September 18, 2015

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

Re: China’s WTO Compliance, FR Doc. 2015-19523

To the members of the TPSC:

The US-China Business Council (USCBC) is pleased to submit its analysis of China’s compliance with its World Trade Organization (WTO) commitments for your October 7, 2015 hearing.

USCBC is in regular contact with your agencies regarding the concerns our members have about the business operating environment in China. This submission is a summary of key WTO-related issues US companies face in China. Also attached are recent USCBC reports on several of the issues, including comments that USCBC has submitted on recent Chinese laws and regulations:

USCBC Reports
- USCBC Annual Membership Survey, September 2015
- USCBC Economic Reform Scorecard, June 2015
- USCBC China Regulatory Transparency Scorecard, March 2015
- USCBC Board Priorities Statement, January 2015

USCBC Comments
- USCBC comment letter on competition and intellectual property, September 2015
- Multi-association comments on CBRC draft regulations, September 2015
- USCBC comment letter on the Cybersecurity Law, August 2015
- USCBC comment letter on the NGO Management Law, June 2015
- USCBC comment letter on the National Security Law, June 2015
- Multi-association letter on CBRC policies, April 2015
- USCBC comment letter on the Foreign Investment Law, February 2015
- USCBC Special 301 Submission, February 2015
China remains a priority market for American companies, despite the slowing economy and challenging business environment. By USCBC calculations, China is a $400 billion market for American manufacturers, service providers, and farmers. Though American companies have come under greater pressure due to rising costs and growing competition, 85 percent of USCBC members operating in China are profitable and close to half saw double-digit revenue growth last year. China, along with the US, will be a significant driver of global economic growth in the years ahead, and continue to be a strong contributor to US economic and job growth.

While China presents important opportunities for American companies, the market also presents significant challenges. As USCBC has reported in the past, China is often in compliance with the letter of its WTO commitments, but not the spirit. American companies face many challenges in China as a result, from using national security provisions as a means to favor domestic companies to the lack of transparency and due process in competition-related investigations. As a result of these challenges and others, more American companies are becoming increasingly uncertain about China’s future policy direction.

To address the challenges American companies face in China, it is imperative that the United States continue and deepen its robust, high-level engagement with China. Through the US-China Strategic and Economic Dialogue (S&ED) and the US-China Joint Commission on Commerce and Trade (JCCT), we have seen steady progress on a number of issues. As the United States and China continue their work in these forums—and through negotiations on a Bilateral Investment Treaty (BIT)—we hope further progress can be made in opening China’s market and in creating a more level playing field for American companies.

In recent months, the bilateral relationship has faced heightened tensions. We should not allow tensions to erode the strong economic relationship between our two countries. While our countries may not see eye-to-eye on all political and strategic matters, our economic relationship is one that benefits both nations. Toward that end, we recommend that the US government reiterate its intention to honor the provisions of China’s Accession Protocol to the World Trade Organization (WTO) and treat China as a market economy starting in December 2016, 15 years after its accession to the WTO. Doing so would be an important reinforcement of the United States’ commitment to both the rule of law established under the WTO and to our commercial relationship with China.

**Market Access Barriers and the BIT**

The overwhelming majority of US companies are doing business in China to access the Chinese market. However, China’s continued prohibitions on investment in nearly 40 sectors limits the types of operations many companies can maintain and the services they can provide there. For instance, foreign law firms are severely restricted in their China practices. These restrictions—and others—make the opportunities that would be provided by a US-China BIT critical. These

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1 Estimate combines US exports to China and sales of US affiliates in China, with adjustments to eliminate double-counting, and includes US exports that pass through Hong Kong to China.
negotiations are an opportunity to address many of the challenges USCBC members face in China and to expand critical market access for American enterprises.

USCBC strongly supports the Obama administration’s continued work on the BIT negotiations. The BIT has the potential to eliminate significant barriers in the China market, and remains the top priority in the US-China economic relationship. To win the support from USCBC members and US industry that will be necessary for its enactment, the BIT must significantly reduce foreign ownership barriers and cover all aspects of China’s economy except a narrow list of excluded sectors. We encourage US negotiators to ensure that China’s final negative list offer is not simply a duplicate of their current list of ownership restrictions, but an ambitious offer that opens up China’s market broadly.

The BIT will not solve all of the concerns that American companies have in China, but it will provide additional tools to address them. At the same time, the United States must continue to press for market openings and equal treatment prior to the enactment of a BIT. Toward that end, USCBC continues to encourage China to reduce current foreign-investment restrictions immediately — not simply at the end of the BIT negotiations. Doing so will help demonstrate China’s seriousness about its economic reforms, and build crucial support in the United States for the BIT negotiations. Such support will be vital for ultimate approval and implementation of the agreement by the US Senate.

**Intellectual Property Rights**

Though China has made progress in protecting investors’ intellectual property (IP), the issue remains a top concern for USCBC members. Companies are concerned with all types of IP, including patents, trademarks, copyrights, and trade secrets. While China has taken some steps year-to-year to improve its IP environment, gains have been modest, with members noting small improvements each year. Concerns remain across all industries, particularly in regards to insufficient IPR enforcement. Together, these issues impact US companies’ bottom lines and diminish the likelihood that companies will create new or expand existing investments in China, especially in innovative industries that China’s policymakers have said they want to promote.

While there is no single fix to address the range of challenges companies face in China, companies see common themes in their recommendations to the Chinese government on this issue. First, China should take steps to prevent IPR infringement before it occurs by adopting and implementing tougher deterrents. Such deterrents will not only strengthen protections on US companies’ IP in China, but they will also help China become the more competitive global market it desires to be. China can create effective deterrents in two key ways: by increasing the effective level of fines and damages for IPR infringement, and by replacing the current value-based thresholds for criminal prosecution with a system that applies criminal penalties for commercial-scale infringement, in line with WTO practices. Taking such steps will help American and Chinese companies retain the profits they have earned, allowing them to invest in new products and hire more workers in both markets.
China should also take additional steps to address issues related to specific areas of IPR. Some of these areas include:

- Increasing resources at the central and local levels to combat IPR infringement;
- Improving trade secret protection through legislative and enforcement reforms;
- Establishing and implementing clear and enforceable regulations and policies in IPR-related areas such as competition, standards, taxation, and R&D;
- Working with industry representatives to discuss outstanding issues with draft policies, such as the draft Service Invention Regulations, Patent Law, Copyright Law, and IP abuse regulations;
- Creating innovation and government procurement policies that do not discriminate against a company’s IPR based on location of ownership;
- Restricting the use of compulsory licenses;
- Promoting better protection of trademarks and copyrights through traditional means and over Internet platforms; and
- Removing market access barriers to legitimate products, such as imported films.

National Treatment

National treatment is an essential principle for all companies doing business globally. However, in China, American companies continue to experience problems with unfair treatment, affecting both their operations and returns.

National Security

Companies have become increasingly concerned in recent months over China’s efforts to use measures imposed under the banner of national security for protectionist purposes. Recent examples of this include measures issued by the China Banking Regulatory Commission targeting foreign technology procurement, and policies requiring national security reviews of foreign investment before a deal can be approved. These policies do little to strengthen China’s national security, and contradict the spirit of China’s WTO commitments. To create a fairer legal environment for all companies invested the market, China, and all governments, should refrain from using national security as a means to discriminate against foreign companies.

Licensing

Licensing also remains a significant concern to companies invested in China. At the central, provincial, and local levels, these issues affect almost every aspect of doing business in China. Further complicating the matter, most USCBC members report that their domestic competitors are not facing the same licensing problems. Though China’s central government has made progress on its initiative to reduce the number of approvals necessary to do business, a majority of companies have not seen improvements in licensing as a result this initiative. Though reducing complexity in the licensing process is a positive step, China must also ensure that American companies are treated equally in all licensing and approval processes, in line with its WTO commitments.
Anti-Trust
Under its Anti-Monopoly Law, China has continued its pricing investigations on foreign and domestic companies, though the pace of investigations has slowed. USCBC was pleased that China committed the 2014 JCCT dialogue to treat foreign and domestic companies equally in competition enforcement, increase transparency, and allow legal counsel to attend meetings and enforcement proceedings. However, USCBC remains watchful as to whether China’s commitments will be fully implemented, and if foreign companies’ concerns will be fully resolved going forward. Company concerns include:

- Fair treatment and nondiscrimination;
- Lack of due process and regulatory transparency;
- Lengthy time periods for merger reviews;
- Role of non-competitive factors in competition enforcement;
- Determination of remedies and fines; and
- Broad definition of monopoly agreements.

Improvements on these issues would not only benefit foreign companies doing business in China—they would also benefit domestic Chinese companies. To read more information on this issue, USCBC’s extensive analysis on China’s competition-enforcement regime is attached.

Innovation Policies
China’s innovation policies have been the focus of international attention since at least 2009, when the central government’s indigenous innovation policies were first released. While China has made modifications to address concerns about provisions that favored domestic firms, American companies have mixed views on the impact innovation promotion policies have had on market access in China. USCBC’s annual membership survey found that while most companies view China’s interest in innovation as an opportunity, more than half view it as a “strategic concern.” Further, despite repeated assurances by Chinese officials that its innovation policies are open to both domestic and foreign companies, very few American companies have seen a positive impact of these policies on their sales and operations in China.

The risk inherent in these policies is unchanged from 2009: They could create an unfair playing field that gives domestic companies an advantage over foreign competitors. For example, China announced a program in June 2014 aimed at promoting the development of its domestic semiconductor industry, despite the fact that the world’s largest and most innovative international semiconductor companies are already present in China’s market. This program poses the risk of discriminating against foreign companies or restricting access to the Chinese market. Overall, favoring certain companies has a negative impact on innovation in China, as it does not create a system of incentives that drives companies to pursue product and process innovation.

USCBC also remains very concerned about China’s efforts to promote domestic competitors in the technology sector, in particular, at the expense of foreign companies. China’s efforts to exclude US technology companies from key areas of China’s market contradicts the spirit of its WTO commitments by creating undue de facto market access barriers for American technology
companies. Seeking to impede what American companies can do in China stifles both innovation and competition in the market — to China’s own detriment. Decisions about technology purchases — both in China and in the United States — should be made on commercial factors and should not be politicized.

**Transparency**

Regulatory and rule-making transparency remains a challenge in China. The issue is not limited to just the release of draft rules and regulations for public comment; it also relates to companies’ ability to get accurate information on the status of licensing applications, participate in the standard-setting process, and provide input on government decisions. This issue is consistently cited as a top concern in USCBC’s annual membership survey on China’s business environment.

Despite the importance of this issue, USCBC’s most recent report on China’s transparency compliance found that almost all Chinese governmental entities fell short of the government’s commitments on this issue. For the fifth straight year, USCBC found that China’s central government agencies have an inconsistent record and are not fully meeting their regulatory transparency obligations.

Progress on this issue, including better and more open engagement with all stakeholders — including foreign companies — is essential if China is to meet its own goals of having a market-based, competitive economy. USCBC recommends that the Chinese government ensures that all administrative regulations, departmental rules, and regulatory documents are posted on the designated SCLAO information website comment page for at least a 30-day period, as per China’s bilateral commitments and domestic laws and regulations. China should take a further step by permitting a longer comment period of 60 or 90 days to allow for higher-quality comment contributions, and define and clarify what types of documents are covered under the State Council’s transparency commitments.

Additional analysis on China’s transparency commitments and performance may be found on USCBC’s website, or in the attached report.

**Conclusion**

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

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

Erin Ennis  
Vice President

Attachments
Growth Continues Amidst Economic Slowdown, Rising Competition, Policy Uncertainty
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EXECUTIVE SUMMARY

- China remains a priority for American companies, despite the slowing economy and challenging business environment, but the growth slowdown and policy uncertainty are undermining confidence.

- Growth in China is slowing for American companies, but 41 percent still report double-digit revenue growth in the last year. While two-thirds project revenue growth in 2015, 20 percent expect a revenue decline, up from 11 percent in last year’s survey.

- The number of companies reporting that their China operations are profitable remains high and unchanged from our previous surveys—85 percent. However, cost increases and rising competition continue to squeeze margins.

- American executives’ confidence in their prospects in China continues to moderate, however, reflecting uncertainty about the direction of Chinese policies, limited progress on economic reforms, increased competition, and slowing growth.

- At the same time, 90 percent of companies say their growth prospects in China are the same or better than in other emerging markets—in spite of a policy environment that 80 percent say is the same or worse than other markets.

- Any benefit from China’s ambitious economic reforms so far? Nearly half say no, although an equal number have seen some impact. But US companies generally are not seeing it in one of the areas commonly highlighted by the Chinese government: streamlined licensing and red tape reductions—77 percent of companies have seen no impact of reforms in these areas.

- Top sources of competition for American companies in China: other foreign companies, private Chinese companies, and Chinese state-owned enterprises (SOEs), in that order—a consistent finding of the US-China Business Council’s (USCBC) annual survey.
Introduction
The China market remains a priority for American companies, despite its slowing economy and its challenging business environment, although confidence continues to weaken about the business outlook.

The US-China Business Council (USCBC)’s latest member survey provides valuable context to the bilateral commercial relationship, as well as an inventory of key issues that China’s government should take note of as the country’s economic reforms continue.

Business outlook
For the last 10 years, USCBC has annually polled its members on their business performance in China and their priority issues. Several points have remained consistent over that period, despite a global economic downturn in 2009-2010 and moderating growth of China’s economy in more recent years:

- China remains a priority market for the majority of companies, with 94 percent citing it among their companies’ top five global priorities.
- Most companies’ China operations are profitable—85 percent operate in the black, consistent with USCBC survey outcomes for the last 10 years.

Fig. 1

**China’s Prominence in Overall Company Strategy**

<table>
<thead>
<tr>
<th>Year</th>
<th>Top priority</th>
<th>Among top five priorities</th>
<th>One of many non-key priorities</th>
<th>Not a priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>23%</td>
<td>71%</td>
<td>14%</td>
<td>2%</td>
</tr>
<tr>
<td>2012</td>
<td>22%</td>
<td>72%</td>
<td>15%</td>
<td>1%</td>
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<tr>
<td>2013</td>
<td>15%</td>
<td>81%</td>
<td>3%</td>
<td>1%</td>
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<tr>
<td>2014</td>
<td>22%</td>
<td>71%</td>
<td>7%</td>
<td>0%</td>
</tr>
<tr>
<td>2015</td>
<td>16%</td>
<td>78%</td>
<td>6%</td>
<td>0%</td>
</tr>
</tbody>
</table>
• While profitable, companies are seeing reduced profit margins—not a surprise in a slowing market with increasing costs and rising competition. Thirty percent report reduced profitability over the past year, a steady increase from prior years. However, a greater percentage still saw profit growth.

• Despite the margin pressures, roughly two-thirds of respondents report that profit margins in China are the same as or better than in other markets. Margins are down versus the years of the global downturn, when China outperformed, but largely in line with recent years.

• Forty-one percent of companies reported double-digit revenue growth in the past year, despite the economic slowdown. Looking ahead, two-thirds of companies anticipate revenue to increase in 2015, while 20 percent expect revenue to decline, nearly double versus the previous year.

• Most companies plan to maintain or accelerate their resource commitment to China in the coming year. While only 11 percent of companies plan to reduce their resource commitment, that percentage is the largest reported in the survey’s 10-year history.
2015 Revenue from China is Projected to...

- Increase: 67%
- Remain unchanged: 13%
- Decrease: 20%

Are Your China Operations Profitable?

- 2011: Yes 85%, No 15%
- 2012: Yes 89%, No 11%
- 2013: Yes 91%, No 9%
- 2014: Yes 83%, No 17%
- 2015: Yes 85%, No 15%

Profitability Compared to Previous Year

- 2011: Increased 62%, Remain unchanged 10%, Decrease 28%
- 2012: Increased 55%, Remain unchanged 10%, Decrease 35%
- 2013: Increased 49%, Remain unchanged 21%, Decrease 30%
- 2014: Increased 44%, Remain unchanged 27%, Decrease 29%
- 2015: Increased 40%, Remain unchanged 30%, Decrease 30%
Impact of policy environment on market optimism

Despite these positive trends, the confidence of American companies in their future prospects in the China market has softened. Only 24 percent of companies remain fully confident in their future prospects in China—the lowest number reported in 10 years—with 52 percent saying they are somewhat optimistic. While few companies have become pessimistic, uncertainty about China’s policy environment, increasing competition, and slowing growth are tempering optimism.

For context, 90 percent of companies view their growth prospects in China as the same or better than other emerging markets, but the majority view China’s policy environment as the same or worse than other markets (79 percent). For many of these companies, the policy environment has a strong impact on company outlook:

- A quarter of companies cite PRC policies and regulations as the primary constraint on increased profitability in China.
- 70 percent of companies name China’s policy and regulatory environment as having the greatest impact on their five-year outlook for the market.
- In the services sector, 75 percent of companies cite China’s policy direction as the top constraint on growth in the sector.
Limited benefits from economic reforms

This year’s survey comes two years into China’s push for economic reforms. While half of companies report that they have seen some tangible benefits from the reforms, almost an equal number have not.

For example, over three-quarters have seen no impact from the government’s work to streamline licensing processes and reduce red tape. This mirrors USCBC’s ongoing analysis of China’s economic reforms, a report that reveals little progress on addressing foreign company concerns. In this latest USCBC member survey, almost 60 percent of companies report that they continue to experience licensing problems in China—primarily with the central government, rather than at the local or provincial level. It is unclear if those challenges are unique to foreign companies or simply systematic—half of respondents say their domestic competitors do not face the same problems, but nearly half say their domestic competitors do.

Has Your Company Seen Benefits from PRC Economic Reforms?

Yes, significant benefits: 1%
Yes, some benefits: 51%
No: 48%
2015 Top 10 challenges: Many recurring issues, with one important addition

The top 10 challenges identified by companies remain largely unchanged from 2014, though are ranked in a somewhat different order this year. Competition with Chinese companies—both private and state-owned—remained the top concern for American companies. The issue has never been out of the list of top 10 concerns in the history of USCBC’s survey, and has been the top concern for the last two years. China’s foreign investment restrictions, the impact of cost increases, and IPR enforcement also remain at the top of the rankings.

Amongst the top 10 this year is an issue that has attracted much media attention in the last year: Chinese policies on information flows and technology security now rank eighth among US company concerns in China—and first among technology companies (more on this below). The issue has become prominent in recent months, due to both new policies that have been proposed or implemented that will impact companies in a wide variety of sectors, as well as instances in which access throughout China to networks and the Internet have been significantly slowed or halted. In addition to multiple ways that these issues impact companies’ day-to-day operations in China, the primary concern that companies across all sectors cite is the US-China political tension stemming from cybersecurity issues.

Challenges in the services sector

Despite regular announcements by the Chinese government stating that services sector development is a priority, US companies continue to be frustrated by market access barriers. Lifting the numerous ownership and licensing restrictions that limit foreign company participation in the services sector would bring a significant driver of services sector growth. As noted in last year’s survey report, China has already demonstrated how an open investment environment can benefit its domestic companies—the Chinese manufacturing sector, which was largely opened to foreign companies when China joined the World Trade Organization in 2001, became a significant driver of China’s growth. China’s services sector will likely experience similar growth if the market is opened more fully to foreign companies—and Chinese consumers stand to benefit from increased competition among service providers.

American services companies face many of the same challenges in China as foreign companies doing business in other sectors. The regulatory environment, however, has an even larger impact on their business. While 23 percent of companies overall say that Chinese policies and regulations are the primary restraint on their profitability in China, 75 percent of services companies cite these hurdles as the top constraint for their sector.
**Top 10 Challenges – Services Sector**

1. Foreign investment restrictions
2. Licensing
3. Competition with Chinese companies in China
4. Data flows
5. Transparency
6. Human resources
7. Cost increases
8. Nondiscrimination/national treatment
9. Uneven enforcement
10. IPR enforcement

**Top Constraints on Growth in the Services Sector**

- **PRC government policy direction**: 75%
- **Licensing**: 67%
- **Human resources**: 67%
- **Competition from Chinese companies**: 64%
- **Competition from foreign companies**: 58%
- **Unequal treatment with domestic companies**: 53%
- **Investment restrictions**: 39%
- **Lack of customer awareness**: 25%
- **Other**: 11%

*Multiple responses allowed*
Challenges for technology companies

American technology companies have faced significant challenges in China over the past year, reflecting both Chinese policies to promote domestic competitors and the proliferation of policies that use national security as a justification to favor domestic products over foreign ones. As a consequence, the top challenges identified by technology companies differ in many ways from the top issues of survey participants as a whole.

It is important to keep these differences in mind when considering the competitive environment for foreign companies in China: companies in some sectors—technology in particular—are facing challenges that impact their ability to fundamentally access the market. For instance, despite repeated assurances by Chinese officials that its innovation policies are open to both domestic and foreign companies, few American companies (only 1 percent) have seen a positive impact of these policies on their sales and operations in China. In contrast, 55 percent of companies view these policies as a strategic concern or have seen a significant negative impact.

More broadly, China should embrace the transformational power that a truly open economy creates. Innovation—a top priority for China’s government—thrives under such conditions, but is stifled when governments seek to limit how and where it occurs, or place undue limits on how and where companies deploy the fruits of their innovation, such as intellectual property. Sustainable economic growth also flourishes best in an economy that allows real competition and broad participation by foreign companies.

Top 10 Challenges – Tech Sector

1. Data flows
2. Innovation policies
3. Competition with Chinese companies in China
4. Cost increases
5. IPR enforcement
6. Cybersecurity
7. Government procurement policies
8. Standards and conformity assessment
9. Tax issues
10. Antitrust/Anti-Monopoly Law

Impact of China’s Innovation Promotion Policies on Sales and Operations

- Positive impact on sales or operations
- No significant impact on sales to date, but is a strategic opportunity
- No significant negative impact on sales to date, but is a strategic concern
- Significant negative impact on sales or operations
What’s not in the top 10?

A few of the issues that did not make the top 10 concerns are worth noting.

• Cybersecurity ranked 14th in this year’s survey, roughly the same as last year’s ranking (13). However, responses to separate questions in the survey reveal that most companies show some level of concern about China’s policies on information flows and technology, as well as the impact of related US-China political tensions. Those issues are discussed below with data flow restrictions.

• Technology transfer issues fell out of the top 20 concerns in 2015, ranking 23rd out of 30 for survey respondents. However, it must be noted that companies impacted by pressures to transfer technology feel the issue very acutely, and the issue remains on the watch list of the majority of companies in our survey. This issue is discussed at the end of the report.

• Currency issues, though a focus of some members of Congress, remain a minor concern to US companies. China’s exchange rate and its impact on American companies in China once again ranked near the bottom of the list (number 25 out of 28). China needs to continue financial reforms and move toward a fully convertible, market-driven exchange rate, but the issue has limited impact on the competitiveness of American companies in China and on the US global trade balance.

Ultimate challenge: How to address concerns?

This year’s report is issued in the days before PRC President Xi Jinping makes his first state visit to the United States. President Xi’s trip comes at an important time in US-China commercial relations. Indeed, as evidenced by USCBC’s survey results, American business confidence in the direction of China’s economy and the role of foreign companies in broadening China’s economic reforms is waning.

Both governments need to find a path forward to address the wide range of concerns that foreign companies have in China’s market. China’s economic reforms will not be successful if the problems that foreign companies face in the market are not addressed, nor will China be able to sustain the projected economic growth targets for 2015 and beyond without opening more fully to foreign investment.

The reality is that there is no simple fix to the challenges that American companies face in China. A true level playing field for foreign companies will require changes to China’s investment rules, improved transparency in rule making and government procedures, continued attention to improving intellectual property rights enforcement and equal treatment in regulatory enforcement more broadly—to name but a few specific areas.

In addition to these individual changes, an overall framework for openness is needed. An important component of this framework will be a strong and comprehensive bilateral investment treaty (BIT). While a BIT will not address every concern that American companies have in China, a high-quality US-China BIT will codify the basic principles of a level playing field, including national treatment and transparency. The successful conclusion of the BIT negotiations should be the top priority in the US-China economic relationship.
The competition landscape in China is frequently characterized as being dominated by Chinese state-owned enterprises (SOEs). The reality is that many Chinese SOEs operate in the market, but so do privately owned Chinese companies—and both are increasingly competitive with American companies.

Some Chinese companies thrive because they produce competitive, high-quality goods and services. At the same time, Chinese policies and practices provide a leg up in many ways to domestic companies but not to foreign ones, as can be seen in several of the issues in this year’s top 10 concerns: foreign investment restrictions that limit foreign company access to the market (#2); lack of transparency (#5); preferential treatment in licensing (#6); and uneven enforcement of rules and regulations (#9). In addition, domestic companies also receive preferential access to financing and government contracts.

It is important to keep in mind that nationality often trumps ownership structure, as these benefits are given to both domestic SOEs and private companies. As a consequence, policies to level the playing field for foreign companies should focus on true national treatment—that is, equal treatment of foreign companies with all forms of domestic companies, regardless of ownership.
Are Non-SOE Chinese Competitors Receiving Tangible Benefits?

- Suspect but not certain: 53%
- No: 21%
- Yes, have concrete knowledge: 26%

Types of Benefits SOE Competitors Receive

- Preferential government financing: 49%
- Preferential access to government contracts: 49%
- Preferential licensing and approvals: 49%
- Tax benefits: 42%
- Lower land costs than are available to foreign companies: 30%
- Other financial subsidies: 28%
- Lower utility costs: 19%
- Other: 5%

Multiple responses allowed
Even after the most recent revisions to its foreign investment catalogue, China maintains restrictions in approximately 90 sectors in manufacturing, services, agriculture, and resources. American companies overwhelmingly invest in China to reach the China market, so investment ownership barriers are in fact market access barriers.

While some moves over the last year to streamline foreign investment approval processes have been helpful, China’s remaining investment caps and other restrictions continue to have a significant impact on the country’s investment environment. As a consequence, a high-standard bilateral investment treaty (BIT) that significantly reduces foreign investment restrictions with a narrow list of excluded sectors is essential to addressing American companies’ concerns in the market.

That said, China should begin reducing foreign ownership restrictions immediately. Doing so is the only way to demonstrate that China is genuinely committed to following through on market openings, rather than using the BIT negotiations as a way to delay reforms.
As China’s economy has grown, the cost of doing business has increased. Almost all companies report they are concerned about continued cost increases in China. Human resources continues to be the top challenge in this area, though companies also cite land and rental costs, regulatory compliance, taxes, utilities and materials as concerns. Human resources costs are discussed more fully in the #7 challenge: human resources. Of note: the issue is among a few in the top 10 that equally impact domestic and foreign companies, along with overcapacity.

Despite the consistent challenge of rising costs, few companies report that they are leaving the China market entirely. Instead, they are focusing on market-based solutions. As one company explained, “Cost increases remain a major issue, especially given that market-level competition is very intense and there is very little scope for any downstream price increases. Productivity and efficiency have become more important than ever.”
Intellectual property rights protection is a perennial issue for American companies doing business in China. While few companies report significant enforcement improvements year to year, companies report that they continue to see modest improvements each year.

As with cost increases, almost all companies have at least some level of concern about IP protection in China. There are no one-size-fits-all solutions to these issues, as companies’ concerns about IP differ. The largest group of respondents indicated that trade secrets were their top area of IP concern, followed by trademarks, patents, and copyrights.

Different types of cases can also lead to different enforcement channels, including administrative, civil, and criminal cases. Companies report that, to date, China’s courts have proven a viable enforcement channel only in some cases, though the success rate of cases varies.

China’s government should take note of an important aspect of continued IP enforcement challenges: 75 percent of companies report that they limit the types of products made, sold or developed in China because of the IP environment. Those decisions guide investment choices, and reflect a lost opportunity for job creation in China, a top priority for the government.
**What Aspect of Trade Secret Protection in China is of Greatest Concern?**

<table>
<thead>
<tr>
<th>Aspect</th>
<th>Percentage</th>
</tr>
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<tbody>
<tr>
<td>Enforcing non-disclosure agreements</td>
<td>63%</td>
</tr>
<tr>
<td>Gathering evidence for trade secrets cases</td>
<td>54%</td>
</tr>
<tr>
<td>Lack of regulatory clarity</td>
<td>46%</td>
</tr>
<tr>
<td>Lack of legal framework</td>
<td>42%</td>
</tr>
<tr>
<td>Getting evidence admitted in enforcement proceedings</td>
<td>33%</td>
</tr>
<tr>
<td>Lack of employee understanding</td>
<td>25%</td>
</tr>
<tr>
<td>Forced disclosure for government licenses</td>
<td>25%</td>
</tr>
</tbody>
</table>

*Multiple responses allowed*

**Over the Past Year, China’s Protection of IPR Has...**

- Somewhat deteriorated: 4%
- Remained unchanged: 3%
- Greatly improved: 35%
- Somewhat improved: 58%
- Greatly deteriorated: 0%

*Multiple responses allowed*
Fig. 25

Impact of China’s Level of IPR Enforcement on Types of Activities Companies Undertake in China

<table>
<thead>
<tr>
<th>Activity</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limits R&amp;D activities in China</td>
<td>37%</td>
</tr>
<tr>
<td>Limits products co-manufactured or licensed in China</td>
<td>37%</td>
</tr>
<tr>
<td>Limits products sold in China</td>
<td>34%</td>
</tr>
<tr>
<td>Limits products manufactured in China</td>
<td>33%</td>
</tr>
<tr>
<td>No impact</td>
<td>35%</td>
</tr>
</tbody>
</table>

Multiple responses allowed

Fig. 26

Viability of China’s IPR Enforcement Channels

- **Criminal courts**
  - Not viable: 3%
  - Viable in some cases: 54%
  - Viable in most cases: 43%

- **Civil cases**
  - Not viable: 12%
  - Viable in some cases: 58%
  - Viable in most cases: 30%

- **Administrative agencies (e.g. SAIC, PSB)**
  - Not viable: 15%
  - Viable in some cases: 63%
  - Viable in most cases: 22%
Regulatory and rule making transparency remains a challenge in China. The issue is not limited to just the release of draft rules and regulations for public comment—the ability of companies to get accurate information on the status of licensing applications, participate in the standard-setting process, and provide input on government decisions is also a part of these concerns.

Despite the importance of this issue, USCBC’s most recent report on China’s transparency compliance found that almost all Chinese governmental entities fell short of the government’s commitment to improve transparency. Progress on this issue, including better and more open engagement with all stakeholders—including foreign companies—is essential if China is to meet its own goals of having a market-based, competitive economy.
Almost 60 percent of American companies report that they have experienced licensing challenges in China. The problems have occurred in a variety of areas, including product approvals, renewing business licenses, and even routine business activities.

Despite efforts by the central government to reform the licensing processes, over three-quarters of companies report that the problems they encountered happened at the central level. China’s licensing reforms to date have yet to address most companies’ challenges, though about 20 percent of companies have seen a positive impact.

Notably, over half of companies say that their domestic competitors do not face the same licensing problems as foreign companies.

### Challenge #6 Licensing

**Progress on Issue in Past Year: Unchanged**

<table>
<thead>
<tr>
<th>Year</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>7</td>
</tr>
<tr>
<td>2013</td>
<td>3 (tie)</td>
</tr>
<tr>
<td>2012</td>
<td>2</td>
</tr>
<tr>
<td>2011</td>
<td>2</td>
</tr>
<tr>
<td>2010</td>
<td>2 (tie)</td>
</tr>
<tr>
<td>2009</td>
<td>1</td>
</tr>
<tr>
<td>2008</td>
<td>1 (tie)</td>
</tr>
<tr>
<td>2007</td>
<td>2</td>
</tr>
<tr>
<td>2006</td>
<td>2</td>
</tr>
</tbody>
</table>

---

![Fig. 27](image_url)

**Has Your Company Experienced Challenges with Administrative Licensing in China?**

- **No**: 43%
- **Yes**: 57%

![Fig. 28](image_url)

**Are Domestic Competitors Experiencing the Same Licensing Problems?**

- **No**: 56%
- **Yes**: 44%
Fig. 29

Types of Licensing Problems Experienced

<table>
<thead>
<tr>
<th>Types of Problems</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product approval or certification</td>
<td>42%</td>
</tr>
<tr>
<td>Business expansion</td>
<td>40%</td>
</tr>
<tr>
<td>Foreign investment approval</td>
<td>30%</td>
</tr>
<tr>
<td>Renewing or amending business licensing</td>
<td>21%</td>
</tr>
<tr>
<td>Routine business activities</td>
<td>19%</td>
</tr>
<tr>
<td>Other</td>
<td>16%</td>
</tr>
</tbody>
</table>

Multiple responses allowed

Fig. 30

Where Licensing Problem Occurred

<table>
<thead>
<tr>
<th>Location</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central government</td>
<td>77%</td>
</tr>
<tr>
<td>City, county, or district government</td>
<td>42%</td>
</tr>
<tr>
<td>Provincial government</td>
<td>37%</td>
</tr>
<tr>
<td>Investment zone officials</td>
<td>12%</td>
</tr>
</tbody>
</table>

Multiple responses allowed
**CHALLENGE #7** Human Resources

**Progress on Issue in Past Year: Unchanged/Deteriorated**

<table>
<thead>
<tr>
<th>Year</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>4 (tie)</td>
</tr>
<tr>
<td>2013</td>
<td>3 (tie)</td>
</tr>
<tr>
<td>2012</td>
<td>1</td>
</tr>
<tr>
<td>2011</td>
<td>1</td>
</tr>
<tr>
<td>2010</td>
<td>3 (tie)</td>
</tr>
<tr>
<td>2009</td>
<td>3</td>
</tr>
<tr>
<td>2008</td>
<td>2 (tie)</td>
</tr>
<tr>
<td>2007</td>
<td>1</td>
</tr>
<tr>
<td>2006</td>
<td>1</td>
</tr>
</tbody>
</table>

Companies continue to experience the challenges of China’s tight labor market. Wages continue to grow between 5 and 10 percent each year—though they are rising the fastest for middle management positions and skilled technical and engineering staff. Most companies report that they pay equal or higher wages than their domestic counterparts.

Despite these cost increases, 46 percent of companies report that they plan to expand head count in the next year. Filling some of those positions may be a challenge, however: companies note that the highest turnover rates were in white collar entry-level positions and middle management—suggesting that wage increases alone are not encouraging managers to stay longer with an employer.

**Wages Versus Domestic Chinese Enterprises**

- Higher than the average wage: 69%
- Lower than the average wage: 3%
- Same as the average wage: 28%

**Company Head Count in Next Year Expected to...**

- **Expand**: 71%
- **Stay the same**: 55%
- **Contract**: 46%

- **2013**: Expand 37%, Stay the same 21%, Contract 8%
- **2014**: Expand 33%, Stay the same 21%, Contract 12%
- **2015**: Expand 37%, Stay the same 21%, Contract 17%
### Wage Increases in the Past Year

- **Did not raise wages**
  - 2013: 6%
  - 2014: 7%
  - 2015: 5%

- **Less than 5 percent**
  - 2013: 12%
  - 2014: 16%
  - 2015: 11%

- **Between 5-10 percent**
  - 2013: 61%
  - 2014: 63%
  - 2015: 75%

- **Between 10-15 percent**
  - 2013: 18%
  - 2014: 13%
  - 2015: 5%

- **Over 15 percent**
  - 2013: 3%
  - 2014: 1%
  - 2015: 4%

### Estimated Percentage of Wage Increases in Next Year

- **Will not raise wages**
  - 2013: 2%
  - 2014: 6%
  - 2015: 2%

- **Less than 5 percent**
  - 2013: 19%
  - 2014: 16%
  - 2015: 19%

- **Between 5-10 percent**
  - 2013: 69%
  - 2014: 70%
  - 2015: 66%

- **Between 10-15 percent**
  - 2013: 10%
  - 2014: 6%
  - 2015: 9%

- **Over 15 percent**
  - 2013: 0%
  - 2014: 2%
  - 2015: 4%
For Which Positions Are Wages Rising Fastest?

- Semi-skilled factory operators: 2% (2015), 2% (2014), 1% (2013)
- Entry-level white collar employees: 5% (2015), 7% (2014), 6% (2013)
- Entry-level factory operators: 4% (2015), 5% (2014), 5% (2013)
- Skilled factory operators: 5% (2015), 6% (2014), 7% (2013)
- Skilled technical, engineering, science staff: 29% (2015), 34% (2014), 37% (2013)
- Middle management: 9% (2015), 32% (2014), 38% (2013)
- Senior management: 8% (2015), 12% (2014)
At What Level Was Turnover Highest?

<table>
<thead>
<tr>
<th>Level</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior management</td>
<td>1%</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>Middle management</td>
<td>39%</td>
<td>42%</td>
<td>38%</td>
</tr>
<tr>
<td>White collar entry-level staff</td>
<td>32%</td>
<td>25%</td>
<td>35%</td>
</tr>
<tr>
<td>Experienced factory operator/technician</td>
<td>19%</td>
<td>17%</td>
<td>13%</td>
</tr>
<tr>
<td>Entry-level factory operator/technician</td>
<td>9%</td>
<td>14%</td>
<td>12%</td>
</tr>
</tbody>
</table>

Fig. 36
Human resources is one of many operational areas impacted by China’s challenges in tackling environmental pollution. Forty-three percent of companies report that air and environmental issues have made it difficult to retain and transition international talent to China—ranking this issue as the top impact of environmental pollution in China. In addition, companies note increases in the use of sick leave by staff in China.

Environmental pollution also impacts the cost of doing business in China: higher environmental standards have increased cost pressures on companies, accompanied by greater regulatory pressure to reduce companies’ environmental impact, and required operational changes to company operations to ensure compliance. A minority of companies—16 percent—indicated one positive outcome, noting that tighter environmental compliance helped make their companies more competitive versus their domestic counterparts.

### Impact of China’s Air and Environmental Pollution

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Difficulty in retaining/transitioning international talent to China</td>
<td>43%</td>
</tr>
<tr>
<td>Increased cost pressure due to higher environmental footprint</td>
<td>25%</td>
</tr>
<tr>
<td>Greater regulatory pressure to reduce environmental footprint</td>
<td>22%</td>
</tr>
<tr>
<td>Required changes to company operations to comply with pollution policies</td>
<td>18%</td>
</tr>
<tr>
<td>Improved competitiveness as domestic companies have to comply with same environmental standards</td>
<td>16%</td>
</tr>
<tr>
<td>Increased sick leave</td>
<td>14%</td>
</tr>
<tr>
<td>Other</td>
<td>14%</td>
</tr>
<tr>
<td>No impact</td>
<td>19%</td>
</tr>
</tbody>
</table>

*Multiple responses allowed*
Internet and cyber-related issues impact almost all companies in China, and are not just a concern for technology firms. As one company explained, “Working with a VPN connection just keeping up with company emails can at times be next to impossible due to very much slowed down Internet traffic.” As a consequence, it is not surprising that data flows appears in the top 10 issues this year, the first time the issue has specifically been queried in USCBC’s survey.

In addition to periodic restrictions on access to company VPNs, in the past year China has implemented or proposed a number of requirements for the use of unique Chinese technology standards, as well as data localization requirements, and restrictions on cross-border data flows. Many of these policies include provisions that foreign companies either could not or would not comply with, creating a situation in which the best technologies may remain unavailable in the second-largest economy in the world.

While China’s intent may be to create more secure networks, the impact of these policies will be the opposite. Many foreign technologies are still the most secure and resilient technologies available commercially, and many of these requirements would undermine the security that global information and communications technology (ICT) companies are currently building into their products. As a consequence, these types of policies actually create more widespread vulnerabilities in Chinese networks, with the risk that compromised networks will undermine China’s broader economic security and development goals.

Though cybersecurity did not make the list of top 10 concerns, the majority of companies—over 80 percent—report that they are somewhat or very concerned about China’s policies on information flows and technology security.

While 57 percent of companies cite China’s restrictions on data flows as a specific cyber concern, even more—62 percent—cite the impact of US-China political tensions on cyber-related issues. It is essential that the US and China find ways to reduce cyber-related tensions. For several years, USCBC’s board of directors has advocated in its annual priorities statement that the two governments should work together on addressing cyber-related criminal activity or deterring industrial facility cyber intrusions that could harm worker or public safety. It is time for action on that recommendation.

**Fig. 38**

**Concern about Chinese Policies on Information Flows and Technology Security**

- Somewhat concerned: 46%
- Very concerned: 37%
- Not very concerned: 8%
- Neither concerned nor unconcerned: 9%
- Not concerned at all: 0%
Concerns Regarding Cyber-Related Issues

- US-China political tensions: 62%
- Restrictions on data flows in Chinese regulations: 57%
- IP theft: 48%
- Loss of sales in China due to national security/protectionism: 28%
- Criminal activity: 24%
- Risks to plant and worker safety from potential cyber intrusions: 15%
- Impact of PRC Internet restrictions on normal business operations: 5%
- Other: 12%

Multiple responses allowed
While the issue of uneven enforcement of Chinese laws and regulations moved down in rank in this year’s survey, companies report that that the problems are persistent and the issue worsened in the last year. Moreover, enforcement differs not only between foreign and domestic companies, but also across sectors and provinces. These concerns come up in a variety of areas, including competition enforcement, tax auditing, licenses and approvals, and regulatory compliance.
Some progress has been made in the past year on China’s implementation of the Anti-Monopoly Law (AML), China’s antitrust regime. There has been a slowdown in the number of cases that have been announced since fall 2014, though China’s antitrust authorities have indicated plans to increase investigations in some sectors. Regardless of the number of cases initiated, further progress is needed to ensure investigations are conducted in ways that promote due process and transparency. USCBC’s updated report on competition policy and enforcement includes detailed recommendations on these issues.

While 80 percent of companies are somewhat or very concerned about China’s antitrust environment, most companies say that they have not had any direct experience with AML enforcement—though about a quarter have concerns they will be targeted in the future.

Many foreign company concerns about AML enforcement are likely similar to those faced by domestic Chinese companies: lack of transparency, lack of clarity in the legal criteria for cases, lack of due process, and the inability to have legal counsel present in proceedings. That said, half of US companies report that their biggest concern is with the excessive focus of enforcement agencies on foreign companies.

**IN FOCUS: Competition enforcement**

### Concern about China’s Competition and Antitrust Legal and Enforcement Environment

<table>
<thead>
<tr>
<th>Concern</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Somewhat concerned</td>
<td>65%</td>
</tr>
<tr>
<td>Very concerned</td>
<td>15%</td>
</tr>
<tr>
<td>Not concerned</td>
<td>20%</td>
</tr>
</tbody>
</table>

**Biggest Challenges in AML Enforcement**

- Lack of transparency in AML review: 55%
- Excessive focus on foreign companies: 50%
- Lack of clarity on key criteria and definitions: 49%
- Lack of due process: 29%
- Inability to have legal counsel: 26%
- Insufficient capacity among enforcement agencies: 24%
- Provisions limiting common business practices: 23%
- Inclusion of non-competitive factors: 21%
- Lengthy timelines for M&A reviews: 18%
- Other: 8%

*Multiple responses allowed*
In USCBC’s 2014 survey report, companies identified overcapacity as a significant issue in China. Unfortunately, companies report that the issues have gotten worse since then. Despite policies to implement market-determined prices for energy, Chinese companies continue to make products even with a significant slowdown in consumer demand, creating competitive distortions that have an important impact on the market. Companies report that overcapacity is an issue in a range of industries, from chemicals to construction products.

As one respondent explained, “Overcapacity for our industry and value chain appears to be deteriorating due to lack of meaningful, concrete action to eliminate government practices that incentivize continual investment in overbuilt sectors.”

The push and pull of supply and demand is a basic market force, and an inevitable outcome as China seeks to have the market play a larger role in its economy. More must be done in this area to set new policies and implement existing policies that allow the market to dictate supply and demand. These efforts will also require China to eliminate policies and practices that foster overcapacity.

China’s leaders should keep in mind that this issue goes beyond basic economics, however: overcapacity was cited by companies as a sign of local protectionism in China’s economy, and a reason why they were less optimistic about their prospects in the market or had stopped or reduced planned investment in China. As a consequence, addressing overcapacity is among the needed steps to improving the overall business environment.
OTHER ISSUES OF INTEREST

Technology transfer

As part of China’s drive to become more innovative, foreign companies have been encouraged and, in some cases, pressured to transfer technology to their China operations or Chinese companies. Almost 60 percent of companies report that they are concerned about transferring their technology to China, particularly because of concerns about the protection of intellectual property rights and proprietary information, as well as concerns about enforcing technology licensing agreements.

While most companies—77 percent—have not been asked to transfer technology to China in the last three years, nearly a quarter have. Of those that were asked to transfer technology, a little less than half would retain control of the technology in their China operations. The same number said the technology would be jointly shared with a Chinese company; 14 percent report that the technology would be controlled by a Chinese entity. Companies have had mixed success in mitigating these technology transfer requests and receiving adequate compensation.

Nonetheless, the issue is an acute concern of affected companies in key sectors, who often must make difficult choices about managing the trade-off of technology sharing and market access. This is another area where a bilateral investment treaty could have a positive impact.
**Who Asked that Technology Be Transferred?**

- Company: 73%
- Central government: 27%
- Local government: 33%

**Who Would Control the Technology in China?**

- Our company: 43%
- Our company and a Chinese entity: 43%
- Chinese entity: 14%

**Top Concerns about Transferring Technology to China**

- Protection of proprietary information during certification/approval: 83%
- Protection of IP: 75%
- Enforcing licensing agreements: 51%
- Government dictating or influencing licensing negotiations: 32%
- Difficulties in negotiating licensing fees: 12%
- Corporate tax implications: 7%
- Other: 5%

Multiple responses allowed for each question.
COMPANY PROFILE

US- and China-based executives

The annual US-China Business Council (USCBC) annual membership survey incorporates a unique mix of US- and China-based executives. Respondents were roughly equally divided between those based in China with an on-the-ground perspective, and those based in the United States, with a view of the China business environment from a global perspective. The remainder of survey respondents were located elsewhere in Asia.

In addition, respondents range from CEOs of global corporations to executives based in the field. Survey results as a consequence incorporate both strategic and tactical perspectives.

Cross-sector representation

USCBC members who completed the 2015 survey represented a cross-section of US companies doing business in China. Fifty-eight percent of respondents represented manufacturing companies, and 47 percent represented service providers—and many respondents’ companies are active in both sectors. A total of 106 USCBC member companies participated in the survey—or roughly half of USCBC’s membership.

Type of Operations in China

- Manufacturing: 58%
- Services: 47%
- Primary industries (agriculture, resource extraction, mining, etc.): 13%
- Other: 1%

Multiple responses allowed
Long experience in the China market

USCBC member companies have a long history of doing business in China: 65 percent of respondents’ companies have been in China for more than 20 years, and 19 percent have been in China for 11 to 20 years.

In China to access Chinese customers

The overwhelming majority of USCBC member companies report that they are doing business in China to access China’s domestic market. Twenty-one percent use China as an export platform to reach other markets around the world, though only 17 percent use their China operations to produce products that are shipped back to the United States.

Objectives for Existing and Future Investments in China

<table>
<thead>
<tr>
<th>Objective</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Access or serve the China market</td>
<td>94%</td>
</tr>
<tr>
<td>Export platform to serve markets other than the United States</td>
<td>21%</td>
</tr>
<tr>
<td>Export platform to serve the US market</td>
<td>17%</td>
</tr>
<tr>
<td>Other</td>
<td>5%</td>
</tr>
</tbody>
</table>

Multiple responses allowed
USCBC China Economic Reform Scorecard – Marginal Improvement; Impact Still Limited
June 2015

Executive Summary

- The latest US-China Business Council (USCBC) assessment of China’s economic reform efforts finds signs of more reform activity but continues to show that this activity has a limited impact on the top concerns of American companies doing business in China. Recent months have seen both positive and negative signals in key areas, such as investment openings and equal treatment for foreign products.

- While China’s top-line reform message of “letting the market play a decisive role” remains compelling, the slow speed of reform in essential areas, as well as signs of protectionism in certain sectors, continues to create uncertainty about whether policy changes will address market access and level playing field concerns of USCBC members.

- Since USCBC’s previous assessment in February 2015, several new central government measures have been released that improve, or pledge to make incremental improvement to, the business environment for foreign companies. This progress can be seen in the limited investment openings introduced by updated versions of China’s Catalogue Guiding Foreign Investment (CGFI) and free trade zone negative list; new requirements for public disclosure of administrative approval authorities for city governments; and recent pilot measures from the State Council opening certain service sectors to foreign investment for a three-year trial period in Beijing. Financial reform has been active, with a decision to open China’s bank card clearing sector to foreign companies; the first public bond default of a state-owned enterprise; greater room for qualified foreign institutional investors to participate in China’s debt and securities markets; and the introduction of a deposit insurance system for banks in China.

- At the same time, companies have continued concerns about policies that use “national security” to exclude foreign companies from business opportunities in various sectors, as well as language in new industry development plans (such as “Made in China 2025”) that appear to promote Chinese companies over their foreign counterparts, including domestic legal entities with foreign investment. Additionally, even sectors that have seen reform efforts, such as financial services, have yet to address key concerns on foreign ownership restrictions. The lack of movement on such key concerns highlights the mixed signals China is sending on its reform efforts, and underscores the perception that China is prioritizing internal reforms before addressing external (foreign company) concerns.

- Overall, China’s reform efforts have yet to comprehensively address core business issues like foreign investment restrictions, licensing, and other market barriers that often benefit domestic companies. China’s reform program is in its second full year of a timeline that the leadership has indicated will end in 2020. Near-term opportunities for further progress on economic reform could come at the upcoming US-China Strategic & Economic Dialogue (S&ED), during President Xi Jinping’s September 2015 state visit to the United States, or in conjunction with bilateral investment treaty (BIT) negotiations between the United States and China.
Since the Xi administration came to power in early 2013, senior government officials and agencies have spoken widely about economic reform. The November 2013 Chinese Communist Party (CCP) Third Plenum—the third full meeting of China’s top political leadership during the 18th National Congress—was a turning point in the government’s economic reform effort under President Xi Jinping. Post-plenum documents and official statements said the market should play a “decisive role” in China’s economy—a change from previous statements that the market should play a “basic role.” Additionally, these same statements said that reforms should focus on improving the legal system, opening more areas to foreign and private investment, and changing how state-owned enterprises (SOE) are owned and operated.

While China’s top-line reform message of “letting the market play a decisive role” remains compelling, few concrete policies have emerged to implement the broad areas laid out for reform, and existing signals about reform have been mixed. The slow speed of reform continues to create uncertainty about when—and even whether—policy changes will address the market access and level playing field concerns of USCBC members.

USCBC tracks reform developments to address two major questions:

- What tangible progress have Chinese government agencies made toward implementing economic reform?
- What impact will reforms have on US companies and their operations in China?

To answer these questions, USCBC has compiled a list of reform-related policies since the start of the Xi administration. The current assessment includes 26 months of data from March 2013 through April 2015. These policies are divided into themes, such as the role of the state and the market, foreign investment, and institutional reforms. Given the stated role of the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ) as the “test lab” for reforms nationwide, this report also analyzes specific Shanghai FTZ-related policy announcements. USCBC will continue to monitor policies developed for the Shanghai FTZ and the three newly opened free trade zones (Fujian, Guangzhou, Tianjin).

This report assesses the impact of China’s reform efforts on foreign company operations by rating individual policies on their direct and immediate impact on foreign company concerns.

- Each policy is assessed as having either a “significant impact” (green), “moderate impact” (yellow), “limited impact” (orange), or “no impact” (red) for foreign company operations in China.
- USCBC’s overall assessment uses a three-color dashboard, rating China’s reform efforts as either limited, moderate, or significant based on their tangible impact on foreign companies.

For more information about USCBC’s methodology, see Appendix 1. For a fuller list of reform-related policies tracked by USCBC, see Appendix 2.

USCBC Assessment: Slight Improvement, Yet Mixed Signals Persist

USCBC’s latest assessment of China’s economic reform efforts still indicates “limited” progress, though with some improvement since our February 2015 assessment. This assessment is based on a review of both new and existing policies.

Since December 2014, Chinese government agencies have released a few reform-related policies and investment lists detailing responsibilities for government agencies, timelines for action, and specific steps to implement given areas of reform that will positively address certain foreign company concerns. While there continues to be slight progress...
on reforms in key sectors important to foreign companies, there have also been a series of policies indicating a lack of desire to include foreign companies in China’s reform efforts. This has led to a continuation of the mixed signals China is sending to investors regarding its openness and ability to achieve truly market-oriented reform in the near term.

Among the regulatory documents working to move China’s reform needle in the right direction were several investment-related developments. An updated version of China’s Catalogue Guiding Foreign Investment (CGFI) released in March 2014 cut back on a large number of sectors with foreign investment restrictions – primarily in the manufacturing and mining sectors. China’s FTZ negative list, now applicable to FTZs in Fujian, Guangdong, Shanghai, and Tianjin, canceled or relaxed restrictions in 18 industry sectors, though many investment restrictions in key sectors remained in place. Although some of these reductions were due to the consolidation of negative list items, these documents did create openings in areas such as aviation, shipbuilding, agriculture, and the automotive industry. A State Council decision that, pending robust implementation, opens the bank card clearing industry to foreign participation, and the first public default of a Chinese state-owned enterprise signal further progress in China’s market access and financial market reforms.

Additionally, the State Council issued several regulatory documents improving institutional support for reforms to the business environment. These include State Council opinions calling for online publication of formal lists of local government administrative authorities in an effort to better manage and limit arbitrary exercise of authority by local government officials. Other items include State Council provisions restricting government interference in the courts; a State Council decision to further open Beijing’s service sectors to foreign investment; and the State Council’s introduction of a bank deposit insurance system to encourage competition in the banking sector, along with plans to give banks greater freedom in making investment decisions.

However, many of these items do not comprehensively address core foreign company issues. Furthermore, the concurrent introduction of several regulatory documents that effectively promote domestic companies and technology over their foreign counterparts have raised concerns. Chief among these are new rules in the banking sector requiring the use of “secure and controllable” technologies, a category indicating that foreign companies would not be able to qualify for these standards unless they surrender key technologies to Chinese authorities such as source code and encryption algorithms. Although those regulations have been suspended, other policies related to telecommunications, e-commerce, and smart manufacturing appear to use similar language. Additional policies that introduce national security reviews for foreign investment in FTZs and describe new funds and policies to promote domestic manufacturers also raise concerns about the direction of reform. Similarly, the role of foreign companies in the Made in China 2025 plan, China’s ten-year roadmap for strengthening its manufacturing competitiveness, remains unclear. The May 2015 release of the State Council’s annual reform priorities agenda again highlighted internal issues first, such as addressing reform concerns with SOEs and administrative burdens placed on companies.

From a broad perspective, despite the number of reform policies released by Chinese government agencies (more than 350 by USCBC’s latest count), many are still not broad enough in scope, or specific enough in implementing detail, to address foreign company issues. Instead, many of these policies address minor operational issues or are limited to particular sectors. Others do not clearly apply to foreign companies.

Senior officials have stated that China’s overall economic reform plans will be implemented through 2020. The Shanghai FTZ was launched in 2013 with a three-year timeframe before its reforms would go nationwide, though some of these policies have already been extended to designated districts in Shanghai. Reform policies still have the potential to address foreign company issues before the above deadlines are reached, even if the practical progress so far has been scant.

USCBC encourages Chinese officials to take further steps to actively promote economic reforms that will benefit both foreign and domestic companies. Key steps include establishing concrete policies that liberalize investment, boost the role of the market in the economy, create a level playing field for foreign and domestic firms, and promote further legal reform.
Appendix 1: Methodology

Research and Data Collection

For the purposes of this report, USCBC compiled a database of policy developments and announcements related to economic reform. These policies include:

- National-level policies that direct and implement reforms in broad areas;
- National-level policies that promote reforms in specific priority areas; and
- Policies related to the Shanghai FTZ, given the zone’s importance in testing and promoting economic reform.

This report does not attempt to include every policy change that has been made since China’s March 2013 leadership transition, nor does it include draft policies that have yet to be finalized. Instead, this report focuses on concrete policies that may have an impact on business operations and that are either explicitly or implicitly tied to economic reform goals. This report also reviews landmark reform documents—such as the Third Plenum Decision—that set clear, high-level direction for wider economic reforms. This report excludes speeches and pronouncements by Chinese leaders about intended reforms unless they include specific policy announcements.

USCBC’s research focuses on the central government for several reasons. First, reforms are being directly driven in most cases by the central government leadership. Second, it is extremely challenging to track and assess local government policies and implementation. Thus, this report excludes reform policies by provincial and local governments unless they have national implications, such as those related to the Shanghai FTZ and the new free trade zones in Tianjin, Fujian, and Guangdong. In the case of the last three, this report contains few policy details, as none had been published as of the date of this report.

To compile data for this report, USCBC conducted detailed reviews of relevant government webpages on a fixed schedule. USCBC also monitored other government websites, media sources, and a broad mix of information channels to identify concrete policies related to economic reform.

Assessing Individual Policies

Each policy was first categorized from a list of key reform themes and subthemes. USCBC used the following themes and subthemes to categorize policies:

- Overall Reform
- Foreign Investment
- Administrative Licensing and Approvals
- Institutional Reforms (Subthemes: Reform-Related Agencies and Groups; Government Restructuring; Other Institutional Reforms)
- Role of the State and the Market (Subthemes: SOE Reform; Private Capital)
- Financial Reforms (Subthemes: Banking/Interest Rates; Exchange Rate/Foreign Exchange; Insurance; Securities)
- Pricing Reform and Competition Policy (Subthemes: Pricing Reforms; Competition Policy)
- Rule of Law/Legal and Judicial Reform
- Taxation and Budget (Subthemes: Taxation; Budget/Debt Issues)
- Corruption, Bribery, and Party Discipline
- Urban/Rural Issues (Subthemes: Urbanization; Hukou/Household Registration Reform; Land Rights)
- Other Reforms

Each policy was then assessed based on its impact on foreign company operations in China, with consideration given to the breadth of impact across industries, the geographic scope of the policy, and the level of foreign company concern addressed. For each policy, USCBC considered both the direct impact and the impact of follow-up implementing policies. The impact of each policy is rated on a four-color scale:
• **Significant** (green) The policy has a positive impact on a wide variety of industries with foreign investment in China, and it has the potential to significantly impact companies’ abilities to operate in those sectors nationwide. For these policies, implementation is either completed or seems likely. This category may also include State Council or National People’s Congress directives that indicate a significant shift in policy direction across multiple areas of reform.

• **Moderate** (yellow) The policy has: 1) the potential to have a positive impact on companies in a wide variety of industries with foreign investment in China, but significant questions remain regarding implementation speed or ability; or 2) a moderate impact on a wide variety of industries with foreign investment in China; or 3) a significant positive impact for companies in only one sector or in a narrow range of sectors with foreign investment in China.

• **Limited** (orange) The policy has a limited impact on one sector or on a narrow range of foreign investment sectors, or it has only an indirect impact or benefit for foreign companies investing in China.

• **None** (red) The policy will have no clear direct or indirect impact for foreign companies.

The database includes a handful of broad policy documents that set high-level strategic direction for economic reform but do not contain guidelines for implementing those reforms, such as the November 2013 Decision on Major Issues Concerning Comprehensive and Far-Reaching Reforms. In these cases, the assessment is made based on how relevant the scope of reform is to top foreign company issues. These policies are marked with specific text indicating that the impact of these policies is aspirational.

**Providing an Overall Assessment**

Based on an overall review of the importance and impact of individual policies, this report assesses the Chinese government’s overall efforts to promote meaningful economic reform.

As detailed above, USCBC’s overall assessment uses a three-color dashboard, rating China’s overall reforms as either limited, moderate, or significant based on the impact they have had on foreign companies. USCBC’s overall rating comes from multiple rounds of discussion about numerous factors, including the average rating of policies in the database and how much of an effect the overall body of reform policies has had on the business environment as a whole.
## Appendix 2: Policy Announcements Related to Nationwide Economic Reform

### I. Overall Reform

<table>
<thead>
<tr>
<th>Date</th>
<th>Policy Title</th>
<th>Agency/ Agencies</th>
<th>Summary</th>
<th>Impact</th>
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<tbody>
<tr>
<td>11/15/13</td>
<td><strong>The Decision on Major Issues Concerning Comprehensive and Far-Reaching Reforms</strong></td>
<td>CCP</td>
<td>Outlines over 300 reform priorities discussed during the Third Plenum. Reforms are to be implemented by 2020.</td>
<td><strong>Moderate:</strong> Describes a litany of government reforms that will have a direct impact on foreign companies. Clearly defines government priority to allow the market to play a greater role in the economy. While potential policy impact remains high, limited implementation of major reforms to date limits this impact to moderate.</td>
</tr>
<tr>
<td>5/24/13</td>
<td><strong>Notice on Key Priorities in Deepening Economic Reforms</strong></td>
<td>State Council</td>
<td>Sets key priorities for deepening economic reform in 2013, and assigns them to key agencies. Key areas include administrative licensing, tax and budgeting, financial reform, investment, pricing, social security, and urbanization.</td>
<td><strong>Moderate:</strong> While the document laid out key areas of reform in 2013, implementation plans were released through 2014. Due to updated implementation, relative progress was made in administrative licensing, urbanization, and pricing plans. As such, the notice’s impact has been upgraded to moderate.</td>
</tr>
<tr>
<td>Date</td>
<td>Document Title</td>
<td>Authority</td>
<td>Summary</td>
<td>Notes</td>
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<tr>
<td>6/6/14</td>
<td><strong>Third Meeting of Central Leading Group for Comprehensively Deepening Reform</strong></td>
<td>State Council</td>
<td>Announces policies to promote reforms introduced during the Third Plenum, including the Proposal for Deepening Reform of the Tax System, Opinions on Promoting Reform of the Household Registration System, Framework Opinions on the Issues with Pilot Programs for Legal Reform, the Proposal for Shanghai Judicial System Reform Pilot Program, and the Proposal for Establishing Intellectual Property Courts.</td>
<td>Moderate: Though policies mention areas of concern to foreign companies, such as tax reform, legal reform, and intellectual property, these policies do little beyond laying out areas of reform, and provide few details or actionable next steps. Follow-up policies in 2014 have begun to provide salient details in some areas of concern to foreign companies, including tax reform, household registration reform, and specialized IP courts. However, other issues raised during this meeting, including legal reform and broader intellectual property concerns, remain to be addressed.</td>
</tr>
<tr>
<td>6/17/14</td>
<td><strong>Notice on Strengthening Efforts in Trade Policy Compliance</strong></td>
<td>State Council</td>
<td>Directs all government agencies that set or influence policy on IPR or trade in goods and services — including central and local government agencies — to comply with China's WTO commitments. States that MOFCOM is responsible for receiving all future compliance opinions from WTO and directing them to relevant Chinese government organs for compliance measures.</td>
<td>Moderate: While MOFCOM has had the ability to review policies for WTO compliance since 2001, these procedures would set a much clearer mechanism for MOFCOM to do so, giving them greater internal leverage to push back and influence policy. However, the notice does not make any practical changes in terms of implementation — and it is important to note the challenges MOFCOM will continue to face in interagency disputes.</td>
</tr>
<tr>
<td>11/16/14</td>
<td><strong>Several Opinions on Promoting the Healthy Development of Domestic Trade Circulation</strong></td>
<td>State Council</td>
<td>Lays out high-level goals for improving domestic trade development, including promoting e-commerce, expediting logistics and distribution development, emphasizing the development of chain stores, and strengthening logistics infrastructure.</td>
<td>Moderate: The opinions do not lay out concrete measures for improving domestic trade, but more recent moves on e-commerce indicate that these opinions have begun to be implemented. Less progress in other areas.</td>
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<tr>
<td>Date</td>
<td>Document Title</td>
<td>Organization</td>
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<td>1/29/15</td>
<td>Notice on Expanding Reform Trial Experiences out of the China (Shanghai) Pilot Free Trade Zone</td>
<td>State Council</td>
<td>Introduces a mix of 35 openings and administrative procedures from the Shanghai FTZ that are now available on a national scale. Highlights include online tax registration, foreign exchange capital settlement for FIEs, allowing the establishment of FIE credit research companies, and allowing the establishment of FIEs in the form of shareholding companies.</td>
<td>Moderate: A positive step at replicating on a national scale a number of reforms that will affect a broad range of companies across multiple sectors. The list is limited to 35 items that are indirectly related to core issues of equal treatment and market access. The limited potential impact means a moderate instead of significant rating.</td>
</tr>
<tr>
<td>10/26/13</td>
<td>383 Plan</td>
<td>Development and Reform Commission</td>
<td>Promotes significant reforms to China’s economy focused on reducing the role of the state and increasing the role of the market, SOE reform, promoting private participation in the market, and streamlining administrative procedures.</td>
<td>Limited: Touches on areas key to China’s overall economic reforms relevant to foreign companies and increasing the market’s role in the economy, with specific policy suggestions. While potential policy impact remains high, limited implementation of major reforms to date limits this impact to limited.</td>
</tr>
<tr>
<td>2/28/14</td>
<td>Second Meeting of Central Leading Group for Comprehensively Deepening Reform</td>
<td>State Council</td>
<td>Releases a series of policies pushing forward reforms introduced during the Third Plenum, including the &quot;Central Leading Group for Comprehensively Deepening Reform 2014 Work Priorities&quot;; the &quot;Opinions on the Legislative Work Requirements and Tasks Proposed by Third Plenum of 18th CPC Congress&quot;; the &quot;Report on the Significant Reforms of the Economic and Ecological Civilization System Special Group&quot;; the &quot;Implementation Plan on Deepening Cultural System Reform&quot;; the &quot;Opinions and Implementation Program on Deepening the Reform of the Judicial System and the Social System.&quot;</td>
<td>Limited: Sector coverage of these policies is broad, but implementation is in the early stages. While potential policy impact remains high, lack of thorough implementation of major reforms to date places this item in the “limited” category.</td>
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<td>Date</td>
<td>Topic</td>
<td>Authority</td>
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<tr>
<td>6/27/14</td>
<td>Notice on the Outline for Establishing a Social Credit System (2014-2020)</td>
<td>State Council</td>
<td>Outlines plans to accelerate the creation of a nationwide credit system (including credit reporting) in China by 2020. The outline focuses on four key areas for establishing the social credit system: government integrity, business integrity, social integrity, and public confidence in the judiciary.</td>
<td>Limited: While building such a nationwide credit system could have a significant impact on transparency and financial development, the policy is more aspirational than detailed, meaning there are few concrete policies included. Additionally, the direct impact of this policy is limited to credit-related institutions.</td>
</tr>
<tr>
<td>8/21/14</td>
<td>Several Opinions on Promoting the Reform and Development of the Tourism Industry</td>
<td>State Council</td>
<td>Creates macro goals for the development of China's tourism industry. The plan calls for tourism spending to reach $1 billion, an average of 4.5 vacations per year by urban residents, and tourism-related GDP accounting for 5% of total GDP by 2020. Follow-up steps to come out this plan are assigned to different ministries with expected follow-up plans by June 2015.</td>
<td>Limited: The high-level plan sets aspirational goals for industry development, and includes relaxing permits for foreign tourism certification to provincial level departments. Overall, there is not a direct impact on improving market access for foreign tourism companies.</td>
</tr>
<tr>
<td>2/14/15</td>
<td>Several Opinions on Accelerating the Development of Trade in Services</td>
<td>State Council</td>
<td>Lays out seven primary tasks to develop trade in services, including promoting the growth of a handful of large Chinese companies in certain services sectors that are competitive abroad. The Opinions also attach a list announcing the work priorities for 25 service areas, with specific government agencies in charge of the tasks.</td>
<td>Limited: High-level opinions that promote reform and supporting trade with a focus on Chinese companies. There is a lack of any specific measures, so there is no immediate impact until follow-up details are provided.</td>
</tr>
<tr>
<td>3/23/15</td>
<td>Several Opinions on Deepening Regime Reform and Accelerating Innovation-Driven Development Strategies</td>
<td>State Council</td>
<td>Proposes to create a policy and legal system by 2020 that is focused on supporting innovation-driven development. Principles to be followed include creating a market based on fair competition that inspires innovation, strengthening financial innovation, and encouraging the commercialization of scientific and technological results.</td>
<td>Limited: Aspirational long-term goals without detail on how to achieve these goals; however, discussions on promoting domestic innovation could have an important impact on companies in many sectors, depending on implementation.</td>
</tr>
<tr>
<td>3/28/15</td>
<td>Vision and Actions on Jointly Building the Silk Road Economic Belt and the 21st-Century Maritime Silk Road (&quot;One Belt, One Road&quot;)</td>
<td>NDRC, MOFCOM</td>
<td>Sets an ambitious economic vision for the development of regions and countries along China's &quot;One Belt, One Road&quot; corridor. Cooperative development priorities will include policy coordination, facilities connectivity, investment and trade cooperation, financial integration, and people-to-people bonding.</td>
<td>Limited: High-level integration of foreign policy and economic goals by developing markets outside of China through infrastructure development and other projects, but immediate impact on foreign companies is likely limited.</td>
</tr>
</tbody>
</table>
## Notice on the Development Plan for City Clusters on the Central Yangtze River

Introduces a plan for developing China's central, western, northeast, and other inland regions that are currently underdeveloped. The overall goal for the plan is to shrink the development gap between different regions in China. The plan focuses on integrating development of urban and rural areas and connecting infrastructure across regions.

### Limited: Broad plans for developing regions in China through joint infrastructure development and urbanization efforts. Potential opportunities for foreign companies involved in supplying infrastructure developers in China, but little detail at this point to suggest specific opportunities for foreign investment.

## Implementation Plan on Carrying out the Decisions of the Fourth Plenary Session of the 18th CCP Central Committee to Further Deepen the Judicial System and Social System Reform

Identifies 84 judicial and social system reform measures that came out of the Fourth Plenum and divides them into three categories: ensuring the fair administration of justice, promoting societal rule of law, and strengthening team building to enforce rule of law. Each task is also assigned to a specific set of government departments, and includes desired outcomes they will be measured against. However, the list of 84 measures and their agency assignments was not made public.

### None: While work to assign specific reform tasks to agencies is a positive step, the list of 84 measures and their assignments is not public—making it impossible to assess the specific tasks and their likely implementation. Without further details, no impact on foreign company concerns can be attributed at this time.

## II. Foreign Investment

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<tr>
<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
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<tbody>
<tr>
<td>9/23/13</td>
<td>Notices on Relevant Matters Regarding RMB Settlement of Foreign Investors Investing in Domestic Financial Institutions</td>
<td>PBOC</td>
<td>Allows foreign investors approved to invest in domestic financial institutions to use RMB in specific activities including capital increases, mergers and acquisitions, equity transfer, distribution of profits, liquidation, etc.</td>
<td>Moderate: Broadens the ability for foreign companies to directly use RMB to expand investments in China.</td>
</tr>
<tr>
<td>3/27/13</td>
<td>Implementation Opinions on Further Developing Local Medical Institutions</td>
<td>Shanghai Municipal Health Bureau</td>
<td>Encourages foreign investment and pledges future reductions in investment barriers in healthcare services, including new medical institutions, high-level medical service centers, and underdeveloped healthcare services including elderly care, rehabilitation, mental health, pediatrics and obstetrics.</td>
<td>Moderate: Discusses investment openings in key areas. Though the policy does not create direct openings, follow-up regulations (such as the Notice on Carrying out the Pilot Program Establishing Wholly Foreign-Owned Hospitals) indicate some progress in Shanghai and various Chinese provinces.</td>
</tr>
<tr>
<td>Date</td>
<td>Document Title</td>
<td>Authority</td>
<td>Description</td>
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<tr>
<td>5/11/13</td>
<td>Regulations on the Administration of Foreign Exchange in Onshore Direct Investment by Foreign Investors</td>
<td>SAFE</td>
<td>Simplifies procedures and policies on foreign exchange issues for foreign direct investment including issues regarding registration, opening an account, payment, selling and purchasing of foreign exchange. The regulation also abolishes 24 foreign exchange administrative regulations.</td>
<td>Moderate: Applies directly to foreign companies investing in China and streamlines relevant foreign-exchange related procedures, but only applies to SAFE rules and does not address broader barriers and delays that foreign companies are most concerned with.</td>
</tr>
<tr>
<td>12/2/13</td>
<td>Catalogue of Investment Projects Subject to Government Approval (2013 revision)</td>
<td>State Council</td>
<td>Transitions numerous investment projects to the record-filing system from the approval system in an effort to streamline administrative approvals. Adopts a &quot;negative list&quot; approach designating investment projects that will still be subject to administrative approvals.</td>
<td>Moderate: Impact on companies across a range of sectors, and supports government efforts to shift towards a negative list approach in investment approvals. However, the impact is only limited to local NDRC approvals and the actual impact for foreign companies is limited given that it does not have any effect on the other steps in the foreign investment approval process, such as MOFCOM or other agency reviews.</td>
</tr>
<tr>
<td>12/28/13</td>
<td>Circular on Improving Regulations of the Approval of Investment Projects and Strengthening Coordinated Supervision</td>
<td>NDRC, MLR, MEP, MOHURD, CBRC</td>
<td>Reduces pre-examinations and strengthening supervision during and after the approval process. NDRC will no longer review the items that are decided by enterprises such as market prospects, economic profitability, fund sources, etc.</td>
<td>Moderate: Streamlines the approval process by cutting the pre-approval process for foreign and domestic investment projects. However, the impact is only limited to local NDRC approvals and the actual impact for foreign companies is limited given that it does not have any effect on the other steps in the foreign investment approval process.</td>
</tr>
<tr>
<td>3/1/14</td>
<td>Administrative Provisions on Company Registered Capital Registration</td>
<td>SAIC</td>
<td>Brings SAIC's company registration rules in line with amendments to China's Company Law by eliminating minimum registered capital requirements, transitioning from a paid-in capital system to a subscribed capital system, and replacing annual inspection system with an annual reporting system.</td>
<td>Moderate: Streamlines administrative processes, but the impact is limited because the registration procedure for foreign companies is subject to a separate set of MOFCOM rules.</td>
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<tr>
<td>Date</td>
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<tr>
<td>5/20/14</td>
<td>Administrative Measures for the Approval and Filing of Foreign Investment Projects</td>
<td>NDRC</td>
<td>Allows some foreign investment projects to use a streamlined filing process. Eligible projects include those listed in the “encouraged” category of the Catalogue Guiding Foreign Investment that do not have Chinese ownership requirements and do not fall under one of the special approval requirements in the 2013 Catalogue of Investment Projects Subject to Government Ratification.</td>
<td>Moderate: Allows numerous foreign investment projects to go through a simplified filing system, and uses a much-welcomed negative list approach. Impact is limited, however, considering additional approvals are required by MOFCOM and SAIC.</td>
</tr>
<tr>
<td>5/26/14</td>
<td>Administrative Measures on the Government Examination and Approval of Investment Projects</td>
<td>NDRC</td>
<td>Provides more specific process guidelines for regulating NDRC's review of investment projects based on a previously released catalogue that allows foreign companies to use a simplified filing system.</td>
<td>Moderate: The measures provide broad oversight authority to the NDRC to review investment projects based on a previously released catalogue that allows foreign companies to use a simplified filing system.</td>
</tr>
<tr>
<td>5/30/14</td>
<td>Notice on Carrying out the Optimization of Approval of Foreign Investments</td>
<td>MOFCOM</td>
<td>Launches a pilot program that would streamline approvals of foreign investment projects by foreign companies and FIEs, eliminating steps in the approval process and attempting to simplify the documentation that applicants must provide to establish a new FIE. The pilot program runs for three months, until August 31.</td>
<td>Moderate: Scope of the pilot project would allow investments across a range of industries to benefit from process improvements to make foreign investment approvals faster and easier. However, the pilot program is quite short—leading to questions about whether such a short pilot with such a short lead time could lead to meaningful implementation. Improvements are primarily process-related.</td>
</tr>
<tr>
<td>8/27/14</td>
<td>Notices on Carrying out the Pilot Program Establishing Wholly Foreign-Owned Hospitals</td>
<td>NHFPC, MOFCOM</td>
<td>Lays out the requirements, standards, and approval processes for foreign investors applying to qualify for establishing wholly foreign-owned hospitals in China. Currently seven provincial/municipal pilot regions have been selected.</td>
<td>Moderate: Potential to have a deep impact on foreign companies looking to invest in this sector, as it is essentially creating equal treatment for foreign and domestic investors in hospitals nationwide (with the exception of traditional Chinese medicine hospitals).</td>
</tr>
<tr>
<td>11/18/14</td>
<td>Catalogue of Investment Projects Subject to Government Approval (2014 Version)</td>
<td>State Council</td>
<td>Adjusts catalogue of investment projects requiring government approval, including delegating approvals to lower level authorities and lifting control of foreign investments.</td>
<td>Moderate: Positive step towards decentralizing decision making and improving foreign investment access for certain projects.</td>
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<tr>
<td>Date</td>
<td>Event Title</td>
<td>Authority</td>
<td>Description</td>
<td>Assessment</td>
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<tr>
<td>12/12/14</td>
<td>State Council Executive Meeting Announces Creation of New FTZs</td>
<td>State Council</td>
<td>Announces the official approval for three new FTZs to be located in Tianjin, Guangdong, and Fujian.</td>
<td>Moderate: Introduction of new FTZs has the potential to be positive, but when reflecting on the Shanghai FTZ and the slow pace established for expanding FTZ policies nationwide, it is yet to be seen if most companies will benefit.</td>
</tr>
<tr>
<td>4/22/15</td>
<td>Decision to Implement Management of Market Access for Bank Card Clearing Agencies</td>
<td>State Council</td>
<td>Sets new conditions for investment in China's bank card clearing sector to be compliant with commitments made as part of China's WTO accession. To qualify, companies must have at least RMB 1 billion ($161 million) in registered capital, adhere to national and industrial bank card clearing system standards, and have senior leadership receive CBRC approval for employment credentials.</td>
<td>Moderate: Significant opening in a narrow industry that has been traditionally monopolized by one company. Potential direct benefit to a number of foreign bank card clearing companies, but there still exist several stringent qualification requirements that will make market entry difficult.</td>
</tr>
<tr>
<td>6/8/13</td>
<td>Modification to Regulations on Foreign Insurance Companies</td>
<td>CIRC</td>
<td>Modifies regulations for foreign insurance companies to allow them to make capital contributions via RMB or other currencies, and allows foreign insurance companies to allocate working capital to their branches in China via RMB-denominated income.</td>
<td>Limited: Process improvements for insurance companies on registered capital issues, but does not impact market access and is limited purely to one sector.</td>
</tr>
<tr>
<td>5/15/14</td>
<td>Opinions on Promoting Foreign Trade</td>
<td>State Council</td>
<td>Encourages Chinese government agencies to increase multilateral trade and outbound investment, promote a free-floating RMB exchange mechanism and RMB settlement, strengthen trading competitiveness, and improve online and traditional trading platforms.</td>
<td>Limited: Contains positive language about liberalizing trade, but this general opinion contains no specific policy measures.</td>
</tr>
<tr>
<td>8/19/14</td>
<td>Notice on Properly Handling the Change in Registration Requirements from Pre-Registration to Post-Registration</td>
<td>SAIC</td>
<td>Revises current requirements that businesses must first receive administrative approvals from other agencies before applying for a business license from SAIC. Instead, companies are now permitted to apply directly for a business license from SAIC first and can apply for other administrative approvals if required.</td>
<td>Limited: Streamlines the process for opening new facilities somewhat, though it does not address or create market access opportunities, or address the larger challenges in administrative licensing.</td>
</tr>
<tr>
<td>12/2/14</td>
<td>Announcement on Encouraging Foreign Investors to Establish For-Profit Elder Care Facilities</td>
<td>MOFCOM, MCA</td>
<td>Encourages foreign investors to set up for-profit elder care institutions in China as a WFOE or JV.</td>
<td>Limited: Potential to have important impact on foreign investment, but limited to a narrow sector (elder care industries).</td>
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<td>Date</td>
<td>Document Title</td>
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<tr>
<td>3/13/15</td>
<td><strong>Catalogue Guiding Foreign Investment in Industry (2015 Revision)</strong></td>
<td>NDRC, MOFCOM</td>
<td>Comprehensive catalogue outlining sectors of the Chinese economy where foreign investment is encouraged, restricted, or prohibited.</td>
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<tr>
<td>5/2/13</td>
<td><strong>Notice on Renminbi Qualified Foreign Institutional Investors (RQFII) issuing securities in China</strong></td>
<td>PBOC</td>
<td>Clarifies specific procedures and requirements for RQFII registration process and the responsibility of regional PBOC office in regulating pilots.</td>
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<tr>
<td>10/14/14</td>
<td><strong>Reply to Issues Concerning the Provision of Online Data Processing and Transaction Processing Services by Service Providers from Hong Kong and Macao in Guangdong Province</strong></td>
<td>State Council</td>
<td>Provides approval for implementing an MIIT plan for allowing service providers from Hong Kong and Macau to provide online data processing services (e-commerce) in Guangdong with ownership cap of 55 percent.</td>
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<tr>
<td>2/2/15</td>
<td><strong>Notice on the Foreign Investment Statistics System (2015)</strong></td>
<td>MOFCOM</td>
<td>Defines comprehensive rules and requirements for a statistical reporting system for FIEs to report their investment data to all local MOFCOM offices. Information provided includes basic information about the company, investment, operations, and shareholding; companies in banking, insurance, securities, and energy have additional requirements.</td>
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## III. Administrative Licensing and Approval Reform

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<tr>
<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
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<tr>
<td>12/29/14</td>
<td>Work Plan for Simplifying Approval Items, Standardizing Intermediary Services, and Implementing Parallel Online Approval Mechanisms for Enterprise Investment Projects</td>
<td>State Council</td>
<td>Creates a work plan for government agencies to clean up all unnecessary pre-approvals for investment projects under their purview, calling for the establishment of an online administrative approval platform for investment projects. Provides an appendix of government pre-approvals and their supporting rationale, while essentially requiring any approvals not in the appendix to be reported to SCLAO for review. Requires SCLAO by June 2015 to submit a report to NPC Standing Committee to approve, cancel, or amend the pre-approvals.</td>
<td>Moderate: Sets clear, specific timelines and goals for government agencies to eliminate unnecessary approvals for investment projects, streamline their approval processes, and create an online approval system. Impact could be significant depending on implementation of the work plan.</td>
</tr>
<tr>
<td>9/19/13</td>
<td>Notice on Strictly Limiting New Administrative Licensing Procedures</td>
<td>State Council</td>
<td>Limits the number of new administrative licensing procedures.</td>
<td>Moderate: Broad impact on overall reform push to simplify administrative licensing procedures, but with few details to date.</td>
</tr>
<tr>
<td>2/7/14</td>
<td>Notice on Registered Capital Registration System Reform</td>
<td>State Council</td>
<td>Lowers requirements for registering new businesses and simplifying procedures in a move aimed at promoting a more market-oriented economy.</td>
<td>Moderate: Sets foundations for reducing registered capital requirements and easing the incorporation process for domestic and foreign companies. However, this impacts only one aspect of the foreign investment process, and not the most troublesome (market access).</td>
</tr>
<tr>
<td>2/18/14</td>
<td>Decision on Cancelling and Decentralizing a Batch of Administrative Approval Items</td>
<td>State Council</td>
<td>Cancels or decentralizes 64 administrative approval items and 18 sub-items that are closely related to business development such as the establishment of an enterprise, production license, business scope and disposal of assets and capital.</td>
<td>Moderate: Eliminates selected business process approvals in a range of areas, including approvals related to foreign-invested banks and financial institutions.</td>
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<tr>
<td>3/25/14</td>
<td>Opinions on Further Optimizing the Market Environment for Enterprise Merger and Reorganizations</td>
<td>State Council</td>
<td>Streamlines M&amp;A approval procedures by addressing issues in examinations and approval, financing, auditing, and service and institutional mechanisms that serve as obstacles for reorganization.</td>
<td>Moderate: Progress in simplifying M&amp;A approvals and increasing transparency that also applies to foreign companies, but questions remain as to how many foreign transactions may be able to take advantage of streamlined procedures.</td>
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<tr>
<td>4/22/14</td>
<td><strong>Circular on the Elimination of Non-Administrative Approval Items</strong></td>
<td>State Council</td>
<td>Requires administrative agencies to review and eliminate non-administrative approval items. <strong>Moderate:</strong> While the notice does not directly eliminate any administrative items, it formally requires agencies to review and eliminate these items, creating significant opportunities for administrative licensing reform.</td>
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<tr>
<td>6/17/14</td>
<td><strong>Notice on Improving Foreign Investment Review and Administration</strong></td>
<td>MOFCOM</td>
<td>Removes requirements on initial capital contributions and capital contribution timelines for foreign companies, as well as registered capital requirements, except where stated otherwise by law. <strong>Moderate:</strong> The notice importantly eliminates requirements for how companies arrange capital contributions. This will simplify procedures for some companies that register a new entity or engage in a JV, but does not address the broader issue of separate regulatory regimes for foreign and domestic firms.</td>
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<tr>
<td>9/11/14</td>
<td><strong>Implementation Measures on Administrative Licensing of Foreign-invested Banks</strong></td>
<td>CBRC</td>
<td>Replaces 2006 implementation measures on administrative licensing for FIE banks. These measures simplify administrative licensing procedures – such as narrowing the scope for approval of articles of association – and strengthen regulation on who may serve on a board of directors. <strong>Moderate:</strong> Measures simplify administrative procedures for foreign banks, allowing them to establish unlimited sub-branches in cities where they have operations and eliminating minimum working capital requirements for those new offices. While impact is limited to the banking sector, the measures will allow much more operational space.</td>
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<tr>
<td>12/31/14</td>
<td><strong>Notice on Prohibiting Matters Pertaining to the Autonomy of Enterprises as Preconditions for the Approval of Enterprise Investment Projects</strong></td>
<td>NDRC, State Commission Office of Public Sector Reforms</td>
<td>Specifies 18 areas where investment approval pre-conditions can no longer be used. Areas include bank loan commitments, financial letters of credit, feasibility study reviews, and review of rail line issues. This notice follows up on NDRC’s previous announcement requiring follow-up work on announcing removal of investment pre-approvals. <strong>Moderate:</strong> Removes some investment pre-approval conditions with language forbidding government interference in a company’s autonomy. There is also a clear effort to clean up existing rules that create project approval hurdles, and blocking such barriers from re-appearing in any future regulations. However, there continue to be a number of unaddressed procedures that are unique to foreign investment in China, and this reform does little to change the underlying challenges companies face in market access.</td>
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<td>5/15/13</td>
<td>Decision on Cancelling and Decentralizing Administrative Items by the State Council</td>
<td>State Council</td>
<td>Eliminates or decentralizes 104 administrative items on its website, including administrative approvals, awards, and administrative fees.</td>
<td>Few of the items included are among those of most concern to foreign companies, though the notice did make some changes in areas such as representative office registration, shipping, service outsourcing, and education appointments.</td>
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<tr>
<td>7/13/13</td>
<td>Decision on Removing 50 Administrative Approvals</td>
<td>State Council</td>
<td>Eliminates or decentralizes 50 administrative approval items.</td>
<td>Eliminates a small number of approval items that apply to foreign investments in specific areas such as certain types of imported cosmetics, medical services, and the movie industry.</td>
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<tr>
<td>7/24/13</td>
<td>Notice on the Release of Regulations on Services Trade Foreign Exchange</td>
<td>SAFE</td>
<td>Shortens the approval process for cross-border services to ensure the healthy growth of the domestic service industry.</td>
<td>Relaxes requirements restricting domestic companies from depositing foreign exchange overseas.</td>
</tr>
<tr>
<td>8/2/13</td>
<td>Notice on Partially Cutting Administrative Fees</td>
<td>NDRC, MOF</td>
<td>Lowers administrative fees for a variety of approvals required by 14 ministries.</td>
<td>Marginally reduces administrative fees in certain areas (e.g. trademark application fees were reduced from RMB 1000 to RMB 800).</td>
</tr>
<tr>
<td>8/20/13</td>
<td>Notice on Easing the Visa and Residency Process for Foreign Talent</td>
<td>MHRSS</td>
<td>Streamlines the visa and residency permit application process for qualified foreign talent working in the PRC.</td>
<td>Streamlines the application process for foreign and domestic companies’ high-skilled employees from overseas, but this is not a huge issue for foreign companies.</td>
</tr>
<tr>
<td>9/27/13</td>
<td>Notices on CSRC Dispatch Agencies Administrative Penalty Work Rules</td>
<td>CSRC</td>
<td>Decentralizes administrative penalties and enforcement and grants 36 branches.</td>
<td>No immediate impact on foreign companies but in line with decentralization reforms.</td>
</tr>
<tr>
<td>10/24/13</td>
<td>Notices on Removing 314 Provincial-level Administrative Fees</td>
<td>MOF, NDRC</td>
<td>Eliminates 314 administrative fees collected by local authorities.</td>
<td>Advances central government efforts to reduce administrative fees, but few of the fees impacted are among US companies’ top concerns.</td>
</tr>
<tr>
<td>11/8/13</td>
<td>Decisions on Cancelling and Delegating Several Administrative Approval Items</td>
<td>State Council</td>
<td>Cancels or delegates to lower levels of government 68 administrative approval items.</td>
<td>Advances government reforms to streamline administrative approvals, but few of these decentralizations touch on top foreign company concerns.</td>
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<tr>
<td>11/15/13</td>
<td>Catalogue Decentralizing MEP Approval Authority Over Environmental Impact Assessment Documents</td>
<td>MEP</td>
<td>Decentralizes approval authority over a total of 25 projects, mainly infrastructure projects and projects with minor environmental impact, such as distributed gas-fired generation, urban rapid rail transportation, civil airport expansion, pumped storage power station and other projects.</td>
<td>Streamlines approval for environmental and infrastructure projects, but impact is limited, and only for foreign companies interested in this sector.</td>
</tr>
<tr>
<td>1/13/14</td>
<td>Circular on Implementing the Decision of the State Council on Eliminating and Delegating a Batch of Administrative Approval Items</td>
<td>SAT</td>
<td>Reduces administrative tax approval items and increases transparency requirements.</td>
<td>Small step forward in reducing administrative approval requirements, but does not address investment barriers that are of greatest concern to foreign companies.</td>
</tr>
<tr>
<td>6/23/14</td>
<td>Notice on Promoting the Streamlining of Regulator Authority and Market Access</td>
<td>CBRC</td>
<td>Simplifies bank approval procedures by eliminating certain administrative approvals (such as approval for Chinese commercial banks and rural banks to open securities trust investment services in China for qualified foreign institutional investors), promoting more decentralization of approval authorities, particularly oversight of local financial institutions; and promoting greater consistency in approval processes and standards through various means, including unified examination and inspection procedures.</td>
<td>Administrative approvals and licensing are important issues for foreign enterprises, but this does not set forth any new treatment for foreign enterprises. This policy is instead directed at improving domestic banking bureaucracy.</td>
</tr>
<tr>
<td>6/26/14</td>
<td>Notice on Further Tightening Enterprise-related Charging Administration to Reduce Enterprise Burdens</td>
<td>State Council</td>
<td>Introduces measures to control administrative and other government fees that are charged to enterprises by establishing a specific list of authorized fees with allowable values; only charges in this list are permitted. The notice also requires the removal of any pre-approval charges that lack a legal basis.</td>
<td>While the policy is national in scale and contributes to increased transparency, administrative fees are not a top concern of foreign companies and will not have a major influence on operations.</td>
</tr>
<tr>
<td>7/25/14</td>
<td>Notice on Improving the Registration System for Foreign Investments in Real Estate</td>
<td>MOFCOM, SAFE</td>
<td>Establishes an electronic filing system for foreign companies to register real estate investments, and delegates oversight from central to provincial-level MOFCOM departments.</td>
<td>Reform makes some improvement to the previous approval process for real estate investment, but the notice does not change the amount, type, or any other relevant market access condition for foreign investments in real estate.</td>
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<td>8/12/14</td>
<td><strong>Decision on Cancelling and Adjusting a Batch of Administrative Approvals</strong></td>
<td>State Council</td>
<td>Removes or relaxes administrative approval processes for certain investment projects and professional certifications. In total, 95 measures have been removed or relaxed, though very few directly impact foreign companies.</td>
<td>Though a positive symbolic step, impact on foreign companies is limited. For example, one cancellation eliminates MOFCOM and NDRC pre-approval for FIE investments in &quot;encouraged&quot; industries from the CGFI, making that process easier – but ignoring the broader investment issues that companies face if their industries are not marked as &quot;encouraged.&quot;</td>
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<tr>
<td>8/15/14</td>
<td><strong>Decision on Revising Certain Administrative Regulations</strong></td>
<td>State Council</td>
<td>Removes certain articles covering administrative approvals in 21 different existing regulatory measures, such as the Telecommunication Provisions and the Administrative Regulations on Civil Explosives.</td>
<td>While a few of these regulations touch on foreign company interests, revisions are primarily general or process-oriented, and do not create new market opportunities for foreign companies; the majority of revised regulations are not directed at foreign companies.</td>
</tr>
<tr>
<td>11/1/14</td>
<td><strong>Notice on Issues Concerning Reduction and Elimination of Administrative Fees on Elder Care Institutions and Medical Institutions</strong></td>
<td>MOF, NDRC</td>
<td>Removes all administrative fees for non-profit elder care and healthcare facilities, and 50 percent of administrative fees for for-profit elder care and healthcare facilities.</td>
<td>Potential to have an important impact on foreign investment specific to the healthcare and elder care industries, though impact is focused more on operations than market access and remains focused on a very narrow sector.</td>
</tr>
<tr>
<td>11/24/14</td>
<td><strong>Decision on Cancelling and Adjusting a Batch of Administrative Examination and Approval Items</strong></td>
<td>State Council</td>
<td>Eliminates, adjusts, or decentralizes a batch of 226 administrative approvals.</td>
<td>Few of the items included are among those of most concern to foreign companies, though the notice did make some changes in areas such as commercial registration for foreign-invested enterprises.</td>
</tr>
<tr>
<td>11/24/14</td>
<td><strong>Notice on Clearing and Regulating Administrative Pre-Approval Services Fees for Enterprises</strong></td>
<td>NDRC</td>
<td>Calls for creating a defined range of costs for administrative approvals for companies, as well as creating a catalogue to list such costs.</td>
<td>Administrative licensing and approvals continues to be a top issue for American companies, so bringing standardization and transparency to the process would be welcome. However, this policy announcement is still aspirational.</td>
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<tr>
<td>12/9/14</td>
<td>Notice on Adjusting the Administrative Policies Concerning the Access of the Inter-bank Foreign Exchange Market by Financial Institutions</td>
<td>SAFE</td>
<td>Cancels the requirement for SAFE to give pre-approval for qualified financial institutions to participate in the inter-bank foreign exchange and derivatives trading markets.</td>
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<tr>
<td>12/8/14</td>
<td>Notices on Cancelling and Adjusting Administrative Approval Items</td>
<td>CIRC</td>
<td>Cancels CIRC administrative approvals and credentials for actuaries for insurance companies, and changes the credentials to a post-approval registration requirement with SAIC.</td>
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<tr>
<td>12/23/14</td>
<td>Notice on the Cancellation, Suspension and Exemption of a Batch of Administrative Fees</td>
<td>NDRC, MOF</td>
<td>Cancels or suspends for all enterprises a batch of 12 central-government level administrative fees (such as land management fees and business registration fees), and for small and micro-sized enterprises an additional batch of 42 administrative fees (such as fees for software copyright registration and drug development assessment). The notice was in effect as of January 1, 2015.</td>
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<tr>
<td>1/27/15</td>
<td>Notice on Republishing CIRC's Program for Collecting Administrative and Institutional Fees</td>
<td>MOF, NDRC</td>
<td>Authorizes CIRC to charge institutional supervising fees and business supervising fees in the insurance industry. Provides definitions and standards for how the fees will be determined. Combines various documents outlining rules for determining who must pay administrative fees, clarifying how the fees are calculated, and who is exempted from the administrative fees.</td>
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<td>1/27/15</td>
<td>Circular on Republishing CBRC's Program for Collecting Administrative and Institutional Fees</td>
<td>MOF, NDRC</td>
<td>Authorizes CBRC to charge its supervising fees on commercial banks, credit cooperatives, finance companies, trust companies, and financial leasing offices, including institutional supervising fees and business supervising fees. Changes the method for calculating these fees for organizations.</td>
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<tr>
<td>1/27/15</td>
<td>Notice on Republishing CSRC's Program for Collecting Administrative and Institutional Fees</td>
<td>MOF, NDRC</td>
<td>Authorizes CSRC to charge institutional supervising fees on securities companies, and companies whose bonds and securities are traded on Chinese exchanges. Combines various documents outlining rules for determining who must pay administrative fees, clarifying how the fees are calculated, and who is exempted from the administrative fees.</td>
<td>Limited: Announcement requires ministry-specific implementation of items from State Council’s institutional reform and functional transformation plan. A positive step towards transparency, but limited impact on foreign companies as they have limited business in this area.</td>
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<tr>
<td>2/28/15</td>
<td>Notice on Further Simplifying and Improving Foreign Exchange Administration for Direct Investment</td>
<td>SAFE</td>
<td>Cancels direct investment foreign exchange registration approvals, and simplifies the capital expenditure registration procedures for foreign investors.</td>
<td>Limited: Positive step at removing administrative barriers to controls on capital. Impact likely limited until broader reform measures remove controls from foreign capital exchange.</td>
</tr>
<tr>
<td>3/13/15</td>
<td>Decision on Cancelling and Adjusting a Batch of Administrative Approval Items</td>
<td>State Council</td>
<td>Cancels a batch of administrative approvals and/or delegates approval authority to lower-level government bodies, and provides a list of business pre-requisite approvals that are being maintained. Sample approvals include software and integrated circuit design company accreditation and product registrations.</td>
<td>Limited: Improvements in removing administrative barriers in some areas, but statements that certain approvals such as FIE establishment approvals should not be removed indicate continued barriers.</td>
</tr>
<tr>
<td>3/16/15</td>
<td>Announcement Issuing the 2015 Catalogue of Construction Projects Subject to MEP Environmental Impact Assessment (EIA) Approval Documents</td>
<td>MEP</td>
<td>Delegates part of MEP’s EIA administrative approval to provincial-level authorities, including approval on construction of thermal power stations, heat power stations, iron making and steel making, nonferrous metals smelting, national highways, and major theme parks.</td>
<td>Limited: The delegation of approval authority to lower-level agencies is likely a welcome result of the 2015 revision of China’s Environmental Protection Law. Only EIAs in certain sectors require central-level MEP approval. This announcement is a further relegation of central MEP approvals to lower-level authorities, such as coal-to-natural gas manufacturing facilities, but is limited to only the projects in the 2015 EIA construction catalogue.</td>
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### Work Plan for Decoupling Environmental Impact Assessment (EIA) Institutions from the National Environmental Protection System

- **Date:** 03/23/15
- **Agency:** MEP
- **Summary:** Requires all entities under the environmental protection system with EIA qualifications to be decoupled from construction projects by 2016. EIA-certified entities are forbidden from any form of ownership in companies that are being assessed. **Limited:** Positive effort at addressing corruption in the environmental protection system, with potential to help address nationwide pollution problems. The work plan is part of high-level MEP goals to standardize EIAs and make the system more accountable to public environmental concerns. Many companies use independent EIAs that fall outside the purview of this work plan, and thus the impact is limited.

### Notice on Cancelling and Adjusting a Batch of Administrative Approval Items

- **Date:** 3/31/15
- **Agency:** CIRC
- **Summary:** Cancels administrative approvals on seven items, including changing company ownership structure in excess of 5 percent of ownership shares for insurance companies. **Limited:** Reduces administrative burdens on companies, but scope of changes is limited.

### Several Opinions on Improving Port Work to Support Foreign Trade Development

- **Date:** 4/17/15
- **Agency:** State Council
- **Summary:** Calls for improving and increasing the efficiency of Chinese ports to facilitate international trade, including immediate measures such as cleaning up unnecessary port fees and cancelling or streamlining administrative approvals involved with customs clearance. **Limited:** Increased efficiency in customs clearance and removal of unnecessary administrative approvals would be welcome changes for foreign companies. However, true impact will be determined when follow-up implementation details from industry regulators are released.

### Notice on Cleaning up and Regulating Intermediary Services for Administrative Approvals by State Council Departments

- **Date:** 4/29/15
- **Agency:** State Council
- **Summary:** Prohibits departments in the State Council responsible for administrative approvals from requiring any applicant to use intermediary services (middlemen), with the exception of licensing requirements found in laws, administrative regulations, State Council decisions, and normative documents that conform to the Administrative Licensing Law. **Limited:** Follows previous notices from State Council regulating intermediary services across all ministries and local governments. This notice is a welcome relief from administrative burdens, but it is limited to one government agency.

### Administrative Approval Rules for Domestic Commercial Banks

- **Date:** 11/14/13
- **Agency:** CBRC
- **Summary:** Eliminates some approval items, and delegates authority for others to lower-level authorities. **None:** Only applies to domestic banks, but also pushes forward administrative licensing reforms.

### State Council Executive Meeting on the Cancellation and Decentralization of 70 Administrative Inspection and Approval Items

- **Date:** 1/8/14
- **Agency:** State Council
- **Summary:** Cancels and decentralizes 70 administrative examination and approval items. **None:** List is not yet publicly released, so no indication of any impact.
3/19/15  **Several Opinions on Building Joint Regulatory Mechanisms for Innovative Investment Management**  
State Council  
Calls for jointly administering investment approval responsibilities between relevant authorities. Recommends building an online platform for investment approvals that also increases transparency.  
None: High-level recommendations for improving the investment management and supervision regime, but no immediate changes to the business environment are made. Goals are aspirational in nature, and pending follow-up regulations for specifics on how to carry out the opinions.

4/6/15  **Notice on Improving Administrative Approval and Reviews in Dealing with Solid Waste**  
MEP  
Requires provincial-level environmental protection authorities to initiate internal inspections to improve interagency regulatory transparency, address ineffective supervisory mechanisms, and boost staff technical capabilities related to supervision and approval of solid waste treatment. Inspection results and plans for improvement to be submitted to MEP by the end of June 2015.  
None: An intra-government improvement in addressing bureaucratic issues and regulatory capabilities, but no immediate impact on foreign company concerns.

### IV. Institutional Reforms

#### Reform-Related Agencies and Groups

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| 12/31/13 | **Establishment of the Central Government Leading Group for Overall Reform**  
State Council  
Sets up a central leading group to comprehensively deepen reforms, determine the leading cadres selection regulation.  
**Moderate:** Signals the central government's intention to move forward with reforms introduced during the Third Plenum. To date, the impact is largely aspirational due to the limited implementation of major reforms assigned to the group.  | State Council    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 1/22/14  | **Work Plan for Relevant Central Authorities to Implement the Important Initiatives of Third Plenum of the Eighteenth CCP Congress Decision**  
State Council  
Establishes six special teams under the central leading group for comprehensively deepening reform: economic and ecological civilization system reform special team, democracy and the rule of law sector reform special team, cultural reform special team, social reform special team, party construction reform special team, and discipline inspection system reform special team.  
**Moderate:** Sets key structures and personnel to push forward economic reforms introduced during the Third Plenum. While potential policy impact remains high, limited implementation of major reforms to date restricts this impact to moderate.  | State Council    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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<tr>
<th>Date</th>
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<th>Agency/Agencies</th>
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<tbody>
<tr>
<td>4/21/15</td>
<td>Notice on Establishing the State Council Coordination Group for Promoting Transformation of Government Functions</td>
<td>State Council General Office</td>
<td>Announces the head (Zhang Gaoli) and other eight members of the State Council Coordinating Small Group for Promoting Functional Transformation, and also identifies six reform-focused sub-groups (such as one focused on administrative approval reform) and four functional sub-groups.</td>
<td>Limited: The reform group is set to tackle issues of importance to domestic and external reforms. The Small Group is likely to have a positive impact on improving inefficiencies in China's government functions over time, but much will depend on the group’s decisions and implementation.</td>
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**Government Restructuring & Other Institutional Reforms**

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<tbody>
<tr>
<td>2/10/14</td>
<td>Plan for Establishing Rule of Law within the Agency</td>
<td>NDRC</td>
<td>Promotes NDRC's transformation over the next five years into a rule of law (ROL) agency with &quot;statutory limitations to power, standardized operations, openness and transparency, unity in power and accountability, integrity and high efficiency.&quot;</td>
<td>Limited: While the language is positive, the policy contains few concrete details of policy change and clear signs of implementation are still largely lacking.</td>
</tr>
<tr>
<td>2/5/15</td>
<td>Guiding Opinions on Promoting the Socialization of Environmental Monitoring Services</td>
<td>MEP</td>
<td>Calls for increased societal participation in environmental monitoring of business activities.</td>
<td>Limited: Encouraging increased private participation in monitoring environmental issues, and reducing the role of MEP in the process is likely to have a positive impact on ability of foreign companies to provide services. It is not clear if participation includes foreign companies, but no specific language excluding them exists in the document.</td>
</tr>
<tr>
<td>3/16/15</td>
<td>Guiding Opinions on Integrating Inspection and Certification Institutions under the National Quality Inspection System</td>
<td>AQSIQ</td>
<td>Plans to divide existing quality inspection institutions into non-profit and for-profit entities, and lists administrative goals such as separating public service entities from administrative entities, regulators from operators, and transforming governmental entities into enterprises.</td>
<td>Limited: Reforming the customs inspection process and its relevant authorities are likely welcome reforms. These opinions do not contain implementing details and will require follow-up implementation plans in order to have meaningful impact on foreign companies.</td>
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<tr>
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<tr>
<td>4/12/15</td>
<td>Approval of the Reform Implementation Plan of China’s Export-Import Bank</td>
<td>State Council</td>
<td>Approves PBOC’s reform implementation plan for China’s Export-Import Bank, and calls for the plan to strengthen China Ex-Im Bank’s policy positions, reasonably define its scope of operations, and to identify risk compensation mechanisms. The notice does not, however, include the full text of the plan.</td>
<td>None: Internal (and as-yet unpublished) governmental reform measure to provide more clarity on the role of China’s Ex-Im Bank in international trade financing. No direct impact on foreign companies as this reform is to support reform of a bank that finances Chinese products being sold abroad.</td>
</tr>
<tr>
<td>4/12/15</td>
<td>Approval of the Reform Implementation Plan of China Development Bank</td>
<td>State Council</td>
<td>Approves PBOC’s reform implementation plan for China Development Bank, and calls for PBOC’s reform plan to adhere to China Development Bank’s position as a developmental financial institution, and to improve organizational structure and governance.</td>
<td>None: Internal (and as-yet unpublished) governmental reform measure to provide additional reform goals pertaining to PBOC’s reform plan for China Development Bank. Likely no direct impact on foreign companies.</td>
</tr>
<tr>
<td>4/12/15</td>
<td>Approval of the Reform Implementation Plan for Agriculture Development Bank of China</td>
<td>State Council</td>
<td>Approves PBOC’s reform implementation plan for the Agriculture Development Bank of China, and calls for PBOC’s reform plan to improve account management, accounting classification, and define its responsibilities and risk compensation mechanisms.</td>
<td>None: Internal (and as-yet unpublished) governmental reform measure to provide additional reform goals pertaining to PBOC’s reform plan for Agriculture Development Bank of China. Likely no direct impact on foreign companies.</td>
</tr>
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</table>

**Other**

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<tbody>
<tr>
<td>3/23/15</td>
<td>Guiding Opinions on Promoting an “Authority List” for Local Government Working Departments</td>
<td>CCP Central Committee, State Council Information Office</td>
<td>Requires local governments to accept public supervision and publicize their administrative powers and responsibilities in catalogues, along with the legal basis for all of their administrative powers. Provincial governments are to complete their reports by the end of 2015, and city and county-level authorities are to complete their reports by the end of 2016.</td>
<td>Moderate: Positive move towards transparency at all levels of government, and falls in line with a recent trend of unifying tax incentives and removing administrative barriers on companies’ autonomy to make investment decisions.</td>
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</table>
### V. Role of the State and the Market

#### SOE Reform

<table>
<thead>
<tr>
<th>Date</th>
<th>Policy Title</th>
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<tbody>
<tr>
<td>12/6/13</td>
<td>Notice on Improving the Operating Budget for State-Owned Assets</td>
<td>CSRC</td>
<td>Requires SOEs to provide a portion of revenues collected to the state.</td>
<td>Limited: Promotes SOE reforms, particularly related to profits and revenues, but does not change the role of SOEs in the economy.</td>
</tr>
<tr>
<td>12/18/13</td>
<td>Opinions on Further Deepening the Reform of Shanghai State-owned Assets and Promoting the Development of Enterprises</td>
<td>Shanghai Municipal Government</td>
<td>Introduces 20 reform measures designed to accelerate SOE structural adjustments, standardize corporate governance structures, improve personnel selection and incentive mechanisms, improve SOE international competitiveness, and optimize SOE supervision.</td>
<td>Limited: Promotes needed reforms for SOEs to push them towards operating based on market factors, but scope remains limited only to Shanghai-controlled SOEs.</td>
</tr>
<tr>
<td>1/20/14</td>
<td>Guiding Opinions on Strengthening Value Management of Central State-owned Enterprises with Focus on Evaluation of Economic Value Added (EVA)</td>
<td>SASAC</td>
<td>Calls for SOEs to focus on improving efficiency and use EVA as a key performance indicator.</td>
<td>Limited: While this represents a step towards holding SOEs more accountable for their performance, it does not fundamentally alter the competitive dynamics that impact foreign companies.</td>
</tr>
</tbody>
</table>
8/29/14  Proposal for Reform of the Compensation for Leaders of Central Government-Managed Businesses  CPC Politburo  Proposes four reforms for SOE leadership compensation, including determining appropriate levels of compensation for SOE leadership. Expected to reduce compensation by at least 50 percent for high-level executives.  None: One of four party-reform announcements released at CPC Politburo meeting. Though it has no direct impact on foreign companies or market access issues, it remains a positive step in systemic reform.

8/29/14  Opinions on Rationally and Strictly Standardizing SOE Leadership Compensation and Expenditures  CPC Politburo  Calls for creating a rational standard for SOE leadership compensation and expenditures, and removes authority for SOE leadership to determine salaries.  None: One of four party-reform announcements released at CCP Politburo meeting. Limiting SOE leadership compensation has no direct impact on foreign companies or market access issues.

Private Capital

<table>
<thead>
<tr>
<th>Date</th>
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<tbody>
<tr>
<td>04/24/15</td>
<td>Administrative Measures for the Franchising of Infrastructure and Public Utilities</td>
<td>NDRC, MOF, MOHURD, MOT, MWR, PBOC</td>
<td>Encourages social capital to invest in franchising projects involving energy, water conservancy, environmental protection, municipal engineering, and other infrastructure and public utilities. The measures aim to improve the quality and efficiency of public services, as well as enhancing cooperation between government and social capital organizations. One goal is to streamline the process for private-public partnerships (PPP).</td>
<td>Moderate: Broad agreement from several key ministries involved in the implementation of PPP projects in China. Previously, many individual ministries released their own specific PPP regulatory documents, which created confusion, but these administrative measures could potentially streamline processes and improve implementation of PPP projects. Foreign entities with Chinese legal person status (such as Chinese subsidiaries of foreign companies) are allowed to participate in these projects.</td>
</tr>
<tr>
<td>9/26/13</td>
<td>Guiding Opinions on Government Procurement of Services from Social Organizations</td>
<td>State Council</td>
<td>Allows further market access in the public service sector for eligible social organizations and enterprises.</td>
<td>Limited: Promotes the establishment of a services procurement system that will include public participation, but does not clarify if this includes foreign companies.</td>
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<td>Date</td>
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<tr>
<td>12/31/13</td>
<td>Opinions on Accelerating the Operations of Medical Institutions with Social Capital</td>
<td>NHFPC</td>
<td>Incorporates the operations of medical institutions with social capital into the planning of the health service system in the coming five years, and require local jurisdictions to develop reasonable policies for non-large-scale medical devices and equal treatment between private and public hospitals.</td>
<td>Limited: Promotes the establishment of private hospitals, but does not clarify access for foreign companies.</td>
</tr>
<tr>
<td>2/13/14</td>
<td>Regulatory Measures on the Equal Opening of Oil and Gas Pipeline Facilities (Trial)</td>
<td>NEA</td>
<td>Requires government agencies to regulate oil and gas pipeline facilities fairly, openly, and transparently, and opens investment to the private sector.</td>
<td>Limited: Allows private capital investment in an area dominated by state capital – but private capital is unlikely to include foreign investment.</td>
</tr>
<tr>
<td>5/18/14</td>
<td>Notice on Encouraging Social Capital in Infrastructure and Other Projects (First Batch)</td>
<td>NDRC</td>
<td>Lists 80 specific projects in infrastructure and other areas where private investment is encouraged.</td>
<td>Limited: Allows private participation in select infrastructure projects, but scope is limited and unclear if it will allow foreign participation.</td>
</tr>
<tr>
<td>9/12/14</td>
<td>Notice on Accelerating the Construction of Projects for Healthcare and Elder Care Services</td>
<td>NDRC, MCA, MOF, MLR, MOHURD, NHFPC, PBC, SAT, GAS, CBRC</td>
<td>Requires upgrading of medical treatment and elder care capabilities, including a new requirement that 25 percent of available hospital beds must be in private hospitals by 2020. The policy also sets targets of having 4.97 hospital beds per 1,000 people by 2015, and 6 hospital beds per 1,000 people by 2020.</td>
<td>Limited: Potentially important development for foreign companies involved in healthcare services, including potential future access to public funds. However, this notice merely sets goals without specific implementation details.</td>
</tr>
<tr>
<td>12/2/14</td>
<td>Guiding Opinions on Carrying Out the Public-Private Partnerships (PPP)</td>
<td>NDRC</td>
<td>Outlines the scope, goals, and reporting mechanisms for implementing the State Council's public-private partnerships for basic government services and infrastructure.</td>
<td>Limited: Further transparency and private participation in providing services, but the direct impact on foreign participation in such programs is yet to be seen. Likely indirect impact for foreign suppliers of inputs for projects being undertaken under the PPP umbrella.</td>
</tr>
<tr>
<td>1/12/15</td>
<td>Guiding Opinions on Encouraging Private Capital to Invest in Hydropower Stations</td>
<td>NEA</td>
<td>Outlines the processes and goals for developing new energy development in China. These opinions focus on the private market playing an important role in the development of hydropower stations as a means of developing clean energy.</td>
<td>Limited: Allows private capital investment in an area dominated by state capital – but openings for private capital are unlikely to be extended to foreign investment, based on other statements about private vs. foreign capital.</td>
</tr>
<tr>
<td>Date</td>
<td>Title</td>
<td>Organization</td>
<td>Summary</td>
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<tr>
<td>3/17/15</td>
<td>Notice on Promoting the Support of Development Financing for Public-Private Partnerships (PPPs)</td>
<td>NDRC, China Development Bank</td>
<td>Encourages adopting various financial tools to provide funding support for PPP projects. Instructs China Development Bank to provide preferential policies for PPP projects, such as giving priority to PPP financing needs, and setting up green channels to expedite the loan approval process.</td>
<td>Limited: Encouraging private capital in infrastructure building through public-private partnerships is not necessarily a new concept. It is not yet clear whether foreign companies will be active participants in PPPs.</td>
</tr>
<tr>
<td>3/30/15</td>
<td>Implementing Opinions for Encouraging and Instructing Social Capital to Participate in the Construction of Major Water Conservancy Projects</td>
<td>MOF, NDRC, Ministry of Water Resources</td>
<td>Encourages social capital, including SOEs, private enterprises, and foreign-invested enterprises, to participate in major water conservancy projects. Preferential and supporting measures for social capital investment are also addressed, for instance, financial subsidies, market-driven price mechanisms, policy-based finance, and preferential tax policies.</td>
<td>Limited: Encouraging foreign capital in infrastructure building through public-private partnerships could provide openings. Immediate impact of this policy is limited in scope and detail, however.</td>
</tr>
<tr>
<td>4/9/15</td>
<td>Guidelines for Issuing Bonds in the Elder Care Industry</td>
<td>NDRC</td>
<td>Encourages companies to finance debt for investment in the elder care industry by issuing bonds, and calls for increased efficiency in NDRC approval of company applications to issue debt.</td>
<td>Limited: Easing debt issuance policies would help investment in this industry but impact is limited to this sector.</td>
</tr>
<tr>
<td>4/9/15</td>
<td>Guidelines for Issuing Bonds for the Construction of Urban Parking Lots</td>
<td>NDRC</td>
<td>Encourages companies to finance debt for investment in urban parking lot construction by issuing bonds, and calls for increased efficiency in NDRC approval of company applications to issue debt.</td>
<td>Limited: Easing debt issuance policies would help investment in this industry but impact is primarily limited to this sector. Some potential direct impact for foreign company suppliers to the construction industry.</td>
</tr>
<tr>
<td>4/9/15</td>
<td>Guidelines for Issuing Bonds for Urban Underground Pipeline Networks</td>
<td>NDRC</td>
<td>Encourages companies to finance debt for investment in underground pipeline construction projects by issuing bonds, and calls for increased efficiency in NDRC approval of company applications to issue debt.</td>
<td>Limited: Easing debt issuance policies would help investment in this sector, but impact is limited to this sector. Some potential direct impact for foreign company suppliers to the construction industry.</td>
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<tr>
<td>4/9/15</td>
<td>Implementing Opinions on Promoting Public-Private Partnerships (PPPs) for the Prevention and Control of Water Pollution</td>
<td>MOF, MEP</td>
<td>Encourages social capital to participate and invest in PPP projects related to the prevention and control of water pollution. The opinions instruct local governments to create preferential policies for PPP projects, such as providing funding support, and other financial incentives and subsidies.</td>
<td>The opinions set high-level goals for promoting improvement in critical infrastructure projects such as water pollution. These opinions do not explicitly address foreign company participation in PPP projects, so direct impact on foreign company access to quasi-government projects is limited at this time.</td>
</tr>
<tr>
<td>8/19/13</td>
<td>Opinions on Reforming the Railway Investment and Financing System and Accelerating Railway Construction</td>
<td>State Council</td>
<td>Opens ownership and management rights of intercity rail, city (suburban) railway, resource development railway and railway branches to local government and social capital, and encourages social capital to invest in railway construction.</td>
<td>None: Encourages the use of private capital in railway construction—but private capital does not likely include foreign investment.</td>
</tr>
<tr>
<td>4/22/14</td>
<td>Infrastructure and Public Utility Franchise Law (“Franchise Law”)</td>
<td>NDRC</td>
<td>Further opens infrastructure and public utility sector to the private sector.</td>
<td>None: Allows more private participation in areas largely dominated by public investment, but foreign investment in this sector is not clarified and is unlikely.</td>
</tr>
<tr>
<td>4/23/14</td>
<td>Opinions on Establishing the Long-term Mechanism of Natural Gas Supply</td>
<td>State Council</td>
<td>Increases natural gas supply to as much as 420 billion cubic meters per year by 2020, and opens energy market to private capital.</td>
<td>None: Opens investment in the energy market to more private capital – but private capital in this context does not likely include foreign investment.</td>
</tr>
<tr>
<td>7/14/14</td>
<td>Notice on Issues Concerning Overseas Financing for Special Purpose Investment Vehicles (SPVs) Set Up by Chinese Residents, and Return Investment Foreign Currency Exchange</td>
<td>SAFE</td>
<td>Defines the scope of special-purpose vehicles (SPVs) foreign exchange transactions administered by SAFE, and expands financing channels by allowing domestic companies to acquire foreign currency for SPV investment. Improves the process for Chinese residents’ overseas financing activities and cross-border capital transactions.</td>
<td>None: Measures are aimed only at Chinese companies and individuals.</td>
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<tr>
<td>11/26/14</td>
<td><strong>Guiding Opinions on Innovating Financing Mechanisms and Encouraging Social Investment in Key Sectors</strong></td>
<td>State Council</td>
<td>Lays out public service projects in fields such as infrastructure, transportation, environmental protection, and ecological construction that should seek private capital for funding and undertaking.</td>
<td>None: Potentially positive move to decentralize the government’s role in supplying all social services and thus allow private participation. &quot;Private capital,&quot; however, likely does not include foreign capital.</td>
</tr>
<tr>
<td>12/25/14</td>
<td><strong>Announcement on Opening the Broadband Access Market to Private Capital</strong></td>
<td>MIIT</td>
<td>Encourages private capital to invest in wireline broadband access services in several designated pilot zones.</td>
<td>None: Encouraging to see the gradual liberalization of the traditionally entrenched telecom services market, but “private capital” does not likely include foreign investment.</td>
</tr>
<tr>
<td>2/25/15</td>
<td><strong>Implementing Opinions on Encouraging the Participation of Private Capital in the Development of Elder Care Services</strong></td>
<td>MCA, MHRSS, NDRC, MOE, MOF, NHFPC, MLR, CBRC, CIRC, MOHURD,</td>
<td>Encourages private capital to participate in developing the elder care market by recommending preferential tax policies, utilizing public-private partnerships, and developing educational programs targeted at improving the talent pool.</td>
<td>None: The opinions lack implementing details, and only apply to a small scope of businesses. The opinions also don’t mention foreign capital as a component of private capital.</td>
</tr>
<tr>
<td>4/22/15</td>
<td><strong>Notice on Financial Support Policies for the Promotion and Application of New Energy Vehicles (NEVs) from 2016-2020</strong></td>
<td>MOF, NDRC, MOST, MIIT</td>
<td>Extends promotional policies that favor NEVs (originally introduced in 2014 by the State Council) through 2020. The policies and subsidies are only available to consumer purchases of NEVs listed in a government NEV promotion catalogue.</td>
<td>None: A February 2015 NEV catalogue for cars qualifying for subsidies includes 18 car brands, but among those 18 brands, none are foreign company brands. Foreign companies are shut out from being included in the subsidies offered.</td>
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# VI. Financial Reforms

## Banking/Interest Rates

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<tbody>
<tr>
<td>3/31/15</td>
<td><strong>Deposit Insurance Provisions</strong></td>
<td>State Council</td>
<td>Requires all financial institutions within China that collect deposits to pay insurance premiums into a fund that will be managed by an agency of the State Council. This agency shall pay back to depositors their insured amount within seven days if the financial institution enters into bankruptcy procedures, or is approved to apply for bankruptcy. Maximum insurance compensation per account is 500,000 RMB.</td>
<td><strong>Moderate:</strong> Increases consumer confidence in the banking system, and is a positive step toward eliminating controls on interest rates. Limited impact on top issues facing foreign companies in the banking sector; foreign banks in China are not covered by the deposit insurance provisions.</td>
</tr>
<tr>
<td>7/26/13</td>
<td><strong>Guiding Opinions on Strengthening Financing Services to Support Small and Micro-Sized Enterprises</strong></td>
<td>NDRC</td>
<td>Requires government agencies at all levels to promote greater financing channels for small and micro-sized enterprises (SMEs).</td>
<td><strong>Limited:</strong> Efforts primarily aimed at domestic enterprises, with an indirect impact for foreign companies in the banking sector.</td>
</tr>
<tr>
<td>8/30/13</td>
<td><strong>Guidelines on Protecting Rights and Interests of Consumers</strong></td>
<td>CBRC</td>
<td>Requires banks to improve governance, including formulating internal codes of conduct and halting practices such as a failure to disclose investment risks, overstating returns, deliberately giving misleading information, and divulging or leaking personal information to any third party without consent.</td>
<td><strong>Limited:</strong> Impacts foreign financial institutions operating in the China market from an operational standpoint, but mainly to bring these practices in line with global industry best practices; does not make progress on top financial reform concerns for foreign companies.</td>
</tr>
<tr>
<td>9/27/13</td>
<td><strong>Measures on Consumer Finance Pilots</strong></td>
<td>CBRC</td>
<td>Creates 10 pilot projects that allow non-financial companies mainly engaged in providing consumer credit services to launch consumer finance businesses, lift the geographical restrictions on business operations, and lower the minimum capital ratio for shareholders from 50 percent to 30 percent.</td>
<td><strong>Limited:</strong> Lowers the minimum shareholder requirements for foreign companies to invest in consumer finance companies, but does not clearly permit them to set up their own consumer finance businesses.</td>
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<tr>
<td>11/8/13</td>
<td><strong>Guidance on Commercial Banks Issuing Corporate Bonds to Replenish Capital</strong></td>
<td>CSRC, CBRC</td>
<td>Allows commercial banks that are listed on domestic or overseas exchanges (or are queued to be listed) to issue corporate bonds to replenish capital.</td>
<td><strong>Limited:</strong> Allows commercial banks an additional channel to raise capital, but bond market still dominated by domestic players—and unclear whether this policy would impact or be applied to foreign commercial banks.</td>
</tr>
<tr>
<td>1/6/14</td>
<td><strong>Notice on Issues Concerning Strengthening the Supervision on Shadow Banking</strong></td>
<td>State Council</td>
<td>Defines the three categories of shadow banking in China, while calling for standardization of private banking practices and assigning responsibility to different regulators to stabilize the shadow banking sector.</td>
<td><strong>Limited:</strong> Stabilizing the financial industry by getting shadow banking under control is a positive step at recognizing there is a problem in the financial system to be addressed. While complete liberalization and openness of the market will take time, this is a positive step at attempting to address the problems. However, the impact to date is yet to be determined, and the direct impact on foreign companies is limited.</td>
</tr>
<tr>
<td>2/14/14</td>
<td><strong>General Plan for the Qingdao Wealth Management Comprehensive Reform Pilot</strong></td>
<td>PBOC, NDRC, MOF</td>
<td>Establishes a special pilot zone aimed at encouraging the establishment of diversified wealth management organizations and participation of private capital in order to build a professional wealth management market in the city.</td>
<td><strong>Limited:</strong> Increases access for private capital to invest in financial services, but does not clearly specify opportunities for foreign companies.</td>
</tr>
<tr>
<td>2/14/14</td>
<td><strong>Measures for the Administration of Service Prices of Commercial Banks</strong></td>
<td>CBRC, NDRC</td>
<td>Makes price charges by commercial banks for services subject to government-guided prices, government-determined prices and market-adjusted prices according to the nature and characteristics of services and market competition situation.</td>
<td><strong>Limited:</strong> Small step forward in allowing the market to play a role in determining prices, but still requires significant government oversight.</td>
</tr>
<tr>
<td>2/19/14</td>
<td><strong>Circular on the Re-approval of Charging Standards of Supervision Fees for the Banking Sector</strong></td>
<td>MOF, NDRC</td>
<td>Adjusts standards on collecting fees in the banking sector.</td>
<td><strong>Limited:</strong> Though the notice makes a concrete policy change, the impact is focused just on one aspect of the banking business—and thus is limited in both sector and operational impact.</td>
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<tr>
<td>Date</td>
<td>Title</td>
<td>Implementor</td>
<td>Description</td>
<td>Limited:</td>
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<tr>
<td>2/20/14</td>
<td>Administrative Measures for the Liquidity Risk of Commercial Banks</td>
<td>CBRC</td>
<td>Institutes a new measurement system aimed to gauge the ability of commercial banks to resist short-term stress from credit squeezes.</td>
<td>Implementation of the new management impact will focus on commercial banks, which could include foreign banks. However, this will have only a minor operational impact, and many foreign banks already have prudential measures in place to address these types of challenges.</td>
</tr>
<tr>
<td>2/27/14</td>
<td>Credit Industry Management Act</td>
<td>PBOC</td>
<td>Promotes the development of credit industry with a more market-oriented approach and calls for the construction of social credit information system along with increased information transparency.</td>
<td>Provides greater room for the private sector in the credit industry, but no clear indication that foreign companies are included.</td>
</tr>
<tr>
<td>6/27/14</td>
<td>Shanghai FTZ Interest Rate Reform Rolled Out to All of Shanghai</td>
<td>PBOC Shanghai Branch</td>
<td>Expands a pilot program on foreign currency deposit rates previously confined to the Shanghai FTZ to all of Shanghai. The announcement allows banks based in Shanghai to put foreign currency deposit rates for accounts (less than $3 million) in line with market conditions.</td>
<td>Although this may not have direct impact on foreign companies due to restrictions on foreign-invested banks, it represents an important first step of expanding a Shanghai FTZ pilot program to a larger scale. The policy could be significant if used as a measure to continue the expansion of more liberalized financial policies more broadly.</td>
</tr>
<tr>
<td>7/24/14</td>
<td>Notice on Improving and Innovating Loans to Small and Micro Enterprises to Improve the Financial Services to Small and Micro Enterprises</td>
<td>CBRC</td>
<td>Promotes the development of small companies in China by improving access to financing, reducing their debt financing costs, and promoting favorable terms for loans to small companies to improve liquidity.</td>
<td>Promoting domestic growth of small firms may create market opportunities, but it does not address the main market access and regulatory concerns of the financial sector. The notice also contains few policy details.</td>
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<tr>
<td>Date</td>
<td>Description</td>
<td>Authority</td>
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<tr>
<td>7/25/14</td>
<td>CBRC Approvals to create Qianhai Weizhong Bank, Wenzhou Private Bank, and</td>
<td>CBRC</td>
<td>Approves the establishment of three private banks, designating Tencent, Zhengtai Group, and Tianjin Huabei Group as the largest shareholders in their respective banks. These institutions are some of the first banks run by non-finance companies in China.</td>
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<td></td>
<td>Tianjin Jincheng Private Bank.</td>
<td></td>
<td><strong>Limited</strong>: A positive step towards creating greater openings for private capital in the banking industry. The significance of a non-finance Internet company being awarded approval for operating a bank shows true potential for private companies to participate in the industry. However, private capital thus far has only included Chinese capital, raising questions as to whether foreign companies will be allowed to participate in these openings.</td>
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</tr>
<tr>
<td>9/26/14</td>
<td>CBRC Approvals to create Shanghai Huarui Private Bank, and Zhejiang Web</td>
<td>CBRC</td>
<td>Approves the establishment of private banks, designating Shanghai Junyao Group and Alibaba's subsidiary Zhejiang Ant Micro-financing Services Group as the largest shareholders in their respective banks. These institutions will are some of the first banks run by non-finance companies in China.</td>
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<tr>
<td></td>
<td>Commercial Bank</td>
<td></td>
<td><strong>Limited</strong>: A positive step towards creating greater openings for private capital in the banking industry. The significance of a non-finance Internet company being awarded approval for operating a bank shows true potential for private companies to participate in the industry. However, private capital thus far has only included Chinese capital, raising questions as to whether foreign companies will be allowed to participate in these openings.</td>
<td></td>
</tr>
<tr>
<td>2/12/15</td>
<td>Notice on Issues Concerning the Scope of Medium and Long-Term Foreign Debt for Foreign Banks in China in 2015</td>
<td>NDRC</td>
<td>Allows foreign banks to apply to increase their foreign debt holdings as part of broader regulation of the amount of foreign debt that foreign banks can hold in 2015. <strong>Limited</strong>: Allowing FIE banks to apply to increase their holdings of foreign debt is likely a welcome liberalization, but still represents just a slight opening in an industry with significant government controls.</td>
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</tr>
<tr>
<td>2/12/15</td>
<td>Notice on Administration of Special RMB Accounts Foreign Exchange Settlement and Sales by Foreign Banks</td>
<td>SAFE</td>
<td>Specifies that a foreign bank that has opened an RMB services account and an RMB foreign exchange account can freely transfer RMB funds between these two accounts. <strong>Limited</strong>: Allows companies more control over their transfer of capital, but represents a limited process improvement.</td>
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</tbody>
</table>
3/12/15  **Guidelines on Risk Management for Commercial Bank Merger and Acquisition (M&A) Loans**  CIRC  Revises existing M&A loan guidelines in certain areas, such as extending the maximum term of an M&A loan from 5 years to 7 years, and increasing the maximum amount of a loan in relation to the total acquisition price from 50 percent to 60 percent.  **Limited**: Allows commercial banks greater space to finance M&A transactions, which could include foreign-related transactions in China, but does not address larger issues of foreign bank participation in the banking sector.

7/1/13  **Guidelines on Financial Support for Economic Restructuring, Transformation and Upgrading**  State Council  Encourages private capital investment in established and restructuring financial institutions; allows established village banks to change their capital contribution structure; promotes a diversified regulatory mechanism for different financial sectors in order to better support the real economy.  **None**: Allows qualified private companies to invest in private banks, financial rental companies and consumer finance companies, but private capital does not likely include foreign investment.

3/17/14  **Regulations on Financial Leasing Companies**  CBRC  Clarifies entry standards, service scopes, operating rules, and regulation & supervision standards for the financial leasing industry.  **None**: Encourages the use of private capital in leasing—but private capital does not likely include foreign investment.

3/27/14  **Opinions on Accelerating the Construction of Microenterprise and Rural Credit Systems**  PBOC  Creates a social risk system that functions like the credit reporting management industry, with a focus on micro-enterprises and rural economic actors.  **None**: Promotes innovation in the financial services sector, but does not provide new market opportunities for foreign companies.

### Exchange Rate/Foreign Exchange

<table>
<thead>
<tr>
<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
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</thead>
<tbody>
<tr>
<td>1/24/14</td>
<td><strong>Circular on Further Improving and Adjusting the Foreign Exchange Control Policy for Capital Accounts</strong></td>
<td>SAFE</td>
<td>Reforms foreign exchange management under companies' capital accounts, simplifies the process of administrative approvals, and facilitates trade and investment.</td>
<td><strong>Moderate</strong>: Simplifies the registration procedures for the acceptance of domestic non-performing assets by foreign investors, creating some new opportunities.</td>
</tr>
<tr>
<td>4/25/14</td>
<td><strong>Measures on Management of the Foreign Exchange Funds of Multinational Companies</strong></td>
<td>SAFE</td>
<td>Allows multinational companies to open overseas and domestic accounts simultaneously as well as conduct collection and settlement of accounts in foreign exchange.</td>
<td><strong>Moderate</strong>: Allows MNCs more flexibility in using foreign exchange.</td>
</tr>
<tr>
<td>Date</td>
<td>Notice Title</td>
<td>Authority</td>
<td>Description</td>
<td>Importance</td>
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<tr>
<td>04/08/15</td>
<td>Notice on Reforming FIE Foreign Capital Settlement Management</td>
<td>SAFE</td>
<td>Introduces foreign exchange capital settlement measures for FIEs based on similar pilot measures in the Shanghai FTZ. Allows FIEs to exchange or settle up to 100 percent of their foreign capital, starting June 1, 2015.</td>
<td>Moderate: Important liberalization that directly affects how companies will hold their capital. The notice will have an impact on how companies manage their capital for tax purposes, among others, across all sectors.</td>
</tr>
<tr>
<td>8/4/14</td>
<td>Notice on Questions Relating to Management of FIE Foreign Exchange Regional Pilot Zones</td>
<td>SAFE</td>
<td>Establishes 16 pilot zones throughout China, allowing foreign companies to convert up to 100 percent of registered foreign capital into RMB at any point in time, eliminating the need to get approval for each conversion separately. The policy also removes a ban on using registered capital for equity investment in Chinese enterprises.</td>
<td>Limited: This notice—effective immediately—loosens the rules for foreign companies to convert and use registered capital to support their business. While access is still limited to pilot zones, the spread of zones is broad.</td>
</tr>
<tr>
<td>7/5/13</td>
<td>Notice on Simplifying Cross-Border RMB Business Processes and Improving Relevant Policies</td>
<td>PBOC</td>
<td>Allows domestic and qualified foreign banks to offer a broader range of RMB clearing and other RMB-denominated services. Also permits domestic banks to offer RMB-denominated loans to domestic and foreign holding companies to qualified offshore entities.</td>
<td>Limited: Expands the market space for foreign banks to offer RMB-denominated services slightly and provides additional financing room for qualified foreign companies in China. However, these improvements are carefully controlled—and the most significant benefits are limited to one sector.</td>
</tr>
<tr>
<td>4/30/14</td>
<td>Provisions on Cross-Border Foreign Currency Flows</td>
<td>SAFE, GAC</td>
<td>Promotes the development of the foreign currency cash management business. Simplifies the management process and delegates administrative approvals to local SAFE branches and allows approved institutions to conduct foreign currency business.</td>
<td>Limited: Simplifies internal procedures related to foreign currency cash management; decentralizes approval to local agencies; and creates some opportunities for domestic and foreign companies in this sector.</td>
</tr>
<tr>
<td>5/19/14</td>
<td>Administrative Provisions for the Cross-Border Foreign Exchange Guarantee</td>
<td>SAFE</td>
<td>Simplifies the cross-border guarantees for foreign exchange by cancelling a number of administrative approval requirements.</td>
<td>Limited: Incremental step deregulating cross-border foreign exchange guarantees that should reduce regulation of cross-border guarantees by simplifying administrative checkpoints.</td>
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<tr>
<td>6/11/14</td>
<td>Guiding Opinions on Implementing the State Council's Opinions on Supporting the Stable Growth of Foreign Trade</td>
<td>PBOC</td>
<td>Provides government entities with instruction on how to support foreign trade growth, including supportive policies, efforts to promote credit, leasing and financing channels for foreign trade; improving cross-border RMB use by simplifying settlement procedures and launching new funds; and improving RMB exchange rate mechanisms.</td>
<td>Limited: Addresses some important issues related to foreign trade and RMB settlement across industries, but provides few details that would allow foreign companies to participate—and some language (such as &quot;providing services for companies that go abroad&quot;) implies a domestic focus.</td>
</tr>
<tr>
<td>6/22/14</td>
<td>Administrative Measures for Foreign Exchange Settlement and Sale Banking Services</td>
<td>PBOC</td>
<td>Clarifies conditions to be fulfilled by banks when applying for spot foreign exchange settlement/sales, and to offer RMB and foreign exchange derivatives products.</td>
<td>Limited: Guidelines for applying for these services are limited and vague, and are still bound by limitations in overlapping regulations. While foreign-invested banks can participate in these areas, the policy does not address key investment restrictions that companies face under the Catalogue Guiding Foreign Investment.</td>
</tr>
<tr>
<td>7/1/14</td>
<td>PBOC Notice on Inter-bank Currency Exchange Rates and Exchange Rate Announcements</td>
<td>PBOC</td>
<td>Authorizes the China Foreign Exchange Transaction Center to publicly announce exchange rates for various currencies (RMB/USD, RMB/EUR, RMB/JPY, etc.) every morning, clarifies how the RMB/USD exchange rate is determined, and allows banks to determine their own daily RMB exchange rates based on market demand.</td>
<td>Limited: While this does create additional flexibility for banks to determine appropriate exchange rates based on observed demand, such flexibility is limited.</td>
</tr>
<tr>
<td>12/20/14</td>
<td>Decision to Revise the Administrative Regulations for Foreign-Invested Banks</td>
<td>State Council</td>
<td>Amends China's FIE Bank Administrative Regulations to allow FIE banks freely convertible currency for operating capital. Working capital allocated to bank branches cannot exceed 60 percent of HQ's available capital.</td>
<td>Limited: An incremental step at liberalizing the banking sector for foreign companies; while it eases aspects of their operation by making working capital freely convertible, it doesn’t create new market access opportunities or allow banks to expand their operations.</td>
</tr>
</tbody>
</table>
Guiding Opinions on Cross-Border Foreign Exchange Payment Services Pilots for Payment Service Companies

SAFE

Launches nationwide pilots allowing payment institutions to receive and send cross-border payments in foreign currencies, as well as foreign exchange settlement for both parties in cross-border e-commerce transactions.

Limited: While the opening would appear to create opportunities for foreign companies and minor financial liberalization, the pilots are likely aimed at domestic firms. Payment institutions must possess a "payment business license" to participate in the pilot. While the rules for domestic companies to apply for such a license are laid out in 2010 PBOC rules, it is unclear if there is a way for foreign companies to apply for a license.

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<tbody>
<tr>
<td>1/29/15</td>
<td>Guiding Opinions on Cross-Border Foreign Exchange Payment Services Pilots for Payment Service Companies</td>
<td>SAFE</td>
<td>Launches nationwide pilots allowing payment institutions to receive and send cross-border payments in foreign currencies, as well as foreign exchange settlement for both parties in cross-border e-commerce transactions.</td>
<td>Limited: While the opening would appear to create opportunities for foreign companies and minor financial liberalization, the pilots are likely aimed at domestic firms. Payment institutions must possess a &quot;payment business license&quot; to participate in the pilot. While the rules for domestic companies to apply for such a license are laid out in 2010 PBOC rules, it is unclear if there is a way for foreign companies to apply for a license.</td>
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Insurance

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<tbody>
<tr>
<td>4/15/13</td>
<td>Administrative Measures on Insurance Company Mergers and Acquisitions</td>
<td>CIRC</td>
<td>Allows insurance companies and individual shareholders that meet conditions to own stakes in more than one other insurance company in the same market and allows insurers to use borrowed capital for up to 50 percent of the transaction price.</td>
<td>Moderate: Allows foreign and domestic insurance companies to hold controlling stakes in up to two competitors in the same product market (i.e., life insurance, property and casualty insurance, reinsurance), though impact limited to this sector.</td>
</tr>
<tr>
<td>3/28/13</td>
<td>Administrative Measures on the Issuance of Subordinated Debts by Insurance Companies</td>
<td>CIRC</td>
<td>Allows insurance groups to issue subordinated debts, where in the past only licensed subsidiaries could issue such bonds.</td>
<td>Limited: Permits insurance groups to issue debt to broaden financing options, but sector impact quite limited.</td>
</tr>
<tr>
<td>5/2/13</td>
<td>Administration Measures for Telephone Sales of Life Insurance</td>
<td>CSRC</td>
<td>Provides rules for companies selling life insurance over the phone to protect consumers.</td>
<td>Limited: Minimal impact for companies focused on one small aspect of a particular industry.</td>
</tr>
<tr>
<td>2/20/14</td>
<td>Circular on Improving Regulation on the Proportional Use of Insurance Funds</td>
<td>CIRC</td>
<td>Raises the maximum share of total assets that insurers can invest in shares and private equity to 30 percent, up from 25 percent under previous rules.</td>
<td>Limited: Changes will have a limited direct impact on the insurance industry.</td>
</tr>
<tr>
<td>4/4/14</td>
<td>Administrative Measures on Insurance Company Mergers and Acquisitions</td>
<td>CIRC</td>
<td>Improves the structure of the insurance industry and enhances its competitiveness, while increasing the variety of risk-handling instruments.</td>
<td>Limited: Will have some impact on foreign companies in the insurance industry, but no impact on others.</td>
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<th>Summary</th>
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<tr>
<td>1/26/15</td>
<td><strong>Insurance Industry Foreign Exchange Management Guidelines</strong></td>
<td>SAFE</td>
<td>Defines the rules for the permitted scope of business, foreign bank account management rules, foreign exchange expenditure and payment receipt, and government oversight of insurance companies that utilize foreign currency exchange as part of their business.</td>
<td>Limited: The management guidelines provide insight into how companies can comply with rules regarding foreign exchange issues when offering insurance services, providing some benefit for foreign companies— but does not change rules governing foreign company access to participate in the insurance industry.</td>
</tr>
<tr>
<td>2/3/15</td>
<td><strong>Opinions on Further Administrative System Reform for Commercial Auto Insurance Clauses and Premiums</strong></td>
<td>CIRC</td>
<td>Calls for a mechanism to ensure market-based development of commercial auto insurance premiums.</td>
<td>Limited: High-level opinions calling for marketization of commercial auto insurance premiums with no specifics. Though market-oriented reforms in determining prices are welcome, the impact is limited until implementing details are available— and impact even then will be limited to one sector.</td>
</tr>
<tr>
<td>2/17/15</td>
<td><strong>Regulatory Rules Numbers 1-17 on Solvency of Insurance Companies</strong></td>
<td>CIRC</td>
<td>Proposes to establish a new “China risk-based solvency system” that requires insurance companies to submit two separate solvency reports quarterly.</td>
<td>Limited: Promotes greater transparency for businesses and consumers, but does not address market access or operational issues.</td>
</tr>
<tr>
<td>2/26/15</td>
<td><strong>Plan for Building a Credit System in China's Insurance Industry (2015-2020)</strong></td>
<td>CIRC, NDRC</td>
<td>Proposes to establish a credit system complete with basic credit rating rules and criteria for the insurance industry. Calls for establishing a unified, publicly available credit information system, as well as a credit reporting system covering the whole industry, by 2020.</td>
<td>Limited: The outline is aspirational and requires detailed implementation procedures in order to determine how impactful the announcement will be on industrial development and on foreign companies.</td>
</tr>
<tr>
<td>3/24/15</td>
<td><strong>Work Plan for Deepening Pilot Reform in Commercial Automobile Insurance Terms and Premium Rates</strong></td>
<td>CIRC</td>
<td>Identifies Heilongjiang, Shandong, Qingdao, Guangxi, Shaanxi, and Chongqing as pilot regions for commercial auto insurance reform. The companies in these regions will be responsible for developing insurance terms at their own discretion, including determining insurance premiums.</td>
<td>Limited: Potentially beneficial industry reform allowing the market to play a determining role in pricing and competition. The plan is limited to a select business sector and geographic regions, thus limiting its potential impact.</td>
</tr>
<tr>
<td>4/24/13</td>
<td><strong>Notice on Regulating the Limited Partnership Equity Investment Enterprises to Invest in Insurance Companies</strong></td>
<td>CIRC</td>
<td>Permits qualified domestic and foreign limited partnership firms to invest in insurance companies, marking an initiative of CIRC to encourage and support private capital investment in the insurance industry.</td>
<td>None: Creates more openings for private capital in the insurance market, but private capital in this case does not likely include foreign companies.</td>
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<tr>
<td>8/27/13</td>
<td>Guidance on Insurance Industry's Support of Economic Restructuring, Transformation and Upgrading</td>
<td>CIRC</td>
<td>Encourages the use of private capital to establish insurance agencies, brokerages, and assessment institutions, along with participation in the rural insurance market.</td>
<td>None: Encourages the use of private capital in insurance – but private capital does not likely include foreign investment.</td>
</tr>
<tr>
<td>2/26/14</td>
<td>Opinions on Establishing a Unified Basic Pension Insurance System for Urban and Rural Residents</td>
<td>State Council</td>
<td>Establishes a unified urban and rural pension insurance fund consists of contributions by individuals, collective benefits, and government subsidies.</td>
<td>None: Changes focus on areas of the insurance industry that are entirely government-run, and companies are not included among contributors.</td>
</tr>
<tr>
<td>4/28/14</td>
<td>Amendment to the Measures on Insurance Company Equity Management</td>
<td>CIRC</td>
<td>States that insurance companies must fund additional equity investment from their own funds, and not from bank loans; aims to further opens the insurance industry to the private capital while controlling the systematic risk, especially risk linked to the banking sector.</td>
<td>None: Provides openings for private capital in the insurance industry – but private capital does not likely include foreign investment.</td>
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**Securities and Private Equity**

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<tbody>
<tr>
<td>5/9/14</td>
<td>Opinions on Further Promoting Healthy Development of the Capital Market</td>
<td>State Council</td>
<td>Removes administrative approvals from private equity issuance, calls for domestic securities and futures companies to invest in foreign markets, and strengthens regulation of illegal activities in the securities and futures market.</td>
<td>Moderate: Reduces administrative approvals for securities companies, and has a broader indirect impact for other companies in promoting a more open private equity market.</td>
</tr>
<tr>
<td>11/14/14</td>
<td>Notice on Tax Policies Concerning the Shanghai-Hong Kong Stock Market Trading Interconnection Pilot Program</td>
<td>CSRC, SAT, MOF</td>
<td>Clarifies tax collection policies for the Shanghai-Hong Kong Stock Market Interconnection pilot program for mainland and Hong Kong investors.</td>
<td>Moderate: Policy announcement does not address new market openings, but is a step in improving comprehensive financial reform, which includes allowing outside investors that are involved in the Hong Kong exchange access to China's stock markets.</td>
</tr>
<tr>
<td>3/21/14</td>
<td>Regulations on the Preferred Stock Pilot Program</td>
<td>CSRC</td>
<td>Allows listed companies to issue preferred shares.</td>
<td>Limited: Impact only on companies listed on public exchanges in China.</td>
</tr>
<tr>
<td>4/25/14</td>
<td>Notice on Further Tightening Risk Control of Fund Management Companies and Subsidiaries</td>
<td>CIRC</td>
<td>Reduces the risk of specific client asset management business conduct by the subsidiaries by banning certain business practices.</td>
<td>Limited: Increases supervision of financial institutions, but impact on foreign companies limited.</td>
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<th>Description</th>
<th>Limitations</th>
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<tbody>
<tr>
<td>5/13/14</td>
<td>Opinions on Stimulating Innovation and Development in Securities Institutions</td>
<td>CSRC</td>
<td>Promotes the development of modern investment banks, support for development of new products in asset management, bulk stock, derivatives and private equity, and improved supervision.</td>
<td>Limited: Contains positive language about liberalizing trade, but does not include any substantive changes that would increase market access.</td>
</tr>
<tr>
<td>6/12/14</td>
<td>Opinions on Promoting the Innovative Development of the Securities Investment Fund Industry</td>
<td>CSRC</td>
<td>Reforms securities regulation by reducing required government approvals and loosening market access controls by setting a negative list for asset management services and by permitting FIE banks to apply for fund management credentials. It also urges securities companies to establish modern asset management mechanisms and develop innovative financial products.</td>
<td>Limited: Positive language that would provide greater market access for securities companies when implemented, but scope is specific only to financial companies and implementation remains limited.</td>
</tr>
<tr>
<td>7/7/14</td>
<td>Measures for the Administration of Publicly Offered Securities Investment Fund Operations</td>
<td>CSRC</td>
<td>Reforms government reviews of publicly offered fund products, shifting from approval to registration and limiting the scope of CSRC’s review. In the review of an application, CSRC will simply focus on completion of the document, adequacy of disclosures, and administrative issues.</td>
<td>Limited: These measures make process improvements to allow securities companies—both domestic and foreign-invested—more room in creating new products, but do not fundamentally address market access issues.</td>
</tr>
<tr>
<td>11/3/14</td>
<td>Notice on Matters Concerning Accessing the Interbank Bond Market by Eligible Non-Financial Institutional Investors</td>
<td>PBOC</td>
<td>Allows non-financial institutional investors to access the interbank bond market.</td>
<td>Limited: Strengthens the role of the bond market in financing and allows markets—and not the government—to play a more decisive role in finance. However, scope of the opening is limited to a small number of institutional investors.</td>
</tr>
<tr>
<td>4/19/13</td>
<td>Rules of Contents and Format of Information Disclosure by Companies Offering Securities</td>
<td>CSRC</td>
<td>Sets new rules for the format and content of quarterly and semiannual reports by listed companies.</td>
<td>None: Constitutes process improvements with limited scope.</td>
</tr>
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## VII. Pricing Reform and Competition Policy

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<tbody>
<tr>
<td>9/30/13</td>
<td>Pricing Case Administrative Penalty Review Rules</td>
<td>NDRC</td>
<td>Provides instructions for price departments at all levels on the review process of administrative penalty cases, and further standardizes the pricing department’s exercise of power in dealing with administrative punishment cases.</td>
<td>Moderate: Process-oriented reform that aims to improve and standardize the investigation process in pricing-related cases. Signals a step forward in improving transparency.</td>
</tr>
<tr>
<td>1/21/14</td>
<td>Revised Rules on the Handling of Whistle-blowing of Illegal Pricing Behavior</td>
<td>NDRC</td>
<td>Allows whistleblowers to inform price authorities of illegal pricing behavior, where an alleged wrongdoer causes consumers to overpay due to its illegal pricing activities, the competent price authorities shall order the wrongdoer to refund the overpaid money to consumers before it decides to impose an administrative penalty for such illegal pricing activities.</td>
<td>Moderate: Step towards promoting market-based pricing and cracking down illegal pricing behaviors, which could have both positive and negative impacts for foreign companies.</td>
</tr>
<tr>
<td>7/2/13</td>
<td>Announcement Setting On-Grid Nuclear Power Price</td>
<td>NDRC</td>
<td>Sets the benchmark on-grid nuclear power price at RMB 0.43 (7 US cents) per kWh for newly built reactors across the country.</td>
<td>Limited: Small step in reforming prices in one sector of the energy industry, but the impact is extremely limited.</td>
</tr>
<tr>
<td>8/8/13</td>
<td>Notice on Near-Term Energy Market Supervision Work</td>
<td>NEA</td>
<td>Promotes electricity market supervision, increases direct trading between power companies and consumers, and boosts cost and price supervision.</td>
<td>Limited: Advances central government reforms to allow the market a greater role in determining energy prices, but has not made much tangible difference for companies regarding government regulation of energy markets.</td>
</tr>
<tr>
<td>11/15/13</td>
<td>Announcement on the Market Adjusted Price for the Charges of Mobile Communications Resale Services under the Pilot Program</td>
<td>MIIT, NDRC</td>
<td>Specifies that market prices will be used for local calls, long distance calls, roaming calls, short messages, multimedia messages, data and other resale services operated by resale enterprises under the pilot program and that the restriction of differential pricing for intranet and extranet upon resale enterprises will be cancelled.</td>
<td>Limited: Allows the market to play a greater role in pricing, but only specific to telecom service providers in the mobile resale pilot program, which does not currently include any foreign companies.</td>
</tr>
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### Competition Policy

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<tr>
<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
<th>Impact</th>
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</thead>
<tbody>
<tr>
<td>4/15/14</td>
<td><strong>Opinions on the Supply of Low-cost Common Drugs</strong></td>
<td>NDRC, MHRSS, NHFPC, MOF, CFDA</td>
<td>Improves price regulation on low-cost drugs and abolishes price ceilings.</td>
<td></td>
</tr>
<tr>
<td>7/18/14</td>
<td><strong>Notice on Issues Concerning Lifting the Control of Fee Standards for Certain Professional Services</strong></td>
<td>NDRC</td>
<td>Removes fixed government pricing standards for certain administrative processes, and allows the prices for these services to be determined by the market.</td>
<td></td>
</tr>
<tr>
<td>1/4/15</td>
<td><strong>State Releases Price Controls on 24 Items</strong></td>
<td>NDRC</td>
<td>Rescinds state price controls on 24 goods and services, including tobacco leaves, express railway shipping services, civil aviation product shipping, shipping container handling services, etc.</td>
<td></td>
</tr>
<tr>
<td>1/16/14</td>
<td><strong>Guiding Opinions on the Online Handling of Cases Involving Administrative Penalties for Price-related Violations</strong></td>
<td>NDRC</td>
<td>Makes price authorities with administrative law enforcement information platforms responsible for approving price activities, managing evidence, and other price-related tasks.</td>
<td></td>
</tr>
<tr>
<td>8/28/13</td>
<td><strong>Work Plan on Eliminating Regional Blockades and Breaking Up Industry Monopolies</strong></td>
<td>MOFCOM, CBRC, CSRC, CIRC, and seven other ministries and agencies</td>
<td>Lays out work to promote fair, market-based competition.</td>
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<th>Date</th>
<th>Title</th>
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<th>Description</th>
<th>Analysis</th>
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<tbody>
<tr>
<td>6/6/14</td>
<td><strong>Revised Guiding Opinions on Declaration of Mergers</strong></td>
<td>MOFCOM</td>
<td>Clarifies company requirements for declaring mergers with new requirements for companies to document ownership control and share, share of operational control, details about new corporate entities (such as joint ventures) created during a transaction, and how to handle pre-merger discussions and multiparty mergers.</td>
<td>Moderate: Scope of changes cuts across industry sectors and provides important clarifications helpful to companies governing their communication with MOFCOM during the merger review process.</td>
</tr>
<tr>
<td>4/13/15</td>
<td><strong>Provisions on the Prohibition of Conduct that Eliminates or Restricts Competition through Abuse of Intellectual Property Rights (IPR)</strong></td>
<td>SAIC</td>
<td>Defines IPR-related monopolistic behavior under the Antimonopoly Law, such as IPR abuse and actions to eliminate or restrict competition; provisions go into effect starting August 1, 2015.</td>
<td>Moderate: This is an important policy — finally completed after several years — that provides some clarifying detail on how Chinese government agencies may regulate on two priority issues for many foreign companies (IPR and competition). However, definitions of some actions are still quite broad, meaning that further explanation is needed.</td>
</tr>
<tr>
<td>7/8/14</td>
<td><strong>Opinions on Promoting Fair Competition and Maintaining Regular Order in the Market</strong></td>
<td>State Council</td>
<td>Encourages government entities to reduce supervisory measures and processes that have a negative impact on companies, with a goal of establishing a more mature market supervision system by 2020.</td>
<td>Limited: Calls for reducing prohibitive measures that affect business operations, but seems to be aimed at domestic companies; foreign companies are mentioned only once (in the context of offering foreign investors pre-establishment and negative list treatment). The document is aspirational in nature and covers a limited number of FIE concerns on market access and investment barriers.</td>
</tr>
<tr>
<td>10/24/14</td>
<td><strong>Work Plan for Parallel Approvals of Acquisitions of Publicly Traded Companies</strong></td>
<td>MIIT, CSRC, NDRC, MOFCOM</td>
<td>Changes the requirements regarding investment reviews allowing NDRC reviews of overseas investment projects and MOFCOM reviews of merger reviews to run parallel with CSRC approval of acquisitions of publicly traded companies. Such reviews were formerly conducted separately. Reviewing agencies must also make their decisions independent of other agencies.</td>
<td>Limited: Though process changes are relatively minor, the changes should alleviate some delays in the approval process for M&amp;A and investment projects involving foreign companies, and promote more independent decision-making by authorities during MOFCOM AML reviews.</td>
</tr>
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</table>
### VIII. Rule of Law/Legal and Judicial Reform

<table>
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<tr>
<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
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<tbody>
<tr>
<td>10/30/13</td>
<td>12th National People's Congress Legislative Plan</td>
<td>NPC</td>
<td>Lays out 68 central government legislative priorities for the next five years.</td>
<td>Moderate: Lays out guidelines for China's key reforms over the next five years. Most notably, it prioritizes revising the Unfair Competition Law, as well as three laws related to Foreign-Invested Enterprise laws, the WFOE, EJV, and CJV laws. While potential policy impact remains high, limited implementation of major reforms to date—including the laws listed in this description—limits this impact to moderate.</td>
</tr>
<tr>
<td>2/4/14</td>
<td>Opinions on Publishing Information relating to Administrative Penalty Cases Involving Producing and Selling Counterfeits and Infringement of Intellectual Property Rights</td>
<td>State Council</td>
<td>Requires administrative enforcement agencies to proactively disclose the information relating to administrative penalty cases involving counterfeiting and IPR infringement within 20 working days of an administrative decision.</td>
<td>Moderate: Improves IPR enforcement and transparency.</td>
</tr>
<tr>
<td>7/21/14</td>
<td>Interim Measures for Corporate Information Disclosure (Draft)</td>
<td>State Council</td>
<td>Requires companies to publicly disclose shareholders, changes in ownership, and other company information on an annual basis as part of an attempt to increase corporate transparency.</td>
<td>Moderate: The measures increase both available information and information disclosure requirements for companies operating in China, including foreign companies. While the requirements may place an increased burden on foreign companies, many are accustomed to information disclosure requirements in other markets and may ultimately benefit from increased information about their competitors and industries.</td>
</tr>
<tr>
<td>Date</td>
<td>Title</td>
<td>Responsible Party</td>
<td>Summary</td>
<td>Evaluation</td>
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<tr>
<td>8/31/14</td>
<td>Decision on Establishing Intellectual Property (IP) Courts in Beijing, Shanghai, and Guangzhou</td>
<td>National People's Congress Standing Committee</td>
<td>Creates specialized courts on a pilot basis in Beijing, Shanghai and Guangzhou to handle administrative appeals and some civil IP cases.</td>
<td>Moderate: Creation of these courts could improve the ability of companies in a range of sectors to better protect their IP, and courts are now beginning to hear cases and engage with the public. However, the scope of the pilot remains limited to three geographic areas.</td>
</tr>
<tr>
<td>3/30/15</td>
<td>Provisions on the Record-Keeping, Reporting and Accountability for Interventions in Judicial Activities and Meddling in Specific Cases by Leading Cadres</td>
<td>CCP Central Committee, State Council Information Office</td>
<td>Aims to restrict any party interference in judicial cases and promote adherence to the Constitution. Notes that judicial offices that record interference from outside parties will be protected by the law.</td>
<td>Moderate: Positive legislation that will be beneficial to China's transparency and judicial reform efforts; however, true impact and effectiveness will depend on the ability to enforce the provisions.</td>
</tr>
<tr>
<td>10/1/13</td>
<td>Opinions on Continue to Strengthen Government Information Transparency and Improve Government Credibility</td>
<td>State Council</td>
<td>Encourages government departments to better explain policies and regulations to the public in a timely and accurate manner, calling for government departments that deal with people's livelihood and the macro-economy to hold at least one press conference every three months. It also stresses the need to make better use of government websites, hotlines and other forms of communication.</td>
<td>Limited: Signals that the central government is serious about improving transparency, but focuses more on encouraging agencies to boost transparency than providing specific requirements to do so.</td>
</tr>
<tr>
<td>11/22/13</td>
<td>Opinions on Further Strengthening the Administrative Law Enforcement for Commerce</td>
<td>MOFCOM</td>
<td>Takes various measures designed to increase transparency in law enforcement and administration.</td>
<td>Limited: Makes recommendations on increasing transparency in commercial law enforcement, but the practical impact of such measures on foreign company operations remains unclear.</td>
</tr>
<tr>
<td>2/26/15</td>
<td>Supreme People's Court Opinions on Deepening Reform of People's Courts</td>
<td>SPC</td>
<td>Lays out seven priorities for reforming the courts system over the next five years, including setting up independent jurisdictions separate from administrative zones, establishing a trial-based procedural system by 2016, and improving the professional level of judicial personnel.</td>
<td>Limited: Potentially positive steps at reforming the judicial system by fostering greater judicial independence, among other measures, but the recommendations do not yet provide implementing details.</td>
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<td>Date</td>
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<td>03/17/15</td>
<td>Implementing Opinions on the CCP Central Committee Decision Concerning Major Issues in Comprehensively Promoting the Rule of Law</td>
<td>MOJ</td>
<td>Identifies several areas for judicial administration reform, such as deepening reform of the penal system, continuing reforms for lawyers, improving the community correction system, expanding the scope of legal aid, and ensuring support for legal expenses.</td>
<td></td>
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<tr>
<td>04/04/15</td>
<td>Opinions on Improving Standardization Work for Energy Conservation</td>
<td>State Council General Office</td>
<td>Encourages relevant ministries and authorities to design and enforce energy efficiency standards. Establishes a goal of having an advanced system of energy efficiency standards by 2020, with 80 percent of energy efficiency standards matching international levels.</td>
<td></td>
</tr>
<tr>
<td>04/04/15</td>
<td>Notice of Key Points in the 2015 Campaign against IPR Infringement and Counterfeiting</td>
<td>State Council General Office</td>
<td>Outlines a six-point work plan for addressing intellectual property infringement and counterfeit products in 2015, including improving the regulatory system, strengthening enforcement, and deepening cooperative discussions such as the US-China S&amp;ED and JCCT. Key work priorities are broken down into 24 sub-sections with government agencies assigned responsibility for carrying them out.</td>
<td></td>
</tr>
<tr>
<td>04/15/15</td>
<td>Opinions on Promoting Reform of the Courts’ Lawsuit Filing Registration System</td>
<td>SPC</td>
<td>Proposes reforms to the court case-filing system by identifying five qualifications that a plaintiff must meet to file a lawsuit (such as having a direct stake in the case), and describes a four-step procedure for filing a lawsuit.</td>
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<tr>
<td>4/24/15</td>
<td>Decision of the National People’s Congress Standing Committee on Revising the Drug Administration Law</td>
<td>NPC Standing Committee</td>
<td>Revises the existing law to remove requirements for drug manufacturers and distributors to have their &quot;drug manufacturing license&quot; before registering with local administrations of industry and commerce. The revision also removes fixed pricing and pricing guidance by the government. The updated law comes into effect immediately.</td>
<td><strong>Limited:</strong> These minor revisions do not address industry concerns with the drug supervisory system, legal liabilities, and administrative penalties for violations currently found in the law. It is an incremental step forward in reducing the government's role and letting market determinants be a bigger factor in the industry. Overall, the impact is limited to one industry, and is limited by the small scope of revisions made.</td>
</tr>
<tr>
<td>6/8/13</td>
<td>Announcement on Implementing Effective Regulatory Documents and Abolishing Some Regulatory Documents</td>
<td>AQSIQ</td>
<td>Announces an AQSIQ review of more than 1,000 internal regulatory documents – and the elimination of 58 of these as &quot;unnecessary.&quot;</td>
<td><strong>None:</strong> Eliminates unnecessary regulatory documents, but only a process-oriented reform for AQSIQ.</td>
</tr>
<tr>
<td>5/4/14</td>
<td>Administrative Measures for the Tendering and Bidding of Telecommunication Construction Projects</td>
<td>MIIT</td>
<td>Adopts public bidding for telecommunication construction projects in which state-owned capital possesses a holding or leading position and must be subject to bid invitation in accordance with the law.</td>
<td><strong>None:</strong> No impact on foreign companies, as they are not active in this space.</td>
</tr>
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</table>

**IX. Taxation and Budget**

**Taxation**

<table>
<thead>
<tr>
<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
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<tbody>
<tr>
<td>12/9/14</td>
<td>State Council Notice on Cleaning Up and Standardizing Taxes and Beneficial Policies</td>
<td>State Council</td>
<td>Standardizes tax and non-tax business incentives offered to businesses by local governments by requiring central government approval of incentives offered, and creating single lines of reporting to ensure adherence to rules.</td>
<td><strong>Significant:</strong> Seeks to create greater consistency and transparency among local government officials by attempting to standardize the types of incentives they can use to attract business and cancel unapproved existing incentives. However, impact on existing business incentives is unclear.</td>
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<tr>
<td>Date</td>
<td>Title</td>
<td>Agency</td>
<td>Description</td>
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<tr>
<td>9/24/13</td>
<td>Notice on the Launch of a Nationwide Inspection Campaign on Fees Imposed on Businesses</td>
<td>NDRC</td>
<td>Initiates nationwide inspection campaign to crack down on arbitrary charges by governmental departments and industries.</td>
<td>Moderate</td>
</tr>
<tr>
<td>3/10/15</td>
<td>Announcement on Corporate Income Tax Issues Concerning the Implementation of the Catalogue of Encouraged Industries in Western China</td>
<td>SAT</td>
<td>Reduces the corporate income tax rate to 15 percent for companies in western China involved in a sector included in the Catalogue of Encouraged Industries in western China. Revenues generated from activities in the encouraged sector must account for greater than 70 percent of overall revenue.</td>
<td>Moderate</td>
</tr>
<tr>
<td>12/16/14</td>
<td>Import-Export Tax Adjustment Announcement</td>
<td>MOF</td>
<td>Reduces tariff rates for various imported products to levels lower than those offered through most-favored nation status. Impacted products include (but are not limited to) advanced manufacturing equipment for optical communication lasers, camera lenses, and automatic wire welding machines. New tariff rates went into effect as of January 1, 2015.</td>
<td>Limited</td>
</tr>
<tr>
<td>5/24/13</td>
<td>Announcement on Implementing VAT Pilot Projects Nationwide in Transport and some Service Industries</td>
<td>SAT</td>
<td>Expands local value-added tax (VAT) reform pilot covering some transportation and services areas nationwide as of August 1, 2013.</td>
<td>Limited</td>
</tr>
<tr>
<td>8/15/13</td>
<td>Extension of the Zhongguancun &quot;1+6&quot; Reform Policies</td>
<td>MOST, MOF, SAT</td>
<td>Extends current preferential tax policies for high-tech, innovative enterprise development.</td>
<td>Limited</td>
</tr>
<tr>
<td>1/29/14</td>
<td>Notice on Promoting the Healthy Development of Labor-intensive Small- and Medium-sized Enterprises</td>
<td>MOF</td>
<td>Provides additional tax breaks and preferential fiscal policies to boost the development of small- and medium-sized enterprises in the light, textile, machinery, electronics, wholesale and retail, accommodation and catering, residential services, elderly services, modern services, and many other industries.</td>
<td>Limited</td>
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<td>Date</td>
<td>Title</td>
<td>Agency(S)</td>
<td>Description</td>
<td>Limitations</td>
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<tr>
<td>3/24/14</td>
<td>Notice on Simplifying Invoice Receipts and Usage Procedures for the Value Added Tax</td>
<td>SAT</td>
<td>Simplifies the tax regime to provide law-abiding taxpayers with more convenient tax methods, including simplifying invoice receipts and usage procedures for the VAT.</td>
<td><strong>Limited:</strong> Impact for taxpayers across industry, but only focused on tax issues (and limited to individual taxpayers, not corporate taxpayers).</td>
</tr>
<tr>
<td>4/8/14</td>
<td>Notice Regarding Adjustment in Tax Preferential Treatment for Small Businesses</td>
<td>MOF, SAT</td>
<td>Further alleviates the tax burden for small businesses, and promotes employment and economic development.</td>
<td><strong>Limited:</strong> Reduces tax burdens on enterprises, but limited impact on multinationals.</td>
</tr>
<tr>
<td>4/30/14</td>
<td>Notice on Including the Telecom Sector in VAT Pilots</td>
<td>MOF, SAT</td>
<td>Includes the telecom sector in VAT pilots.</td>
<td><strong>Limited:</strong> Promotes some measure of tax reform for the telecom sector.</td>
</tr>
<tr>
<td>5/13/14</td>
<td>Notice on Tax Collection Policy for Aircraft Leasing Companies</td>
<td>MOF, GAC, SAT</td>
<td>Reduces the tax rate from 17 percent to 5 percent for companies that import airplanes above 25 tons in order to lease them to domestic airlines; this reduced tax rate paid by domestic airlines.</td>
<td><strong>Limited:</strong> Provides a tangible tax reduction, but direct impact is limited to companies leasing aircraft. Indirectly impacts foreign aviation firms as well, as it could spur more purchases/imports of foreign aircraft.</td>
</tr>
<tr>
<td>7/30/14</td>
<td>Notice on Expanding the Scope of the Pilot Program for Tax Rebate Policy at Ports of Departure</td>
<td>MOF, GAC, SAT</td>
<td>Expands an export tax rebate pilot for maritime shipping companies from Shanghai to eight additional ports, including Nanjing, Suzhou, Lianyungang, Wuhu, Juicing, Qingdao, Wuhan, and Yueyang. The expanded program goes into effect September 1, 2014.</td>
<td><strong>Limited:</strong> The policy allows for process improvements for companies to receive export tax rebates, but remains limited to a specific set of nine pilot ports on and around the Yangtze River.</td>
</tr>
<tr>
<td>8/1/14</td>
<td>Announcement on the Exemption from Vehicle Purchase Tax for New Energy Vehicles</td>
<td>MOF, SAT, MIIT</td>
<td>Removes the vehicle purchase tax (which is one of several taxes related to vehicle pricing) for new energy vehicles for a period of three years.</td>
<td><strong>Limited:</strong> Potential to positively impact companies that manufacture NEVs, with indirect benefit to suppliers and after-market service providers. This also specifies the same criteria for qualified imported cars as well. However, only vehicles listed in the NEV tax exempt catalogue qualify for the elimination of vehicle purchase tax; only one foreign vehicle currently qualifies.</td>
</tr>
<tr>
<td>8/27/14</td>
<td>Administrative Measures for Value-added Tax Exemptions on Cross-border Services (for Trial Implementation)</td>
<td>SAT</td>
<td>Revises previous standards for the types of cross-border services to include in China’s efforts to transition from a business tax to a VAT, clarifying that reforms include postal, delivery services, and telecom services.</td>
<td><strong>Limited:</strong> This revision clarifies the tax situation for a range of companies providing specific cross-border services, but is primarily an extension of an existing reform effort.</td>
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<tr>
<td>Date</td>
<td>Title</td>
<td>Implementing Agencies</td>
<td>Description</td>
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<tr>
<td>9/10/14</td>
<td>Notice on the Nationwide Implementation of the Pilot Export Rebate Policy for Financial Leasing Goods</td>
<td>MOF, GAC, SAT</td>
<td>Expands the pilot program for a VAT and consumption tax rebates on exported leased products with a lease term of five years or greater nationwide, previously limited to Tianjin's Dongjiang Free Trade Port Zone.</td>
<td>The rebates are most likely aimed at domestic companies as the service eligible for exemption is &quot;exported&quot; products.</td>
</tr>
<tr>
<td>10/8/14</td>
<td>Notice on the Adjustment of Coal Import Tariffs</td>
<td>State Council</td>
<td>Removes a provisional zero percent tariff rate on various types of imported coal.</td>
<td>Impact limited to the energy sector and does not have a major impact on operations.</td>
</tr>
<tr>
<td>10/9/14</td>
<td>Notice on Implementing the Coal Resource Tax Reform</td>
<td>MOF, SAT</td>
<td>Lays out plans for implementing and administering the new tax reform plan for imported coal, including tax calculation and collection.</td>
<td>Impact limited to the energy sector.</td>
</tr>
<tr>
<td>9/9/14</td>
<td>Notice on Policies concerning the Adjustment to Resource Tax on Crude Oil and Natural Gas</td>
<td>MOF</td>
<td>Adjusts subsidies and tax rates for 27 oil, natural gas, and mineral extraction companies in China.</td>
<td>Impact limited to the energy sector.</td>
</tr>
<tr>
<td>10/10/14</td>
<td>Notice on Issues Relating to Disposing of Payment Funds Concerning Coal, Crude Oil, and Natural Gas</td>
<td>MOF, NDRC</td>
<td>Removes several forms of subsidy and benefits to coal, oil, and natural gas producers – including removing a subsidy that brought their tax rate to zero percent.</td>
<td>Impact limited to the energy sector.</td>
</tr>
<tr>
<td>11/14/14</td>
<td>Notice on Issues concerning the Temporary Exemption of Corporate Income Tax on Income from the Transfer of Stock or Other Equity Investment Assets Gained by Qualified Foreign Institutional Investors (QFII) and RMB Qualified Foreign Institutional Investors</td>
<td>CSRC, SAT, MOF</td>
<td>Removes the corporate income tax for capital gains from stock purchased in mainland China for qualified foreign institutional investors (QFII) and RMB qualified foreign institutional investors (RQFII).</td>
<td>Encourages more foreign capital in China's stock market, creating additional investor opportunities while also strengthening China's stock market. However, the announcement does not address market access issues.</td>
</tr>
<tr>
<td>11/25/14</td>
<td>Notice on the Increase of Oil Consumption Tax</td>
<td>MOF</td>
<td>Raises the consumption tax on various types of refined oil used in transportation (i.e., gasoline, aviation kerosene).</td>
<td>Largely aimed at reducing oil consumption in an effort to reduce pollution, while promoting the use and development of new energy vehicles. Energy is an important input for all businesses, but resulting impact from this announcement yet to be seen.</td>
</tr>
<tr>
<td>11/25/14</td>
<td>Notice on the Adjustment of Consumption Tax</td>
<td>MOF, SAT</td>
<td>Adjusts consumption tax on various products including removal of consumption tax on automobile tires, low-displacement motorcycles, and alcoholic spirits.</td>
<td>A limited impact on prices for a small range of products.</td>
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<td>Date</td>
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<td>Agency</td>
<td>Description</td>
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</tr>
<tr>
<td>12/23/14</td>
<td>Notice on Exempting Small and Micro Enterprises from Contributing to Certain Government Funds</td>
<td>MOF, SAT</td>
<td>Exempts qualifying small and micro-sized enterprises from contributing to certain government tax funds (such as education funding, the water construction fund, and the cultural industry construction fund) between January 1, 2015 and December 31, 2017.</td>
<td></td>
</tr>
<tr>
<td>12/25/14</td>
<td>Notices on Issues Concerning the Enterprise Income Tax Treatment for the Promotion of Enterprise Restructurings</td>
<td>MOF, SAT</td>
<td>Expands the number of M&amp;A deals that could be eligible for “special tax treatment.”</td>
<td></td>
</tr>
<tr>
<td>2/3/15</td>
<td>Announcement on Issues Concerning Income Tax on Indirect Property Transfers by Non-Resident Enterprises</td>
<td>SAT</td>
<td>Addresses foreign enterprise offshore tax avoidance efforts by determining that indirect transfer of taxable assets by non-resident enterprises that results in avoidance of corporate income tax shall be deemed as direct transfer of China taxable assets and thus subject to tax in China.</td>
<td></td>
</tr>
<tr>
<td>2/4/15</td>
<td>Announcement on the Follow-up Administrative Issues Related to the Cancellation of the Administrative Approval Process for Certain Tax Matters</td>
<td>SAT</td>
<td>Provides details on tax implementation following the cancellation of administrative approval requirements in certain tax matters.</td>
<td></td>
</tr>
<tr>
<td>2/12/15</td>
<td>Notice of Cancellation and Exemption of a Batch of Administrative Charges</td>
<td>MOA</td>
<td>Cancels and/or exempts a batch of 14 administrative fees for small and micro enterprises. Fees being addressed include phytosanitary fees, quarantine fees for animals and animal products, and personnel relations and archives preservation fees.</td>
<td></td>
</tr>
<tr>
<td>3/13/15</td>
<td>Notice on Preferential Corporate Income Tax Policies for Small Low-Profit Enterprises</td>
<td>MOF, SAT</td>
<td>Reduces the corporate income tax on small companies making less than RMB 200,000 ($31,922) annually for a period of three years.</td>
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<tr>
<td>Date</td>
<td>Announcement</td>
<td>Authority</td>
<td>Description</td>
<td>Limited:</td>
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<tr>
<td>3/20/15</td>
<td><strong>Announcement on Issues Concerning Corporate Income Tax on Payments Made by Enterprises to Related Parties Overseas</strong></td>
<td>SAT</td>
<td>Specifies that an enterprise, when making payments to related parties overseas, shall abide by the &quot;arm's length principle&quot; and provide, if required by the tax authority, the contract and other materials to prove the transaction is independent and fair. The announcement lists four payment scenarios that do not conform to the arm's length principle, and thus cannot be deducted when calculating enterprise income.</td>
<td></td>
</tr>
<tr>
<td>4/3/15</td>
<td><strong>Notice on the 2015 Plan for Tax-Free Imports of Seeds and Stock for Breeding of Poultry, Fish, Wildlife, and Wild Animal and Plant Species</strong></td>
<td>MOF, GAC, SAT</td>
<td>Exempts the import of certain seeds, poultry breeding stock, fish breeding eggs, and wild animal and plant species breeding seeds during the Twelfth Five-Year Plan period from import taxes.</td>
<td></td>
</tr>
<tr>
<td>4/27/13</td>
<td><strong>Announcement on Tax Exemption of Interests of Local Government Bonds</strong></td>
<td>MOF, SAT</td>
<td>Eliminates two taxes on interest paid on local government bonds to make the bonds more attractive to domestic investors.</td>
<td>None:</td>
</tr>
<tr>
<td>4/29/14</td>
<td><strong>Notice on Extending the Preferential Tax Policy in Support of Entrepreneurship and Employment</strong></td>
<td>SAT</td>
<td>Grants tax breaks to startups and employers that hire those currently unemployed, new graduates, and other categories of unemployed and underemployed workers.</td>
<td>None:</td>
</tr>
<tr>
<td>9/25/14</td>
<td><strong>Notice on Value-added Tax (VAT) and Business Tax (BT) Policy for Further Supporting Small- and Micro-Sized Businesses</strong></td>
<td>MOF, SAT</td>
<td>Eliminates value-added taxes for companies with RMB 20,000-30,000 in monthly sales and business tax for companies with monthly turnover of RMB 20,000-30,000.</td>
<td>None:</td>
</tr>
<tr>
<td>10/24/14</td>
<td><strong>Notice on Stamp Tax Exemption for Loan Contracts Between Financial Institutions and SMEs</strong></td>
<td>MOF, SAT</td>
<td>Exempts loan contracts between financial institutions and small and micro-sized enterprises from paying the stamp tax.</td>
<td>None:</td>
</tr>
</tbody>
</table>
**11/3/14**  
**State Council Executive Meeting Decision**  
State Council  
Expands six trial policies from the Zhongguancun High-Tech Zone nationwide and calls for the creation of a new batch of high-tech zones. Policies to be expanded include reforming scientific research fund management, equity financing tools for non-publicly listed SMEs, and tax deductions for staff education expenses, etc.  
None: Tax benefits for companies and individuals participating in the high-tech zone, but largely aimed at domestic SMEs. No clear impact on foreign companies, especially in regards to market access.

**12/3/14**  
**State Council Executive Meeting Decision**  
State Council  
Extends agricultural tax preferences, including removing income tax earned by financial companies on loans of less than 50,000 RMB to farmers.  
None: Largely an effort at promoting the development of small rural farming areas, not targeted at foreign investors.

**2/2/15**  
**Announcement on Follow-Up Administrative Issues Related to the Cancellation of the Administrative Approval Process for Three Corporate Income Tax Items**  
SAT  
Cancels three SAT administrative approvals (for preferential corporate income tax rules for small enterprises with micro-level profits, companies with revenue that falls under central government enterprises (tier two and below), and changes to combined corporate tax structures), and clarifies management rules for companies that previously abided by those canceled administrative approvals.  
None: Clarification on cancellations for certain administrative approval procedures. Scope is limited to a batch of cancellations and appears to be largely directed at domestic companies.

### Budget/Debt Issues

<table>
<thead>
<tr>
<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
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</thead>
<tbody>
<tr>
<td>1/10/14</td>
<td><strong>Announcement on 2012 Central Budget Implementation and the Rectification of Other Issues Concerning Financial Revenue and Expenditure Audits Problem</strong></td>
<td>National Audit Office</td>
<td>Lays out direction of reform in several areas, including the government fund budget management, regional tax incentives adjustment, the state capital operating budget management, transfer payments management, etc.</td>
<td><strong>Moderate</strong>: Clarifies that MOF will explicitly decouple regional development from tax incentives, a step towards addressing discriminatory tax policies.</td>
</tr>
<tr>
<td>6/13/14</td>
<td><strong>Guiding Opinions on Credit Rating of Local Government Bond Issuance in Pilot Zones in 2014</strong></td>
<td>MOF</td>
<td>Introduces credit rating systems for local government bond-issuance pilots with multiple tiers for credit ratings (AAA to C) and varying lengths (five, seven, or 10 years). 2014 pilot areas include Shanghai, Zhejiang, Guangdong, Jiangsu, Shandong, Beijing, Jiangxi, Ningxia, and Qingdao.</td>
<td><strong>Moderate</strong>: Represents a relatively significant step towards marketization of the financial system, and a key measure to implement broader issuance and use of local government bonds as a financing channel. This could have important implications for transparency, market reform, and government spending/procurement. While systemic impact is important, direct impact for foreign companies remains limited.</td>
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<td>Date</td>
<td>Description</td>
<td>Issuer</td>
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<tr>
<td>5/19/14</td>
<td>Measures for the Pilot Program of Issuing and Repaying Local Government Bonds in 2014</td>
<td>MOF</td>
<td>Allows 10 provinces and cities (including Beijing, Shanghai, Jiangsu, and Guangdong) to issue and repay their own local government bonds on a trial basis in 2014.</td>
<td>Limited: Test platforms for reforms that aim to increase financing channels for local governments. While increased use of such debt issuance could help fund infrastructure and construction projects that could benefit foreign companies, direct impact on foreign companies limited. Additionally, this program is still in a pilot phase.</td>
</tr>
<tr>
<td>6/13/14</td>
<td>Guiding Opinions on Information Disclosure of Pilot Local Government Bonds in 2014</td>
<td>MOF</td>
<td>Clarifies information disclosure requirements for local government debt issuance, requiring local finance bureaus in pilot areas to disclose certain information no later than five business days prior to the issuing date of local bonds via a specific website. Required disclosures include basic information about the bonds, the quantity of bonds being issued, issuing date, issuing method, credit rating, and corresponding rating report.</td>
<td>Limited: While these regulations are an important step in defining transparency standards and promoting local government bond issuance in a more market-oriented fashion, the impact for foreign companies is primarily indirect.</td>
</tr>
<tr>
<td>12/5/14</td>
<td>Notice on Issues Concerning the Improvement of Government Budget Systems</td>
<td>MOF</td>
<td>Requires local governments to improve their budgeting systems and to ensure that sufficient attention is given to maintaining governmental funds and funds for public services. All local governments are required to comply as of January 1, 2015.</td>
<td>Limited: Promotes better financial management practices in place for local governments, which could have a positive systemic impact by reducing corruption and increasing government solvency, but does not create market-oriented reforms.</td>
</tr>
<tr>
<td>1/24/14</td>
<td>Notice on Promoting Government Procurement of Services Related to Budget Management</td>
<td>MOF</td>
<td>Promotes government procurement of services related to budget management.</td>
<td>None: Internal process related policy that does not directly impact foreign companies.</td>
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</table>
### Other

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<tr>
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<tbody>
<tr>
<td>11/27/14</td>
<td>Notice on Continuing to Implement Tax Policies for the Transformation of Publicly Funded Institutions to Private Enterprises</td>
<td>MOF, SAT, Central Propaganda Department</td>
<td>Extends tax incentives for enterprises that have been converted from publicly (government) funded institutions to for-profit cultural institutions through the end of 2018.</td>
<td>None: Primarily targeted at Chinese companies, as it is rare that a foreign company would be formed out of a previously publicly funded institution. No new market access foreign companies granted and no new positive treatment for foreign companies.</td>
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### X. Corruption, Bribery and Party Discipline

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<th>Date</th>
<th>Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
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<tbody>
<tr>
<td>8/13/13</td>
<td>Notice on Banning Extravagant Official Galas</td>
<td>CCP Propaganda Department, MOF, MOC, NAO, SAPPRFT</td>
<td>Prohibits extravagant official galas and punishes those who organize such events. It restricts the use of government funds to hold commercial celebrations or pay for expensive entertainment.</td>
<td>Moderate: While policy would standardize government behavior in line with foreign company international best practices, immediate impact has created uncertainty among local officials that has delayed many economic decisions by local governments.</td>
</tr>
<tr>
<td>12/13/13</td>
<td>Implementation Opinions on Rectifying Improper Practices in Procurement and Sales of Medicines and Medical Services</td>
<td>NHFPC, NDRC, MIIT, MOF</td>
<td>Enacts campaign against untoward practices in pharmaceutical sales and medical service.</td>
<td>Moderate: Improves transparency in hospital procurement process, but will have a negative impact for companies with drug prescription incentive programs at hospitals.</td>
</tr>
<tr>
<td>1/23/14</td>
<td>Notice on Implementing Opinion to Further Combat Corruption in Pharmaceutical Sales and Purchasing and Illegal Medical Practices</td>
<td>NHFPC, NDRC and MOF</td>
<td>Tackles corruption in pharmaceutical sales and medical services practices in an effort reduce artificially high prices of some drugs.</td>
<td>Moderate: Could have an important impact, both positive and negative, for companies in the healthcare sector and their operating practices.</td>
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<tr>
<td>Date</td>
<td>Title</td>
<td>Authority</td>
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<tr>
<td>12/25/13</td>
<td>Provisions on Establishing a Commercial Bribery Blacklist in the Pharmaceutical Industry</td>
<td>NHFPC</td>
<td>Creates new mechanisms to expose companies in the pharmaceutical industry that engage in commercial bribery. All public medical institutions in China will be prohibited for a period of two years from purchasing drugs, medical equipment and medical supplies from enterprises included on the “black list” for more than two within five years.</td>
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</tr>
<tr>
<td>12/31/13</td>
<td>Administrative Measures on Central and State Organs Travel</td>
<td>MOF</td>
<td>Requires government agencies to cut down on waste from business travel expenses of government branches.</td>
<td></td>
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<tr>
<td>3/18/14</td>
<td>Opinions on Reducing and Addressing Waste by Party and Government Agencies</td>
<td>State Council</td>
<td>Reduces food and other types of waste for official activities.</td>
<td></td>
</tr>
<tr>
<td>4/1/14</td>
<td>Implementation Measures for the Anti-Corruption Punishment and Prevention Work Plan (2013-17)</td>
<td>SASAC</td>
<td>Lays out implementation measures for SASAC’s anti-corruption work.</td>
<td></td>
</tr>
<tr>
<td>4/28/14</td>
<td>Guidance on Anti-money-Laundering of Securities Companies</td>
<td>SAC</td>
<td>Requires securities companies to establish and improve an internal anti-money laundering control system, which shall include but not be limited to a client identification and risk grading system, a block trade and suspicious transaction reporting system, a client identity materials and trade records retention system, a confidentiality system, a publicity and training system.</td>
<td></td>
</tr>
<tr>
<td>03/24/15</td>
<td>Provisions on Self-Discipline and Prohibition of Interference in Environmental Impact Assessment (EIA) Approvals</td>
<td>MEP</td>
<td>Prohibits government officials and their relatives from influencing EIA approval processes, and prohibits them from engaging in private business (third-party) EIA projects.</td>
<td></td>
</tr>
</tbody>
</table>
8/29/14  Implementation of the Proposal for Deepening Reform of the Party's Establishment System

CCP Politburo  Proposes reforms to four aspects of the structure of the CCP: the organizational system, the cadre personnel (HR) system, the basic level system, and the talent development system.

None: One of four party-reform announcements released at CPC Politburo meeting, with no direct impact on foreign companies or market access issues.

8/21/14  Notice on Further Improving the Public Disclosure Mechanism for a Directory of Administrative Charges

MOF, NDRC  Requires that all administrative charges for publicly funded projects must be recorded in a public directory, and the administrative charges must conform to pre-defined cost standards.

None: While this is a positive transparency step for information disclosure of publicly funded project expenditures, it does not directly eliminate or change administrative charges that foreign companies face.

1/22/15  Several Opinions on Building and Improving Grain Security by Establishing an Accountability System for Provincial Governors

State Council  Proposes a potential mechanism that assigns responsibility for developing and maintaining a safe, productive, consistent, and capable grain industry to provincial governors.

None: Likely an effort to improve good governance in a critical industry in China by ensuring clear lines of responsibility and reporting. However, this is aimed at government actors, not companies.

XI. Urban/Rural Issues

Urbanization

Date  Title  Agency/Agencies  Summary  Impact

3/16/14  New National Urbanization Plan (2014-2020)  State Council  Improves regulation of the migration of rural residents into urban areas, with a focus on sustainable infrastructure development and raising living standards.  Significant: Allows rural citizens broader access to urban social services and thus could lead to increased domestic consumption—a step toward rebalancing China's economy and creating market opportunities. Could also encourage controlled migration and provide access to new human resources for a range of foreign companies.
### Proposal for the Comprehensive Performance of National Pilot Projects for the New Type of Urbanization

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<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
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<tbody>
<tr>
<td>2/4/15</td>
<td>Proposal for the Comprehensive Performance of National Pilot Projects for the New Type of Urbanization</td>
<td>NDRC, SCOPSR, MPS, MCA, MOF, MOHRSS, MOHURD, MOA, PBOC, CBRC, SAC</td>
<td>Provides an outline of goals and objectives for a pilot system in 2 provinces (Jiangsu and Anhui) and 62 cities to test different plans for urbanization and hukou reform.</td>
<td>Limited: The proposals right now are aspirational and do not provide concrete implementation plans for how to achieve urbanization and reform targets. In addition, while welcome reforms, they have limited impact on key FIE concerns regarding market access and fair treatment.</td>
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</table>

### Notices on Further Strengthening the Remaking of Poor Urban Residential Areas

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<tr>
<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
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<tbody>
<tr>
<td>8/4/14</td>
<td>Notices on Further Strengthening the Remaking of Poor Urban Residential Areas</td>
<td>State Council</td>
<td>Provides high-level direction for how Chinese government agencies and stakeholders (such as state-owned enterprises) should promote better infrastructure and conditions in poor urban residential areas.</td>
<td>None: No direct impact on foreign companies or market access conditions, and company participation is focused on domestic companies. There is possibly a limited, indirect impact for companies that support urbanization processes.</td>
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</table>

### Hukou/Household Registration Reform

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<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
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<tbody>
<tr>
<td>7/30/14</td>
<td>State Council Opinions on Further Promoting Household Registration System Reform</td>
<td>State Council</td>
<td>Overhauls China's residency system, establishes a unified household registration system that aligns rural and urban resident benefits based on location of residency instead of location of birth.</td>
<td>Moderate: This reform has the potential to boost consumer spending, increase labor mobility, and open new investment opportunities in urban infrastructure—which could benefit foreign companies. Follow-up implementation details needed for impact to be felt broadly.</td>
</tr>
</tbody>
</table>
### Notice on Adjusting the Criteria for the Classification of City Sizes

State Council

Creates new standards for defining city-level classifications based on number of permanent residents, likely in reference to ongoing hukou reforms.

None: Likely aimed at follow-up legislation for clarifying hukou reform efforts, including where and how people can obtain social services in different jurisdictions. This policy itself does not create any new market openings, but serves to clarify definitions for follow-up policies.

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#### Other Urban/Rural Policies

<table>
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<tr>
<th>Date</th>
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<tbody>
<tr>
<td>11/20/14</td>
<td>Notice on Adjusting the Criteria for the Classification of City Sizes</td>
<td>State Council</td>
<td>Creates new standards for defining city-level classifications based on number of permanent residents, likely in reference to ongoing hukou reforms.</td>
<td>None: Likely aimed at follow-up legislation for clarifying hukou reform efforts, including where and how people can obtain social services in different jurisdictions. This policy itself does not create any new market openings, but serves to clarify definitions for follow-up policies.</td>
</tr>
</tbody>
</table>

**Note:** This table provides a summary of various urban and rural policies implemented in China, including dates, titles, agencies involved, summaries of the policies, and their impacts. The policies cover a range of areas, from rural medical cooperative work to pension services, and each entry includes the date, title, agencies involved, summary, and impact. The impact columns include notes on whether the policy is limited to domestic or foreign participation, or focused on government agencies. The table is designed to provide a comprehensive overview of the policies and their implications.
<table>
<thead>
<tr>
<th>Date</th>
<th>Policy Title</th>
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<tbody>
<tr>
<td>1/20/15</td>
<td><strong>Notice on Relaxing Conditions for Withdrawals from the Housing Provident Fund for Rent Payments</strong></td>
<td>MOHURD, MOF and PBOC</td>
<td>Relaxes the conditions and amounts individuals can withdraw from the housing provident fund.</td>
<td>None: A social issue related to access to rental housing. No direct impact on foreign companies.</td>
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<td><strong>XII. Other</strong></td>
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<tr>
<td>5/23/14</td>
<td><strong>Measures to Support the Stable Development of Foreign Trade</strong></td>
<td>GAC</td>
<td>Encourages the establishment of reforms focused on streamlining the customs process, improving the trading environment, improving innovation in services, promoting outbound investment and trade, and establishing a consolidation customs area pilot program in Shanghai. This announcement follows a May 4 announcement from the State Council requiring government agencies to set reform measures to promote stable growth in foreign trade.</td>
<td>Moderate: Measures will not cause immediate impact, but will lay out goals to promote increased trade and development of China's services sector by simplifying administrative procedures. The plan includes a plan to develop a consolidated customs area in the Shanghai Yangshan Bonded Zone.</td>
</tr>
<tr>
<td>2/27/15</td>
<td><strong>Government Procurement Law Implementing Regulations</strong></td>
<td>State Council</td>
<td>Regulates government procurement by setting up specific rules for purchasing goods and services, the process for making purchases, the appropriate format for contracts, procedures for complaints, procurement supervision, and legal responsibilities.</td>
<td>Moderate: Clearly states for the first time that products produced in China—even by foreign companies—are domestic. The regulations, however, do not provide more specific details on the definition of “domestic products,” including clarifications on inputs and handling IT products.</td>
</tr>
<tr>
<td>3/26/15</td>
<td><strong>Reform Plan for Further Improving Standardization Work</strong></td>
<td>State Council</td>
<td>Lays out goals for reform to China’s standards system, as well as specific tasks to take place over the next five years in three phases: 2015-2016, 2017-2018, and 2019-2020. The plan streamlines current standards into four categories, with clearer definitions of the type of standards that fall into each category and a required “clean-up” of existing standards to adjust to the new definitions.</td>
<td>Moderate: Includes positive transparency-related language saying that all mandatory national standards must be made available to the public. However, the plan also calls for coordination of standard-setting activities with efforts to promote Chinese companies “going out” and promoting Chinese brands.</td>
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<tr>
<td>Date</td>
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<tr>
<td>9/28/13</td>
<td><strong>Opinions on Promoting the Development of Healthcare Services</strong></td>
<td>State Council</td>
<td>Opens investment to private capital and promotes market-based pricing in the healthcare industry.</td>
<td></td>
</tr>
<tr>
<td>1/3/14</td>
<td><strong>Administrative Measures on Non-Bidding Government Procurement Methods</strong></td>
<td>MOF</td>
<td>Clarifies the circumstances that apply to three different kinds of non-bidding government procurement methods: competitive negotiation, single-source procurement and price inquiry.</td>
<td></td>
</tr>
<tr>
<td>3/12/14</td>
<td><strong>Guiding Opinions on Promoting the Pension Agency Liability Insurance Work</strong></td>
<td>MCA, CIRC and National Office on Aging</td>
<td>Promotes the establishment of the pension agency liability insurance system.</td>
<td></td>
</tr>
<tr>
<td>3/21/14</td>
<td><strong>Opinions on Undertaking Further Work on Constructing the Agricultural Product Market System</strong></td>
<td>MOFCOM</td>
<td>Promotes diversified development of retail market and strengthens the market’s ability to cultivate modern circulation enterprises.</td>
<td></td>
</tr>
<tr>
<td>4/8/14</td>
<td><strong>Opinion on Comprehensive Reform to County-level Public Hospitals</strong></td>
<td>MOF</td>
<td>Encourages cross-provincial drug tendering, ensuring drug safety, and lowering drug prices.</td>
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<tr>
<td>4/9/14</td>
<td>Notice on Issues Concerning the Implementations of Non-public Health Care Sector Market Price</td>
<td>NDRC, NHFPC, MOHRSS</td>
<td>Encourages private capital to enter the healthcare sector, expands the supply of medical services, improves the efficiency of medical services, and promotes development of medical services and orderly competition of the healthcare sector.</td>
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<td><strong>Limited</strong>: Promotes the role of private capital in the healthcare sector—but private capital does not likely include foreign investment. Some indirect impact of market-oriented pricing for companies in this sector.</td>
<td></td>
</tr>
<tr>
<td>4/29/14</td>
<td>Notice on Extending the Preferential Tax Policy in Support of Entrepreneurship and Employment</td>
<td>MOF, SAT, MHRSS</td>
<td>Grants business startups and employers that are willing to hire the jobless tax breaks as the Chinese central government looks to encourage employment amid the economic slowdown.</td>
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<td></td>
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<td></td>
<td><strong>Limited</strong>: Scope only applies to small businesses, impact limited on MNCs.</td>
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<tr>
<td>5/28/14</td>
<td>Guiding Opinions to Support Enterprises and Promote the Stable Growth of Foreign Trade</td>
<td>AQSIQ</td>
<td>Promotes stable growth in foreign trade by easing some inspection controls on exports, promoting imports of key technologies and improving regional cooperation. This announcement follows a May 4 announcement from the State Council requiring government agencies to set reform measures to promote stable growth in foreign trade.</td>
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<td></td>
<td><strong>Limited</strong>: Although the document covers several cross-cutting reform categories like simplification of inspection and quarantine systems and promoting imports of goods and services, it is vague and generic on prescriptions for achieving reform.</td>
<td></td>
</tr>
<tr>
<td>8/23/14</td>
<td>Interim Regulations on Enterprise Information Disclosure</td>
<td>State Council</td>
<td>Creates an online reporting mechanism that companies must use to disclose information such as registration information, ownership changes, equity pledges, and administrative penalties.</td>
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<td></td>
<td></td>
<td></td>
<td><strong>Limited</strong>: While increased information disclosure does improve some transparency in the market, this regulation does not address market access issues—or core transparency concerns—for foreign companies.</td>
<td></td>
</tr>
<tr>
<td>9/9/14</td>
<td>Notice on Implementation for the 2014 Annual Healthcare Reform Key Tasks for Improving Drug Distribution</td>
<td>MOFCOM, MOF, NDRC, MOHRSS, NHFPC, CFDA</td>
<td>Establishes general goals for promoting healthcare reform and drug distribution in China, including encouraged development of independent pharmacies.</td>
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<td></td>
<td></td>
<td></td>
<td><strong>Limited</strong>: While encouraging the growth of independent pharmacies outside of hospitals could spur significant change in drug distribution channels, the policy remains aspirational in setting goals as opposed to specific policies.</td>
<td></td>
</tr>
<tr>
<td>11/20/14</td>
<td>Opinions on Supporting the Healthy Development of Small and Micro Sized Enterprises</td>
<td>State Council</td>
<td>Provides high-level guidance for development of small and micro-sized enterprises engaged in “encouraged” investment projects, including exemption from tariffs for small and micro-sized enterprises that import advanced equipment used that cannot be produced by domestic producers.</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Limited</strong>: While it could create some opportunities for foreign companies to sell advanced equipment to SMEs, it doesn’t address market access openings for foreign companies in any specific industry.</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Title</td>
<td>Implementing Organization</td>
<td>Description</td>
<td>Limitations</td>
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<tr>
<td>2/3/15</td>
<td>Notices on Implementing the &quot;Three Mutuals&quot; to Promote Significant Customs Clearance Reforms</td>
<td>State Council</td>
<td>Aims to build an integrated customs clearance system built on the &quot;three mutuals&quot; – mutual information exchange between customs and related ministries, mutually recognized regulations across regions, and mutual aid for law enforcement activities.</td>
<td>Limited: A streamlined port management system would be welcomed by foreign companies, but the notice does not give specifics for implementation. The notice is aspirational in nature.</td>
</tr>
<tr>
<td>3/11/15</td>
<td>Administrative Measures for Food Recalls</td>
<td>CFDA</td>
<td>Regulates food safety production stoppages and recalls, and supervision of recalls on unsafe food.</td>
<td>Limited: Significant impact for a specific sector, with roughly six months to prepare for compliance – effective date starting September 1, 2015.</td>
</tr>
<tr>
<td>3/30/15</td>
<td>Announcement of Customs Clearance Integration Reform in the Silk Road Economic Belt</td>
<td>GAC</td>
<td>Indicates that GAC will start integrated customs clearance procedures across nine provinces along the Silk Road Economic Belt starting May 1. The enterprises in these regions may choose to go through the process of customs declaration, tax payment, and goods examination in the place where the business operators are registered, or where the goods actually enter and exit China.</td>
<td>Limited: Positive integration of and streamlining of customs work, but likely targeted at Chinese companies hoping to take advantage of China's international economic development policy. Geographic scope also limited.</td>
</tr>
<tr>
<td>3/30/15</td>
<td>Announcement of Customs Clearance Integration Reform in Northeast China</td>
<td>GAC</td>
<td>Indicates that four provinces in northeast China will collaborate on customs clearance procedures starting May 1. All imported and exported goods from companies within the regions will enjoy simplified procedures through a regional integrated clearance system, which will require only one customs declaration.</td>
<td>Limited: Positive integration of and streamlining of customs work, but likely targeted at Chinese companies hoping to take advantage of China's international economic development policy. Geographic scope also limited.</td>
</tr>
<tr>
<td>8/6/14</td>
<td>Guiding Opinions on Accelerating the Development of Productive Service Industry to Promote Industrial Restructuring and Upgrading</td>
<td>State Council</td>
<td>Lays out a range of policies designed to promote and support companies in high-tech service industries, including allowing such companies to qualify for HNTE and thus receive a 15 percent tax rate.</td>
<td>None: Not clear if, or how, existing market access barriers for foreign companies will be changed — and how the criteria by which companies can qualify for this status might work. Implementing details are vague.</td>
</tr>
<tr>
<td>1/14/15</td>
<td>Notice on Raising the Minimum Standard for Basic Pensions under the National Basic Pension Insurance for Urban and Rural Residents</td>
<td>MOHRSS, MOF</td>
<td>Raises the minimum standard for contribution to basic pensions to RMB 70 ($11.29) per person per month from the original standard of RMB 55 ($8.87) per person per month.</td>
<td>None: No new impact on foreign companies.</td>
</tr>
<tr>
<td>Date</td>
<td>Event</td>
<td>Details</td>
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<tr>
<td>3/12/15</td>
<td>State Council approval for setting up the Cross-Border E-commerce Pilot Zone in Hangzhou</td>
<td>State Council Establishes Hangzhou as the first pilot zone in China for cross-border e-commerce. The zone will be used to test technical standards and business processes for cross-border payment, logistics, customs, and tax rebates pertaining to e-commerce. None: The pilot zone is still in the planning stage and awaits follow-up details from the Zhejiang provincial government. It is unclear how this zone will benefit foreign companies — since foreign companies often do not have the ability to conduct this type of operation in China given the licensing requirements for e-commerce and e-payments, this appears to benefit only domestic companies.</td>
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</tbody>
</table>
Appendix 3: Policy Announcements Related to the Shanghai Free Trade Zone

### I. Overall Reform

<table>
<thead>
<tr>
<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>9/18/13</td>
<td>State Council’s Notice on the General Plan for the China (Shanghai) Pilot Free Trade Zone</td>
<td>State Council</td>
<td>Outlines the general provisions for the Shanghai FTZ and highlights sectors opened to foreign investment.</td>
<td>Limited: Opens some areas to foreign investment in financial services, logistics, and other professional services. While this policy made few major changes, follow-up policies in operational areas such as customs clearance and capital flow have implemented some of the zone's plans, and other zones were created using this model. To date, however, the Shanghai FTZ (and other FTZs) have only led to a limited range of openings. These factors have limited the positive impact of this policy.</td>
</tr>
<tr>
<td>9/17/14</td>
<td>Interim Measures for Administration of Regulatory Information Sharing in Shanghai Free Trade Zone</td>
<td>Shanghai Municipal People's Government</td>
<td>Creates an information-sharing platform for all administrative authorities and organizations with public administration duties in the Shanghai FTZ.</td>
<td>Limited: Measures create a mechanism for improving government transparency and communication that members report has had some impact on the time it takes for some government agencies to make decisions.</td>
</tr>
<tr>
<td>12/29/14</td>
<td>Notice on Expanding Shanghai FTZ to Other Areas in Shanghai</td>
<td>Shanghai Municipal Government</td>
<td>Expands the Shanghai FTZ outside its original territory to include the Lujiazui Financial District, the Jinqiao Development Zone, and the Zhangjiang Hi-tech Zone.</td>
<td>Limited: A positive step at introducing Shanghai FTZ reforms more broadly, but the geographic scope remains limited — and as the scope of reforms in the Shanghai FTZ has yet to represent significant progress on core market access issues, the impact remains limited.</td>
</tr>
</tbody>
</table>
## II. Foreign Investment

<table>
<thead>
<tr>
<th>Date</th>
<th>Policy Title</th>
<th>Agency/ Agencies</th>
<th>Summary</th>
<th>Impact</th>
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</thead>
<tbody>
<tr>
<td>12/21/13</td>
<td>Decision to Temporarily Adjust Relevant Administrative Regulations and Documents in the China (Shanghai) Free Trade Zone</td>
<td>State Council</td>
<td>Reforms foreign investment management models, expands the opening up of service sectors, and temporarily adjusts provisions relating to administrative approvals.</td>
<td>Moderate: Reduces administrative requirements for foreign companies establishing in the Shanghai FTZ and eases approval requirements for services companies. Impact limited to the Shanghai FTZ.</td>
</tr>
<tr>
<td>1/6/14</td>
<td>Decision on the China (Shanghai) Pilot Free-Trade Zone Interim Adjustments Regarding Administrative Regulations and the Administrative Examination and Approval and Special Management Measures</td>
<td>State Council</td>
<td>Adjusts regulations on foreign investment models, and promotes expansion of the services sector.</td>
<td>Moderate: Temporarily suspends approval requirements for companies registered in the Shanghai FTZ. Impact limited to the Shanghai FTZ.</td>
</tr>
<tr>
<td>4/9/14</td>
<td>Arbitration Rules for the China (Shanghai) Pilot Free Trade Zone (FTZ)</td>
<td>Shanghai International Economic and Trade Arbitration Commission</td>
<td>Specifies arbitration rules for dispute settlements in the Shanghai FTZ.</td>
<td>Moderate: Allows companies across sectors more freedom to select dispute settlement channels, but limited to Shanghai FTZ.</td>
</tr>
<tr>
<td>04/20/15</td>
<td>Notice on Special Administrative Measures for Foreign Investment Access in Free Trade Zones (Negative List)</td>
<td>State Council General Office</td>
<td>Revises China's list of industries off-limits to foreign investment in its four free trade zones. The list does provide additional clarity on 49 industries where foreign companies are not allowed to compete, including banking and natural gas development. The 2015 negative list adds more specific definitions of the restricted industry sectors not included in the 2014 list, helping provide clarity for foreign investors in areas where investment is discouraged.</td>
<td>Moderate: The revisions mirror – but further solidify – a number of existing and approved revisions to national investment catalogues and a proposed new investment law. While this negative list does not break significant new ground, it does cement incremental improvements in several market sectors.</td>
</tr>
<tr>
<td>Date</td>
<td>Description</td>
<td>Issuer</td>
<td>Description</td>
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<tr>
<td>9/29/13</td>
<td><strong>China (Shanghai) Free Trade Zone Foreign Investment Access Special Management Measures (Negative List) (2013)</strong></td>
<td>Shanghai Municipal Government</td>
<td>Defines specific industry categories restricted to foreign investment in the Shanghai FTZ.</td>
<td>Limited: List is a clear transition to a negative list approach in the Shanghai FTZ, with coverage of a broad range of industries. However, the negative list itself largely restates existing restrictions, and thus represents no major openings to date. In addition, the scope is limited to Shanghai only. Follow-up lists have created some additional openings, but results to date have not achieved the openings desired by foreign industry.</td>
</tr>
<tr>
<td>1/6/14</td>
<td><strong>Opinion on Further Opening up Value-added Telecommunications Services in China (Shanghai) Pilot Free Trade Zone</strong></td>
<td>MIIT, Shanghai Municipal Government</td>
<td>Further opens seven pilot value-added telecommunications business areas to foreign investors.</td>
<td>Limited: Step forward in increasing market access for foreign telecom companies, but the sectors and areas for openings do not address top company concerns.</td>
</tr>
<tr>
<td>4/30/14</td>
<td><strong>Notice on Supporting Accounting Firms Setting up Branches and Launching Pilot Work in Shanghai Free Trade Zone (FTZ)</strong></td>
<td>MOF</td>
<td>Supports qualified partnership and limited liability partnership (LLP) accounting firms to establish branch offices in the Shanghai FTZ and allows them to use “Shanghai FTZ” in the names of their branch offices.</td>
<td>Limited: Defines government organizational structure and approval processes for accounting companies in the zone, including handling of applications from major accounting firms and others, but does not create new market opportunities.</td>
</tr>
<tr>
<td>6/30/14</td>
<td><strong>China (Shanghai) Free Trade Zone Foreign Investment Access Special Management Measures (Negative List) (2014)</strong></td>
<td>Shanghai Municipal Government</td>
<td>Revises the list of sectors in which foreign investment is prohibited, reducing the number. These revisions are an incremental step forward in China’s broad economic reforms, but of limited practical use to foreign companies due to the limited number and geographic scope of the openings.</td>
<td>Limited: The new negative list contains only a limited number of substantive reductions on issues that matter to foreign companies.</td>
</tr>
<tr>
<td>2/12/15</td>
<td><strong>Provisional Implementing Details for Prudent Macroeconomic Management of Separate Accounting Services for Overseas Financing and Cross-Border Capital Flows in the China (Shanghai) Free Trade Zone</strong></td>
<td>PBOC</td>
<td>Allows companies within the Shanghai FTZ to raise financing both domestically and from overseas by utilizing special Shanghai FTZ-related bank accounts.</td>
<td>Limited: Positive movement towards allowing companies freer management and better access to capital, regardless of its origin. Geographic scope is limited to Shanghai FTZ.</td>
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<tr>
<td>Date</td>
<td>Plan Title</td>
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<tr>
<td>4/20/15</td>
<td>Plan for Promoting Further Reform and Opening in the China (Shanghai) Free Trade Zone</td>
<td>State Council</td>
<td>Identifies 25 concrete tasks and measures for Shanghai FTZ administrative authorities to better manage investment in the zone, including promoting reform in the foreign investment management system, improving the efficiency of customs management, and improving legal protections.</td>
<td>While developments in the free trade zones continue to be of interest to foreign companies, this work plan is very high-level and lacks specific details on how the 25 tasks will be achieved. This plan does not address the concerns with the lack of substantive openings in the free trade zone negative list.</td>
</tr>
<tr>
<td>4/20/15</td>
<td>Notice of the Overall Plan for the China (Fujian) Free Trade Zone</td>
<td>State Council</td>
<td>Calls for the Fujian FTZ to take the lead in developing free trade with Taiwan, and identifies 16 priority tasks for development of the Fujian FTZ—including promoting openness in the financial sector and improving investment ties with Taiwan in regards to telecom, transportation services, and engineering technology services.</td>
<td>While developments in the free trade zones continue to be of interest to foreign companies, this work plan is very high-level and lacks specific details on how the 16 tasks will be completed. This plan does not address the concerns with the lack of substantive openings in the free trade zone negative list. The focus of the Fujian FTZ is slotted to promote attracting &quot;foreign&quot; investment from Taiwan, similar to Guangdong province's free trade agreement with Taiwan.</td>
</tr>
<tr>
<td>4/20/15</td>
<td>Notice of the Overall Plan for the China (Tianjin) Free Trade Zone</td>
<td>State Council</td>
<td>Calls for the Tianjin FTZ to set an example for development of the greater Beijing-Tianjin-Hebei region, and identifies 16 high-level priority tasks for development of the Tianjin FTZ. These tasks include lowering investment access barriers, strengthening international trade service ability, and improving government efficiency in administrative management.</td>
<td>While developments in the free trade zones continue to be of interest to foreign companies, this work plan is very high-level and lacks specific details on how the 16 tasks will be completed. This plan does not address the concerns with the lack of substantive openings in the free trade zone negative list.</td>
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<td>Date</td>
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<tr>
<td>4/20/15</td>
<td>Notice of the Overall Plan for the China (Guangdong) Free Trade Zone</td>
<td>State Council</td>
<td>Identifies 15 high-level priority tasks for development in the Guangdong FTZ. These tasks include strengthening international shipping services, and leading economic transformation in the Pearl River Delta region. The plan also has a stated target of deepening cooperation with Hong Kong and Macau.</td>
<td>While developments in the free trade zones continue to be of interest to foreign companies, this work plan is very high-level and lacks specific details on how the 16 tasks will be completed. This plan does not address the concerns with the lack of substantive openings in the free trade zone negative list.</td>
</tr>
<tr>
<td>4/22/15</td>
<td>Notice on Launching Foreign Currency Services for Free Trade Accounts</td>
<td>PBOC Shanghai</td>
<td>Announces that financial institutions in Shanghai that have free trade zone bank accounts can engage in foreign currency services such as collecting deposits in foreign currencies, originating foreign currency loans, and using foreign currency to make payments directly through their free trade zone account. It also aims to reduce financing costs by allowing companies to raise capital in foreign currency and leave that currency in their free trade zone bank account instead of exchanging it into RMB.</td>
<td>Represents a step in liberalizing capital controls for companies that have qualified free trade zone bank accounts, but the rules are limited in scope to a small subset of companies providing a small subset of services.</td>
</tr>
<tr>
<td>9/28/14</td>
<td>Decision on Temporary Adjustment and Implementation of Special Administrative Measures on Access Required by Relevant Administrative Provisions and Department Regulations Approved by the State Council in China (Shanghai) Pilot Free Trade Zone</td>
<td>State Council</td>
<td>Announces 27 new foreign investment openings for sectors that are covered by six industry-specific investment regulations, but the new openings are only applicable to the Shanghai FTZ.</td>
<td>The 27 investment openings in the Decision are already open to foreign investors via the 2014 revised Shanghai FTZ negative list.</td>
</tr>
<tr>
<td>04/20/15</td>
<td>Pilot Measures for National Security Reviews of Foreign Investment in the Free Trade Zones</td>
<td>State Council General Office</td>
<td>Establishes a mechanism to monitor foreign investment in “sensitive” sectors in the free trade zones. The new model follows the review mechanism outlined in the draft foreign investment law released in early 2015. The measures outline sectors subject to review, agencies responsible for the reviews, procedures for the review, and what factors will be considered in a review.</td>
<td>The measures increase transparency in a sensitive area but raise a number of concerns for foreign companies, due to a broad scope of review and windows for inputs from third parties, and the lack of an appeals process to allow for reconsideration.</td>
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</table>
## III. Administrative Licensing and Approval Reform

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<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
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<tbody>
<tr>
<td>10/1/13</td>
<td>Decision on Temporarily Adjusting Relevant Local Laws and Regulations in the China (Shanghai) Free Trade Zone</td>
<td>Shanghai People's Congress</td>
<td>Suspends local regulations on foreign investment in the Shanghai Free Trade Zone for three years.</td>
<td>Moderate: Suspends local regulations on foreign investment in the Shanghai Free Trade Zone. Impact is broad and touches on a top foreign company issue—but is limited only to Shanghai.</td>
</tr>
<tr>
<td>10/21/13</td>
<td>China (Shanghai) Pilot Free Trade Zone Enterprises Registration and Management Provisions</td>
<td>Shanghai Industry and Commerce Bureau</td>
<td>Specifies the registration procedures for foreign companies in the FTZ.</td>
<td>Moderate: Simplifies and shortens approval process for foreign companies—but only in the Shanghai FTZ.</td>
</tr>
<tr>
<td>4/30/14</td>
<td>Measures on the Commitment Mechanism for the Inspection Agency Validation and on the Commitment Mechanism for the Measurement Certification</td>
<td>Shanghai Administration of Quality and Technology Supervision</td>
<td>Simplifies the administration approval process for inspection agencies.</td>
<td>Limited: Eases the approval process for companies but in a very limited sector.</td>
</tr>
<tr>
<td>6/30/14</td>
<td>Notices on Implementing Enterprise Registration Reform in Shanghai Free Trade Zone</td>
<td>Shanghai Customs</td>
<td>Removes administrative approvals for registration of certain types of customs-relevant enterprises (declaration agencies and dual-identity enterprises) and eliminates recordation for remote branch offices.</td>
<td>Limited: Impact is limited to a very narrow group of companies.</td>
</tr>
<tr>
<td>7/18/14</td>
<td>Provisional Measures for the Shanghai Commercial Financing Pilot Program</td>
<td>Shanghai Municipal Commission of Commerce, Shanghai Administration of Industry and Commerce</td>
<td>Specifies the conditions and procedures that must be met to establish a commercial financing (non-banking) company.</td>
<td>Limited: While the procedures ease the restrictions for foreign and domestic companies in this space, the scope is limited to Shanghai FTZ currently, and this liberalization effort is specific to only commercial financing companies.</td>
</tr>
<tr>
<td>7/24/14</td>
<td>Development Opportunity for Foreign-invested Certification Bodies in Shanghai FTZ</td>
<td>Shanghai Entry-Exit Inspection and Quarantine Bureau</td>
<td>Eliminates several restrictions for foreign certification bodies in the Shanghai FTZ, including eliminating policy restrictions, recordation requirements for foreign certification body representative offices, and approvals for the establishment of non-legal person branch offices.</td>
<td>Limited: The policy represents market openings for foreign certification bodies, but the impact is limited to one sector, and the scope of opening is limited to the Shanghai FTZ.</td>
</tr>
</tbody>
</table>
9/16/14  Announcement on Copying and Expanding the Second Batch of Customs Regulatory Service Innovative Mechanisms in Shanghai Free Trade Zone  Shanghai Customs  Expands eight customs pilot regulatory mechanisms from Shanghai FTZ – including reforms to promote paperless customs documentation and promote enterprise information disclosure – to the entire municipality of Shanghai.  Limited: Limited geographic scope, but some process improvements to simplify customs approvals.

IV. Institutional Reforms

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<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
<th>Impact</th>
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<tbody>
<tr>
<td>9/29/14</td>
<td>Shanghai Free Trade Zone establishes a “Public Participation Commission”</td>
<td>Shanghai FTZ Administrative</td>
<td>Establishes a “public participation commission” as a new mechanism for</td>
<td>None: Little detail on this currently and the commission is limited to</td>
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<td>Committee</td>
<td>creating a market regulator and administrator with a clear delineation</td>
<td>the Shanghai FTZ. One FIE bank is listed as a member of the commission.</td>
</tr>
</tbody>
</table>
## VI. Financial Reforms

### Banking/Interest Rates

<table>
<thead>
<tr>
<th>Date</th>
<th>Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
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</tr>
</thead>
<tbody>
<tr>
<td>9/29/13</td>
<td>Notice on Banking Supervision Issues in China (Shanghai) Pilot Free Trade Area</td>
<td>CBRC</td>
<td>Supports the establishment of non-banking finance companies in FTZ; allows foreign-invested banks to carry out business in the FTZ; encourages private capital to participate in the banking industry of the FTZ; encourages cross-border service and financing in the FTZ.</td>
<td>Moderate: Permits foreign-invested banks to carry out business in the FTZ, but direct impact limited to the banking sector.</td>
</tr>
<tr>
<td>9/29/13</td>
<td>Circular on Regulation of the Banking Sector in China (Shanghai) Pilot Free Trade Zone</td>
<td>CBRC</td>
<td>Allows qualified private investors to set up private banks, financial leasing companies, consumer finance companies, and other financial institutions in Shanghai Pilot Free Trade Zone.</td>
<td>Moderate: Provides market openings for foreign banks to operate in the Shanghai FTZ, and encourages cross-border investment in financial services and offshore business. Direct impact for the banking sector; indirect impact for others.</td>
</tr>
<tr>
<td>2/26/14</td>
<td>Announcement Lifting Foreign Currency Deposit Rates Caps in the Shanghai FTZ</td>
<td>PBOC</td>
<td>Removes small amount foreign currency deposit interest rate cap in Shanghai FTZ.</td>
<td>Moderate: Allows the market to play a greater role in China's financial system, but the mechanism is narrowly focused.</td>
</tr>
</tbody>
</table>

### Exchange Rate/Foreign Exchange

<table>
<thead>
<tr>
<th>Date</th>
<th>Policy Title</th>
<th>Agency/Agencies</th>
<th>Summary</th>
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</thead>
<tbody>
<tr>
<td>2/18/14</td>
<td>Implementation Opinions on Shanghai Payment Agencies Carrying Out Cross-border RMB Payment Services in Shanghai</td>
<td>PBOC</td>
<td>Allows offshore RMB borrowing in the Shanghai FTZ.</td>
<td>Moderate: Important reform allowing companies registered in the Shanghai FTZ to use RMB in cross-border transactions, and eases the review process for RMB settlement.</td>
</tr>
<tr>
<td>2/21/14</td>
<td>Opinions on Promoting Cross-Border RMB Business in the Shanghai FTZ</td>
<td>PBOC</td>
<td>Clarifies operational details for conducting cross-border business in RMB through the Shanghai FTZ.</td>
<td>Moderate: Promotes internationalization of the RMB and eliminates approvals for lenders operating within the Shanghai FTZ.</td>
</tr>
<tr>
<td>Date</td>
<td>Policy Title</td>
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<tr>
<td>2/28/14</td>
<td>Notice on the Issuance of Foreign Exchange Management Implementation Details to Support the Construction of China (Shanghai) Free Trade Zone</td>
<td>SAFE</td>
<td>Simplifies settlement of current accounts, simplify direct investment foreign exchange registration, relax foreign credit and debt management.</td>
<td>Moderate: Reduces regulatory checkpoints for foreign exchange settlements.</td>
</tr>
<tr>
<td>5/21/14</td>
<td>Implementing Rules of the Shanghai Pilot Free Trade Zone for Separate Accounting Business (for Trial Implementation) and the Rules of the Shanghai Pilot Free Trade Zone for the Prudential Management of Risks Relating to Separate Accounting Business</td>
<td>PBOC</td>
<td>Specifies that domestic and foreign currency free trade accounts will be subject to uniform rules and can be opened in separate accounting units in the Shanghai FTZ, while also laying out guidance for managing foreign exchange in the Shanghai FTZ.</td>
<td>Limited: Clarifies that foreign and domestic companies will be subject to equal treatment in setting up foreign currency accounts, but no major change to Shanghai FTZ policies that directly impact foreign firms opening foreign exchange accounts.</td>
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### Insurance

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<tr>
<td>9/29/13</td>
<td>Notice to Support the Construction of the China (Shanghai) Free Trade Zone</td>
<td>CIRC</td>
<td>Strengthens insurance in China by encouraging foreign-invested specialized health insurance institutions, the development of cross-border RMB-denominated insurance business, outbound investment by health insurance institutions in the FTZ, development of shipping insurance, fostering of social organizations, and innovation in insurance products.</td>
<td>Limited: Moderate importance for insurance industry, with specific mention of openings for foreign-invested specialized health insurance institutions setting up in the FTZ. Impact, however, limited to that sector—and to the FTZ.</td>
</tr>
<tr>
<td>5/19/14</td>
<td>Notice on Further Simplifying Administrative Approval to Support the Development of the Shanghai Pilot Free Trade Zone</td>
<td>CIRC</td>
<td>Allows shipping insurance company operations centers to establish branches in the Shanghai FTZ, and eliminates prior approval requirements for establishing shipping insurance operation centers and reinsurance companies.</td>
<td>Limited: Benefits foreign companies that provide shipping insurance to shipping companies, but impact is limited to the one particular industry.</td>
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### Securities and Private Equity

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<tr>
<td>9/29/13</td>
<td>Measures to Support the Shanghai FTZ</td>
<td>CSRC</td>
<td>Allows the founding of an energy trading center in Shanghai; permits qualified individuals and entities in Shanghai FTZ to invest in domestic and foreign securities and future markets from the Shanghai FTZ; allows foreign parent companies invested in the Shanghai FTZ to issue RMB bonds in the domestic market; permits securities and futures institutions to set up specialized subsidiaries in the Shanghai FTZ; and allows securities and futures institutions to carry out OTC transactions.</td>
<td>Moderate: Creates market openings for companies in various sectors to participate financially in the Shanghai FTZ. Though the opportunities are only offered in Shanghai, many of these services (such as participating in bond markets) can be done nationwide from Shanghai, broadening the impact.</td>
</tr>
<tr>
<td>9/15/14</td>
<td>Notice on Implementing Opinions for Further Promoting the Healthy Development of Capital Markets</td>
<td>Shanghai Municipal People's Government</td>
<td>Sets broad development goals for Shanghai FTZ capital markets, including increasing foreign equity ownership limits for securities JVs and fund management companies.</td>
<td>Limited: The notice might benefit foreign-invested finance firms, but it lacks implementing details.</td>
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#### VII. Pricing Reform and Competition Policy

None

#### VIII. Rule of Law/Legal and Judicial Reform

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<tr>
<td>7/7/14</td>
<td>Announcement on Allowing Companies in the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ) to Conduct Autonomous Supervision</td>
<td>Shanghai Customs</td>
<td>Establishes authority and reporting mechanisms for companies registered within the Shanghai FTZ to self-report legal violations that are discovered by the company. Self-reporting will result in lighter punishment.</td>
<td>Limited: This policy encourages companies to adopt more market-oriented regulatory procedures and contributes to broader legal reforms by establishing leniency rules for companies that self-report. Geographic scope of these reforms, however, is still limited to the Shanghai FTZ.</td>
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<tr>
<td>Date</td>
<td>Title</td>
<td>Institution</td>
<td>Summary</td>
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<td>7/25/14</td>
<td><strong>Provisions on China (Shanghai) Free Trade Pilot Zone (revised)</strong></td>
<td>Shanghai People's Congress Standing Committee</td>
<td>Sets rules for managing the Shanghai FTZ, replacing a similar set of September 2013 administrative measures. While much of the content is identical, these regulations do include new content on tax reform and creates a transparent, rule-of-law-based legal environment in the zone.</td>
<td>Limited: These provisions appear designed to further codify Shanghai FTZ policies, but do not create new openings for companies and do not have an impact on the &quot;negative list&quot; and market access discussions.</td>
</tr>
<tr>
<td>8/7/14</td>
<td><strong>Shanghai FTZ Administrative Commission Notice of a Standardized Document for Legal Examination Rules</strong></td>
<td>Shanghai Municipal People's Government</td>
<td>Provides a standard document to be used for requesting a legal review if a party feels the Shanghai FTZ Administrative Commission violated their legitimate rights and interests, or is acting in an incompatible manner with the requirements of the Shanghai FTZ.</td>
<td>Limited: While it does not create new market opportunities, it does represent a small positive step for improving rule of law and judicial reform in the Shanghai FTZ.</td>
</tr>
<tr>
<td>8/7/14</td>
<td><strong>Implementation Measures for Concentration of Administrative Reconsideration Rights</strong></td>
<td>Shanghai Municipal People's Government</td>
<td>Provides a legal basis for parties that feel the Shanghai FTZ Administrative Commission has violated their legitimate rights and interests to pursue legal action against the government.</td>
<td>Limited: While it does not create new market opportunities, it does represent a small positive step for improving rule of law and judicial reform in the Shanghai FTZ.</td>
</tr>
<tr>
<td>9/26/14</td>
<td><strong>Shanghai FTZ Administrative Committee Establishes New IP Bureau</strong></td>
<td>Shanghai FTZ Administrative Committee</td>
<td>Establishes IP Bureau in Shanghai FTZ to unify and strengthen protection over patents, trademarks, and copyrights.</td>
<td>Limited: While this creates a new mechanism that could strengthen IP protection, the bureau has not taken any actions as of yet.</td>
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## IX. Taxation and Budget

### Taxation

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<th>Date</th>
<th>Policy Title</th>
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<tr>
<td>12/2/13</td>
<td>Circulars on Issues Concerning Policies for Enterprise Income Tax on Outbound Investment with Non-monetary Assets or Asset Restructuring Transactions in the China (Shanghai) Pilot Free Trade Zone (FTZ)</td>
<td>MOF, SAT</td>
<td>Allows enterprises registered in Shanghai FTZ to pay enterprise income tax (EIT) in installments over five years dating from confirmation of gains from the transfer of non-monetary assets.</td>
<td>Moderate: Broad sector impact on companies, but limited only to one area of operations and applicable only to companies registered to the Shanghai FTZ.</td>
</tr>
<tr>
<td>10/24/13</td>
<td>Notice on Tariff Policy for Imports in the China (Shanghai) Pilot Free Trade Zone</td>
<td>MOF, GAC, SAT</td>
<td>Exempts producers in the FTZ from import duties when they import required machinery, equipment and other goods. However, the imported goods of consumer service enterprises and other enterprises, as well as goods that legal and administrative regulations and relevant provisions explicitly exclude are not included in this duty-exempt category.</td>
<td>Limited: Provides tax exemptions for a subset of companies, but does not apply to all industries – and only applies to companies producing in the Shanghai FTZ.</td>
</tr>
<tr>
<td>1/30/15</td>
<td>Organization Code Fee Exemption for Small- and Micro-Sized Enterprises (SMEs) in the Shanghai FTZ</td>
<td>Shanghai Government</td>
<td>Exempts SMEs in the Shanghai FTZ from a RMB 120 ($19.35) handling fee for organization code certification.</td>
<td>Limited: Likely aimed at supporting domestic companies, with limited impact for small foreign companies that do business in the Shanghai FTZ.</td>
</tr>
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### Budget/Debt Issues
None
X. **Corruption, Bribery and Party Discipline**
None

XI. **Urban/Rural Issues**
None

XII. **Other**

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<tr>
<td>3/6/14</td>
<td><strong>Measures on Corporate Annual Reporting Public Disclosure</strong> and the <strong>Business Abnormal Operation Directory Management (Trial)</strong></td>
<td>Administration of Industry and Commerce</td>
<td>Sets rules to ease the annual corporate reporting process, as well as rules to govern companies with “abnormal operations” – those that have previously failed to meet reporting requirements.</td>
<td>Limited: Measures allow foreign and domestic companies to file reports online and increase overall transparency, but it only applies to companies in the Shanghai FTZ.</td>
</tr>
<tr>
<td>6/30/14</td>
<td><strong>Notices on Including Enterprise Customs Registration into the “Single Window” of Enterprise Access in Shanghai Free Trade Zone</strong></td>
<td>Shanghai Customs</td>
<td>Streamlines enterprise customs registration into the &quot;single window&quot; of enterprise access where all authorities (includes authorities of administration of industry and commerce, taxation, quality inspection, commission of commerce, and customs) work jointly.</td>
<td>Limited: While these efforts are important for streamlining administrative approvals, creating a unified window doesn’t itself ease administrative burdens that companies face in customs clearance.</td>
</tr>
<tr>
<td>6/30/14</td>
<td><strong>Notices on Enterprise Credit Information Disclosure in Shanghai Free Trade Zone</strong></td>
<td>Shanghai Customs</td>
<td>Specifies information disclosure content, channel, and related issues regarding the application of credit certificate.</td>
<td>Limited: This is purely a process improvement in the customs process.</td>
</tr>
<tr>
<td>12/4/14</td>
<td><strong>Administrative Measures for Customs Clearance Bank Accounts in Shanghai FTZ</strong></td>
<td>GAC, Shanghai Municipal Government</td>
<td>Allows enterprises established in Shanghai FTZ to create a customs clearance payment debit account. The account can be automatically debited for tariffs owed post-delivery of products.</td>
<td>Limited: Has the potential to impact companies in a wide variety of industries that import products, whether for assembly, final use, or resale. A positive step at streamlining the customs clearance process, but is limited only to the Shanghai FTZ.</td>
</tr>
<tr>
<td>6/30/14</td>
<td><strong>Notice on Implementing a Pilot for Company Coordination in Shanghai Free Trade Zone</strong></td>
<td>Shanghai Customs</td>
<td>Requires pilot companies to appoint executives who are responsible for customs-related affairs to handle daily contact with customs industry coordinator.</td>
<td>None: This policy does not have any real positive benefit for top company concerns with customs.</td>
</tr>
<tr>
<td>Date</td>
<td>Description</td>
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<tr>
<td>6/30/14</td>
<td><strong>Notices on Promoting the Customs &quot;Certified Operators&quot; Mutual Recognition in Shanghai Free Trade Zone</strong></td>
<td>Shanghai Customs</td>
<td>Specifies policies to facilitate customs procedures for enterprises from Singapore, North Korea, and Hong Kong. None: Impact of these policies is purely limited to foreign companies from those regions, which do not include the United States.</td>
<td></td>
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<tr>
<td>8/12/14</td>
<td><strong>Pilot Opinions on Comprehensive Land Use Planning and Land Management in the Shanghai Free Trade Zone</strong></td>
<td>Shanghai City Planning Land Resource Bureau, Shanghai Free Trade Zone Administrative Committee</td>
<td>Allows for reserved industrial-use land in Shanghai FTZ to be purchased by companies and developed for commercial purposes, such as creating office space. None: The opinions are intended to create more available office space in the Shanghai FTZ, where the majority of the limited land available was reserved for industrial purposes. Shanghai FTZ negative list restricts foreign investment in high-class office buildings, so no impact for FIEs.</td>
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Appendix 4: Abbreviations for Chinese Government Agencies

This list includes the full names for the Chinese official ministries, agencies, and organizations listed in Appendices 2 and 3.

AQSIQ  General Administration of Quality Supervision, Inspection, and Quarantine
CBRC  China Banking Regulatory Commission
CCP  Chinese Communist Party
CFDA  China Food and Drug Administration
CIRC  China Insurance Regulatory Commission
CSRC  China Securities Regulatory Commission
GAC  General Administration of Customs
MCA  Ministry of Civil Affairs
MEP  Ministry of Environmental Protection
MHRSS  Ministry of Human Resources and Social Security
MIIT  Ministry of Industry and Information Technology
MLR  Ministry of Land Resources
MOC  Ministry of Culture
MOF  Ministry of Finance
MOFCOM  Ministry of Commerce
MOHURD  Ministry of Housing and Urban-Rural Development
MOST  Ministry of Science and Technology
NAO  National Audit Office
NDRC  National Development and Reform Commission
NEA  National Energy Administration
NHFPC  National Health and Family Planning Commission
NPC  National People’s Congress
PBOC  People’s Bank of China
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
Executive Summary

- China’s competition regulators seem to have paused some controversial Antimonopoly Law (AML) enforcement practices in response to concerns raised in the US-China Business Council’s (USCBC) September competition report and echoed by international government and industry stakeholders.
  - The National Development and Reform Commission (NDRC) completed only two new pricing investigations since that time, though both involved foreign companies. NDRC has recently announced new enforcement priorities, indicating plans to resume more high-profile investigations in areas such as abuse of intellectual property rights (IPR) in the near future.
  - The Ministry of Commerce (MOFCOM) approved 137 merger and acquisition (M&A) deals in the same time period with no rejections and no conditions imposed on approvals.
  - The State Administration of Industry and Commerce (SAIC) announced decisions in five investigations, all involving domestic companies.
- At the December 2014 Joint Commission on Commerce and Trade (JCCT), China committed to treat foreign and domestic companies equally in competition enforcement, increase transparency, and allow legal counsel to attend meetings and enforcement proceedings.
- A review of public NDRC price investigations reveals several interesting data points:
  - Chinese companies and foreign companies are both being fined on the basis of revenues in China. Initial concerns that foreign companies might be fined based on global sales so far are unfounded.
  - The average fine is 2.5 percent of sales, well below the cap of 10 percent allowed by the AML. However, foreign companies are being fined at a higher average rate (3.3 percent) than their domestic counterparts (1.9 percent).
- USCBC has also updated the data regarding foreign versus domestic cases:
  - Twenty-five percent of the NDRC’s concluded pricing investigations have involved foreign companies, while approximately three-quarters have involved Chinese companies.
  - While 97 percent of M&A deals since 2008 have been approved by MOFCOM without conditions, all of the 26 rejected or conditionally approved transactions have involved foreign companies.
  - All of the 22 completed monopoly investigations by the SAIC have involved Chinese companies, but foreign companies are involved in two ongoing cases yet to be decided.
- Despite the pause, it remains to be seen if foreign company concerns have been sustainably resolved. These concerns primarily revolve around how investigations and M&A reviews are conducted and decided, including 1) fair treatment and nondiscrimination; 2) lack of due process and regulatory transparency; 3) lengthy time periods for merger reviews; 4) the role of non-competitive factors in competition enforcement; 5) determination of fines and remedies; and 6) the broad definition of monopoly agreements. Addressing these concerns would also benefit domestic Chinese companies.
- Broad questions raised six months ago have not yet been put to rest: Will China use the AML to protect domestic industry rather than promote fair competition? Is the government using the AML to lower prices, rather than letting the “market play the decisive role” as prioritized at the Third Plenum? Decisions and investigations in the coming months may provide further insight.
- As the second largest economy in the world, China should and needs to have a well-designed and predictably executed antitrust regime. Government and industry groups in the United States and other countries must work with their counterparts in China to promote further progress toward reaching this mutually beneficial goal.
Competition issues have been prominently featured in discussions about China’s business landscape for the last several years, given the growing number of high-profile competition cases involving foreign and domestic companies. In 2008, China launched the Antimonopoly Law (AML), the country’s first comprehensive competition law, and has taken notable steps to build the knowledge base, government infrastructure, and regulatory capacity needed to enforce it.

The AML created a unique regulatory structure that divided competition enforcement among three antimonopoly enforcement authorities (AMEAs): the Ministry of Commerce (MOFCOM) for reviews of mergers and acquisitions (M&A), the National Development and Reform Commission (NDRC) for price-related monopoly investigations, and the State Administration of Industry and Commerce (SAIC) for non-price-related monopoly cases. With the framework in place, these agencies began creating the processes China’s new competition regime would use in practice, releasing a flurry of follow-up regulations designed to guide antimonopoly enforcement. Each AMEA has also boosted enforcement personnel and capacity, permitting greater competition enforcement activity.

China’s AML enforcement activity has garnered attention from stakeholders around the world, including governments, companies with operations in China, and media outlets. Many stakeholders question whether foreign companies are being treated fairly and equally in these investigations in line with their Chinese counterparts. Such concern has partly been fueled by extensive media reporting on investigations of foreign companies—not only in the West, but also in China, where media outlets continue to cover foreign-related investigations much more extensively than those of domestic companies. Specific questions focus on how AMEAs launch competition investigations, how they conduct those investigations, how they determine fines or remedies—and lastly—whether foreign companies and domestic companies are treated equally in each of these steps.

As this issue has gained attention, the US-China Business Council (USCBC) and other foreign stakeholders have regularly raised these issues directly with Chinese government officials at all levels. At the July 2014 Strategic & Economic Dialogue (S&ED), the US and Chinese governments affirmed that “the objective of competition policy is to promote consumer welfare and economic efficiency rather than promote individual competitors or industries, and that enforcement of their respective competition laws should be fair, objective, transparent, and non-discriminatory.” Such language marked a step in the right direction, but did not address many of the specific concerns raised by USCBC and other groups.

To advance the agenda on these issues, in September 2014 USCBC published a comprehensive report on China’s competition regime, including a detailed analysis of China’s competition enforcement activity, a summary of the questions and concerns of foreign companies, and specific recommendations for how to further improve the substance, implementation, and perception of China’s competition regime. While the efforts of USCBC and other stakeholders have elevated this issue on the US-China commercial agenda and have led to some progress, many key questions remain unanswered.

This report provides an update on US company views and perspectives on China’s competition regime based on developments that have occurred in the eight months since USCBC’s initial report.

New Developments in Competition Enforcement (September 2014-April 2015)

Since September 2014, there have been notable developments on China’s competition enforcement, including progress made in bilateral discussions, changes to relevant laws and regulations, and changes in the enforcement landscape—including new investigations of both foreign and domestic companies.

Western and Chinese media reporting on China’s competition regime have featured monopoly investigations targeting foreign companies and their resulting fines. A review of publically available information provides fuller detail on competition enforcement in China.

- Foreign companies only constitute about twenty-five percent of the completed NDRC monopoly pricing investigations since 2008, (Appendix 2) none of the companies involved in completed SAIC
Chinese companies have been investigated in sectors such as pharmaceuticals, financial services, Chinese liquor, cement, and insurance. Notable foreign company investigations have occurred in the pharmaceutical, infant milk powder, automotive, and high-tech sectors.

- The AML has unclear provisions about the basis of fines for competition violations, but public information on completed cases indicates that fines imposed on foreign and domestic companies are being assessed on the same basis: sales in the China market, not global sales. Every case decision claiming an AML violation by a foreign company either explicitly states that fines are based on sales in China, or implies it based on the fine amount. Some decisions further clarify that the basis for the fine is sales from the “relevant market” in China, though they do not always define relevant market. It is not clear whether this standard is upheld in all AML investigations, but there is no clear evidence that it is inconsistent among investigations of foreign versus domestic companies.

- While the basis for the calculations may be the same, foreign companies are more likely to be fined at higher percentages than their domestic counterparts. The AML permits NDRC to assess fines of up to 10 percent depending on the details of the case, but does not provide any specific guidance for determining the appropriate percentage, leaving NDRC with considerable discretion. In reviewing publicly available case decisions for AML investigations conducted by NDRC, the average fine is 2.5 percent of sales, well below the upper limit of 10 percent allowed by the AML. However, foreign companies were fined an average rate of 3.3 percent, while Chinese companies were fined at a rate of 1.9 percent. When coupled with the sizable sales figures of many multinational corporations in China, this disparity in percentage can lead to a significant difference in the overall fine.

- While the majority of M&A transactions are approved without conditions, all of the 26 transactions that were rejected or approved with conditions have involved foreign companies. Overall, the Ministry of Commerce (MOFCOM) has reviewed more than 1,000 M&A transactions since 2008, approving more than 97 percent without conditions. While most M&A approvals since 2008 have involved domestic companies, a number of transactions involving foreign companies have also been approved, including transactions involving foreign companies such as Abbott, Cummins, Siemens, Dow, and Toyota.

**Domestic Developments**

Although the bulk of China’s competition legal framework is now in place, work continues on a number of key laws and regulations. The most notable regulatory development during this time period was the release of SAIC’s final [Provisions to Prohibit Intellectual Property Abuse to Eliminate or Restrict Competition](https://www.uschina.org/provisions-prohibit-intellectual-property-abuse-eliminate-restrict-competition) in April 2015. These regulations, which had been in the drafting process since 2009, cover the relationship between intellectual property and competition, addressing issues such as essential facilities, patent disclosure in standard-setting processes, and intellectual property (IP) related trading practices like bundling and tying. USCBC and other industry groups had concerns with various provisions within the law, and provided written comments on many of the areas listed above.

Other competition and monopoly-related laws and regulations active during this period include:

- **Draft Template for Intellectual Property Policies in Industry Standardization Organizations.** This draft template, issued for comment by the Ministry of Industry and Information Technology’s

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1 Foreign companies are involved in ongoing monopoly investigations from both NDRC and SAIC. It is challenging to compile a complete list of companies that have been investigated by NDRC and SAIC for a number of reasons. First, it is not clear that all of NDRC’s investigations are made public. Additionally, foreign and domestic media coverage of investigations, which generally name foreign firms but sometimes exclude domestic firms, are uneven, making it difficult to fully evaluate whether the investigation of domestic companies is administered in proportion to their activity in sensitive industries.

2 The draft template is no longer available via the Electronic Intellectual Property Center site, but can be found at the China IPR blog.
Electronic Intellectual Property Center in November 2014, includes a number of provisions that relate to antitrust and licensing concerns, including provisions dealing with essential patents, patent disclosure to standard-setting groups, and requirements for licensing of standard-essential patents.

- **Measures Concerning the Divestiture of Assets or Businesses when Implementing Concentrations of Business Operators.** These rules, released by MOFCOM in December 2014 to replace earlier interim regulations, provide guidance on how MOFCOM oversees the implementation of remedies imposed in merger and acquisition transactions, including a variety of structural and behavioral remedies such as divestitures, “hold separate” provisions, and other business conditions.

- **Draft Interpretation on Issues Related to the Application of Laws in Reviewing Act Preservation Cases of Disputes over Intellectual Property Rights and Competition.** This draft interpretation, released for public comment by the Supreme People’s Court in February 2015, describes the process by which parties can apply for judicial orders requiring another party to act—or not act—in a certain way, such as a preliminary injunction or evidence preservation order.

On the enforcement side, NDRC saw a significant—but perhaps temporary—slowdown in pricing investigations, while MOFCOM and SAIC have continued a steady pace of M&A reviews and monopoly investigations.

- **MOFCOM** continued to review a steadily increasing number of M&A transactions, reviewing 75 deals in the fourth quarter of 2014 and an additional 62 in the first quarter of 2015. All of the deals reviewed by MOFCOM during this time period were approved without conditions. While MOFCOM did not apply new conditions to any M&A deals, it approved an application from Google to remove one of the specific restrictions that had been imposed in 2012 when Google purchased Motorola Mobility (Google would treat all original equipment manufacturers in a non-discriminatory manner with respect to the provision of its Android platform). That application and decision were prompted by Google’s sale of Motorola Mobility and its smartphone business to Lenovo, which closed on October 30, 2014.

In total, MOFCOM has reviewed 1,058 deals since the AML went into effect in August 2008, and has approved all but 26 of those deals. However, all of those deals that were rejected or approved with conditions involved foreign parties, many involving foreign-foreign global acquisitions in which the reviewed companies had subsidiaries in China.

MOFCOM’s simplified case procedures (initially implemented in April 2014) have been increasingly relied upon since their introduction. Since the first of these simplified cases was posted for public comment on May 22, 2014 through the end of 2014, 103 deals have been approved through this process—nearly half of all deals. In the first quarter of 2015 alone, 36 of the 62 deals that were approved without conditions came through the simplified process—nearly 60 percent of that total.

- **NDRC** has seen a notable slowdown in enforcement activity. After announcing investigations involving both foreign automotive and domestic cement and insurance companies in September 2014, NDRC and its provincial branches have announced a final decision in only two cases:
  - In February 2015, NDRC determined Qualcomm was in violation of the AML, fining the company RMB 6.088 billion ($971.7 million), or eight percent of Qualcomm’s sales revenue in China in 2013. NDRC’s decision stated that Qualcomm holds a dominant market position in several key telecom standard-essential patents and in chips, and had abused that position by charging excessive royalty rates, tying wireless and non-wireless patents, and attaching conditions to chip sales.
  - In April 2015, the Jiangsu Price Bureau ruled that Mercedes-Benz dealers in Nanjing, Wuxi, and Suzhou violated the AML, fining Mercedes-Benz RMB 350 million ($56.4 million), or one

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3 Conversion rates for this and other RMB figures are done based on the RMB/dollar exchange rate on the last day of the month in which the decision was announced. For example, this conversion is done based on the exchange rate on February 28, 2015.
percent of the company’s sales revenue of the previous year. The bureau also fined the dealers a total of RMB 7.86 million ($1.27 million). In its ruling, the bureau said that Mercedes-Benz and its dealers had reached monopoly agreements by enforcing minimum prices for final products and fixed prices for components.

However, recent developments signal that NDRC may resume its more robust level of competition enforcement activity. In March 2015, Zhang Handong, the new head of NDRC’s Price Supervision and Antimonopoly Bureau, stated at a Chinese Academy of Social Sciences (CASS) symposium in Beijing that abuse of intellectual property rights (IPR) will be the next major focus of AML enforcement in China. He also noted that NDRC and other agencies would focus investigations on specific industries such as the pharmaceutical, automotive, and agricultural machinery industries. Zhang said that his bureau would seek to boost AML enforcement by targeting monopoly agreements, abuse of dominant market position, abuse of administrative power to eliminate or restrict competition, and other types of monopolies.

• **SAIC** continued a slow but steady stream of decisions involving monopoly behavior, announcing five new decisions since September 2014 that involved companies in the mining, tobacco, natural gas, concrete, and water industries. As with all of SAIC’s previously announced decisions, these involved domestic companies and focused on monopoly agreements and abuse of market dominant position. SAIC has yet to announce a final decision in either of the two ongoing SAIC investigations involving foreign companies, Microsoft and TetraPak.

• In **private litigation**, the most significant recent development was the Supreme People’s Court’s October 2014 final decision in the ongoing legal battle between Chinese companies Qihoo 360 and Tencent, upholding the decisions of lower courts that ruled in favor of Tencent. The case had centered on whether Tencent’s decision to incorporate its antivirus software (QQ Doctor) into its popular QQ instant messaging program could be considered antimonopoly behavior. Qihoo’s initial suit against Tencent in the Guangdong Higher People’s Court was unsuccessful, leading it to appeal to the Supreme People’s Court.

**Bilateral Developments**

Due to the high visibility of competition issues among US and Chinese stakeholders, the two governments have spent considerable time and effort discussing these issues over the past several months. Just prior to USCBC’s previous report, the US and Chinese governments included competition issues among the outcomes of the July 2014 S&ED. At that dialogue, the two sides affirmed that “the objective of competition policy is to promote consumer welfare and economic efficiency rather than promote individual competitors or industries, and that enforcement of their respective competition laws should be fair, objective, transparent, and non-discriminatory.”

As attention grew, Chinese officials responded. Premier Li Keqiang addressed foreign company concerns related to discriminatory investigations at the September 2014 Davos Forum in Tianjin, saying that he shared their concerns. Later that month, Vice Premier Wang Yang also raised these issues with USCBC at the 18th China International Fair for Investment & Trade.

At the December 2014 JCCT, China reiterated its S&ED commitments, stating further that all companies should be treated equally in AML enforcement. Additionally, China stated that enforcement measures would be carried out to address competition concerns and not to protect domestic companies or industries. AMEAs would also improve transparency of enforcement proceedings, strictly follow statutory limits on their authority, and allow legal counsel to attend meetings and enforcement proceedings.

**Top Challenges and Policy Recommendations**
Despite the increased level of attention and bilateral engagement on competition issues, key strategic questions remain about the direction and objectives of China’s competition regime. These questions include:

- Will China use the AML to protect domestic industry rather than promote fair competition?
- Is the government using the AML to force lower prices rather than letting the “market play the decisive role” as enshrined at the third plenum?
- What approach will China ultimately adopt for its economy and its antitrust regime—a government-dictated, state-run model, or a market- and consumer-oriented model?

In addition to these broad questions, foreign stakeholders continue to raise questions about issues such as fair treatment and non-discrimination, due process and regulatory transparency, the role of non-competitive factors in competition enforcement, and determination of remedies and fines. As noted above, the two sides have made some progress in discussions, particularly on non-discrimination and due process issues. US companies will be watching Chinese enforcement actions very closely in the coming months to see if bilateral commitments made at the S&ED and JCCT are fully and consistently implemented, and if China takes steps to address additional areas of concern.

USCBC’s September 2014 competition enforcement report includes a series of recommendations that address these issues in greater detail.

**Fair Treatment/Nondiscrimination**

Chinese authorities regularly state that AML enforcement activities do not target foreign companies. Chinese regulators committed at both the 2014 S&ED and JCCT that they would treat foreign and domestic companies equally and that competition would be “fair, objective, transparent, and non-discriminatory.” Such language is a positive step, but aspects of China’s regulatory framework for competition—and previous enforcement outcomes—fuel continued concern about the ability to translate those words into practice. Such concerns include:

- Criteria in MOFCOM merger reviews that allow officials to weigh non-competition factors, including those related to industrial policy;
- Required MOFCOM consultations with industry regulators such as NDRC, the Ministry of Industry and Information Technology, or the Ministry of Agriculture that provide government regulators and domestic interests the ability to influence decisions based on protectionist or industrial policy goals;
- Security reviews for the foreign acquisition of domestic companies (detailed in Article 31 of the AML) that could be used to promote domestic economic protectionism;
- Considerable leeway for NDRC and SAIC to select investigation targets and carry out investigations, with little transparency about how those targets are selected, and evidence from high-profile cases that decisions may be influenced by broader Chinese policy concerns on intellectual property, standards, and the protection of domestic industries, as opposed to the interests of fair competition; and
- Competition investigations that do not fully value market considerations, or that make inappropriate comparisons between prices in China and overseas markets without taking into account local market conditions.

**Due Process and Transparency**

Transparency has been a major topic of bilateral discussion in the last several months. China has made specific commitments to provide clear information to parties involved in competition investigations about authorities’ concerns, notify parties of the facts and basis for any administrative penalties, and publish final decisions with detailed rationale. Additionally, China made a specific commitment that its AMEAs would allow both internal and external legal counsel to attend meetings with their clients. Both developments are greatly welcomed by US companies seeking due process and transparency in investigations, and should be implemented robustly.

While these commitments should address some of the issues raised by USCBC member companies, they will only be effective if they are implemented fully and fairly by officials at all levels. Specific ongoing issues include the inability during enforcement proceedings to inquire about the nature of complaints, pressure to “admit guilt” without the ability to respond to evidence, the inability to have legal counsel present during
competition investigations and enforcement proceedings, and the lack of transparency in publishing case decisions. Companies will continue to raise these issues until stakeholders see a clear track record that enforcement agencies have updated their work practices to reflect China’s commitments.

**Time Periods for M&A Reviews**

While long and uncertain timeframes across the range of competition investigations create challenges for companies, these challenges have been most acute for merger reviews. Articles 25 and 26 of the AML describe a specific timeline for M&A review processes: a preliminary review that lasts up to 30 days, a more detailed review that lasts up to 90 days, and an extension period if the review is not completed that can last up to 60 days. Clear timelines for reviews were established to provide important guidance to potential filers, helping them make preparations preceding transactions.

In practice, timelines remain increasingly stretched as the number of transactions that MOFCOM reviews grows, and more parties whose reviews approach the 180-day limit have been asked to withdraw and refile the transaction. MOFCOM’s pre-consultation process also remains an issue, as some companies report that they are encouraged to use the pre-consultation process even as increasing MOFCOM workloads have increased the length of the process. Notably, time spent in the pre-consultation process does not appear in official case timelines, as the official 180-day review timeline does not officially begin until MOFCOM accepts the company’s application and supporting materials.

More companies are using MOFCOM’s simplified case review system, which should allow regulators to devote more resources to addressing complex cases on more rapid timelines. However, there has been little evidence of this outcome to date, as MOFCOM has not rejected or imposed conditions on any deals since the simplified case review began to pick up steam in late 2014 that could shed light on whether the existence of this channel could allow shorter timelines in complex merger review cases.

MOFCOM has also not addressed other structural issues that can delay M&A review timelines, such as required MOFCOM consultation with other government agencies that can result in new concerns being presented to filers late in the process.

**Role of Non-Competitive Factors in Competition Enforcement**

Two key articles of the AML (Article 4 and Article 27) grant-competition agencies the ability to weigh both competitive factors and non-competitive factors in the law’s enforcement, and specifically define those factors to include areas such as influence on national economic development, influence on technological progress, and influence on consumers and other business operators. Competition review processes allow specific times for government stakeholders to consider such non-competition concerns. For example, MOFCOM is required to consult with other agencies during the merger review process, allowing government regulators and domestic interests to influence decisions based on protectionist or industrial policy goals, rather than on truly competitive factors.

Key competition regulations (such as the SAIC’s [Provisions to Prohibit Intellectual Property Abuse to Eliminate or Restrict Competition](#)) and various AML decisions have also raised concerns about how regulators consider non-competitive factors. Some competition decisions, for example, illustrate that regulators are weighing competition concerns alongside Chinese policy goals such as domestic innovation and industry development. This focus undermines the balance struck in other regulations between China’s goal of encouraging the adoption of innovative standards and the need to preserve the free exercise of intellectual property by patent owners. Recent decisions indicate that such non-competitive factors remain an important and concerning part of competition enforcement decisions.

**Application of Remedies and Fines**

As Chinese AMEAs have gained experience and set best practices for competition enforcement, they have laid out increasingly clear markers for how they will apply remedies to address competition concerns. MOFCOM continues to apply a unique mix of structural and behavioral remedies to address potential competition concerns. The implementation of its updated [Measures Concerning the Divestiture of Assets or Businesses](#)
when Implementing Concentrations of Business Operators provide further legal grounding to apply remedies such as divestitures and “hold separate” provisions that require companies to maintain separate subsidiaries in China as market competitors. Notably, MOFCOM favors a heavier use of behavioral remedies, including regular application of behavioral remedies even in cases where the monopoly concerns raised have been horizontal. Some of these behavioral remedies restrict or eliminate the legitimate business value of conducting the transaction in the first place.

NDRC and SAIC continue to work within the framework of the AML’s Article 47 to apply fines of up to 10 percent of the previous year’s sales revenue. Significant questions remain, however, as to how these fines are determined and applied, particularly with the lack of specific guidance or standards for when an agency might apply a higher fine versus a lower fine. As noted above, all of the fines levied on foreign companies to date have been limited to domestic sales revenue. Without explicit language to clarify the basis for fines, however, questions remain about whether future fines could be assessed based on global company revenue. In addition, basing fines on a percentage of sales serves to discriminate against large companies while limiting flexibility in setting fines based on the level of the infraction. Additionally, questions remain about whether fines are being applied fairly to both foreign and domestic companies. To date, foreign companies penalized by NDRC under have received higher fines (3.3 percent) than their domestic counterparts (1.9 percent).

**Broad Definition of Monopoly and Pricing Agreements**

US companies have a number of lingering questions about provisions within the AML that define monopolistic behavior, and little has changed over the past few months to address these questions. Many of their concerns relate to the ways that China’s competition regime differs from international best practices. Companies also highlight provisions that are designed to protect against anticompetitive practice, but in practice produce unintended negative consequences for foreign and domestic companies operating in China.

Such issues include a range of business agreements, such as resale price maintenance (RPM) agreements and “other monopoly agreements” as determined by NDRC or SAIC. Such clauses—which appear to eliminate RPM agreements in blanket fashion—are out of sync with evolving practices in other legal jurisdictions, which have generally shifted to an approach considering a given RPM by looking at its pro- and anti-competitive effects (the “rule of reason”). Chinese case law on these issues remains unclear, with some indications that RPMs have been considered based on their competitive impact alongside final decisions that have ruled these to be anticompetitive.

Companies also fear that other agreements they sign with distributors could be construed as monopolistic. For example, many companies selling complex products such as automobiles frequently sign agreements with their manufacturing partners to ensure that the product-specific parts those partners manufacture are only sold through company-authorized dealers. These agreements are designed to promote strong customer service and customer safety by ensuring that only trained, certified personnel conduct repairs of such products using spare parts. NDRC’s announced focus in 2015 on monopoly agreements raises concerns that these and other agreements could be targeted in coming months without consideration of their pro-consumer effects.
Appendix 1: Merger Reviews Completed by MOFCOM (2008 – present)

Since the initial implementation of the AML in 2008, MOFCOM has increased enforcement capacity and laid down clear markers that global transactions—even those between foreign companies that have little business in China—must be reviewed in China. This has resulted in a sharp increase in the number of merger review cases handled by MOFCOM.

According to statistics through the first quarter of 2015, MOFCOM has conducted full reviews of 1,058 proposed merger transactions, with the number increasing steadily year-on-year. More than 97 percent of these cases (1,032) that have been reviewed were approved by MOFCOM unconditionally. While most M&A approvals have involved domestic companies, a number of transactions involving foreign companies have also been approved, including transactions involving foreign companies such as Abbott, Cummins, Dow, and Toyota. Of the remaining 26 cases, all involve foreign companies. Twenty-four of these were approved with conditions, and two were rejected.

The table on the next page includes information and descriptions for each case that MOFCOM has either approved conditionally or rejected since the launch of the Antimonopoly Law in August 2008, including the 26 cases mentioned above.
### Mergers and Acquisitions Rejected or Conditionally Approved by MOFCOM

<table>
<thead>
<tr>
<th>Date Announced</th>
<th>Industry</th>
<th>Parties</th>
<th>Remedy</th>
<th>Case Duration</th>
</tr>
</thead>
<tbody>
<tr>
<td>November 2008</td>
<td>Beverage Manufacturing</td>
<td>InBev, Anheuser-Busch</td>
<td><strong>Conditionally approved:</strong> Pre-merger, Anheuser-Busch had a 27 percent stake in Tsingtao Brewery (the second-largest beer producer in China) and InBev had a 29 percent stake in Zhujiang Brewery (fourth-largest). MOFCOM imposed three conditions on the post-merger entity: InBev and AB should not increase their stakes in Zhujiang Brewery and Tsingtao Brewery from pre-merger levels; InBev may not acquire any stakes in China Resources Snow Breweries or Beijing Yanjing Brewery (largest and third-largest, respectively); and InBev will be obliged to notify MOFCOM of any changes in its controlling shareholders.</td>
<td>70 days</td>
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<tr>
<td>March 2009</td>
<td>Beverage Manufacturing</td>
<td>Coca-Cola, Huiyuan</td>
<td><strong>Rejected:</strong> MOFCOM asserted that the proposed acquisition would enable Coca-Cola to leverage its dominant position in the carbonated soft drinks to dominate the neighboring juice market. Such dominance would raise entry barriers and limit the ability of medium and small-sized juice companies to compete and innovate. MOFCOM stated that since the two parties were not able to agree on an acceptable remedy with MOFCOM, they had to reject the transaction.</td>
<td>182 days</td>
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<tr>
<td>April 2009</td>
<td>Chemical Manufacturing</td>
<td>Mitsubishi Rayon, Lucite</td>
<td><strong>Conditionally approved:</strong> This case raised competition concerns in the methylmethacrylate (“MMA”) market, where the parties would have a post-merger market share of 64 percent. According to MOFCOM, Mitsubishi had businesses in both the MMA market and downstream markets, and thus would have been able to foreclose downstream competitors by leveraging its dominant position in the MMA market. MOFCOM required the parties to divest assets, with Lucite to divest 50 percent of its annual MMA production capacity for five years to one or more unaffiliated third party purchasers. Lucite China must also grant third-party purchasers the right to purchase 50 percent of Lucite China’s annual MMA production for five years at cost (equal to the production and management cost per unit), with no added profit margin, with compliance verified annually by an independent auditor.</td>
<td>124 days</td>
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<tr>
<td>Date</td>
<td>Industry</td>
<td>Companies</td>
<td>Merger Status</td>
<td>Reasons</td>
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<tr>
<td>September 2009</td>
<td>Auto Manufacturing / Equipment Manufacturing</td>
<td>General Motors, Delphi</td>
<td>Conditionally approved: MOFCOM argued that GM would have the ability to bar its competitors in the auto manufacturing market as Delphi was the exclusive supplier for various Chinese auto manufacturers. MOFCOM cleared the transaction subject to conditions: GM/Delphi must continue to supply Chinese auto manufacturers on a non-discriminatory basis; GM and Delphi would not exchange confidential information relating to any third party; GM/Delphi must cooperate with customers to achieve a smooth transition when they switch to other auto parts suppliers; and GM must continue its diversified and non-discriminatory policy of purchasing auto parts from multiple suppliers.</td>
<td>42 days</td>
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<tr>
<td>September 2009</td>
<td>Pharmaceuticals</td>
<td>Pfizer, Wyeth</td>
<td>Conditionally approved: MOFCOM believed the acquisition would have anti-competitive effects on the swine mycoplasma pneumonia vaccine (SMPV) market in China. The agency argued that the combined entity would possess a 49 percent market share in an increasingly concentrated SMPV market in China. According to MOFCOM, this would have enabled Pfizer/Wyeth to enlarge their market share and consequently increase the price of SMPV and raise entry barriers to the SMPV market. MOFCOM ordered a divestiture of Pfizer’s SMPV business in China. Pfizer had to find a third party buyer approved by MOFCOM within six months and ensure that the divested business included all tangible and intangible assets necessary for the survival and competitiveness of the divested business.</td>
<td>113 days</td>
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<tr>
<td>October 2009</td>
<td>Battery Manufacturing</td>
<td>Panasonic, Sanyo</td>
<td>Conditionally approved: MOFCOM argued that the acquisition would have anti-competitive effects in three highly concentrated battery markets: rechargeable button-shaped lithium batteries, nickel-hydride batteries for daily use, and nickel-hydride batteries for automobile use. Post-transaction, Panasonic/Sanyo would have market shares of 62, 46, and 77 percent, respectively. MOFCOM considered that the high market shares in already concentrated markets would easily enable the parties to raise prices. Both parties were ordered to divest substantial businesses in all three merger-relevant markets. Sanyo and Panasonic were to spin off their relevant businesses within six months to an independent third party approved by MOFCOM.</td>
<td>283 days</td>
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<tr>
<td>August 2010</td>
<td>Healthcare</td>
<td>Novartis, Alcon</td>
<td>Conditionally approved: MOFCOM believed that post-transaction Novartis/Alcon would be able to coordinate with Hydron (a key supplier of contact lens care products) on price, quantity, and sales territories. Therefore, the transaction was cleared on conditions that Novartis cease sales of its ophthalmic anti-inflammatory/anti-infective combinations under its current brands in China, and not sell any of these products under the same or different brands in China for the next five years. Furthermore, Novartis would terminate its distribution agreement with Hydron within 12 months.</td>
<td>116 days</td>
</tr>
<tr>
<td>Month</td>
<td>Industry</td>
<td>Company/JV</td>
<td>Conditionally approved:</td>
<td>Description</td>
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<tr>
<td>June 2011</td>
<td>Chemicals / Fertilizer</td>
<td>Uralkali, Silvinit</td>
<td>Conditionally approved:</td>
<td>The potassium chloride market was highly concentrated with the top three producing countries accounting for more than 80 percent of the world’s total reserves. MOFCOM believed that, since China relies heavily on imports of these products, 50 percent of which are from Uralkali, Silvinit, or their affiliated companies, the transaction would increase the level of concentration in the market. In addition, the merged entity would benefit from an increased market power through the ownership of more potassium resources and stronger production capabilities. Thus, MOFCOM imposed acquisition conditions to maintain a stable level of imports of potassium chloride into China. The merged entity would have to continue to provide the whole range of potassium chloride products to the Chinese market in sufficient quantity and maintain the current methods, processes, and existing customary negotiations procedures.</td>
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<tr>
<td>October 2011</td>
<td>Textile Machine Manufacturing / Private Equity</td>
<td>Alpha V, Savio</td>
<td>Conditionally approved:</td>
<td>Uster (28 percent owned by private equity investor Alpha V) and Leopfe (a wholly-owned subsidiary of Savio) were the only two global suppliers of yarn clearers – devices to remove faults from yarn and improve its quality – remove faults (thick places, thin places, foreign matter) from the yarn. MOFCOM believed that after the transaction it is likely that Uster and Leopfe could coordinate with each other through Alpha V to restrict and/or eliminate the competition in the yarn clearer market. MOFCOM imposed several conditions on the acquisition, including requiring Alpha V to divest its shares in Uster to an independent party within six months upon MOFCOM’s approval of the transaction and prohibiting Alpha V from participating in or influencing Uster’s operations and management before completion of the divesture process.</td>
</tr>
<tr>
<td>November 2011</td>
<td>Energy</td>
<td>General Electric, Shenhua (formation of a JV)</td>
<td>Conditionally approved:</td>
<td>GE China and China Shenhua Coal to Liquid and Chemical Co., Ltd. (CSCLC, a subsidiary of state-owned Shenhua Group) had announced plans to establish a 50/50 joint venture (JV) to license coal-water slurry (CWS) gasification technology to industrial and power projects in China. GE Infrastructure Technology, another subsidiary of GE, would license GE’s CWS gasification technology to the proposed JV. MOFCOM found that this transaction might exclude or restrict competition in the CWS gasification technology licensing market. The JV was approved, subject to the condition that it may not force potential licensees for CWS gasification technologies to use its technology. Further, it may not raise these licensees’ cost of using other technologies by restricting feedstock supply.</td>
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<tr>
<td>Date</td>
<td>Industry</td>
<td>Companies</td>
<td>Decision</td>
<td>Reason</td>
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<tr>
<td>December 2011</td>
<td>Computing Components</td>
<td>Seagate, Samsung</td>
<td>Conditionally approved</td>
<td>MOFCOM raised concerns regarding market share in the hard disk drive (HDD) manufacturing industry, with Seagate and Samsung representing two of the top five companies that collectively hold a virtual monopoly in the market. MOFCOM believed that reducing the number of competitors would encourage collusion. The acquisition was approved, but required that Samsung HDD remain an independent competitor to Seagate and others. Seagate was also required to ensure that an unaffiliated Chinese supplier would not be restricted from supplying other HDD manufacturers.</td>
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<tr>
<td>February 2012</td>
<td>Chemical Manufacturing</td>
<td>Henkel Hong Kong, Tiande (formation of a JV)</td>
<td>Conditionally approved</td>
<td>MOFCOM’s review of the proposed joint venture focused on three chemical products that appear in correlated upstream and downstream roles in compound production. MOFCOM’s fear that a JV between these parties that supply each other with inputs for different chemical compound outputs would eventually lead to them stifling competition by restricting competitor access to product inputs. MOFCOM required Tiande to provide one of the concerned chemicals to all downstream customers on a “fair, reasonable and non-discriminatory” basis. Tiande was also prohibited from selling this chemical at an unreasonably high price, offer more favorable terms of supply to the JV, or exchange competitive information with Henkel or the JV.</td>
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<tr>
<td>March 2012</td>
<td>Electronics Components</td>
<td>Western Digital, Hitachi</td>
<td>Conditionally approved</td>
<td>Western Digital and Hitachi were among the world’s five largest manufacturers of data storage drives at the time. MOFCOM was concerned that because China has the world’s greatest number of consumers who buy computers, they would potentially suffer most widely from increased HDD prices. China is also home to large numbers of manufacturers which incorporate HDDs in their computer products. MOFCOM approved the acquisition but imposed conditions requiring Hitachi GST to remain as an independent competitor in the global HDD market, with independent manufacturing, pricing, and marketing. Western Digital and Hitachi were also prevented from substantially altering their business models or coercing customers into exclusively purchasing their HDDs.</td>
</tr>
<tr>
<td>Date</td>
<td>Industry</td>
<td>Acquirers and Subsidiaries</td>
<td>Conditionally approved: MOFCOM’s decision</td>
<td>Approval Time</td>
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<tr>
<td>May 2012</td>
<td>Mobile Phone Manufacturing</td>
<td>Google, Motorola Mobility</td>
<td>MOFCOM was concerned with the dominant market share in China of Google’s mobile operating system, Android. It believed Google could provide preferential licensing conditions to Motorola to use Android on Motorola devices, giving it an advantage over other mobile phone manufacturers. MOFCOM also stated that Google’s acquisition of Motorola’s patent portfolio would allow it to impose unreasonable licensing conditions of such patents to competitors. MOFCOM’s remedy required Google to license Android free of charge and to treat all mobile device OEMs equally.</td>
<td>233 days</td>
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<tr>
<td>June 2012</td>
<td>Aviation Electronic Systems</td>
<td>UTC, Goodrich</td>
<td>UTC and Goodrich comprised 84 percent of the market share in aircraft electronic systems, a market that MOFCOM stated had high entry barriers due to research costs. MOFCOM approved the acquisition but required the companies divest Goodrich’s electronics systems business, and find a suitable buyer for this business divestiture within six months.</td>
<td>187 days</td>
</tr>
<tr>
<td>August 2012</td>
<td>E-Commerce</td>
<td>Walmart, Yihaodian</td>
<td>MOFCOM argued that Walmart’s rich experience in operating physical markets for goods and grocery shopping could allow it to expand and eliminate competition in the online e-commerce goods and groceries shopping space. MOFCOM limited Walmart’s acquisition to Yihaodian’s online direct sales business, and prohibited the company from providing online trading services to other trading parties without first obtaining a value-added telecom services permit. Walmart was also prohibited from operating Yihaodian’s current online trading platform service.</td>
<td>242 days</td>
</tr>
<tr>
<td>December 2012</td>
<td>Application Processors / Intellectual Property</td>
<td>ARM, G&amp;D, Gemalto (formation of a JV)</td>
<td>MOFCOM ruled that ARM disclose the security monitoring code and other information that is necessary to develop alternative TEE solutions based on its application processor technology.</td>
<td>217 days</td>
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</tbody>
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4 On January 29, 2014, Lenovo and Google announced an agreement under which Lenovo would purchase the Motorola Mobility smartphone business from Google. The deal closed on October 30, 2014, prompting Google to apply to MOFCOM to eliminate some of the conditions imposed under the original transaction – namely, that Google will treat all original equipment manufacturers in a non-discriminatory manner with respect to the provision of its Android platform. On January 9, 2015, MOFCOM approved Google’s application and removed that requirement.
<table>
<thead>
<tr>
<th>Date</th>
<th>Industry</th>
<th>Companies</th>
<th>MOFCOM Decision</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 2013</td>
<td>Natural Resources/Mining</td>
<td>Glencore, Xstrata</td>
<td>Conditionally approved</td>
<td>MOFCOM was concerned with competition in the minerals market, largely due to China’s heavy reliance on imports of copper, lead, and zinc. Specifically, the agency was concerned that the post-merger market shares of Glencore and Xstrata for these three minerals would harm competition, with downstream Chinese users of Glencore’s inputs likely affected negatively. MOFCOM required the combined entity to divest and sell a copper mine in Peru within 18 months of the decision. Additionally, Glencore was required to provide lead and zinc concentrate to Chinese customers for eight years after the decision.</td>
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<tr>
<td>April 2013</td>
<td>Agricultural Products</td>
<td>Marubeni, Gavilon</td>
<td>Conditionally approved</td>
<td>MOFCOM argued that Marubeni’s sales infrastructure in China and share of the soybean import market in China, combined with Gavilon’s US soybean sourcing operations, would limit competition in the soybean import market. MOFCOM approved the acquisition with conditions on the deal: establishing two independent subsidiaries as relating to soya bean exports and sales to China; maintaining two separate operating teams with independent operations; prohibiting the exchange of competitive information between the two subsidiaries, backed up by a mandatory firewall; and prohibiting the Marubeni subsidiary’s purchase of soya beans from the Gavilon subsidiary, except on an arm’s length basis.</td>
</tr>
<tr>
<td>August 2013</td>
<td>Medical Devices</td>
<td>Baxter, Gambro</td>
<td>Conditionally approved</td>
<td>Baxter and Gambro were both major competitors in the highly concentrated CRPT device market (equipment used for treatment of kidney issues). MOFCOM concluded that Baxter would have a dominant market position for CRPT products after the merger, since the transaction would eliminate one of Baxter's main competitors and thus negatively impact competition. The transaction was approved, but with conditions that Baxter divest its worldwide CRPT business and discontinue its OEM agreement with competitor Niplo in the Chinese market.</td>
</tr>
<tr>
<td>Date</td>
<td>Industry</td>
<td>Companies</td>
<td>Description</td>
<td>Time (days)</td>
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<tr>
<td>August 2013</td>
<td>Electronic Components</td>
<td>Mediatek, MStar</td>
<td><strong>Conditionally approved</strong>: MOFCOM found that Mediatek and MStar were primary competitors in the LCD TV control chip market, which they stated was a market with high technical barriers to entry. MOFCOM argued that the post-acquisition environment would eliminate the benefits the competitive relationship brought to the market, as the combined company would have a market share as high as 61 percent in the global market and 80 percent in China. MOFCOM also alleged that other LCD TV control chip manufacturers would not be able to compete effectively with the combined entity, meaning that downstream TV makers in China would have restricted choices in the procurement of LCD TV control chips. MOFCOM’s approval required MStar’s Taiwanese subsidiary to take ownership of MStar’s LCD TV control chip business, and continue operating as a competitor in the Chinese market.</td>
<td>417</td>
</tr>
<tr>
<td>January 2014</td>
<td>Biotechnology</td>
<td>Thermo Fisher, Life Technologies</td>
<td><strong>Conditionally approved</strong>: MOFCOM found considerable overlap in the two companies’ businesses in three biotechnology areas, with 59 relevant products between them. MOFCOM’s analysis led it to focus on a portion of those products that would have high market concentration and estimated price increases in a post-acquisition environment. The final approval of the acquisition set conditions that Thermo Fisher divest its global cell culture business, sell its 51 percent stake in a Chinese bioengineering subsidiary, and reduce prices of certain products that had potential for significant price increases due to market concentration after the acquisition. (Those prices should be reduced by one percent per year for 10 years.)</td>
<td>196</td>
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<tr>
<td>April 2014</td>
<td>IT / Software / Mobile</td>
<td>Microsoft, Nokia</td>
<td><strong>Conditionally approved</strong>: While Microsoft’s acquisition of Nokia’s handset business seemed to have little direct impact on competition in China’s mobile market because of the parties’ relatively small market shares in operating systems and devices, MOFCOM raised concerns that the transaction could result in restrictions in licensing of patents deemed essential to competition for smartphones. The agency argued that Microsoft held essential patents for Android operating system licenses, which has an 80 percent market share of mobile devices in China, and would have an incentive to increase licensing costs to other smartphone makers utilizing the Android operating system. MOFCOM imposed conditions that Microsoft and Nokia were required to honor fair, reasonable, and non-discriminatory (FRAND) commitments for standard-essential patents (SEPs); and to refrain from seeking injunctions for infringement of such SEPs against smartphones produced by Chinese producers.</td>
<td>208</td>
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<td>Year</td>
<td>Industry</td>
<td>Companies</td>
<td>Status</td>
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<tr>
<td>May 2014</td>
<td>Mobile Device Manufacturing</td>
<td>Merck kGaA, AZ Electronic Materials</td>
<td>Conditionally approved</td>
<td>Merck kGaA is the world’s leading manufacturer of liquid crystal for use in tablets and smartphones, while AZ Electronic Materials has significant global and China market share in photoresist, a complementary product used in tablets and smartphones. MOFCOM found that after the acquisition, Merck would be the world’s largest supplier of both, while competitors would only be able to supply one of the two aforementioned raw materials. This, they argued, would thus allow Merck to restrict competition. MOFCOM’s conditions for acquisition include: Merck must report any licensing deals it signs in China to the ministry; Merck cannot force Chinese customers to buy products from both companies; and Merck must license liquid crystal patents on non-exclusive terms.</td>
</tr>
<tr>
<td>June 2014</td>
<td>Transportation Shipping</td>
<td>Maersk, MSC, CMA CGM</td>
<td>Rejected</td>
<td>MOFCOM rejected plans by three leading European shipping companies – Denmark’s Maersk, Switzerland’s MSC, and France’s CMA CGM – to form a shipping alliance that would allow the companies to share ships and port facilities. In its decision, MOFCOM noted that the three companies involved in the alliance already held a 46.7 percent market share in the Asia-Europe container shipping line market, and that the alliance would allow them to enhance their market dominance in ways that would restrict competition and unfairly increase their bargaining power against consignors and ports.</td>
</tr>
<tr>
<td>July 2014</td>
<td>Battery Manufacturing</td>
<td>Primearth EV Energy, Toyota Motor China Investment, Toyota Tsusho, Hunan Corun New Energy, Changshu Sinogy Venture Capital (formation of a JV)</td>
<td>Conditionally approved</td>
<td>MOFCOM’s review of the proposed JV focused on nickel metal-hydride car batteries, used in the vast majority of hybrid vehicles. Globally, the top four suppliers of nickel metal-hydride car batteries have 97 percent global market share, with Primearth EV Energy (PEVE) among them. MOFCOM considered that, due to high concentration of major players and high market entry barriers, this joint venture could restrict or even eliminate competition in the hybrid vehicle market. Further, MOFCOM believed that the JV would further increase Toyota’s dominance in the hybrid vehicle market and thwart development of China’s domestic hybrid vehicle companies. The JV was approved with the conditions that it must continue to sell products to third parties on a non-discriminatory basis. Also, within three years, the JV must bring their product(s) market to meet market demand.</td>
</tr>
</tbody>
</table>
Pricing Investigations Conducted by the National Development and Reform Commission and its Provincial Branches, 2008-present

Since the initial implementation of the AML in 2008, the NDRC has taken significant steps to increase its level of enforcement activity at the central and provincial levels, particularly since early 2013. Between 2008 and 2012, NDRC conducted nearly 20 price-related investigations. By comparison, the agency investigated more than 80 companies at both the central and provincial levels in 2013, and at least 150 companies and company branches in 2014. These investigations covered a range of sectors, including pharmaceuticals, telecom, banking, food and beverage, infant formula, tourism, and chemicals.

Statements from senior-level Chinese officials in September 2014 stressed that NDRC and its provincial branches have conducted a total of 335 pricing investigations, stating that only 10 percent of these involved foreign companies. However, USCBC’s regular information searches make it clear that there is no public information on many of these investigations, making it difficult to clearly determine the objectives, process, and outcomes of NDRC’s monopoly investigations. USCBC’s detailed searches have only uncovered 36 AML cases launched by NDRC or its provincial entities, of which 27 have been completed. Based on publicly available information about completed cases, 10 were investigated by NDRC at the central level, 16 by NDRC at the provincial level, and one case was investigated jointly.

China commitments at 2014 S&ED and JCCT aim to ensure that its enforcement efforts will be “fair, objective, transparent, and nondiscriminatory.” China also committed that its enforcement agencies will “publish the final version of administrative decisions that impose liability on a party under the AML in a timely manner.” As of this update, implementation of those commitments is unclear.

The two tables below include information about selected price-related investigations concluded by NDRC and its provincial branches since the launch of the AML in August 2008. It also includes information about pricing investigations that were announced, but—according to public sources—have yet to be concluded. Both lists are based on publicly available information.
## Completed Cases

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<th>Companies Involved</th>
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<tr>
<td>March 2010</td>
<td>Rice noodle</td>
<td>Guangxi</td>
<td>Juezhihe, Xianyige, Liuzhou Brothers, Yongcai and other involved rice noodle</td>
<td>Starting in 2010, eighteen rice noodle manufacturers held a series of meetings to discuss profit sharing and business integration and to set market prices. The Guangxi Price Bureau ruled that these behaviors violated the Price Law and the Antimonopoly Law. The bureau fined three of the leading companies RMB 100,000 ($14,648) apiece, and ordered fines of RMB 30,000-80,000 ($4,394-11,718) for other manufacturers according to their behavior.</td>
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<td>August 2010</td>
<td>Paper making</td>
<td>Zhejiang</td>
<td>Fuyang Paper Manufacturing Industry Association</td>
<td>In 2010, the Fuyang Paper Manufacturing Industry Association held five meetings with more than 20 attending member companies to discuss the sales price for white paperboard. The Zhejiang Price Bureau ruled that the behavior violated both the Price Law and Antimonopoly Law, and ordered the Association to pay fines of RMB 500,000 ($73,437).</td>
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<tr>
<td>November 2010</td>
<td>Household products</td>
<td>Hubei</td>
<td>Wuchang Salt Company</td>
<td>In July and August 2010, the Wuchang Salt Company required distributors to purchase both salt and Huolierba detergent powder. After an investigation, the Hubei Price Bureau announced that Wuchang had violated Articles 7 and 17(5) of the AML, but that the company had voluntarily returned illegal revenue to distributors. The Hubei Price Bureau also required Wuchang to take further unspecified corrective measures within the month.</td>
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<tr>
<td>May 2011</td>
<td>Household products</td>
<td>Shanghai</td>
<td>Unilever</td>
<td>In March 2011 Unilever released information to the media that it might raise detergent and soap prices because of raw materials costs, activity that caused customers to engage in &quot;panic buying.&quot; NDRC ruled that such behavior violated Article 14(3) of the Price Law, ordered Unilever to cancel its price hike, and fined the group RMB 2 million ($307,978).</td>
</tr>
<tr>
<td>November 2011</td>
<td>Pharmaceuticals</td>
<td>Shandong</td>
<td>Weifang Shuntong, Huaxin</td>
<td>NDRC found that Shutong and Huaxin had signed exclusive distribution agreements with the only two domestic producers, allowing them to control the supply of promethazine hydrochloride, a key raw material for the compound reserpine commonly used in high blood pressure treatments. Those agreements required the producers to obtain approval from both companies before selling product to any other party, thus eliminating competition. NDRC found that these actions violated the AML and the Price Law, and, under the AML, fined Weifang Shuntong RMB 6.877 million ($1.1 million) and Huaxin RMB 150,000 ($23,505).</td>
</tr>
<tr>
<td>Date</td>
<td>Category</td>
<td>Location</td>
<td>Company/Association</td>
<td>Summary</td>
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<tr>
<td>February 2012</td>
<td><strong>Chemicals</strong></td>
<td>Hubei</td>
<td>Hubei Yihua Group</td>
<td>NDRC and its branch in Hubei found that Yihua, one of the world’s largest manufacturers of sodium hydrosulphite, had worked with other companies to fix prices and subsequently imposed those prices on its customers. Methods included requiring customers to enter purchase agreements with Yihua and its subsidiaries and imposing conditions on material and equipment suppliers. These actions caused the price of sodium hydrosulphite to increase by 300 percent in 2011. NDRC and its branch in Hubei found that these actions violated the AML and imposed fines of RMB 10.12 million ($1.6 million).</td>
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<tr>
<td>March 2012</td>
<td><strong>Sea sand</strong></td>
<td>Guangdong</td>
<td>Guangdong Sea Sand Association and its members</td>
<td>Investigation reports stated that several companies took steps to set and manipulate resource fees for mining sea sand under the umbrella of the Guangdong Sea Sand Association. The Guangdong Price Bureau determined these actions violated Article 16(2) of the AML and issued fines and warnings to members of the association. Three members of the association—Guangdong Baohai Sand and Stone, Dongguan Jianghai, and Shenzhen Donghai Century Information Consulting—were collectively fined RMB 759,200 ($120,565). Other members were issued warnings.</td>
</tr>
<tr>
<td>January 2013</td>
<td><strong>LCD panels</strong></td>
<td>nationwide</td>
<td>Samsung, LG, Chimei, AUO, Chunghwa Picture Tubes (CPT), HannStar Display Corporation</td>
<td>NDRC’s investigation found that these six foreign LCD manufacturers met repeatedly between 2001 and 2006 to exchange information on the LCD panel market and set or manipulate LCD panel prices in China. NDRC ruled that these behaviors violated Article 14.1 and Article 40 of the Price Law. NDRC ordered the parties to return the overcharged funds to Chinese television enterprises (RMB 172 million ($27.6 million)). NDRC confiscated other illegal gains (RMB 36.75 million ($5.9 million)) and ordered the companies to pay fines of RMB 144 million ($23.1 million). NDRC also ordered the parties to take other corrective measures, including providing fair treatment of all customers in the procurement of high-end or new technology products, and extending the free repair warranty period from 18 to 36 months for LCD panels used on televisions that Chinese television enterprises sell in mainland China.</td>
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<tr>
<td>February 2013</td>
<td><strong>White liquor (baijiu)</strong></td>
<td>Guizhou</td>
<td>Kweichow Moutai Group</td>
<td>The Guizhou Price Bureau ruled that Kweichow Moutai had sought to fix the minimum resale price to third-party distributors since 2012, taking punitive measures against those who did not implement the price. The bureau ruled that such activities violated Article 14 of the AML as a resale price maintenance agreement and fined Kweichow Moutai RMB 247 million ($39.676million), or one percent of the “related” sales revenue in the previous year.</td>
</tr>
<tr>
<td>Date</td>
<td>Industry</td>
<td>Location</td>
<td>Company/Store Names</td>
<td>Summary</td>
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<tr>
<td>February 2013</td>
<td>White liquor</td>
<td>Sichuan</td>
<td>Wuliangye Group</td>
<td>The Sichuan Development and Reform Commission found that between 2009 and 2013, Wuliangye signed agreements with over 3,200 independent dealers to limit the lowest resale price for its products. It then enacted punitive measures against those who did not implement the price. The commission ruled that such activities violated Article 14 of the AML as a resale price maintenance agreement and fined Wuliangye RMB 202 million ($32.4 million), or one percent of the “related” sales revenue in the previous year.</td>
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<tr>
<td>August 2013</td>
<td>Gold jewelry</td>
<td>Shanghai</td>
<td>Shanghai Laofengxiang, Yuyan Plaza</td>
<td>The Shanghai Price Bureau ruled that Shanghai Laofengxiang and several other gold jewelry stores sought to set retail prices within strict bounds for gold jewelry products under the umbrella of the Shanghai Gold &amp; Jewelry Trade Association. The bureau ruled that this behavior violated Articles 13 and 16 of the AML and fined the association RMB 500,000 ($81,743) and the five stores a total of RMB 10.09 million ($1.6 million), or one percent of their previous year’s sales.</td>
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<tr>
<td>August 2013</td>
<td>Milk powder</td>
<td>Nationwide</td>
<td>Biostime, Mead Johnson Nutrition, Dumex, Abbott, FrieslandCampina, Wyeth, Fonterra, Beingmate, Meiji</td>
<td>The nine milk powder companies were accused of fixing resale prices for distributors and retailers, including fixing or restricting prices for resale to a third party and adopting punitive measures for parties that do not meet those requirements. NDRC judged these behaviors to violate Article 14 of the AML and fined six of these producers a total of RMB 668.7 million ($109.3 million). Fines ranged from three to six percent of prior year revenue.</td>
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<tr>
<td>September 2013</td>
<td>Tourism</td>
<td>Hainan</td>
<td>Sanya Platinum Crystal Crafts, Crystal Source, Good Royal Crystal</td>
<td>The Hainan Price Bureau ruled that these three companies formed a cartel, holding coordination meetings and signing a formal agreement in June 2012 to fix prices, commission rates, and market share for crystal products. They also formed a joint bank account to guarantee the agreement. The bureau found these activities violated Article 13 of the AML. Sanya Platinum Crystal Crafts and Crystal Source were fined RMB 3.6 million ($588,134) (four percent of the previous year’s revenue) and RMB 1.35 million ($220,550) (two percent of the previous year’s revenue), respectively, for the monopoly agreement. They were also fined RMB 99,000 ($16,174) and RMB 90,000 ($14,703), respectively, for concealing, transferring, or destroying financial data and evidence. Good Royal Crystal was exempt from punishment due to “cooperation.”</td>
</tr>
<tr>
<td>Date</td>
<td>Industry</td>
<td>Location</td>
<td>Description</td>
<td>罚款/处罚</td>
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<tr>
<td>September 2013</td>
<td>Tourism</td>
<td>Hainan, Yunnan</td>
<td>Tourist-oriented shops selling crystal and spirulina products (a popular Chinese herbal product) in the tourist hubs of Sanya, Hainan, and Lijiang, Yunnan were accused of using price discounts to lure customers. According to the investigation, the shops first raised prices on these products far above cost and then offered discounts to bring prices back down. Sticker prices for these products were often tens or hundreds of times the cost of the products. Pricing agencies in Hainan and Yunnan found these practices to violate Article 14(4) of the Price Law, and fined each offending shop 300,000 ($49,011).</td>
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<tr>
<td>September 2013</td>
<td>Tourism</td>
<td>Yunnan</td>
<td>Eight travel agencies in Yunnan, including the Lijiang branch of Ctrip, under the guidance of the Lijiang Tourism Association Travel Agency Division, signed agreements in 2009 and 2010 to set prices for tour groups, sharing RMB 227 million ($37.1 million) in profits over two years. The commission found this conduct violated Articles 13 and 16 of the AML as a price monopoly agreement. The agency was fined RMB 500,000 (US $81,685) and the travel agencies were collectively fined RMB 3.35 million (US $547,291), or five percent of the previous year's revenue.</td>
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<tr>
<td>September 2013</td>
<td>Tourism</td>
<td>Hainan</td>
<td>Travel agencies in Hainan, including Hainan Haikou Civil Tourism Agency and the Hainan Tongxing Tianxia Travel Agency, used bait-and-switch tactics to lure customers. They priced tours at or below cost in order to attract tourists. They then made up for those losses with high commissions from shopping activities organized by the tour groups and pressuring tourists to purchase. The bureau ruled that such behavior violates Article 14 of the Price Law and fined each agency 300,000 ($49,011).</td>
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<tr>
<td>December 2013</td>
<td>Insurance</td>
<td>Hunan</td>
<td>Hunan Loudi City Insurance Industry Association organized companies to conduct anticompetitive behavior, including setting unified prices for new car insurance discount rates, dividing up the market, and signing agreements with the association-organized automobile service center. The Hunan Price Bureau found that this behavior violated the AML and fined the association and six of the insurance companies RMB 2.19 million ($361,746). The other five companies were exempt from penalties for cooperating with authorities.</td>
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<tr>
<td>Month</td>
<td>Industry</td>
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<td>Companies</td>
<td>Description</td>
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<tr>
<td>February 2014</td>
<td><strong>Banking</strong></td>
<td>nationwide</td>
<td>Domestic commercial banks (unnamed)</td>
<td>Chinese banks were accused of imposing arbitrary charges and fees on customers. In February 2014, NDRC held a press conference announcing that to date it has ordered 64 branches of different banks to return RMB 409 million ($66.5 million) in fees from those charges, and imposed fines of RMB 416 million ($67.7 million). Further investigations and fines are possible.</td>
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<tr>
<td>May 2014</td>
<td><strong>Telecommunications</strong></td>
<td>nationwide</td>
<td>InterDigital</td>
<td>InterDigital was accused of abuse of market dominance, charging discriminatory high price patent license fees for China's communications equipment manufacturers, and issuing bundled license for non-standard essential patents and standard essential patents. In June 2014, NDRC announced that the investigation was suspended.</td>
</tr>
<tr>
<td>May 2014</td>
<td><strong>Vision care</strong></td>
<td>nationwide</td>
<td>Essilor, Zeiss, Nikon, Bausch &amp; Lomb, Johnson &amp; Johnson, Hoya, Weicon</td>
<td>Seven manufacturers of eyeglasses and contact lenses were accused of setting minimum resale prices and running promotions that effectively served as resale price maintenance (RPM) arrangements. NDRC determined that their activities violated Article 14 of the AML and fined five of the manufacturers a total of more than RMB 19 million ($3.0 million), with rates of either one or two percent of the previous year's sales.</td>
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<tr>
<td>July 2014</td>
<td><strong>Brick manufacturing</strong></td>
<td>Hainan</td>
<td>Five domestic manufacturers of aerated bricks: Hainan Houde New Century Building Materials; Guangyiduo New Environmentally Friendly Wall Materials; Hainan Xinzhongda Building Materials; Hainan Guangsheng New Building Materials; and Hainan Hailiyuan Industrial</td>
<td>According to the investigation reports, in October 2012, five manufacturers of aerated bricks—bricks with holes to allow airflow—established without authorization an aerated brick industry association to harmonize sales price, supervision and control and statistics for each company's production, sales, and shipments. The five companies subsequently agreed upon and coordinated price increases, signed monopoly agreements to divide sales. Two companies were exempted from fines due to their cooperation; the other three companies were fined RMB 530,000 ($85,879), or one percent of the previous year's sales.</td>
</tr>
<tr>
<td>Date</td>
<td>Industry</td>
<td>Region</td>
<td>Companies/Agreements</td>
<td>NDRC Announcements</td>
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<td>August 2014</td>
<td>Automotive</td>
<td>Nationwide</td>
<td>Hitachi, Denso, Aisan, Mitsubishi Electric, Mitsuba, Yazaki, Furukawa Electric, Sumitomo Electric, Nachi-Fujikoshi, NSK, JTEKT, and NTN</td>
<td>NDRC announced that 12 Japanese companies—eight auto parts manufacturers and four bearings manufacturers—had held frequent consultations to set and influence pricing of vehicles, auto parts, and bearings. NDRC exempted Hitachi and Nachi-Fujikoshi Corporation from fines due to their collaboration, but issued high fines for the other companies: RMB 832 million ($135.1 million) for the other seven auto parts companies and RMB 403.4 million ($65.5 million) for the other three bearings companies. These figures range between four and eight percent of the company’s previous year sales.</td>
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<tr>
<td>August 2014</td>
<td>Automotive</td>
<td>Hubei</td>
<td>Four Mercedes-Benz dealerships</td>
<td>The Hubei Price Bureau announced that four Mercedes-Benz dealerships had overcharged customers for the pre-delivery inspection (PDI) of purchased automobiles, and had colluded to set prices. The bureau fined the dealerships a collective total of RMB 1.63 million ($264,666).</td>
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<tr>
<td>September 2014</td>
<td>Insurance</td>
<td>Zhejiang</td>
<td>Zhejiang Insurance Industry Association and 23 property insurance companies</td>
<td>NDRC announced that Zhejiang Insurance Industry Association and 23 property insurance companies had held frequent consultations to set and influence discount rate of new vehicles and unified commercial commission for auto insurance agencies. NDRC ruled that the association and companies had violated the AML, fining the association RMB 500,000 ($81,457) and 23 provincial level property insurance companies a total of RMB 110.2 million ($18.0 million), or one percent of the previous year’s sales revenue. NDRC also announced that it waived or reduced fines for three insurance companies due to their cooperation. The investigation reports indicated that initial investigations of a number of other foreign and domestic insurance companies in Zhejiang indicated that they had not participated in these agreements; those companies were not charged.</td>
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<tr>
<td>September 2014</td>
<td>Cement</td>
<td>Jilin</td>
<td>Three domestic cement companies: Yatai, Northern and Jidong</td>
<td>The Jilin Price Bureau announced that Yatai, Northern and Jidong were found to have held several consultations to reach an agreement to set cement price and implementation policies. Investigators ruled that these activities had violated the AML, and fined Yatai and Jidong two percent of their sales revenue in 2012, and fined Northern for one percent of its sales revenue in 2012. Those fines collectively added up to RMB 114,390 ($18,636).</td>
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</tbody>
</table>
September 2014  Automotive  Hubei  FAW-Audi Sales, and 10 Audi dealers in Hubei  The Hubei Price Bureau announced that FAW-Audi Sales Company and the 10 dealers had reached monopoly agreements to set and influence vehicle sale and maintenance prices in violation of the AML. The bureau fined FAW-Audi Sales RMB 248.58 million ($40.4 million), or six percent of its previous year’s sales revenue, while fining eight dealers a total of RMB 29.96 million ($4.9 million): seven dealers were fined one to two percent of their sales revenue of the previous year; one dealer was fined 0.5 percent of its sales revenue of the previous year; and two dealers were exempted from penalties.

February 2015  Telecom  nationwide  Qualcomm  NDRC fined Qualcomm RMB 6.088 billion ($971.7 million[1]), or eight percent of Qualcomm’s sales revenue in China in 2013, claiming violations of the AML. In its decision, NDRC argued that Qualcomm holds a dominant market position in several key telecom standard-essential patents and in chips, and had used that position to charge high royalty rates, tie wireless and non-wireless patents, and attach conditions to chip sales.

April 2015  Automotive  Jiangsu  Mercedes-Benz and its dealers in Nanjing, Wuxi and Suzhou  The Jiangsu Price Bureau announced that Mercedes-Benz had reached a monopoly agreement with its dealers in Jiangsu province by enforcing minimum prices for dealers to charge for its products. It also reached and implemented fixed-price agreements for part of the components. The bureau found that Mercedes-Benz and its dealers violated the AML, and fined Mercedes-Benz RMB 350 million ($56.4 million), or one percent of its sales revenue of the previous year. The dealers were fined a total of RMB 7.86 million ($1.27 million).

Ongoing Cases

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<td>November 2011</td>
<td>Telecommunications</td>
<td>China Mobile, China Unicom</td>
<td>Alleged abuse of market dominance through price discrimination</td>
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<td>August 2012</td>
<td>E-Commerce</td>
<td>360 Buy, Gome, Suning</td>
<td>Alleged illegal and fraudulent behavior while engaging in low-cost competition</td>
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<td>March 2013</td>
<td>Cement</td>
<td>Cement companies nationwide</td>
<td>Alleged supply restrictions</td>
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<tr>
<td>Date</td>
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<td>July 2013</td>
<td>Pharmaceutical</td>
<td>GlaxoSmithKline, Merck, Astellas, Novartis, Boehringer Ingelheim, Baxter International, Fresenius, UCB, and many others</td>
<td>Alleged unfair import pricing (33 companies); internal cost structure (transfer pricing) (27 companies)</td>
</tr>
<tr>
<td>August 2013</td>
<td>Automobile</td>
<td>Imported cars and domestic auto joint ventures (no specific companies named) (Note: this is likely related to a series of automotive-related investigations announced in 2014.)</td>
<td>Alleged “excessive” pricing</td>
</tr>
<tr>
<td>April 2014</td>
<td>Pharmaceutical</td>
<td>Nine unnamed pharmaceutical companies across six provinces, including Jiangsu, Anhui, Zhejiang, Hebei, Liaoning and Shanghai</td>
<td>Alleged monopolistic pricing practices</td>
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<tr>
<td>July 2014</td>
<td>Automotive</td>
<td>Luxury car makers, including Mercedes-Benz, Audi, Toyota, Land Rover, and others</td>
<td>Alleged abuse of dominant market position; imposition of horizontal and vertical restraints on competition (initial findings released, but fines not yet announced)</td>
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<td>August 2014</td>
<td>Express delivery</td>
<td>Domestic express delivery companies in Chongqing and Xiangtan, Hunan, including HT Express, STO Express, TK Express, YTO Express, Yunda, and ZTO Express</td>
<td>Alleged illegal pricing behavior, including collusion</td>
</tr>
<tr>
<td>August 2014</td>
<td>Real estate</td>
<td>Real estate brokers in Tianjin (no specific companies named as targets)</td>
<td>Alleged monopolistic pricing practices</td>
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</table>
Monopoly Investigations Conducted by SAIC and Its Provincial Branches, 2008-present

Since the initial implementation of the AML in 2008, the SAIC has gradually increased its level of enforcement activity. Based on publicly available sources, SAIC and its provincial branches investigated 23 companies in 2014, an increase from the nearly 15 companies investigated in 2013. In total, SAIC’s dedicated information platform for monopoly investigations includes information on 22 concluded cases, while public news sources indicate two additional ongoing monopoly investigations. The actual number of investigations is likely higher, as it may include cases where SAIC has investigated but not imposed penalties. For example, in a February 2014 press conference, SAIC Deputy Commissioner Sun Hongzhi said that SAIC had authorized its provincial branches to investigate more than 30 competition cases between 2008 and 2014, even though only 14 of those cases (13 completed cases and one ongoing investigation) had been publically announced at that point.

The two tables below include information about price-related investigations that were closed by SAIC and its provincial branches since the launch of the AML in August 2008, including information from SAIC’s official platform and other government and news sources. It also contains information about monopoly investigations that were announced—but according to public sources—have not yet concluded.

Completed Cases

<table>
<thead>
<tr>
<th>Date Announced</th>
<th>Industry</th>
<th>Location</th>
<th>Companies Involved</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 2010</td>
<td>Concrete</td>
<td>Jiangsu</td>
<td>Lianyungang Construction Material and Machinery Association and 16 member companies</td>
<td>Jiangsu investigators ruled that in 2009, the Lianyungang Construction Material and Machinery Association's Concrete Committee and 16 member companies signed agreements to monopolize the market. The deal prohibited all involved from independently signing contracts with buyers. The Jiangsu AIC ruled that this behavior constituted an illegal monopoly agreement under the AML. It confiscated illegal profits of more than RMB 136,481.20 ($20,046) and fined five participants in the cartel a combined total of RMB 530,723.19 ($77,950).</td>
</tr>
<tr>
<td>Date</td>
<td>Category</td>
<td>Region</td>
<td>Description</td>
<td>Details</td>
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<tr>
<td>April 2011</td>
<td>Liquefied Petroleum Gas</td>
<td>Jiangxi</td>
<td>Taihe County Huawei LPG Station and six other gas companies according to the investigation report, Taihe County Huawei Liquefied Petroleum Gas (LPG) Station in October 2008 signed an agreement with six other LPG companies to monopolize and divide up the market, with each company getting a specific piece. The Jiangxi AIC found such behavior illegal under Article 14(1) of the AML, and as a result, confiscated illegal gains of RMB 205,537 ($31,665) and fined Taihe County Huawei LPG Station RMB 130,230 ($20,063).</td>
<td></td>
</tr>
<tr>
<td>January 2012</td>
<td>Second-hand automobiles</td>
<td>Henan</td>
<td>11 secondhand car dealerships in Anyang, Henan SAIC ruled that a group of three secondhand auto dealerships in Anyang, Henan formed a cartel and signed an agreement to set a uniform price and market share in 2007. By 2009, this cartel expanded to include 11 dealerships. SAIC ruled that these activities violated Article 13 of the Antimonopoly Agreement. It then confiscated RMB 1.468 million ($232,691) in illegal profits and imposed a fine of RMB 265,000 ($42,005) on the participants.</td>
<td></td>
</tr>
<tr>
<td>August 2012</td>
<td>Cement</td>
<td>Liaoning</td>
<td>Liaoning Construction Material Industry Association and 12 member companies According to investigation reports, the Liaoning Construction Material Industry Association's Cement Committee and 12 member companies from central Liaoning signed agreements in 2010 to monopolize the market, control production, and set market share. The Liaoning AIC ruled that their behavior constituted an illegal monopoly agreement under the AML and imposed fines of RMB 16.37 million ($2.6 million) on the association and the 12 involved members.</td>
<td></td>
</tr>
<tr>
<td>November 2012</td>
<td>Insurance</td>
<td>Hunan</td>
<td>Yongzhou Insurance Association and 10 member companies SAIC ruled that the Yongzhou (Hunan) Insurance Industry Association and 12 insurance companies in October 2011 signed an agreement establishing a new car insurance service center. This center served as a window for consumer purchases of new car insurance, of which 10 proceeded to set-up. SAIC judged the agreement to be an illegal monopoly agreement under the Antimonopoly Agreement, fining the insurance companies RMB 400,000 ($64,194) and the twelve companies a combined total of RMB 972,000 ($155,990).</td>
<td></td>
</tr>
<tr>
<td>Month</td>
<td>Industry</td>
<td>Location</td>
<td>Company Details</td>
<td>Summary</td>
</tr>
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<tr>
<td>December</td>
<td>Insurance</td>
<td>Hunan</td>
<td>Zhangjiajie Insurance Association and 8 member companies</td>
<td>Investigation reports indicate that the Zhangjiajie (Hunan) Insurance Industry Association and 8 insurance companies in October 2010 signed agreements to establish a new car insurance service center as a window for consumer purchases of new car insurance. SAIC determined the agreement was an illegal monopoly agreement under the Antimonopoly Agreement and fined the association RMB 400,000 ($64,192).</td>
</tr>
<tr>
<td>December</td>
<td>Insurance</td>
<td>Hunan</td>
<td>Changde Insurance Association and 9 member companies</td>
<td>SAIC ruled that the Changde (Hunan) Insurance Industry Association and nine insurance companies in May 2006 signed agreements to establish a new car insurance service center as a window for consumer purchases of new car insurance. SAIC believed the agreement was an illegal monopoly agreement under the Antimonopoly Agreement and fined the association RMB 450,000 ($72,216).</td>
</tr>
<tr>
<td>December</td>
<td>Insurance</td>
<td>Hunan</td>
<td>Chenzhou Insurance Association and 14 member companies</td>
<td>SAIC investigation reports indicate that the Chenzhou (Hunan) Insurance Industry Association and 10 insurance companies in June 2007 signed an agreement to establish a new car insurance service center as a window for consumer purchases of new car insurance. Ultimately, 14 companies participated. SAIC judged the agreement to be an illegal monopoly agreement under the Antimonopoly Agreement and fined the association RMB 450,000 ($72,216).</td>
</tr>
<tr>
<td>December</td>
<td>Concrete</td>
<td>Zhejiang</td>
<td>Jiangshan Tiger Product Concrete, Jiangshan Yongcheng Concrete, and Jiangshan Hengjiang Product Concrete</td>
<td>The Zhejiang AIC ruled that three concrete companies—Jiangshan Tiger Product Concrete, Jiangshan Yongcheng Concrete, and Jiangshan Hengjiang Product Concrete—in September 2009 made an oral agreement to divide the city's concrete market, set prices, and eliminate competition between them. The Zhejiang AIC judged the agreement to be an illegal monopoly agreement under the Antimonopoly Agreement and fined the three companies a total of RMB 1.18 million ($189,367).</td>
</tr>
<tr>
<td>Month</td>
<td>Industry</td>
<td>Region</td>
<td>Description</td>
<td>Final Decision/Outcome</td>
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<tr>
<td>March 2013</td>
<td>Construction Equipment</td>
<td>Zhejiang</td>
<td>The Zhejiang AIC stated that the Cixi Construction and Engineering Testing Association, along with the Cixi Building and Engineering Quality Supervision Station Energy Office, and three companies, signed in March 2010 an agreement to divide market share among the three companies and set ground rules for competition. The Zhejiang AIC determined that this was illegal behavior, but decided in early 2012 to suspend the investigation for one year based on initial submissions provided by the parties. In March 2013, the Zhejiang AIC closed the investigation without punishing the enterprises.</td>
<td></td>
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<tr>
<td>March 2013</td>
<td>Bricks/ceramics</td>
<td>Sichuan</td>
<td>The Sichuan AIC ruled that three major brickmaking companies working under the Yibin Building Material Industry Association Brick Committee, three of its member companies, and one individual signed a series of agreements in May 2009 designed to limit the output of bricks in the market and control market share. The Sichuan AIC judged the agreement to be an illegal monopoly agreement under the Antimonopoly Agreement and fined the three companies a total of RMB 1 million ($161,093). The Sichuan AIC also fined an individual involved in the case RMB 60,000 ($9,666).</td>
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</tr>
<tr>
<td>April 2013</td>
<td>Tourism</td>
<td>Yunnan</td>
<td>According to investigation reports, the Xishuangbanna Tourism Association, Xishuangbanna Travel Agency Association launched a new information platform in 2003. Between 2009 and 2011, the association convinced more than 80 other groups—hotels, attraction, passenger car services, and travel agencies—to sign on. This agreement promoted specific tours to specific stops with punitive actions for those who deviated from those recommendations. Meanwhile, the Xishuangbanna Travel Agency Association and 24 travel agencies signed agreements to set prices and itineraries for travel. The Yunnan AIC found the behavior of both organizations to violate the AML and fined each organization RMB 400,000 ($64,859).</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Industry</td>
<td>Location</td>
<td>Company Name</td>
<td>Description</td>
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<tr>
<td>July 2013</td>
<td>Civilian Blasting</td>
<td>Guizhou</td>
<td>Qianzhong Civilian Blasting Equipment Operating Company</td>
<td>The Guizhou Anshun AIC found that a local subsidiary of the Qianzhong Civilian Blasting Equipment Operating Company was guilty of abuse of market dominance and excessive prices and fined the company RMB 127,000 ($20,715).</td>
</tr>
<tr>
<td>December 2013</td>
<td>Water supply engineering</td>
<td>Guangdong</td>
<td>Huizhou Daya Bay Yiyuan Purified Water</td>
<td>Investigation reports state that Huizhou Daya Bay Yiyuan Purified Water used its strong market position to require local real estate companies to sign agreements bundling water supply with other services. The Guangdong AIC determined that Yiyuan's behavior constituted a violation of Article 17(5) of the AML and required Huizhou halt business practices, turn over illegal gains of just over RMB 860,000 ($142,056), and to pay a fine of two percent of Yiyuan’s 2012 revenue, or just under RMB 2.4 million ($396,434).</td>
</tr>
<tr>
<td>June 2014</td>
<td>Sports and entertainment</td>
<td>Beijing</td>
<td>Shankai Sports International</td>
<td>Shankai Sports International—the authorized vendor of package tours to the 2014 FIFA World Cup in Brazil for China, Hong Kong, and Macao—was accused of bundling various products and services, such as game tickets, accommodation, food and beverages, multilingual hostesses, parking, and requiring customers to purchase set bundles. This violated a March 2011 agreement with Beijing China Travel Service Company in which that agency was assigned to arrange such hotel, transportation, and tourism services. The Beijing AIC launched an investigation, but suspended it in June 2014, stating that Shankai admitted that its actions violated the AML and it took undisclosed steps to address concerns.5</td>
</tr>
</tbody>
</table>

5 Since Shankai had carried out corrective measures as it promised, Beijing AIC terminated the investigation in January 2015.
<table>
<thead>
<tr>
<th>Date</th>
<th>Industry</th>
<th>Location</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2014</td>
<td><strong>Fireworks</strong></td>
<td>Inner Mongolia</td>
<td>Six fireworks companies in Chifeng, Inner Mongolia that were designated by local product production safety bureaus as the sole wholesalers for various fireworks products were accused of abusing their dominant market position. Specifically, these companies were accused of requiring distributors to apply for fireworks purchases, use standard markings, and pay for fireworks in advance throughout the year or see their purchasing quotas cut. Four of the companies also signed an illegal monopoly agreement. The Inner Mongolia AIC fined the six companies RMB 583,700 ($94,580).</td>
</tr>
<tr>
<td>July 2014</td>
<td><strong>Tobacco</strong></td>
<td>Inner Mongolia</td>
<td>The Chifeng Subsidiary of the Inner Mongolia Tobacco Company was accused of using its market position to bundle sales, requiring retailers to purchase both popular and less popular cigarette products. The Inner Mongolia AIC fined the company RMB 5.95 million ($964,108), or one percent of sales.</td>
</tr>
<tr>
<td>October 2014</td>
<td><strong>Sand and gravel mining</strong></td>
<td>Chongqing</td>
<td>Four Chongqing quarry operators in Wuxi County were accused of setting a verbal monopoly agreement in order to divide the sand and gravel sales required to construct the local portion of the Fengxi Highway. The Chongqing AIC imposed fines of RMB 400,000 ($65,440) on the four operators.</td>
</tr>
<tr>
<td>October 2014</td>
<td><strong>Tobacco</strong></td>
<td>Jiangsu</td>
<td>The head of the Pizhou Subsidiary of the Xuzhou Tobacco Company (Dai Xiangqin) was accused of abusing his company’s dominant market position to unfairly determine supply allotted to different retailers without reasonable cause. The Jiangsu AIC fined Dai just over RMB 1.72 million ($281,394), or one percent of the sales revenue made from selling cigarettes under limited supply conditions.</td>
</tr>
</tbody>
</table>
November 2014 | Natural gas | Chongqing | Chongqing Gas Group | Chongqing Gas Group Co., Ltd. overcharged its customers for natural gas using fee rates that were inflated using a “correction coefficient.” The Chongqing AIC posted an April decision ruling that the activity was “abuse of market dominance”, and had violated the AML’s Article 17. Since the company had cooperated, the Chongqing AIC decided to lighten its punishment based on company cooperation and attempts to rectify its behavior, as well as the relatively narrow application of the “correction coefficient.” It fined the company RMB 1.79 million ($291,500), or one percent of its 2010 sales revenue.

December 2014 | Concrete | Zhejiang | Zhejiang Shangyu Concrete Association and 8 member companies | The Concrete Association and 8 member companies in Shangyu, Zhejiang were determined to be using monopoly agreements to divide local market share, in violation of the AML’s Article 16 and Article 46. The Zhejiang AIC fined the association RMB 10,000 ($1,611), and imposed fines of between RMB 10,000 ($1,611) and RMB 400,000 ($64,447) on the eight member companies.

February 2015 | Water supply | Hainan | Hainan Dongfang Water Company | Dongfang Water Company was accused of abusing its market dominance to impose additional water deposit on the new users when providing water supplying services in the city, in violation of the AML’s Article 17 and Article 47. The Hainan AIC confiscated the illegal gains of RMB 38,521 ($6,148) and fined the company RMB 593,208 ($94,683), or two percent of its sales revenue of the previous year.

### Ongoing Cases

<table>
<thead>
<tr>
<th>Date Launched</th>
<th>Industry</th>
<th>Companies involved</th>
<th>Potential Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2013</td>
<td>Food and beverage packaging</td>
<td>Tetra Pak</td>
<td>Alleged abuse of market dominance</td>
</tr>
<tr>
<td>July 2014</td>
<td>Information technology</td>
<td>Microsoft</td>
<td>Alleged abuse of market dominance</td>
</tr>
</tbody>
</table>
Update: China’s Innovation & Government Procurement Policies
May 2015

Executive Summary

Innovation is an increasingly important theme for Chinese policymakers, viewed as a way to promote economic development and upgrading in China and bring increased economic benefits to the Chinese public. US companies are active innovators in China, with sizable operations and R&D facilities designed to create and deliver innovative products and services to Chinese companies and consumers.

Chinese innovation policies create both opportunities and challenges for American companies. Many of the challenges stem from the ways in which China implements its innovation incentive policies and how these policies treat domestic and foreign companies. Indigenous innovation policies that discriminate against foreign companies and their products in areas such as government procurement and intellectual property have long been a concern for the US-China Business Council (USCBC).

In November 2011, the State Council addressed concerns about innovation and procurement policies by releasing a notice requiring provincial and local governments to halt implementation of any measures that used government procurement preferences to promote indigenous innovation products and services. The measure also required authorities to review existing regulatory documents for provisions that may need to be eliminated, and to report results to the State Council before the end of December 2011.

More than three years later, there are signs that implementation of these commitments is lagging. Some sub-national governments have yet to publicly comply with these requirements. Additionally, a growing number of provincial and local governments have announced new indigenous innovation policies that favor domestic products in government procurement processes, contradicting State Council rules.

USCBC’s findings:

• On the positive side, as of May 2015, 19 provincial governments had released notices and announcements to comply with central government requirements. Fifteen provincial governments—Anhui, Beijing, Chongqing, Guangdong, Guizhou, Hebei, Hunan, Inner Mongolia, Jiangsu, Jiangxi, Jilin, Liaoning, Tianjin, Xinjiang, and Yunnan—complied to some degree after the November 2011 State Council notice was issued. An additional four—Fujian, Gansu, Shandong, and Shanghai—did so before the notice was issued. An additional 41 sub-provincial governments—ranging from Chengdu, Sichuan to Wuxi, Jiangsu—have issued notices and announcements to comply with central government requirements.

• However, significant work still remains: 12 provinces have not released any measures since January 2011 to implement central-level pledges, including some locations where foreign companies have significant investment, such as Sichuan and Zhejiang provinces.

• Moreover, USCBC has found 31 new local regulations formally linking indigenous innovation and government procurement released even after such links were prohibited by the State Council’s November 2011 notice. This number has been increasing each year since 2011, suggesting work still needs to be done on these issues.

USCBC recommends that US government officials re-prioritize this issue to ensure full and consistent compliance, including at the Innovation Dialogue, Strategic & Economic Dialogue, Joint Commission on Commerce and Trade, and other relevant bilateral meetings.
nnovative US companies view China’s drive to promote innovation as an important step in its economic
development, creating both opportunities and challenges. In the US-China Business Council (USCBC)’s
2014 member company survey, for example, 11 percent of companies surveyed said that China’s
innovation promotion policies have had a positive impact on sales or operations, compared with 5 percent
who said that it had had a negative impact. Of remaining companies who said these policies had not yet had
an impact on sales, 45 percent said that such policies present a strategic opportunity, while 39 percent said
that innovation policies are a strategic concern.

Many of these concerns, however, stem from the ways in which China implements its innovation policies and
how these measures treat domestic and foreign companies. Indigenous innovation policies that discriminate
against foreign companies and their products in areas such as government procurement have long been of
concern to the US-China Business Council (USCBC) and its member companies.

In January 2011, and in response to detailed discussions between the US and Chinese governments on
indigenous innovation policies such as the Ministry of Science and Technology (MOST) proposed national
catalogue of indigenous innovation products, Chinese President Hu Jintao attested that China would eliminate
existing measures that used government procurement to promote indigenous innovation products and services
at the expense of foreign companies. This was followed by subsequent commitments at the May 2011 Strategic
and Economic Dialogue (S&ED) and the November 2011 Joint Commission on Commerce and Trade (JCCT) to
eliminate regulations and policies linking innovation and government procurement.

In the subsequent months, central and provincial governments have taken specific steps toward implementing
these commitments. In June 2011, the PRC Ministry of Finance (MOF) and other agencies published notices
invalidating three regulations linking indigenous innovation and government procurement and removed the
draft accreditation rules for indigenous innovation products in July. These national regulations had comprised
important parts of the PRC regulatory framework promoting government procurement of indigenous
innovation products and had spurred national, provincial, and local government agencies to release similar
policies.

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

Subsequent government actions to amend or eliminate some of these regulations and catalogues show that
many provinces and local governments took tangible steps to meet these commitments. Based upon publicly
available information, 19 of China’s provinces (such as Guangdong and Jiangsu) and provincial-level cities
(such as Beijing and Shanghai) demonstrated some kind of specific, concrete action in late 2011. The majority of
provincial governments did so in direct response to the November 2011 circular.

Not all provincial and municipal governments, however, complied. Based on USCBC research, several
important provinces (such as Zhejiang and Sichuan) did not publicly demonstrate that they had complied with
the notice. Of greater concern, many provincial and sub-provincial government agencies have released new
policies and regulations that re-link indigenous innovation and government procurement. To date, USCBC has
uncovered 31 new policies released since the November 2011 State Council notice requiring provincial and
local governments to halt implementation of any such measures. These policies have increased each year, from
one policy released in 2011 to 12 policies released in 2014. Three such policies have already been released in
2015.
These measures include the following:

2011
- A notice announcing budget management of government procurement released in December 2011 by the local government of Cheng County, Longnan, Gansu, indicating that the county government procurement budget should incorporate preferential purchase of indigenous innovation products.

2012
- Regulations on provincial science and technology progress, passed by the Shaanxi provincial government in May 2012, stating that the government should put indigenous innovation products developed by local enterprises and institutions into its government procurement catalogue.
- Rules to support local enterprises released in June 2012 by the local government in Zhenjiang, Jiangsu, encouraging use of the indigenous innovation product catalogue and government procurement to support local enterprises.
- Interim measures announced by the Changsha municipal government in July 2012, requiring local government agencies, units, and state-owned enterprises and groups conducting government procurement to preferentially purchase the products listed in a catalogue of indigenous innovation and energy efficient products of Changsha when other conditions are equal. The catalogue was released in October 2012; more products were added in December 2013 and August 2014. (Note: Neither the full text of the interim measures nor the December 2013 batch of products added to the catalogue was publicly available at the time this report was released.)
- A circular released in August 2012 by the Hainan provincial government, requiring local government agencies, units, and state-owned enterprises and groups conducting government procurement to offer preferential government procurement for local indigenous innovation products and services, and assigning the provincial financial department and development and reform commission to implement these procedures.
- A notice reviewing 2012 government procurement work released in December 2012 by the municipal government of Yantai, Shandong, describing a scoring mechanism to evaluate government agencies’ procurement work that includes points based on procurement of indigenous innovation products.
- Implementing plans for fostering high-tech enterprises in Henan issued in June 2012 by the province’s Science and Technology Department, recommending that the government preferentially include products incorporating core intellectual property held by high and new-technology enterprise (HNTA) companies in its procurement catalogue.

2013
- A 2012 provincial government work report, released by the Hubei provincial government in January 2013, stating that the government would expand the scope of preferential government procurement of indigenous innovation products.
- Regulations on the Haikou National New High-Tech Industrial Development Zone released in January 2013 by the municipal government of Haikou, Hainan, stating that district and municipal authorities should purchase indigenous innovation products provided by innovative companies in the zone if their prices are at the same level as other bidders and their technology meets government procurement standards.
- Opinions to promote the local cultural industry released in February 2013 by the local government of Xiangshan County, Ningbo, Zhejiang, stating that the county government should gradually increase the ratio of cultural products and services products in their government procurement catalogue that have intellectual property from the county in order to promote local enterprises.
- Implementing opinions on establishing a “Zhenjiang Talent Zone” issued in February 2013 by the municipal government of Zhenjiang, Jiangsu, stating that the government will preferentially add indigenous innovation products into their government procurement catalogue.
- A notice announcing 2013-2014 government procurement work released in February 2013 by local authorities in Hanggin Banner, Inner Mongolia, stating that the government should “actively support” indigenous innovation products through government procurement, and should give prior consideration of procurement for domestic indigenous innovation companies if they have the same quality or price conditions.
• A circular listing 114 indigenous innovative products as the government procurement preferences issued in March 2013 released by the local government in Yinzhou District, Ningbo, Zhejiang, stating that the release of the catalogue was to encourage government procurement and preferential purchases by entities with state-owned capital of products, materials, equipment, and services from the district.

• Implementing opinions on accelerating the development of small and medium-sized technology firms released by the authorities of Tianjin Binhai New Area in May 2013, suggesting that local government procurement should prioritize indigenous innovation goods and services from their government procurement catalogue.

• Rules to support local enterprises released in August 2013 by the local government in Yangzhou, Jiangsu, that encourage government agencies to preferentially procure accredited HNTE products above the provincial level, as well as software products, as a means of supporting the city’s indigenous innovation products.

• A circular stipulating annual government procurement catalogues and standards released in December 2013 by the provincial government in Fancheng District, Xiangyang, Hubei, calling for the district governmental agencies to include indigenous innovation products in the catalogue for annual procurement activities.

2014

• Implementing opinions on the protection of intellectual property rights issued in January 2014 by the Sichuan Provincial Intellectual Property Office, suggesting that the local government should carry out preferential procurement of indigenous innovation products when they have the same conditions as other products.

• A 2014-2015 government procurement catalogue released by the government of Shilou County, Shanxi, in February 2014, stipulating that the local authorities should prioritize indigenous innovation products in government procurement.

• Guidelines for developing leading innovation enterprises released by the Science and Technology Bureau of Changshu, Jiangsu, in March 2014 that identify the accreditation and government procurement of indigenous innovation products as a preferential fiscal measure to cultivate innovation enterprises.

• Opinions about accelerating the development of leading industrial enterprises, released in March 2014 by the municipal government of Ningbo, Zhejiang, that encourage the inclusion of indigenous branded goods and products incorporating intellectual property held by leading indigenous enterprises in the government procurement catalogue and the indigenous innovation quality products catalogue.

• A circular on government procurement and promotion of advanced products in Zhongguancun Science & Technology Park, issued in April 2014 by the Beijing municipal government, that sets fiscal incentives for governmental agencies and state-owned enterprises to purchase advanced technology and products developed by Zhongguancun-based enterprises, universities, and research institutes. Focal areas include office supply products; products used in environmental protection, public safety, health care, and transportation management; and infrastructure products.

• A circular announcing 2014-2015 local government procurement catalogue, standards, and tendering work released in April 2014 by the local government in Aohan Banner, Inner Mongolia, requiring that the local authorities preferentially budget for and purchase indigenous innovation products.

• Rules on science and technology in Luoyang, Henan, approved in September 2014 by that province’s people’s congress, stating that the government agencies can use funds to preferentially procure products based on innovation taking place in Luoyang, including products under development.

• A circular announcing 2014-2015 local government procurement policies released in July 2014 by the government of Zhuozi County, Inner Mongolia, stating that the local authorities should make preferential purchase of indigenous innovation products and environmentally friendly products.

• A circular announcing 2015 local government procurement policies released in October 2014 by the local government in Jungar Banner, Inner Mongolia, requiring that the local authorities preferentially buy indigenous innovation products.
A circular on annual government procurement released by the municipal government of Jinzhou, Hubei, in December 2014, stating that the government will include indigenous innovation products in its procurement catalogue.

Opinions about encouraging high-tech enterprises released in December 2014 by the municipal government of Luliang, Shanxi, stating that local government funds must be used to preferentially procure indigenous innovation products.

A annual government procurement circular released in December 2014 by the municipal government of Suqian, Jiangsu, stating that the local government should preferentially procure indigenous innovation products in order to support development of small and medium-sized enterprises.

2015

A circular on annual government procurement issued in February 2015 by the government of Xinshan County, Hubei, requiring municipal authorities to preferentially purchase indigenous innovation products.

A circular establishing a catalogue of indigenous innovation products released in February 2015 by the Economic and Information Technology Bureau of Yinzhou District, Ningbo, Zhejiang, indicating that the government will support such products through preferential government procurement and use of state-owned investment funds.

A notice regarding the 2015 budget released in March 2015 by the Finance Bureau of Nanxian County, Hunan, stipulating the preferential procurement of indigenous innovation products and local products.

USCBC has also uncovered statements from government officials, agencies, and stakeholders calling for, or discussing the need to implement, government procurement preferences for government procurement. This includes statements from the deputy director of the State-Owned Assets Supervision and Administration Commission (March 2015), representatives of the Municipal Statistics Bureau of Zhuzhou, Hunan (October 2013), and the Hunan Provincial Academy of Social Sciences (December 2014).

To facilitate continued discussion about how China has implemented its indigenous innovation commitments, USCBC has issued regular reports detailing central, provincial, and local policy changes that relate to China’s pledges. This next section of the report is designed to inform policymakers in both countries on progress towards full implementation of China’s commitments at the provincial and local level since January 2011, with a particular focus on those documents released since the November 2011 notice.

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

Anhui

On July 8, 2011, the Anhui Finance Bureau announced that it would suspend the implementation of 2007 provincial rules that regulate government procurement of indigenous innovation products, including provisions that cover drafting and use of provincial catalogues.

In late November or early December 2011, the Anhui provincial government issued a circular that is believed to order all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011.

On November 30, 2011, four Anhui governmental agencies, including the Anhui Commission of Science and Technology and the Anhui Finance Bureau, jointly released a circular announcing that it would halt implementation of the 2007 Anhui Provisional Indigenous Innovation Product Accreditation Management Rules as of December 1, 2011. (Link inactive, but formerly available at www.ahzwgk.gov.cn/xxgkweb/showGKcontent.aspx?xxnr_id=95297)

On December 8, 2011, the Chuzhou municipal government released a circular announcing the launch of its work to eliminate measures linking innovation and government procurement. The notice required relevant departments to draft a list specifying which regulatory documents would remain in effect, and which would be discarded or suspended. Departments should eliminate such documents by December 12, 2011, and should report results to the public and to the Anhui provincial government.
www.czzwgk.gov.cn/openness/detail/content/53db5d5a4261f2d01b4edcc8.html

Beijing
On September 7, 2011, the Beijing Finance Bureau released a circular, which referenced the June 2011 MOF circular, calling on municipal government agencies to implement MOF government procurement policies. It also stated that agencies should stop implementation of three local measures transmitting the central-level notices invalidated in the June MOF circular: the 2007 Evaluation Measures on Indigenous Innovative Products for Government Procurement, the 2007 Administrative Measures on Budgeting for Government Procurement of Indigenous Innovation Products, and the 2007 Administrative Measures on Government Procurement Contracts for Indigenous Innovation Products. (Link inactive, but formerly available at www.bjsjs.gov.cn/zfcg/zcfg/8a8481d2345a594701355ba4a2ef028c.html)

On December 1, 2011, the Beijing municipal government released a circular announcing that it would suspend the implementation of some related measures linking innovation and government procurement, including specific provisions in the 2006 Opinions on Strengthening Indigenous Innovation Capacity and Building an Innovative City, the 2008 Opinions on Pilot Work to Develop Government Procurement of Indigenous Innovation Products in Zhongguancun Science & Technology Park, the 2009 Opinions on Scientific Promotion of Industry Development in Ecological Conservation Development Zones, and the 2010 Opinions on Promoting the Establishment of Industry Development Guidance in Beijing.
cwc.bjedu.gov.cn/publish/portal13/tab784/info18781.htm

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

Chongqing
On July 14, 2011, the Chongqing Finance Bureau announced that it would no longer award extra points for indigenous innovation products in the Chongqing municipal government procurement process. The bureau also said it would eliminate such points from the 2010 standard text for tendering documents.
On November 29, 2011, the Chongqing municipal government released a circular announcing that all government entities at or below the municipal level must halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Agencies and district governments must submit lists of regulations that will remain in effect, as well as those that will be eliminated or suspended, to the city government by December 15. The Chongqing Legislative Office will summarize progress reports and submit its final report to the State Council by December 25.

On December 5, 2011, the Banan district government under Chongqing city released a circular announcing that government entities within the district must halt implementation of any regulations linking innovation and government procurement by December 1, 2011, and must also halt implementation of any regulations based on related regulations now invalidated by NDRC, MOST, and MOF. Agencies must submit suggested regulations to eliminate to the Banan Legislative Office by December 12, which must then report the results of such work to the Chongqing Legislative Office by December 15.

On January 17, 2012, the Chongqing municipal government announced the results of its round of regulatory changes, stating that county governments had eliminated five regulatory documents linking innovation and government procurement and had revised two others. Chongqing’s government is also currently revising Article 8 of the 2008 Opinions on Encouraging Enterprises to Expand Research & Development Investments to Increase Indigenous Innovation Capabilities.

On July 11, 2011, the Fujian Finance Bureau announced that it would suspend implementation of 2007 provincial rules regulating government procurement of indigenous innovation products, as well as all policies on government procurement preferences for indigenous innovation products.

On July 11, 2011, the Xiamen Bureau of Science and Technology released a circular announcing that the city would “temporarily suspend” its 2011 work on accrediting indigenous innovation products in light of the July central-level interagency circular. Xiamen’s circular made no reference to existing catalogues in Xiamen.

On July 20, 2011, the Zhangzhou Government Procurement Center released a circular announcing that it would suspend implementation of any policies providing preferences in government procurement to indigenous innovation products that appear in the center’s bidding documents.

On August 24, 2011, the Fujian Finance Bureau announced that it would suspend implementation of the 2007 Fujian Trial Administrative Measures on the Accreditation of Provincial Indigenous Innovation Products.

On July 6, 2011, the Gansu Finance Bureau announced that it would suspend implementation of indigenous innovation-related provisions included in broader provincial measures on procurement of energy saving, environmental, and indigenous innovation products.
Guangdong

- On August 2, 2011, the Guangdong Finance Bureau announced that it would suspend implementation of the 2009 guidance on government procurement of indigenous innovation products starting on August 1, 2011. (Full text attached in www.haizhu.gov.cn/site/main/gov/zfcg/a/A634539201500558750.pdf)

- On August 16, 2011, the Qingyuan municipal government released a circular referencing the August 2011 Guangdong Finance Bureau circular and requesting relevant government agencies, including finance and science & technology bureaus at the city, district, and county level, to comply. qingyuan.gdgpo.com/show/id/4028708332b5d20e0132f752ffde0c92.html

- On August 17, 2011, the Shaoguan municipal government released a circular referencing the August 2011 Guangdong Finance Bureau circular and requesting relevant government agencies, including finance and science & technology bureaus at the city, district, and county level, to comply. qingyuan.gdgpo.com/show/id/402870833244646501324bf4cde31815.html

- On October 8, 2011, the Haizhu district government of Guangzhou released a circular referencing the August 2011 Guangdong Finance Bureau circular and requesting relevant government agencies at the district and sub-district level to comply. (Full text attached in www.haizhu.gov.cn/site/main/gov/zfcg/a/A634539201500558750.pdf)

- In late 2011, the Guangdong provincial government released a circular that is believed to order all government agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents. (Full link not available, but referenced in zwgk.gd.gov.cn/007335807/201204/t20120405_311243.html)

- On January 9, 2012, the Chaozhou municipal government released a circular calling for governments at or below the municipal level to eliminate or revise regulatory documents linking innovation and government procurement. Such regulatory changes must be completed and reported to the Chaozhou Finance Bureau by February 15, 2012. zwgk.gd.gov.cn/007335807/201204/t20120405_311243.html

- On January 9, 2012, the Xinhui district government under Jiangmen city released a circular calling on governments and agencies at or below the district level to eliminate or revise regulatory documents linking innovation and government procurement. Such regulatory changes must be completed and reported to the Xinhui Legislative Office by February 15, 2012. (Link inactive, but formerly available at www.xinhui.gov.cn/zwgk/GBYTJ/QZFGB/201205/P020120524638115803821.doc)

- On March 8, 2012, six Jiangmen municipal government agencies, including the Jiangmen Science and Technology Bureau and the Jiangmen Finance Bureau, released a circular announcing revisions to the 2009 Jiangmen Provisional Management Rules for Indigenous Innovation Product Accreditation, including the elimination of Article 10, which had called for advantages in government procurement for indigenous innovation products. fzj.jiangmen.gov.cn/FileDiscuss.aspx?Id=639

- On March 13, 2012, the Zhuhai municipal government released a circular calling for all relevant government agencies to eliminate or revise regulatory documents linking innovation and government procurement. Such regulatory changes must be completed before December 1, 2011, and must be posted for the public on the municipal government website as well as reported to the Zhuhai Finance Bureau and the Zhuhai Legislative Office. www.zhcz.gov.cn/ljcz/gzdt/201203/t20120313_279376.html
• On April 17, 2012, the Guangzhou municipal government released a circular announcing that the city would immediately halt the implementation of the Guangzhou Management Rules for Indigenous Innovation Product Accreditation.

sfzb.gzlo.gov.cn/sfzb/file.do?fileId=2C9089253734F024013739EB5CC90000

Guangxi

• On January 5, 2012, the Liuzhou municipal government autonomous region released a circular announcing that the city would start reviewing and revising regulatory documents linking innovation and government procurement. The notice stated that the municipal government would halt implementation of any such regulatory documents by December 1, 2011. Agencies must submit suggested regulations to eliminate to the Liuzhou Legislative Office by January 20; that office must then report the results of such work to the municipal government by January 16. (Link inactive, but formerly available at www.liuzhou.gov.cn/xxgk/jcxgk/zcwj/gfxwj/201408/t20140829_686984.html)

• On January 9, 2012, the Liunan district government under Liuzhou city released a circular announcing that the district would start reviewing and revising regulatory documents linking innovation and government procurement. The notice stated that the district government would halt implementation of any such regulatory documents by December 1, 2011.

www.liuzhou.gov.cn/lzgovpub/lzszf/gqzf/A090/201203/t20120331_523792.html

• On January 16, 2012, the Fangchenggang municipal government announced the results of its work to review and revise regulatory documents linking innovation and government procurement released before December 20, 2011. According to its report, the review included five documents released by the municipal government, all of which remain in effect, and four departmental documents, of which one remains in effect and three have been suspended.

www.fcgs.gov.cn/Info/csdt/12010.aspx

Guizhou


Hebei

• On December 22, 2011, the Hebei Finance Bureau released a circular referencing the June 2011 MOF notice and requesting relevant government agencies at all levels to comply.

www.hebgp.gov.cn/upnews/upfiles/zfcg_zcfg/TS_LX20111222162415jg@ng.htm

• In early February 2012, the Hebei Finance Bureau issued a circular calling on all government entities at or below the provincial level to halt implementation of the 2011 Hebei Indigenous Innovation Product Government Procurement Catalogue. (Full link not available, but referenced in www.hebgp.gov.cn/upnews/upfiles/zfcg_zcfg/LF2012314152831jg_nf.htm)

• On December 31, 2011, the Langfang municipal government released a circular requiring invalidating the Hebei Indigenous Innovation Product Government Procurement Catalogues and halting implementation of the Hebei Provincial Department of Finance’s Circular on preferential government procurement of specified products.

www.lfcz.gov.cn/Item/132.aspx
On December 1, 2011, the Hunan provincial government released a circular announcing that all government entities at or below the municipal level must halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Government entities must complete this work by December 31, 2011 and report results. www.yylq.gov.cn/html/zhengwugongkai/zwgkzcwj/11216.html

On December 14, 2011, the Yueyanglou district government under Yueyang city released a circular announcing that government entities, in accordance with Hunan provincial measures, must eliminate or revise any regulatory documents linking innovation and government procurement and announce which documents remain in effect, and which are eliminated or suspended. The notice called on all relevant departments to submit the results of these efforts by December 20, 2011. www.yylq.gov.cn/html/zhengwugongkai/zwgkzcwj/11216.html

On December 19, 2011, the Hengyang municipal government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Agencies must submit suggested regulations to eliminate to the Hengyang Legislative Office by December 20. Regulatory changes must be completed by December 25, 2011. (Link inactive, but formerly available at www.hengyang.gov.cn/main%5Chyzw/zfxxgk/fggw/szfbgswj/1_17888/default.shtml)

On December 19, 2011, the Beihu county government (Chenzhou city) released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Regulatory changes must be completed by December 20, 2011. www.czbeihu.gov.cn/dtxx/tzgg/content_61384.html

On December 19, 2011, the Changsha municipal government released a circular announcing that it will revise regulatory documents that link innovation and government procurement no later than December 31, 2011. Regulatory changes would be implemented as soon as revisions are released. www.changsha.gov.cn/xxgk/szfbmxxgkml/szfgzbxgkml/szffzb/tzgg_1966/201201/20120104_299869.html

On December 31, 2011, the Taoyuan municipal government released a circular announcing that it had completed the required document removal work, confirming that the two existing regulations dealing with government procurement were both valid and that there were no documents that required elimination or suspension. taoyuan.gov.cn/Web/Article/84401f06-ed8b-4af8-9682-04c738714143


www.xiangtan.gov.cn/new/wszf/wjgz/zfwj/szfgfxwj/content_26596.html

Inner Mongolia
• On December 21, 2011, the Inner Mongolia autonomous regional government issued a circular referencing the November 17 State Council notice and calling on governments below the provincial level to implement the policy and submit progress reports to the Inner Mongolia Legislative Office by January 31, 2012.

www.nmfzrb.gov.cn/information/fzb17/msg548586222.html

• On February 24, 2012, the Inner Mongolia Health Department announcing that it would halt implementation of a 2007 notice aimed at implementing the spirit of MOF rules on indigenous innovation and government procurement.


Jiangsu
• In November 2011, the Jiangsu provincial government released a circular that is believed to order all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011.

(Full link not available, but formerly referenced in

• On November 25, 2011, the Changzhou Municipal Working Group for Comprehensive Promotion of Legal Administration Work released a circular announcing that implementation of any measures that link innovation and government procurement within regulatory documents should be halted no later than December 1, 2011, and that all government agencies at or below the Changzhou municipal level should review existing regulations for compliance. The municipal committee, city government, and directly administered offices should report initial results of their review and recommended changes to the Changzhou Legislative Office by December 5, 2011, while all municipal-level government organs, district governments, and governments of other directly administered cities should report to the same office by December 10, 2011.

(Link inactive, but formerly available at
www.changzhou.gov.cn/gi_news/133994310012279)

• On November 29, 2011, the Qidong municipal government released a circular announcing that any measures that link innovation and government procurement within regulatory documents should be eliminated and implementation halted no later than December 1, 2011. Regulatory changes should be completed by December 10, 2011, with progress reports given to the Qidong Legislative Office the same day.

(Link inactive, but formerly available at
On December 6, 2011, the Wuxi municipal government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Relevant departments and agencies should submit progress reports to the Wuxi Legislative Office by December 10, 2011. That office will summarize and submit a final report to the municipal government by December 15, 2011.

On December 8, 2011, the Donghai municipal government released a circular announcing that government entities, in accordance with Jiangsu provincial measures, must eliminate or revise any regulatory documents linking innovation and government procurement and announce which documents remain in effect, and which are eliminated or suspended. The notice called on all relevant departments to submit results of removal work by December 20, 2011.


On January 10, 2012, the Nanjing municipal government issued a decision announcing the elimination and revision of a broad mix of documents – including some related to innovation and government procurement. These changes include the elimination of 2008 measures to promote innovation in enterprises, and revisions to 2009 measures on promoting enterprise growth and stable, rapid development and to 2010 policies for promoting the software and information service industries. While revisions removed explicit ties between government procurement and innovation, the notices still call for government support and promotion of indigenous innovation software products and services.

On February 3, 2012, the Xuzhou municipal government announced the results of its round of regulatory changes designed to eliminate or revise regulatory documents linking innovation and government procurement, stating that city government agencies had eliminated specific provisions in the 2006 Circular on Encouraging and Promoting Scientific and Technological Innovation and Start-ups and the 2009 Outline of Xuzhou’s Intellectual Property Strategy.

Jilin

On November 28, 2011, the Jilin provincial government released a notice rejecting a proposed policy that would have offered preferential government procurement to a local computer brand, Zhuo’er. In its rationale for rejecting the proposal, the notice cites the June 2011 Ministry of Finance notice and states that Jilin provincial authorities had halted implementation of relevant policies linking indigenous innovation and government procurement as a primary rationale for rejecting the proposal. (Link inactive, but formerly available at jl.gov.cn/zwgk/yatabl/zxwylmta2010/2011_38838/201311/t20131128_1573761.html)

Liaoning


On January 11, 2012, the Shenyang Finance Bureau released a circular announcing that it would halt implementation of 2009 implementing measures to promote model government procurement bidding activities no later than January 1, 2012.

Ningxia

On December 21, 2011, the Yanchi county government released a circular calling for governments at or below the county level to eliminate or revise regulatory documents linking innovation and government procurement. All departments and agencies should report suggestions for regulatory changes or results of such work to the Yanchi county government by December 25, 2011. (Link inactive, but formerly available at xxgk.yanchi.gov.cn/detail.asp?id=1592)

On January 18, 2012, the Dawukou autonomous regional government announced that it would halt the implementation of the Administrative Regulations for Dawukou Government Procurement.

On February 17, 2012, the Wuzhong Municipal Legislative Office released a review of its 2011 work and its direction for 2012. This report notes that it had completed a review of local regulations to ensure compliance with requirements not to link innovation policies and government procurement, and had not found any regulations that were out of compliance.

Shandong

On July 4, 2011, the Shandong Finance Bureau released a circular, which referenced the June MOF circular, calling on provincial government agencies to implement MOF government procurement policies. (Link inactive, but formerly available at www.ccgp-shandong.gov.cn/fin_info/servlet/attach?type=site&id=832)
Shanxi

- On December 13, 2011, the Anze county government called for governments at all levels to eliminate or revise regulatory documents linking innovation and government procurement in line with China’s external commitments. Such regulatory changes must be completed by December 25, 2011, and governments should post online a list of which documents are still in effect and which have been eliminated or suspended. Regulatory documents that are not listed online in this manner should cease implementation after January 1, 2012.
  www.anze.gov.cn/info/news/shows/2697.htm

- On February 12, 2012, the Gujiao municipal government released a circular announcing that all government entities at or below the municipal level must halt implementation of any measures that link innovation and government procurement within regulatory documents, and must begin work to eliminate or revise regulatory documents linking innovation and government procurement. Results of the work must be reported to the Gujiao Legislative Office by February 20, 2012.
  (Link inactive, but formerly available at www.sxgujiao.gov.cn/gfgw/bgtwj/2010bgt/201203/561314199.html)

Shanghai

- On July 1, 2011, the Shanghai branches of MOST and MOF announced that Shanghai’s 2009 catalogue of indigenous innovation products would no longer be valid, effective immediately.
  www.czj.sh.gov.cn/zcfg/gfxwj/zcfg/201107/t20110708_128211.html

Sichuan

- On July 11, 2011, the Chengdu Government Procurement Service Center announced that it would no longer award extra points for indigenous innovation products during the evaluation process for five specific municipal-level government procurement projects as of July 1.

Tianjin

- On July 1, 2011, the Tianjin Finance Bureau announced that it would no longer award extra points for nationally and locally accredited indigenous innovation products in the evaluation process for government procurement programs starting July 1, and released a list of bidding projects prior to July 1 that would need to be reviewed for compliance with the new notice.

  www.tjjj.gov.cn/upload/File/20111215160915059.pdf

- On June 26, 2012, the Tianjin municipal government released a circular, announcing that the city would halt implementation of the 2009 Tianjin Provisional Management Rules for Indigenous Innovation Product Accreditation Management Rules.
  www.tjzfxxgk.gov.cn/tjep/ConInfoParticular.jsp?id=33352
Xinjiang


- On December 8, 2011, the Hutubi county government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Relevant departments and agencies should complete regulatory changes and report to the Hutubi Legislative Office by December 10, 2011. [www.htb.gov.cn/arc,70,769.php](www.htb.gov.cn/arc,70,769.php)

Yunnan

- On August 16, 2011, the Yunnan Finance Bureau released a circular referencing the June 2011 MOF notice and requesting relevant government agencies at all levels to comply. [www.ynwscz.gov.cn/show.asp?id=1925](www.ynwscz.gov.cn/show.asp?id=1925)

- On September 20, 2011, the Wenshan municipal government released a circular referencing the August 2011 Yunnan Finance Bureau circular and requesting relevant government agencies, including finance bureaus at the city, district, and county level, to comply. [www.ynwscz.gov.cn/show.asp?id=1925](www.ynwscz.gov.cn/show.asp?id=1925)

- In late November or early December 2011, the Yunnan Legislative Office released a circular that is believed to call on all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. (Full link not available, but referenced in [www.cxlaw.gov.cn/show.asp?id=4674](www.cxlaw.gov.cn/show.asp?id=4674))

- On December 8, 2011, the Chuxiong Yi autonomous prefectural government issued a circular referencing a similar notice from the Yunnan provincial government, calling on government entities to carry out regulatory changes and submit progress reports to the Chuxiong Legislative Office by December 16, 2011. [www.cxlaw.gov.cn/show.asp?id=4674](www.cxlaw.gov.cn/show.asp?id=4674)

- On December 20, 2011, the Qujing municipal government in a report released on its performance in 2011 stated that it had begun the work of eliminating or revising documents that link innovation and government procurement measures. (Link inactive, but formerly available at [qj.xxgk.yn.gov.cn/canton_model25/newsview.aspx?id=1645716](qj.xxgk.yn.gov.cn/canton_model25/newsview.aspx?id=1645716))

- On January 17, 2012, the Yongshan county government released a notice soliciting comments on the results of work to eliminate or revise regulatory documents linking innovation and government procurement. The government asked for comments on elimination or revision of eleven relevant documents. Comments and recommended changes are due to the government by February 20, 2012. [zt.xxgk.yn.gov.cn/ztmode/newsview.aspx?id=1666995](zt.xxgk.yn.gov.cn/ztmode/newsview.aspx?id=1666995)
China 2015 Regulatory Transparency Scorecard  
March 2015

Executive Summary

Transparency—the openness of government decision-making, the public availability of information, and the solicitation of broad public feedback during the drafting of new laws and regulations—is consistently cited as a top concern in the US-China Business Council’s (USCBC) annual membership survey on China’s business environment. To measure the transparency of China’s lawmaking process, USCBC conducts an annual review of how select PRC government agencies comply with commitments to soliciting public feedback. In particular, all of China’s economic and trade-related central government agencies have agreed to public comment periods of at least 30 days on draft laws, administrative regulations, departmental rules, and regulations that function as regulations and rules. For the fifth straight year, USCBC has found that China’s central government agencies have an inconsistent record and are not fully meeting their regulatory transparency obligations.

These obligations include high-level commitments by the National People’s Congress (NPC), China’s legislature, and the State Council, the equivalent of the US cabinet. In 2008, the NPC agreed to solicit public comments on most draft laws and amendments. In 2008, 2011, and again in 2012, the State Council pledged during bilateral dialogues with the United States to release drafts of all economic and trade-related administrative regulations and departmental rules for at least a 30-day public comment period.

One challenge in tracking transparency is the lack of clarity about which regulations fall under China’s commitments. USCBC’s report uses two filters for determining what policy documents to include in the report: a “narrow” interpretation that includes document types explicitly labeled as administrative regulations or departmental rules (known in this report as “narrow regulatory documents”), and a “broad” interpretation that includes other documents that have a clear economic regulatory impact (known in this report as “broad regulatory documents”).

This year’s report, covering the period from January to December 2014, reveals that compliance remains far below China’s commitments for nearly all government entities. Only China’s State Council showed a notable improvement this year, but it is unclear if this is the start of a dedicated and positive trend, or a one-off result. Major findings of the report include:

- Seventy-five percent of narrow regulatory documents were posted by the State Council, just under a 50 percentage point increase from USCBC’s 2013 and 2014 findings. Since 2013, when USCBC began listing data separately for each agency, this is the highest rate of compliance for any entity.
- However, the State Council’s record is not as positive for broad regulatory documents. The State Council posted only 30 percent of its broad regulatory documents for public comment in 2014.
- Just three of nine laws passed or amended by the NPC were posted for public comment.
- None of the seven priority government agencies monitored by USCBC posted more than 30 percent of broad regulatory documents for public comment on the State Council Legislative Affairs Office (SCLAO) website, and most posted less than 15 percent. For narrow regulatory documents, none of the agencies posted more than 62 percent of policies for public comment on the SCLAO website, and most posted less than 35 percent.

USCBC recommends that the Chinese government ensures that all administrative regulations, departmental rules, and regulatory documents are posted on the designated SCLAO information website comment page for at least a 30-day period, as per China’s bilateral commitments and domestic laws and regulations. China should take a further step by permitting a longer comment period of 60 or 90 days, which would allow for higher-quality comment contributions. Finally, lawmakers should define and clarify what types of documents are covered under the State Council’s transparency commitments, making sure to include catalogues, measures, standards, and opinions, all of which can impact industry significantly.
Regulatory transparency—the openness of government decision-making, the public availability of information, and the solicitation of broad public feedback during the drafting of new laws and regulations—remains a top concern of US-China Business Council (USCBC) member companies operating in China. In USCBC’s 2014 annual membership survey, transparency ranked as the number eight business challenge (see graph), above national treatment and below licensing.

Since 2009, USCBC has monitored and tracked the drafting and release of economic- and trade-related laws, departmental rules, administrative regulations, and other regulatory documents to determine whether they have been posted for at least a 30-day public comment period on the websites of the National People’s Congress (NPC), the State Council Legislative Affairs Office (SCLAO), and other relevant government agencies.1 Following the collection of these data, USCBC publishes an annual report summarizing and analyzing the results. This is the seventh report USCBC has published on China’s regulatory transparency, and covers the 12-month period from January to December 2014.

For the fifth consecutive year, USCBC has found that China’s National People’s Congress, State Council, and other central government agencies are not fully meeting their regulatory transparency obligations.

Methodology

USCBC’s transparency scorecard is based on China’s domestic laws and regulations as well as its bilateral and multilateral commitments to improve regulatory transparency. Since 2000, China has committed to regulatory transparency on numerous fronts:

- The 2000 Legislation Law2 states that the government may seek opinions from relevant organizations, groups, experts, and the general public on major laws (Article 25).
- China’s 2001 World Trade Organization Accession Protocol states that for all laws, regulations, and measures impacting trade in goods or services, the government would “provide a reasonable period for comment to the appropriate authorities before such measures are implemented” (Article 2, Section C).

1 This includes the National Development Reform Commission, the Ministry of Industry and Information Technology, the Ministry of Commerce, the Ministry of Human Resources and Social Security, the Administration of Quality Supervision, Inspection, and Quarantine, and the State Administration for Industry and Commerce.
2 The Legislation Law was under revision as of the drafting of this report, and was reviewed by the National People’s Congress during its March 2015 session.
• The State Council’s 2001 Regulations on Procedures for the Formulation of Administrative Regulations state that drafts of major administrative regulations are to be released for public comment after those drafts receive approval from the State Council (Article 19).
• The State Council’s 2001 Regulations on Procedures for the Formulation of Rules state that public opinion will be solicited for draft rules that have a direct influence on the rights and obligations of citizens, legal persons, or other organizations (Article 15).
• The State Council’s 2007 Regulations on Open Government Information require administrative organs to prepare and release publicly open government information guidebooks and directories (Article 19).
• The NPC Standing Committee announced in April 2008 that it would generally solicit public comments on most draft laws it reviews, to promote open participation in the legislative process.
• At the June 2008 Strategic Economic Dialogue (SED IV), a US-China bilateral dialogue, China committed to providing a forum for “public comment for all trade- and economic-related administrative regulations and departmental rules” for at least 30 days on the SCLAO information website comment pages.
• At the May 2011 Strategic & Economic Dialogue (S&ED), China committed to requiring that “all trade- and economic-related administrative regulations and departmental rules be published” for at least 30 days on the SCLAO website.
• The State Council’s 2012 Opinions of the State Council on Strengthening the Construction of a Law-Based Government aim at creating a system in which regulatory documents are open to public comment (Article 9).
• SCLAO’s 2012 Interim Measures on Solicitation of Public Comments on Draft Laws and Regulations require draft laws and administrative regulations to be released for public comment and to be posted on the official SCLAO website for public comment for no fewer than 30 days (Article 6).

This 2014 transparency scorecard reflects ongoing USCBC efforts to monitor and track all economic and trade-related laws, amendments, administrative regulations, departmental rules, and regulatory documents drafted and issued by the NPC, the State Council (including SCLAO), and government agencies responsible for regulating trade and the economy. USCBC also tracks the activities of key subsidiary agencies such as the National Energy Administration (NEA), which is under the purview of the National Development and Reform Commission (NDRC). The agencies tracked are:

• NDRC, including NEA and the State Administration of Grain (SAG);
• Ministry of Industry and Information Technology (MIIT);
• Ministry of Commerce (MOFCOM);
• Ministry of Finance (MOF);
• Ministry of Human Resources and Social Security (MOHRSS);
• General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), including the Standardization Administration of China (SAC) and the Certification and Accreditation Administration of the People’s Republic of China (CNCA); and
• State Administration of Industry and Commerce (SAIC), including the China Trademark Office (CTMO)

During 2014, USCBC conducted regular and detailed monitoring of the individual Chinese-language agency websites and of major Chinese-language media websites to compile data for this report. To ensure that the report captured all documents that served in an economic and trade-related regulatory capacity, USCBC reviewed each document released by these agencies to determine their direct or indirect regulatory impact on businesses in China. USCBC’s research also tallied whether each of these documents was ever open for public comment, during this or any previous tracking period.

No explicit guidance exists on what is formally considered “trade- and economic-related administrative regulations and departmental rules” as cited in China’s June 2008 SED IV and May 2011 S&ED transparency commitments. Even though China has enacted regulations for setting administrative regulations and departmental rules, the definitions and official titles of such documents are not listed anywhere, making it difficult to identify which documents are included in their scope. For example, Article 4 of the Regulations on
Procedures for the Formulation of Administrative Regulations says administrative regulations are typically called “regulations,” but can also be called “provisions,” “measures,” or other titles. Article 6 of the Regulations on Procedures for the Formulation of Rules says that departmental rules are typically called “provisions” and “measures,” but may not be called “regulations.”

What qualifies as a regulatory document is even less clear. In the Opinions of the State Council on Strengthening the Construction of a Law-based Government, no guidance is given on how to identify a regulatory document, with the Opinions saying only that regulatory documents with a “direct influence on rights and obligations of citizens, legal persons or other organizations, public comments shall be solicited.” No further guidance is given on what “direct influence” is, or on how to define the rights, obligations, and scope of public comments.

For the purposes of this report, USCBC has divided rules and regulations into two separate categories:

- A “narrow” interpretation that includes only those documents explicitly labeled as administrative regulations or departmental rules, such as “provisions” (规定), “regulations” (条例), and “measures” (办法); and
- A “broad” interpretation that includes regulations under the “narrow” interpretation and other documents with a clear regulatory impact, such as “opinions” (意见), “notices” (通知), and “catalogues” (目录).

For categories of administrative regulations, departmental rules, and regulatory documents along with a full list of the types of documents included under these categories, see Appendix 1.

**Findings**

**Implementation of NPC Transparency Commitments**

NPC compliance with the regulatory transparency commitments made in April 2008 has been uneven since the inception of this annual USCBC report in 2010. However, NPC compliance backtracked in 2014 compared to 2013. Out of the nine laws passed or amended in the 12-month period, only three were open for public comment. Six of the laws passed during the tracking period were revisions to previous laws, and none of the revised laws were open for public comment. This is a marked decrease from 2013, in which six of nine laws were open for public comment.

This year’s figure marks a three-year low for NPC. Before 2011, NPC consistently opened draft laws for at least a 30-day comment period at least once during the standard three review rounds by NPC Standing Committee. As these laws have considerable regulatory weight across China, USCBC encourages NPC to return to its previously consistent high marks.

**Implementation of State Council Transparency Commitments**

The State Council (including SCLAO) and its cabinet-level government agencies’ commitment to regulatory transparency remain insufficient. USCBC tracked 673 broad regulatory documents released by the State Council and seven priority government agencies in 2014. However, only 119 of these (17.7 percent) were open for public comment at any point on either SCLAO or the respective agency website. Though USCBC analysis shows that these numbers are an improvement from past years, these agencies still have a poor record of compliance with China’s transparency commitments.

The State Council posted a small portion (30 percent) of its broad regulatory documents for public comment on the SCLAO website. The State Council had a much better record for narrow regulatory documents, posting 75 percent—nearly a 50 percentage point increase from last year. USCBC applauds the State Council for its progress on narrow regulatory documents, but would encourage it to continue improving its record on broad regulatory documents.
All of the government agencies tracked by USCBC showed a poor record of compliance with State Council commitments on transparency, based on a variety of metrics. None of the agencies, for example, posted a significant number of broad regulatory documents to the SCLAO website, with compliance ranging from 28.6 percent (SAIC) to less than one percent (NDRC). In fact, other than SAIC, no agency posted more than 9 percent of broad regulatory documents to the SCLAO website. For the narrow category, the compliance rates were higher, and have improved from last year—but are still insufficient. Most agencies still posted less than half of all narrow regulatory documents to SCLAO for public comment. Again, SAIC was the exception with 61.5 percent. NDRC had the lowest percentage in this category, posting only 2.4 percent of its narrow regulatory documents to SCLAO.

In looking more comprehensively at regulations posted to either SCLAO or the agency sites, the numbers improve somewhat, but are still insufficient. Looking at broad regulatory documents, the percentage of policies posted to either site increases for each ministry, ranging from 9.8 percent (MIIT) to 44.6 percent (SAIC), with most ranging between 9 and 15 percent. The numbers improve somewhat for narrow regulatory documents, with ministry posting rates ranging from 21.1 percent (MIIT) to 84.6 percent (SAIC), with most ranging between 20 and 55 percent. For reference, every policy that was posted to the SCLAO website for comment was also posted to the respective agency website.

### Table 2: Selected Government Agencies’ Departmental Rules and Regulatory Documents Posted for Public Comment

<table>
<thead>
<tr>
<th>Government Agency</th>
<th>Broad Regulatory Documents</th>
<th>Narrow Regulatory Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
<td>Posted to SCLAO</td>
</tr>
<tr>
<td>National Development and Reform Commission (NDRC)</td>
<td>205</td>
<td>2 (0.98%)</td>
</tr>
<tr>
<td>Ministry of Commerce (MOFCOM)</td>
<td>74</td>
<td>6 (8.1%)</td>
</tr>
<tr>
<td>Ministry of Finance (MOF)</td>
<td>202</td>
<td>3 (1.5%)</td>
</tr>
<tr>
<td>Ministry of Industry and Information Technology (MIIT)</td>
<td>143</td>
<td>4 (2.8%)</td>
</tr>
<tr>
<td>General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ)</td>
<td>78</td>
<td>5 (6.4%)</td>
</tr>
<tr>
<td>State Administration of Industry and Commerce (SAIC)</td>
<td>56</td>
<td>16 (28.6%)</td>
</tr>
<tr>
<td>Ministry of Human Resources and Social Security (MOHRSS)</td>
<td>34</td>
<td>3 (8.8%)</td>
</tr>
</tbody>
</table>

---

3 **Items posted to the SCLAO website may also have been posted on one or more agency websites for comment; for example, one or more agencies may post jointly released regulations to their websites.**

4 **This does not include policies that were listed to both SCLAO and agency websites.**
Among the small number of broad regulatory documents from any entity (6.1 percent) that were listed on the SCLAO website for public comment, the majority (46 of 52, or 88.5 percent) were posted for at least 30 days, in full compliance with China’s commitments. On average, regulatory documents posted to the SCLAO website were open for public comment for at least 28 days.

The record was less positive for broad regulatory documents posted only to agency websites, however. Only 25 of 67 or 37.3 percent of those policies were posted for at least 30 days, and these policies had an average comment period of fewer than 20 days (see table 3 below). This is a drop from last year’s average of 24 days. The length of comment periods varies significantly, ranging from as few as four days to as many as 94. For methodology and resources, see Appendix 2.

**Table 3: Length of Time State Council and Government Agency Administrative Regulations, Departmental Rules, and Regulatory Documents are Posted for Public Comment**

<table>
<thead>
<tr>
<th>Regulations Posted to SCLAO</th>
<th>Total Regulations</th>
<th>Regulations Released for 30+ Days</th>
<th>Adjusted Mean</th>
<th>Non-Adjusted Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Council and Agency Regulations</td>
<td>52</td>
<td>46 (88.5%)</td>
<td>28.3 days</td>
<td>30.2 days</td>
</tr>
<tr>
<td>State Council Regulations</td>
<td>15</td>
<td>15 (100%)</td>
<td>30 days</td>
<td>32.7 days</td>
</tr>
<tr>
<td>Agency Regulations</td>
<td>37</td>
<td>31 (83.8%)</td>
<td>27.5 days</td>
<td>29.2 days</td>
</tr>
<tr>
<td>Agency Regulations Posted to Agency Websites Only</td>
<td>67</td>
<td>25 (37.3%)</td>
<td>19.6 days</td>
<td>23.8 days</td>
</tr>
</tbody>
</table>

**Challenges in Tracking Transparency**

Tracking the State Council and selected agencies’ regulatory transparency record is a challenging process. Chinese commitments—including bilateral agreements—do not define key terms such as “trade- and economic-related,” “administrative regulations and departmental rules,” “regulatory documents,” “public opinions,” or “direct influence on the “rights and obligations of citizens, legal persons, or other organizations.” The ambiguous terminology has led to multiple interpretations of the commitments and multiple methods for measuring compliance. It also results in uneven commitment among Chinese regulatory agencies. All of these factors make it difficult to identify readily which regulations fall under these commitments, resulting in the need to track both broad and narrow definitions of what may qualify.

SCLAO’s April 2012 Interim Measures on Solicitation of Public Comments on Draft Laws and Regulations states that draft regulations should “generally” be released for public comment for no fewer than 30 days (Article 6), but exempts “emergency or special circumstances” as well as “draft administrative regulations involving state secrets, national security, the exchange rate, and monetary policy that are not suitable for public comment” (Article 3). Some regulations may fall into these exempted categories, but they are unlikely to cover all of the unreleased regulatory documents USCBC identified in 2014. SCLAO’s 2012 measures do not provide clarification on the scope and definition of these exceptions. Additionally, regulations that legally may be exempt from these requirements generally do not state clearly that they are invoking these exemptions.

Additionally, after an administrative item is posted for public comment on an agency website, some agencies later remove the link to the original policy. Verifying the publication date, implementation date, and content of

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5 USCBC found that a number of regulatory documents had been posted for longer than 30 days, skewing the figure for the average number of days posted for comment. To present a more accurate average, USCBC adjusted the data to treat regulatory documents posted for more than 30 days as regulatory documents posted for comment for exactly 30 days.
the policy must therefore be done through detailed Chinese-language media searches, making it challenging to confirm that a policy was indeed listed for the full period on the agency website.

Some administrative items, including amendments to laws and draft regulations, may include rounds of comment that are not open to the public, but in which officials circulate drafts to select stakeholders in government, industry, and academia. In these cases, the comment periods can vary in length and may last only a few days. This manner of solicitation does not meet Chinese government transparency commitments and limits the perspectives the Chinese government receives. To qualify as “public comment,” government agencies must include all industry stakeholders, including foreign companies, allowing them to provide an accurate assessment of the impact policies may have—as well as constructive feedback.

The number of administrative items released each year represents a significant challenge for comprehensive data collection. This year’s report included nearly 700 administrative items, but in total, thousands were reviewed as part of USCBC’s data collection. Because it is not always clear from their title which Chinese policies must be released for public comment, every administrative item must be read in order to be assessed for whether it could classify as an administrative regulation or a departmental rule based on its form and function.

In the absence of a centrally maintained public record of items released for comment in China, the only way to verify whether laws and regulations are published for public comment is to check each relevant agency website regularly for the release of new documents. Although all the agencies tracked have a specific page for administrative items open for public comment, other regulatory documents not open for public comment are scattered across different locations on each agency’s website. While some draft items may be released for comment to ministry websites only, it is challenging to track new regulations if they are neither posted to the SCLAO site nor receive coverage in the Chinese media. This makes it nearly impossible for transparency to be tracked comprehensively, without a significant time commitment.

It is important to note that these challenges are simply for tracking and evaluating China’s compliance with its transparency commitments. The burden for companies seeking to ensure that they are in compliance with relevant laws and regulations is even heavier, since in addition to identifying the policies, companies must then assess what the potential impact of the released policies may be on their businesses. For policies that are only publicly released after implementation, companies may have little time to determine how to comply with new policies and procedures that their regulators have issued.

A lack of transparency also negatively impacts China’s ability to achieve its own economic and trade goals. China aims to be a major global economy that plays a leading role in setting global trade policy. Regulatory transparency is an important step to help China achieve this goal. Transparency helps create a more predictable policy environment that promotes confidence among global investors. This predictability helps investors feel more comfortable bringing the technology, managerial know-how, and capital that China seeks. Longer public comment periods with broad participation will help industry understand China’s policy priorities, and will help align foreign investment to achieve those goals.

The process of releasing policies for public comment is not the end goal, but a means for developing effective policy. More voices help inform policymakers about the possible impacts of policy measures. In addition to improving the effectiveness of policies, regulatory transparency improves government accountability and governance, both stated goals of last year’s Fourth Plenum of the 18th Chinese Communist Party Congress. Indeed, the Chinese Academy of Social Sciences issues an annual report on the transparency of ministries under the State Council, as well as provincial governments (see Appendix 3d).
Recent Developments in Transparency

The PRC government continues to voice its commitment to transparency through various statements and regulations, despite generally poor compliance with past transparency commitments. Some recent developments regarding regulatory transparency include:

**Fourth plenum documents on legal and regulatory reform** The fourth plenum communique issued in October 2014 suggests that the legislative process may be more open to public participation in the future. The communique states that citizen participation, expert research and verification, risk evaluation, legitimacy review, and collective discussion will become part of the legislative process for major administrative policy decisions. Indeed, improved governance, a more rules-based system, greater accountability, and increased transparency would all be welcome reforms for domestic and foreign companies if enacted. USCBC continues to advocate that public participation ought to go beyond “major administrative policy decisions” and include all decisions that will impact domestic and foreign companies.

**JCCT outcomes on medical devices and pharmaceutical access** At the December 2014 Joint Commission on Commerce and Trade (JCCT), the United States and China agreed on a comment period of at least 60 days for all draft pharmaceutical and medical device rules and regulations. Further detail is needed to define what constitutes “rules and regulations” and to ensure the comment period is open publicly to all industry stakeholders. Nevertheless, China’s public commitment in this area represents a step in the right direction.

**Public surveys on existing regulations** Chinese government agencies have also shown greater willingness to survey the public on regulatory issues, pointing to a greater belief in the value of transparency and public opinion. In September 2014, the SAIC website asked the Chinese public to vote on whether they had seen local implementation of a group of 75 separate approval and licensing items, with the aim of understanding how policies are implemented at the local level. The website does not explain how the results were used, if at all, but the action was ostensibly a step forward in promoting transparency and public participation in policy. In September 2014, MOFCOM released a survey on its website to understand and evaluate problems with the Regulation on Franchise Management, an administrative regulation passed in 2007 that created China’s franchising regulatory framework. Even though no information was provided on how the survey results were used, this is again a positive development in soliciting public feedback.

**USCBC Recommendations**

To improve regulatory transparency and increase public participation, USCBC recommends that China’s government should:

- Ensure that all administrative regulations, departmental rules, and regulatory documents are posted on the “solicitation of comment” section of the SCLAO website for at least 30 days. As the USCBC 2015 Board Priorities Statement notes, a longer comment period of 60 to 90 days would be preferable. Longer commenting periods will result in broader input from stakeholders, and provide feedback that will help China achieve its economic and legislative goals.

- Define and clarify what types of documents are covered under the State Council’s transparency commitments, making sure to include catalogues, measures, standards, and opinions, all of which can affect industry significantly. Although these policies may not be, in name, “administrative regulations” or “departmental rules,” their implementation can have a substantial impact on stakeholders. Regulatory agencies should provide notice and opportunities for comment before releasing all of these types of measures.
• Explain in detail the economic methodology and rationale behind administrative reviews and decision-making by central government bodies to allow greater transparency in these processes. These should include antimonopoly reviews, countervailing duty and antidumping investigations and case rulings, and decisions made based on “national economic security considerations.”

• Create a central government-run, web-based database of laws and regulations that have been released for comment in order to facilitate annual reviews of the State Council and its agencies’ compliance to transparency commitments.

• Remove or clarify language such as “and other relevant regulations” from administrative regulations, departmental rules, and regulatory documents. Ambiguity surrounding the scope of “relevant regulations” results in significant burdens for companies trying to ensure they are complaint with new rules. Specific additional regulations should be identified, or the phrase should be removed.
Appendix 1: Categories for Relevant Administrative Regulations, Departmental Rules, and Regulatory Documents

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

- Articles 89 and 90 of the PRC Constitution ([www.gov.cn/gongbao/content/2004/content_62714.htm](http://www.gov.cn/gongbao/content/2004/content_62714.htm)) note that the State Council is responsible for drafting and releasing “administrative regulations” (行政法规), “decisions” (决定), and “orders” (命令). The State Council is also responsible for changing or cancelling relevant regulations released by ministries and agencies, including “orders” (命令), “directives” (指示), and “rules” (规章).
- Article 4 of the 2001 Regulations on Procedures for the Formulation of Administrative Regulations ([http://www.gov.cn/gongbao/content/2002/content_61545.htm](http://www.gov.cn/gongbao/content/2002/content_61545.htm)) state that State Council administrative regulations are generally titled “regulations” (条例), and may also be called “provisions” (规定), “measures” (办法), and “others.” (等)
- Article 6 of the 2001 Regulations on Procedures for the Formulation of Rules ([http://www.gov.cn/gongbao/content/2002/content_61556.htm](http://www.gov.cn/gongbao/content/2002/content_61556.htm)) state that departmental rules are generally titled “provisions” (规定) and “measures” (办法), but cannot be titled “regulations” (条例)

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

- A “narrow” category that includes only those documents explicitly labeled as State Council or departmental administrative regulations; and
- A “broad” category that also includes administrative regulations that appear to function as State Council or departmental administrative regulations, but are not included in the State Council definition. (This broad category includes regulatory documents that are narrow, as well as an additional set of “non-narrow” regulations listed below.)

### Terms Used for Narrow Items Circulated or Issued by Key Entities, January 2014 through December 2014

<table>
<thead>
<tr>
<th>Terms</th>
<th>Total⁶</th>
<th>Posted for Comment on SCLAO Site</th>
<th>Posted for Comment on Ministry Site</th>
<th>Not Posted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisions (规定)</td>
<td>35</td>
<td>14</td>
<td>24</td>
<td>11</td>
</tr>
<tr>
<td>Decisions (决定)</td>
<td>6</td>
<td>3</td>
<td>3</td>
<td>3</td>
</tr>
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<td>Orders (命令)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Regulations (条例)</td>
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<td>11</td>
<td>11</td>
<td>1</td>
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<tr>
<td>Measures (办法)</td>
<td>96</td>
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<td>40</td>
<td>56</td>
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<td>Directives (指示)</td>
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<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Rules (细则)</td>
<td>8</td>
<td>0</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>General rules (规则)</td>
<td>7</td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
</tbody>
</table>

⁶ All items posted on the SCLAO website were also posted on the relevant agency website.

### Terms Used for Non-Narrow Items Circulated or Issued by Key Entities, January 2014 through December 2014

<table>
<thead>
<tr>
<th>Terms</th>
<th>Total</th>
<th>Posted for Comment on SCLAO Site</th>
<th>Posted for Comment on Ministry Site</th>
<th>Not Posted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opinions (意见)</td>
<td>86</td>
<td>0</td>
<td>3</td>
<td>83</td>
</tr>
<tr>
<td>Notices (通知)</td>
<td>237</td>
<td>0</td>
<td>2</td>
<td>235</td>
</tr>
<tr>
<td>Guides (指引)</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Standards (标准)</td>
<td>4</td>
<td>0</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Catalogues (目录)</td>
<td>39</td>
<td>1</td>
<td>8</td>
<td>31</td>
</tr>
<tr>
<td>General rules (通则)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Requirements (条件)</td>
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<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Measures (方法)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>138</td>
<td>2</td>
<td>22</td>
<td>116</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>509</strong></td>
<td><strong>3</strong></td>
<td><strong>37</strong></td>
<td><strong>472</strong></td>
</tr>
</tbody>
</table>
Appendix 2: Information Sources

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

National People’s Congress (NPC)

USCBC tracks NPC laws on the NPC website (wwwnpc.gov.cn/npc/xinwen/node_12488.htm). In addition to ascertaining which and how many laws were passed during each calendar year, USCBC looks at which drafts of these laws were posted for comment on the NPC’s public comment portal (wwwnpc.gov.cn/npc/flcazqyj/node_8176.htm) at any point during the drafting process, even if that public comment was prior to the current tracking period.

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

SCLAO

USCBC tracks items posted on the State Council’s website (www.gov.cn), as well as the SCLAO’s websites (http://www.chinalaw.gov.cn/article/cazjgg/index.shtml and http://www.chinalaw.gov.cn/article/fgkd/xfg/).

Ministries and Agencies

USCBC tracks items released by key government agencies on their individual websites. As each agency may organize data differently, USCBC conducts an in-depth review of website pages where relevant items may be posted, including pages for announcements, policies, laws and regulations, and public comments. For the key agencies examined in this report, USCBC tracks regulatory documents posted to these pages and checks whether they were posted for comment at any point during the drafting process.

National Development and Reform Commission (NDRC)

<table>
<thead>
<tr>
<th>Announcements (公告)</th>
<th><a href="http://www.sdpc.gov.cn/zcfb/zcfbqg/">http://www.sdpc.gov.cn/zcfb/zcfbqg/</a></th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning documents (规划文本)</td>
<td><a href="http://www.sdpc.gov.cn/zcfb/zcfbgwb/">http://www.sdpc.gov.cn/zcfb/zcfbgwb/</a></td>
</tr>
<tr>
<td>Seeking public comment (征求意见)</td>
<td><a href="http://www.sdpc.gov.cn/yjzq/">http://www.sdpc.gov.cn/yjzq/</a></td>
</tr>
<tr>
<td>Other (其他)</td>
<td><a href="http://www.sdpc.gov.cn/zcfb/zcfbq/">http://www.sdpc.gov.cn/zcfb/zcfbq/</a></td>
</tr>
</tbody>
</table>

National Energy Administration

| Open catalogue (公开目录) | http://zfxxgk.nea.gov.cn/index.htm |

State Administration of Grain

| Policy documents (政策文件) | http://www.chinagrain.gov.cn/n16/n1077/n1632/index.html |
| Work developments (工作动态) | http://www.chinagrain.gov.cn/n16/n1062/n1422/n1512/index.html |
| Industry developments (行业动态) | http://www.chinagrain.gov.cn/n16/n1062/n1167/n4020298/index.html |

**Ministry of Commerce (MOFCOM)**

<table>
<thead>
<tr>
<th>Topic</th>
<th>URL</th>
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</thead>
<tbody>
<tr>
<td>China’s documents on foreign economic trade (中国对外经济贸易文告)</td>
<td><a href="http://www.mofcom.gov.cn/article/b/g/">http://www.mofcom.gov.cn/article/b/g/</a></td>
</tr>
<tr>
<td>Department order announcements (部令公告)</td>
<td><a href="http://www.mofcom.gov.cn/article/b/c/">http://www.mofcom.gov.cn/article/b/c/</a></td>
</tr>
<tr>
<td>Foreign trade management (国外贸易管理)</td>
<td><a href="http://www.mofcom.gov.cn/article/b/e/">http://www.mofcom.gov.cn/article/b/e/</a></td>
</tr>
<tr>
<td>Comprehensive policies (综合政策)</td>
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</tr>
<tr>
<td>Seeking public comments (征求意见)</td>
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</tr>
</tbody>
</table>

**Ministry of Finance (MOF)**

<table>
<thead>
<tr>
<th>Topic</th>
<th>URL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy releases (政策发布)</td>
<td><a href="http://www.mof.gov.cn/zhengwuxinxi/zhengcefabu/index.htm">http://www.mof.gov.cn/zhengwuxinxi/zhengcefabu/index.htm</a></td>
</tr>
<tr>
<td>Notices and announcements (通知公告)</td>
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<tr>
<td>Collection of comments (意见征集)</td>
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**Ministry of Industry and Information Technology (MIIT)**

<table>
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<th>Topic</th>
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**General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ)**

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<td><a href="http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/">http://www.aqsiq.gov.cn/xxgk_13386/jlgg_12538/</a></td>
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<td>Projects and plans (计划规划)</td>
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<td>Drafts for public comments (草案征询意见)</td>
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**State Administration of Industry and Commerce (SAIC)**

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<th>Topic</th>
<th>URL</th>
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**China Trademark Office**

<table>
<thead>
<tr>
<th>Topic</th>
<th>URL</th>
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</thead>
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<td>Important trademark news (商标要闻)</td>
<td><a href="http://www.ctmo.gov.cn/sbyw/">http://www.ctmo.gov.cn/sbyw/</a></td>
</tr>
<tr>
<td>Important releases (重要发布)</td>
<td><a href="http://www.ctmo.gov.cn/tz/">http://www.ctmo.gov.cn/tz/</a></td>
</tr>
<tr>
<td>Laws and regulations (法律法规)</td>
<td><a href="http://www.ctmo.gov.cn/flfg1/">http://www.ctmo.gov.cn/flfg1/</a></td>
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### Ministry of Human Resources and Social Security (MOHRSS)

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

The Chinese Academy of Social Sciences (CASS) annually evaluates the transparency of ministries directly under the State Council, including ad-hoc organizations, institutions, state bureaus, departments related to foreign affairs, and departments that have direct responsibility for the well-being of PRC citizens. The evaluation uses a combination of phone, mail, and ministry self-surveys. The most recent CASS report was released in March 2015.

CASS ranked ministries on a scale of 1 to 100 points. The overall score for each ministry was based on assessments of five criteria: government information disclosure catalogues (20 percent of the overall score), work information (20 percent), regulatory documents (25 percent), open applications (25 percent), and annual reports on information disclosure (10 percent). Selected rankings for ministries that the US-China Business Council (USCBC) regularly tracks are listed below.

<table>
<thead>
<tr>
<th>State Council Ministry or Agency</th>
<th>Rank</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Commerce</td>
<td>2</td>
<td>75.17</td>
</tr>
<tr>
<td>National Development and Reform Commission</td>
<td>4</td>
<td>74.39</td>
</tr>
<tr>
<td>General Administration of Quality Supervision, Inspection and Quarantine</td>
<td>6</td>
<td>73.82</td>
</tr>
<tr>
<td>Ministry of Finance</td>
<td>18</td>
<td>66.18</td>
</tr>
<tr>
<td>Ministry of Human Resources and Social Security</td>
<td>25</td>
<td>62.27</td>
</tr>
<tr>
<td>State Administration of Industry and Commerce</td>
<td>38</td>
<td>54.97</td>
</tr>
<tr>
<td>Ministry of Industry and Information Technology</td>
<td>39</td>
<td>54.96</td>
</tr>
</tbody>
</table>

Source: CASS

CASS also ranked local governments on a scale of 1 to 100 points. The overall score for each ministry was based on assessments of six criteria: government information disclosure catalogues (15 percent), regulatory documents (15 percent), administrative approval information (15 percent), environmental protection information (15 percent), open applications (30 percent), and annual reports on information disclosure (10 percent).

<table>
<thead>
<tr>
<th>Local Government</th>
<th>Rank</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guangdong</td>
<td>1</td>
<td>80.34</td>
</tr>
<tr>
<td>Shanghai</td>
<td>2</td>
<td>80.27</td>
</tr>
<tr>
<td>Anhui</td>
<td>3</td>
<td>79.80</td>
</tr>
<tr>
<td>Zhejiang</td>
<td>4</td>
<td>78.09</td>
</tr>
<tr>
<td>Shandong</td>
<td>5</td>
<td>77.83</td>
</tr>
<tr>
<td>Tianjin</td>
<td>6</td>
<td>77.12</td>
</tr>
<tr>
<td>Hainan</td>
<td>7</td>
<td>77.08</td>
</tr>
<tr>
<td>Henan</td>
<td>8</td>
<td>76.15</td>
</tr>
<tr>
<td>Fujian</td>
<td>9</td>
<td>75.87</td>
</tr>
<tr>
<td>Beijing</td>
<td>10</td>
<td>75.05</td>
</tr>
</tbody>
</table>

Source: CASS

7 CASS rankings include a fuller range of government ministries and agencies; this list reflects rankings for the seven agencies tracked in USCBC’s report.
8 CASS rankings include provinces and the four centrally administered municipalities—Beijing, Chongqing, Shanghai, and Tianjin. They do not include any of China’s autonomous areas—Guangxi, Inner Mongolia, Ningxia, Tibet, and Xinjiang—or either of China’s two specially administered regions—Hong Kong and Macao.
<table>
<thead>
<tr>
<th>Local Government</th>
<th>Rank</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guangzhou, Guangdong</td>
<td>1</td>
<td>84.12</td>
</tr>
<tr>
<td>Ningbo, Zhejiang</td>
<td>2</td>
<td>83.91</td>
</tr>
<tr>
<td>Wuxi, Jiangsu</td>
<td>3</td>
<td>82.88</td>
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<tr>
<td>Suzhou, Jiangsu</td>
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<td>Xiamen, Fujian</td>
<td>5</td>
<td>80.55</td>
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<td>Hangzhou, Zhejiang</td>
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<tr>
<td>Qingdao, Shandong</td>
<td>7</td>
<td>80.09</td>
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<tr>
<td>Changsha, Hunan</td>
<td>8</td>
<td>75.40</td>
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<tr>
<td>Chengdu, Sichuan</td>
<td>9</td>
<td>74.58</td>
</tr>
<tr>
<td>Fuzhou, Fujian</td>
<td>10</td>
<td>74.13</td>
</tr>
</tbody>
</table>

Source: CASS

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9 The CASS assessment states that it tracks only China’s larger cities, though it does not provide any more specific criteria for determining which cities to track.
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 threats 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.
September 1, 2015

Mr. Liu Jian  
Price Supervision and Anti-Monopoly Bureau  
National Development and Reform Commission  
People’s Republic of China

Dear Mr. Liu:

On behalf of the approximately 210 members of the US-China Business Council (USCBC), we appreciate the opportunity to engage with the National Development and Reform Commission (NDRC) on issues related to competition and intellectual property (IP), two priority areas in which our member companies have considerable experience both in China and around the world.

USCBC members include global leaders in innovation that hold thousands of patents in manufacturing, information technology, pharmaceuticals, services, and other areas. Our companies support China’s right to foster a more innovative society and foster competitive markets, as well as its goals of enhancing economic efficiency and safeguarding consumer and public interests. We appreciate and encourage Chinese efforts to develop clear laws and regulations to promote these goals as the foundation of a modern economy.

We appreciate NDRC’s ongoing efforts to engage actively with industry early in the drafting process for potential rules on these issues, and to provide greater transparency in the formulation of policy and legislation. We look forward to continued constructive engagement with NDRC and other Chinese government agencies on intellectual property and competition issues and particularly appreciated meeting with Deputy Director General Lu Yanchun in June this year to discuss recent developments in AML enforcement.

We are pleased to be able to provide general comments as NDRC works to draft these rules. These views will be augmented by our members, as many have received copies of NDRC’s questionnaire asking for their views on the legitimate exercise of IP and the IP-related practices that constrain competition.

First, we encourage NDRC to ensure that new guidelines strike an appropriate balance between respecting the legitimate exercise of intellectual property rights and addressing anticompetitive behavior. Such balance is a critical factor in the success of innovative jurisdictions around the world, as that balance allows innovation to thrive while protecting against behavior that is clearly anti-competitive. This balance is also recognized in China’s Antimonopoly Law, which states in Article 55 that the law does not apply to those who exercise IP legitimately.
We therefore suggest that NDRC’s regulations seek to respect and support IP rights while focusing enforcement measures on clearly defined activities that have a serious anticompetitive impact. We suggest this approach be used as the basis for draft provisions on in considering whether an “essential facilities” discussion is appropriate in an IP context. The approach should also be the basis for drafting provisions on standard-setting and use of “standard-essential patents (SEPs),” and terms reflecting SEP holder and implementer interests.

Second, the concept of balance should also apply to how regulators assess anticompetitive impact. For example, company practices such as price and licensing differences can have both pro-competitive and anti-competitive impacts. Such activities can promote competition by allowing companies to more efficiently serve a variety of consumer groups or by promoting technology development, or can hinder competition by unreasonably limiting companies’ ability to compete on a level playing field under some specific circumstances.

Branding an activity as either pro- or anti-competitive without considering the nature of the transaction and its competitive effects contradicts Chinese goals to promote competitive markets. We encourage NDRC to require enforcement officials to weigh the pro- and anti-competitive impact of company activities and possible remedies, and to consider whether the company behavior can be considered unreasonable before taking action. We suggest that this approach inform draft provisions on how officials should regulate alleged monopoly agreements on areas such as pricing, licensing, and dealing as well as IP-related company arrangements such as patent pools.

Third, we encourage NDRC to consider the goals laid out at the Third Plenum to allow the market to play a decisive role in the economy. Specifically, we hope that NDRC will ensure that companies have the ability to freely exercise and contract for the use of IP rights. For example, the market is the best arbiter of whether royalty rates can be considered excessive or unfair, as companies can believe that fees are too high by not seeking a patent license or by acquiring licensing rights to alternative patents, if available.

Allowing more room for parties to contract on issues like royalties, licensing terms, and grantbacks is also the best means for China to achieve another goal: creating a vibrant market for patent and technology exchange. We suggest that NDRC ensure that final regulations incorporate this broad Chinese goal and give greater play to the market to promote a fair and balanced, cooperative relationship between IP and competition.

Finally, we suggest that the guidelines provide clarity on a number of outstanding issues, including the relationship between the exercise of IP (falling under China’s Patent Law) and antitrust (falling under the Antimonopoly Law); the scope of “relevant markets” in ways that do not use “technology markets;” definitions for key terms such as “standard-essential patents” that promote innovation and ensure appropriate support for IP during standard-setting activities; and others. USCBC’s July 2014 comments to the State Administration of Industry and Commerce (attached) provide additional feedback on these and other issues.
US-China Business Council Submission
April 20, 2015
Page 3

USCBC would be happy to further discuss these points with you at any point. We greatly appreciate our positive working relationship with NDRC and look forward to continuing this cooperation. Please do not hesitate to contact either me or our acting chief representative in USCBC’s Beijing office, Jake Laband (010-6592-0727), with any questions or clarifications.

Sincerely,

Erin Ennis
Senior Vice President

Attachment
Comments on CBRC Draft Regulations Affecting Technology Purchases

14 September 2015

Introduction

The American Chamber of Commerce in China, American Chamber of Commerce in Shanghai, Asia Securities Industry & Financial Markets Association (ASIFMA), BSA | The Software Alliance (BSA), Canada-China Business Council, European Banking Federation (EBF), Financial Services Forum (FSF), Information Technology Industry Council (ITI), International Swaps and Derivatives Association (ISDA), Japan Electronics and Information Technology Industries Association (JEITA), Securities Industry and Financial Markets Association (SIFMA), Semiconductor Industry Association (SIA), Software and Information Industry Association (SIIA), Transatlantic Business Council (TABC), United States Information Technology Office (USITO), US Chamber of Commerce, US-China Business Council (USCBC), US Council for International Business (USCIB) and their member companies appreciate the opportunity to offer input on technology regulations affecting banks operating in China and thank the China Banking Regulatory Commission (CBRC) for considering revisions to these policies.

Our organizations represent companies from Asia, Europe and the North America and engage in business across all industry sectors in China. Among our members are both financial institutions and global technology and innovation leaders. These companies have made significant investments in China that have contributed greatly to China’s economic and technological development over the past three decades.

Chinese companies have developed many world class technologies and its policymakers have an important role to play in the global discussion of cybersecurity. Our organizations support China’s desire to create a secure operating environment for banks. Incidents that disrupt the integrity of banking infrastructure not only impact individual bank operations, but also undermine the confidence of consumers and investors, and threaten the stability of global financial systems. As a consequence, effectively addressing cyber risks in the banking sector is critical to maintaining public confidence and mitigating financial risks. We hope this submission will help achieve those shared goals for effective security.

In recognition of the potential impact of cyber intrusions on the broader economy, global banking regulators and the international financial sector have established a variety of mechanisms to mitigate potential risks and collaborate on ways to protect the systems they oversee from being disrupted. Underpinning these is a set of important principles which are essential to the formation of effective policy on cybersecurity. We strongly encourage China to implement a prudential regulatory framework which reflects these principles, allowing appropriate industry-level benchmarking and avoiding the pitfalls associated with mandating prescriptive mechanisms of technology and cybersecurity standard-setting. Using these internationally recognized approaches will also help ensure consistent global practices in this important area.

Global Cybersecurity Environment
There are two crucial issues that must be recognized at the outset before principles for effective policymaking can be established.

First, cybersecurity is a global issue and it requires global solutions to be truly effective. Global systems play an important role for financial institutions to promote security. Cyber risks transcend national borders, so countries – through their governments and private sector institutions – need to work together to develop safeguards that protect the integrity of global markets.

As a consequence, the financial sector is subject to a significant and diverse number of laws, regulations and examination standards related to cybersecurity that, together, broadly reflect an emerging international consensus regarding what is most effective. And, in some instances, standards are being established at the international level itself. For example, the Payment Card Industry Data Security Standard (PCI-DSS) is a global industry standard setting security requirement for all payment card systems used by financial institutions. Thus, the use of internationally accepted cybersecurity standards can minimize the risks for global financial networks by ensuring that best practices are widely implemented. Use of such standards also avoids the insurmountable challenge of asking international firms with global platforms to comply with conflicting rules and regulations between markets. To that end, we urge the CBRC to consult with other national regulators for rules that avoid exclusive use of localized solutions, prescriptive technologies and restrictions on data flows.

The international perspective is, for example, crucial in governing policy decisions on encryption standards. In particular, the use of local encryption standards which may not be consistent with international practices would raise security concerns for companies and international regulators. Leveraging internationally accepted approaches to encryption – such as used in Singapore and the United Kingdom, for example - minimizes conflicts across systems in different countries and ensures that client data is as well protected as possible – something that globally recognized industry regulations require as well. A comprehensive global approach will ensure that companies based in China are better able to compete globally.

Similarly, requirements to disclose source code are problematic in a globalized economy which is one reason they are not a feature of prevailing rules and regulations in other markets. Internationally-accepted standards on software and Intellectual Property (IP) licensing typically preclude banks from disclosing or holding third party IP in escrow without permission from the owners (or licensors) of that IP. Such disclosure would expose firms to unquantifiable financial risk from litigation and IP actions by software and IP licensors for breach of standard controls and contractual provisions protecting supplier IP.

Second, cybersecurity risks and the technology that mitigate them shift faster than regulations and standards can respond. As a consequence, policies that require specific technology requirements, detailed technical reviews or other processes by regulators will be reactive to the environment and to adversaries that seek to take advantage of vulnerabilities. In addition, written regulations and prescriptive standards become quickly outdated as cyber risks and the technology to address them evolve and create an obstacle to protecting financial institutions and their clients. As recognized by the approaches taken by policymakers in a number of markets, effective
regulations go beyond assessing whether an institution is compliant with a particular standard and instead ensure that sufficient people, processes, and technology are in place to manage risks.

General Principles for Enhancing IT Security in Banking Sector

Given the global and constantly evolving nature of banking technology, we encourage China to base its regulations on the following high-level principles for workable and effective cybersecurity policies.

- **Transparency** in the policymaking process – together with **sufficient time for consultation** with industry on proposed approaches – will help address and resolve complex and challenging policy issues. CBRC’s request for input on its policy revisions is a welcome confirmation of China’s intent to do that. We encourage CBRC to release its revised regulations in draft form prior to implementation so that banks, technology companies and other interested parties can have an opportunity to provide formal feedback.

- Given the growing and evolving nature of cyber threats, policies need to be flexible and adaptable to confront emerging threats while enabling companies to continue to innovate. It is important for regulators to avoid a “one size fits all” approach in developing IT security guidelines in the banking sector. Policies should be flexible to accommodate different approaches to address cybersecurity risks. Banks face unique risks and cyber threats, so cybersecurity guidelines should enable firms to choose specific technology solutions to meet their unique needs and ensure the integrity of global financial networks. Regulations that call for specific technologies will never be able to keep pace with innovation and the creation of new solutions driven by the needs of the market and the evolution of the threats the financial sector faces. Regulators should not limit the options that are available for firms to protect themselves and their clients.

- Take a risk-based approach to examining whole systems for cyber threats to foster a prudential regulatory framework that can be more efficient and more effective than focusing on individual functions or processes. Banking institutions make significant investments to protect client data and to limit disruption and preserve the integrity of data processing from those who seek to attack corporate networks. To do so, international banks leverage global platforms to limit the number of attack surfaces to ensure the highest level of security possible for their customers. This enables banks to maximize system security, efficiency and interoperability across their operations around the world. In policy terms, for example, requiring the use of specific domestic technologies or processes - without regard to industry best practices and already established global platforms and investments - runs counter to international norms, which base technology decisions on holistic assessments of risk.

- Reliance on global security standards based on consensus industry processes will ensure that the best practices from around the world are incorporated and that security requirements will be regularly updated to respond to evolving threats.
• There is an important role for market-based approaches that achieve desirable outcomes. Regulators in major economies work closely with banks and their counterparts in other markets to help achieve those goals sustainably and mindful of both the local and international context. To do so, they use a successful approach of empowering private financial institutions to implement risk-based cybersecurity policies and protections that are specific to their individual circumstances. In addition, regulators have established standards to enable individual institutions to continually evaluate the risks faced by their networks and respond appropriately based on those needs. Network security is an ongoing process, so effective cyber policies must enable financial institutions to respond rapidly to constantly changing threats and use the most appropriate and innovative technologies for their unique business circumstances. Coordination between regulators and banks creates an environment that meets the needs of all sides.

Several regulatory authorities around the world have incorporated these principles in their domestic bank technology requirements. For example Canada, Germany, Hong Kong, Singapore, the United Kingdom and the United States have successfully adopted risk based approaches that focus on whole systems.

Conclusion

The best approach for developing technology policies is open and transparent formulation and implementation, which allows stakeholders to provide helpful input to regulators. This helps ensure that the resulting regulations are effective, compatible with global norms, and unlikely to cause unintended consequences. In particular, effective prudential frameworks and policies must allow companies to conduct their own risk assessments and determine what technology best meets their security needs.

As a consequence, we respectfully urge CBRC to base its revised regulation on the internationally accepted principles that other banking regulators have used as described above to ensure that financial systems in China and around the world address the risks that may cause the most harm and are as secure as possible.

—END—

Local Contacts:

AmCham China, US Chamber of Commerce (USCC)
Contact Person: Ian Curtiss, Senior Manager for Policy Initiatives
Phone: 8610 8519-0854
Email: icurtiss@amchamchina.org

AmCham Shanghai
Contact Person: Veomayoury Baccam, Director, Government Relations
Phone: +86.21.6279-8066
Email: v.baccam@amcham-shanghai.org
Asia Securities Industry and Financial Markets Association (ASIFMA)
Contact Person: Rebecca Terner Lentchner, Executive Director – Head of Policy and Regulatory Affairs
Phone: +852.2531.6560
Email: RTernerLentchner@asifma.org

BSA | The Software Alliance
Contact Person: Jared Ragland, Director, Policy - APAC
Phone: +65 6262 9609
Email: jaredr@bsa.org

Canada-China Business Council (CCBC)
Contact Person: Travis Joern, Managing Director
Phone: +86-21-6236-6370, x808
Email: travis@ccbc.com.cn

European Banking Federation (EBF)
Contact Person: Sebastien de Brouwer, Executive Director, Retail Financial services, Legal, Economic and Social Affairs
Phone: +32 2 508 37 65
E-mail: S.deBrouwer@ebf-fbe.eu

Financial Services Forum (FSF)
Contact Person: John Dearie, Acting Chief Executive Officer
Phone: 1-202-457-8761
Email: john.dearie@financialservicesforum.org

International Swaps & Derivatives Association (ISDA)
Contact Person: Donna Chan, Communications Director, Asia Pacific
Phone: +852 2200 5906
Email: dchan@isda.org

Japan External Trade Organization of Beijing Office (JEITA Beijing Office)
Contact Person: Mengyun Hu, Senior Assistant
Phone: 010-6513-9015
Fax: 010-6513-7079
E-mail: Mengyun_Hu@jetro.go.jp

Securities Industry & Financial Markets Association (SIFMA)
Contact Person: Peter Matheson, Managing Director, International Policy
Phone: 1-202-962-7324
Fax: 1-202-962-7305
E-mail: pmatheson@sifma.org

US-China Business Council (USCBC)
Contact Person: Jake Laband, Manager, Business Advisory Services
Phone: 010-6592-0727  
Fax: 010-6512-5854  
E-mail: jlaband@uschina.org.cn

**US-Council for International Business (USCIB)**  
Contact Person: Barbara Wanner, Vice President, ICT Policy  
Phone: 1-202-617-3155  
Email: bwanner@uscib.org

**USITO Associations (ITI, SIA, SIIA, USITO)**  
Contact Person: GU Xiyun, Policy Manager (顾希韫)  
Phone: 156-1896-5695  
Fax: 010-8429-9075  
Email: xgu@usito.org
US-China Business Council Comments on
The Draft Cybersecurity Law

August 5, 2015

On behalf of the approximately 210 members of the US-China Business Council (USCBC), we appreciate the opportunity to provide comments to the National People’s Congress on the latest draft of the Cybersecurity Law. Our member companies represent a wide variety of industries, including companies that sell and purchase information security products and services, as well as companies that operate and use information networks. These diverse members are united in their commitment to promoting and participating in an open, healthy commercial environment that supports China’s development and promotes the use of information technology as a key driver of economic growth.

USCBC and our members recognize that the drafting of this law reflects a desire by the Chinese government to promote information security and the lawful rights of Chinese citizens and organizations. Our companies share these goals, and have strong global expertise in working with governments and other industry players in ways that achieve these objectives while also promoting robust industry development. Many of our members have long offered high-quality information security products and services in China, contributing actively to the development of this industry.

We recognize positive language in this draft calling for better international cooperation and exchange (Article 5), for equal treatment of domestic and foreign enterprises (Section II of the draft law’s explanatory note), and for closer coordination between government and industry (Articles 47 and 50). USCBC looks forward to more details on how the Chinese government will implement these goals (for example, international cooperation and exchange). We strongly encourage China to leverage international standards and industry best practices wherever possible in the implementation of the law.

USCBC encourages the National People’s Congress to ensure transparency in government processes, consistency with other Chinese laws and regulations, and uniform implementation across agencies as it further revises this law. We also strongly recommend that the National People’s Congress engage actively with industry, including foreign companies in impacted industries, throughout the drafting process for this law and for other relevant documents such as the cybersecurity strategy mentioned in Article 11, the agency-specific plans mentioned in Article 12, and follow-up regulations mentioned in Articles 17, 19, 25, 30, and 31. Such
engagement will not only ensure the best possible law, but will also promote the law’s successful implementation.

Additionally, we recognize that the draft Cybersecurity Law is part of a broader emerging legal framework that includes the draft cybersecurity strategy, Counterterror Law, and the National Security Law. Several provisions in the draft law (such as Article 6, 7, 31, 40, 41, and 43), in fact, refer to “other laws and regulations” that may impact implementation of this law, but do not specify the regulations in question. We recommend that the National People’s Congress clearly state which regulations are covered under these clauses, and that policies such as the draft cybersecurity strategy and agency enforcement guidance that will have a significant impact on the Cybersecurity Law’s implementation (Articles 11-12) be finalized and released before this law is completed.

USCBC is pleased to offer additional comments on the draft law based on specific inputs received from its members. We recommend revisions to several articles in the draft law that need further clarification or impose obligations on companies and government agencies that may actually hinder the cybersecurity goals of the law. Such concerns include provisions that relate to definitions of key terms in the law; certification of information security products; storage, use, and transfer of data; formulation of cybersecurity standards; obligations on network information providers; and liabilities for those that are unable to comply with provisions in the law.

We encourage the National People’s Congress to actively consider USCBC’s comments in the next draft of the law, as well as comments on other provisions provided by other organizations based on their areas of expertise. Addressing these concerns in a comprehensive manner is the best way to ensure China’s information security by encouraging companies to deploy their best and most secure technology available in China.

Definitions and Scope of Coverage
Article 2 describes a broad mandate for the law, stating that it applies to the construction, operation, maintenance, and usage of networks in China. Subsequent articles provide a variety of terms to clarify the law’s scope, such as network operators, critical information infrastructure, and citizens’ personal data. While Article 65 defines several key terms, questions remain about some of these definitions:

- **Critical information infrastructure**: Article 25 defines “critical information infrastructure (CII)” broadly, including information networks and systems covering a wide variety of industries, as well as “networks and systems owned or managed by network service providers with significant amounts of users.” However, key terms such as “significant” and “users” are not clearly defined, and the range of industries named could cover a large number of information systems that may or may not be truly critical. Because the definition is so vague, it could capture popular Chinese services like Tencent or Taobao that have large numbers of users but would not otherwise qualify as critical information infrastructure. Online services that are based outside of China but can be accessed in China might also fall under the definition, even if they have only a small number of users in China.
Given these questions, the number of users may not be the most appropriate indicator of a system’s criticality; instead, systems that have a major impact on areas like public safety may be a better focus. We suggest that this last phrase be removed or revised to read “other non-commercial networks and systems whose failure or interruption would have a major negative impact on public safety or national security,” and (if revised) that additional language to define the scope of these provisions be provided in the law (such as in Article 65) or its implementing regulations. We also suggest providing an additional definition for “critical information infrastructure operators,” and that new language clarify how these definitions fit with terms in other laws and regulations, such as “critical infrastructure” in the Public Security Law.

- **Network operators:** Article 65(3) defines network operators as the “owners and administrators of networks, as well as network service providers using networks owned or administered by others to provide related services, including basic telecommunications operators, network information service providers, major information system operators, and others.” This definition is very broad and could be interpreted to include nearly any company that is using telecommunications or Internet services, such as companies operating non-commercial websites as platforms to provide company information or to promote their off-line business. Such sites present a smaller security risk than the networks on which they operate. Applying the full obligations of a network operator to these companies would raise costs significantly and ultimately limit their ability to promote their business through the Internet.

  Additionally, the law as written could apply these obligations to internal corporate IT networks. Should the law apply to these non-commercial networks, companies could be required to monitor employees’ personal activity on their official networks, which would raise privacy questions.

  We suggest that the law clarify the definition of “network operators” to focus on telecommunications, Internet, network hardware, and network software providers that construct, operate, and maintain networks within China. This definition would exclude non-commercial websites and networks (including internal corporate networks). Additionally, we suggest that the definition be revised as needed to make this definition consistent with other regulations, such as the Administrative Rules on Internet Information Services.

- **Citizens’ personal data:** Article 65(5) broadly defines personal data, including provisions that include “other types of data from which a citizen’s identity may be determined.” We recommend that IP addresses be excluded from the definition of “personal data.” If IP addresses are protected as “personal data,” they cannot be shared, analyzed, or used effectively to undertake cybersecurity research and develop effective strategies. This could hinder company efforts to protect cybersecurity in line with the goals in this draft law. In addition, we recommend that the law clarifies how provisions related to citizens’ personal data interact with other laws and regulations, such as the
Consumer Rights Law and the Measures for Penalties for Infringing upon the Rights and Interests of Consumers.

In addition, we note several terms—such as “active utilization” in Article 3; “Internet-related industry associations” in Article 8; “network products, operations, and services” in Article 13; “users” in Article 18; “information publication services” in Article 20; “network security incidents” in Article 21; as well as “electronic information providers,” “application software providers,” and “digital information distribution providers,” and “application software download service providers” in Article 41—that are not defined, which could lead to implementation questions for both regulators and companies. We suggest that these terms be defined clearly based on consultation with foreign and domestic stakeholders.

Finally, we recommend that some of the key goals described in the law – such as “protecting the lawful rights and interests of citizens, legal persons, and other organizations” (Article 1) and “advancing the construction of network infrastructure” (Article 3) – be strengthened with further language that would reiterate citizens’ to privacy as well as rational planning for construction of network infrastructure and allocation of network resources.

Certification of Information Security Products

Article 19 states that “critical” network equipment and “specialized” network security products must go through a security inspection and certification process before they can be sold in China, based on a catalogue of such products. Article 30 further requires such products to undergo an additional security inspection when they are purchased by information infrastructure operators. Neither article, however, provides detail on how such processes would work, or how they might interact with each other.

Such language raises a number of concerns. First, there are significant questions about both processes, particularly if they require companies to disclose source code or use local encryption algorithms. Although the draft law does not detail the certification process, other recent Chinese policies have raised similar concerns, such as the China Banking Regulatory Commission’s Guidelines on Promoting the Application of Secure and Controllable Information Technology in the Banking Industry (2014-2015). These types of requirements risk companies’ core intellectual property, endangering their competitiveness and their ability to innovate. In addition, such a certification process would be redundant, as Article 18 already requires these products and services to comply with relevant national and industry standards.

Second, provisions in Article 30 requiring the purchaser to undergo a security check when buying network products and services will create challenges for both companies and government agencies. Purchasing firms frequently do not have access to the source code and intellectual property of products they source from technology firms, making it difficult to comply with Article 30. In sectors such as financial services, compliance requirements in international markets could also bar them from making these kinds of disclosures. Both Chinese and foreign firms in this sector would thus be unable to comply with the requirements in the current draft law, due to the differences with internationally established standards, regulations, and best practices.
Third, the provision does not define “critical” or “specialized,” giving little guidance as to what types of products will be included in the catalogue and raising major questions for companies whose products may or may not be covered by these provisions.

Given the above concerns, we recommend that Articles 19 and 30 be deleted entirely, or edited to provide significantly more detail about the scope and processes described in these articles. If these articles are revised, we also recommend that new language be added explicitly stating that qualified private institutions, including foreign institutions, will be permitted to certify products to meet these standards, and that government and private institutions should strive for uniform implementation of certification and inspection standards and procedures.

**Cross-border data flows**

Article 31 requires CII operators to store citizens’ personal data and other important data within Chinese borders, and to store or provide the information to those outside of China only after a security assessment. Such restrictions on cross-border data flow are troubling, as such flows are critical to the growth of the global digital economy that supports the development of the information industry and broader economic growth globally, including in China. Additionally, such local data storage and transfer requirements impede the growth of this sector in China by isolating Chinese companies from the best data-related technology and business expertise. These restrictions present obstacles to China’s greater integration with the global information and communications technology (ICT) ecosystem, and may negatively impact Chinese government policy goals such as promotion of cloud-based services or smart technologies.

Additionally, current language is so broad that it could capture unintended information flows. For example, a Chinese customer seeking to verify a transaction made through an international branch of a Chinese bank by voluntarily transmitting personal information or a Chinese citizen exchanging information with family and friends in other countries could be covered by this provision and required to obtain a security assessment for each instance—even if the customer gives assent. This provision also raises other questions, including the definition of CII operators, the types of data that could be covered (such as proprietary business information or human resources data), details of the security assessment required to request an exemption, and the scope of the requirement (such as whether it would apply only to newly collected data or retroactively to existing data).

In light of these questions, we recommend that Article 31 be revised in close consultation with industry stakeholders to ensure that attempts to regulate data flows can address both security and practical business needs. Open discussion on this issue can better ensure China meets its cybersecurity needs, while simultaneously promoting the sustainable development of its ICT sector.

**Cybersecurity Standards**

USCBC appreciates the specific language in Article 13 encouraging enterprises to participate in the development of national and industry cybersecurity standards. Active, open engagement with industry in the development of standards is the best way to ensure that those standards are
comprehensive, achievable, and widely accepted. We encourage the Chinese government to ensure transparency in standard-setting, and recommend adding a sentence to Article 13 to clarify that “Domestic, foreign-invested, and foreign enterprises are eligible to participate in these standard-setting activities.”

Additionally, we strongly encourage the addition of language throughout the law mandating harmonization with international standards and best practices wherever possible. Greater consistency with international standards would serve the needs of both Chinese customers, by giving them the widest range of choices to protect cybersecurity, and Chinese companies, by allowing them easier access to the global marketplace. Conversely, China-specific standards in these areas could undermine the goals of the draft law by slowing industry’s ability to respond to evolving cyber threats. Provisions where such language would be most appropriate include Articles 7, 13, 17, 19, and 26.

Network Operator Obligations and Liabilities
Much of the language in the draft law discusses obligations for network operators, as well as liability for operators that do not comply with the law’s provisions.

- **Article 17** describes a “tiered network security protection system,” and then lays out specific obligations that network operators must meet. The last paragraph of this article also states that the State Council will release more specific measures governing tiered network security protection. It is unclear how this tiered system may related to existing schemes, such as China’s multilevel protection scheme (MLPS) that impacts how technology-based products can be certified and sold in China. Ensuring consistent approaches and requirements between these schemes will be important to reduce overlaps and increase clarity, thus allowing regulators to make better use of their time and resources. In addition, China’s MLPS framework has raised previous concerns for many foreign companies due to discriminatory provisions requiring companies to register IP locally and turn over sensitive source code. We recommend that the last paragraph be revised to read: “Specific measures for tiered network security protection will be developed by the State Council and aligned with other government security initiatives.” We also recommend that the State Council and other agencies develop and implement such a tiered network security protection system in line with non-discriminatory principles laid out in this draft law as well as with international best practices.

- **Article 18** requires network products and services to comply with relevant standards and requires companies to notify users when information is collected or when they discover potential security risks. The article also requires them to provide security maintenance for products and services within the contract period, but does not indicate whether the company is still obligated to do so if the contract is terminated early or is breached by the other party. Additionally it leaves a number of key questions addressed, including how companies should obtain consent from users or whether companies would still be liable if a third party alters the products or installs them incorrectly. We recommend new language be added to this provision to address these specific concerns, including addition of a “deemed consent” standard.
Articles 18, 21, 36, 47, and 52 all require network operators that discover security risks or network intrusions to “promptly” address issues and inform users as well as provide information to government entities. The law, however, does not define “promptly.” Given language in Chapter VI that defines legal liabilities when companies do not meet these provisions, this lack of clarity is a significant concern. We suggest that the word “promptly” be replaced with “as soon as is practicable when the operator is made aware of the threat.”

In addition, it is not clear how companies need to order their efforts to address identified intrusions and inform users; according to the draft law, network operators must immediately take both actions. In practice, disclosing security risks before a solution is developed can damage security systems further by broadcasting the system’s vulnerability. Language should be added to allow the operator a reasonable period of time to quickly correct the issue before informing users and government entities. We also encourage such standards of “reasonableness” to be added or explicitly applied to other requirements in this law, including those listed in Articles 27, 28, 36, 41, 47, 48, and 51-59.

Articles 18 and 41 prohibit malicious programs that are either installed by network product and service providers or included among information sent by application software providers. Both articles raise questions about whether companies are liable if they are unaware of such programs because they have been installed by third parties or by rogue employees. We recommend that new language be added to both articles to state that application software companies are not liable if they can prove they were unaware of the installation or transmission of malicious programs.

Article 20 mandates that network operators conducting key services require users to provide real identity information, and prohibits them from providing those services otherwise. Such requirements may conflict with broader Chinese goals of protecting user privacy and security, while also creating significant challenges for network operators. Additionally, these requirements could increase the risk created by any individual network incident by increasing the cache of citizens’ personal data available to an attacker. For these reasons, we encourage the National People’s Congress to engage stakeholders to revise these requirements in line with international best practices and regulatory experience in other jurisdictions, such as South Korea.

Article 23 allows government entities conducting security or criminal investigations to request network operators to provide assistance, but provides no further detail on the scope of assistance that companies can or should provide. To ensure smooth cooperation and protect user privacy, we recommend that the State Council draft a separate regulation on this topic and release it before or at the same time as the Cybersecurity Law is finalized, and clarify whether activities such as encryption key transfer and network access will be required. Such assistance should be limited to the extent necessary to
conduct these investigations, and efforts should be made to reduce any negative impact on network functionality.

Similarly, Articles 32 and 33 should also be revised to incorporate new language stating that government reporting and inspections should strive to minimize the negative impact on network function, that government agencies conducting these activities should protect proprietary information, trade secrets, and intellectual property, and that these activities are subject to government oversight. Additionally, we suggest new language be added to hold accountable any officials that fail to protect trade secrets, confidential information, or citizens’ personal data confidential as required under the revised Articles 32, 33, and 39.

Finally, new language should be added to Article 59 to protect network operators against actions from affected parties based on actions taken in cooperation with government authorities.

- **Article 29** requires CII operators to sign agreements with equipment providers to clarify responsibilities for security and confidentiality. However, the scope of these agreements is unclear, making it difficult for both network providers and equipment providers to ensure they are in compliance. We recommend that the Chinese government release more details about such agreements or a template of how such an agreement would be structured.

- **Articles 34–43** discuss privacy obligations for network operators, including how they should handle personal information, protect privacy, and address actual or potential information leaks. These provisions are described as broad principles, and do not provide clarity for either network operators or other businesses interacting with personal data as to how to protect against the risks of inadvertent breaches and what privacy rules might apply. Given the breadth of coverage in this section, we recommend that the State Council address these issues in a separate Data Privacy Law that would better and more clearly allow the full treatment of these issues, and to draft that law in tandem with the Cybersecurity Law. Additionally, we encourage China to consider international best practices, including the APEC Privacy Framework, that provide an effective foundation for creating a formal data protection system.

The provisions also do not define terms such as “privacy” and “trade secrets” (Article 34) within the context of this law, nor do they indicate whether these obligations extend to other parties, including employees, channel partners, and customers. We request clearer guidance in these regulations or in implementing details to best ensure that companies can comply.

- **Article 36** states that network operators must take remedial measures, including notifying customers, when information leaks, damage, or loss occur or “might occur.” This vaguely worded requirement to notify customers based on speculative risk could create issues for both networks and users, as disclosing potential security risks could hinder security
further by broadcasting potential vulnerabilities. In addition, the vagueness of the definition means that different operators could define the level of possible risk needed to trigger customer notification very differently. We recommend the deletion of the phrase “might occur,” and the addition of the phrase “there is a serious risk” to qualify damage or loss to users.

In addition, Article 36 prohibits network operators from “illegally” providing citizens’ personal data to others, but does not provide a clear definition here for what might constitute a “legal” versus an “illegal” disclosure. We recommend new language be added to this article to define the circumstances for “legal” disclosure to third parties versus “illegal” disclosure.

- Article 40 requires network operators to “keep relevant records,” but does not provide information about the required scope or format of records, or how long companies must keep this information. These questions also arise in Article 57, which imposes penalties for failing to comply with Article 40. We recommend that Article 40 be revised to provide more specific obligations, and that these obligations be drafted in close consultation with industry and international best practices.

Additionally, Article 40 (and Article 43) require network operators to halt transmission of information published by users under specific circumstances. This raises two questions: first, the ability of an operator to halt transmission often depends on the specific way in which the information is released by users. For example, information posted to a website and information sent via a social media platform are transmitted very differently. We encourage the National People’s Congress to engage directly with network operators to revise Article 40 to ensure reasonable standards for network operators in handling such information. Second, government direction to halt transmission of such information can create potential liability for the company unless they are protected against action from the affected user. As such, we recommend new language be added to Article 43 protecting network operators from such liability.

- Article 50 permits government agencies to take temporary measures related to network communications in order to protect national security and public order to respond to “major social security incidents.” However, the provision does not clarify what might constitute such an incident, nor does it specify what types of measures can be taken and for how long. Such a lack of clarity raises major questions for both government agencies that might invoke this authority, as well as for network operators who need to understand how such restrictions might impact their operations. We suggest that new language be added to define the scope and type of measures that can be taken, the permissible duration of such measures, and requirements by which governments exercising this authority provide justification for the measures taken.

**Network Vulnerability Testing**

Articles 22 and 32 contain contradictory language on the topic of network vulnerability testing. Article 32 states that CII operators should inspect and assess their networks’ security at least
once annually, either personally or by retaining a specialized institution. This language thus appears to permit companies to hire outside experts to assess their system through tools such as vulnerability scans and internal security penetration tests. However, Article 22 prohibits any form of network intrusions, thus restricting companies from engaging in behavior that Article 32 seems to encourage as a way of enhancing network security. This contradiction could lead companies to determine that even authorized vulnerability scans are prohibited, limiting their ability to guarantee the safety of their own networks—and undermining the broader goals of this law.

We recommend revising Article 22 to state that “Individuals or organizations must not engage in network intrusions or interfere with the ordinary function of other networks, steal network data, or engage in other activities harmful to network security unless authorized by the network’s operator as part of a security assessment; they must not provide either the tools or methods for creating network intrusions, interfering with the ordinary function of networks or stealing network data or other activities harmful to network security; they must not intentionally provide assistance such as technical support, advertising/promotion, or financial support to others that is aimed at engaging in activities that undermine cybersecurity.” Such focused language would give companies the freedom to regularly assess their network vulnerabilities, while maintaining the essence of the original provision in preventing cyber-based criminal activity.

CONCLUSION
USCBC thanks the National People’s Congress for providing this opportunity to comment on the draft Cybersecurity Law. We hope that these comments are constructive and useful to the National People’s Congress Legislative Affairs Commission as it reviews the draft measures, and welcome the opportunity to continue to discuss these points in the future.

—END—

The US-China Business Council
Contact: Jake Laband, Acting Chief Representative in Beijing
Tel: 010-6592-0727
Fax: 010-6512-5854
E-mail: jlaband@uschina.org.cn
Comments on Second Draft of the Overseas NGO Management Law

June 4, 2015

The US-China Business Council (USCBC) and its member companies appreciate the opportunity to offer comments on the second draft of the Overseas NGO Management Law. We are pleased that the National People’s Congress released the draft for public comment, as a transparent rulemaking process produces better and more fully-supported legislation.

USCBC represents approximately 210 US companies engaged in business across all industry sectors in China. Over the past four decades, USCBC member companies have contributed significantly to building healthy, mutually-beneficial US-China commercial relations and to the development of China’s economy.

USCBC has had representative offices in China almost since China’s government allowed them to be established. USCBC opened its office in Beijing in 1979, and an additional office in Shanghai in 1997. The purpose of having multiple offices is to facilitate greater commerce and trade between the United States and China. As a consequence, our organization has a significant interest in the scope of the draft Law and its implications for our operations in China.

USCBC recognizes and applauds the goals of the Chinese government to streamline approval processes for NGOs as part of the government’s broader administrative reform agenda. We also recognize the right of the Chinese government to regulate foreign institutions within its borders. USCBC is concerned, however, that certain articles within the draft Law actually work counter to Chinese government goals of administrative reform, and economic reform and opening. This can have an important influence on the ability of organizations such as USCBC to contribute to the next stage of China’s development, as well as perceptions of the direction of China’s reform agenda. With this in mind, USCBC respectfully offers comment on select provisions within the law.

Comments on Specific Provisions

Article 2
Article 2 of the draft Law defines overseas NGOs as “non-profit, non-government social organizations.” This definition – and therefore the scope of the draft Law - is unclear, given the wide variety of NGOs that operate not only in China but around the world. USCBC’s activities are entirely business-focused, rather than being a “social organization,” and support China’s economic development. These activities seem to be beyond the scope of the intended concerns of this legislation. USCBC recommends that the definition of NGOs covered by the law be clarified. If the intent of the draft Law is to focus on social organizations and not business organizations such as USCBC, the draft should be revised to reflect that.

Article 7
We understand that the draft law aims to streamline the management of foreign NGOs in China as part of China’s administrative reforms. While we applaud the goal of making registration processes easier and
more efficient, we have concerns about the implications of having China’s public security departments as the manager of that process for an organization such as USCBC.

Business associations work closely with China’s government agencies to support economic and commercial interests in China. As such, the expertise for managing NGOs in China lies in its ministries and agencies that work directly with these organizations, rather than its public security entities. We recommend that China maintain its current approach by retaining the existing registration processes managed by agencies that understand the nature and the value of the activities that business organizations such as USCBC conduct in China.

Alternatively, we propose the draft law be revised to designate the Ministry of Civil Affairs as the lead agency in charge of NGO registrations and that it be given sufficient resources to be able to execute such expanded responsibilities.

**Article 10**
USCBC has significant concerns about the draft Law’s restriction of allowing NGOs to have only one representative office in China without permission from the State Council. It is unclear why such a restriction is necessary, given China’s large and diverse economy, particularly since for-profit entities do not face similar restrictions.

USCBC has offices in both Beijing and Shanghai, and serves very different functions unique to the needs of those cities. In the past year, USCBC has been approached by senior government officials in other Chinese cities and provinces requesting that it set up additional offices to assist foreign companies in their areas. In addition, we have worked closely with government agencies and think tanks such as the China Council for the Promotion of International Trade (CCPIT), the Ministry of Commerce, Ministry of Finance, the Development Research Center, the Shanghai WTO Research Center, and the Shanghai Development Research Center to support their work and policy decisions.

Maintaining our current two offices is critical to our mission of building mutually-beneficial commercial ties. We recommend that existing representative office approvals be grandfathered and not require additional State Council approval. In addition, we recommend that business associations such as USCBC be allowed to open additional representative offices subject to local government approval rather than require State Council approval, in the spirit of China’s current reforms streamlining and localizing approval processes.

**Articles 24 and 37**
USCBC’s understanding is that the goal of the draft Law is to reduce the administrative burdens of NGO registrations and reporting. Some of the processes detailed in the draft Law are reasonable means to ensure that legitimate entities are licensed to operate in China and that they follow appropriate Chinese laws. However, the draft Law’s requirements in Article 24 to submit annual work plans and in Article 37 to submit annual reports on activities create extra work and bureaucracy for both NGOs and their supervisory units without any appreciable benefit for either.

In addition, Article 24 stipulates that annual work plans must be approved by the relevant authorities, suggesting that regulators will have authority to alter the work plans of independent organizations. Such a process raises several questions, including what the standards for approval may be, the timeline for the supervisory unit and registration management organization to approve, and whether NGOs can appeal adverse decisions.

Given all of these concerns, USCBC recommends that both Article 24 and Article 37 be eliminated.

**Article 29**
Article 29 stipulates several requirements for NGOs to manage their finances in accordance with China’s accounting laws. However, the article also stipulates that annual financial audit results be made public. Given that NGOs are not permitted to fundraise or accept donations from within China, these requirements seem unnecessary. USCBC recommends that this requirement be eliminated.

**Articles 34 and 35**
Article 34 of the draft law indicates that an overseas NGO can have up to four representatives – a chief representative and up to three others. This rigid staffing limitation will prevent a business association such as USCBC from providing the services that support China’s economic development and the expansion of US-China commercial relations. As the relationship grows, this staffing restriction would actually limit our ability to expand our services and maintain the level of support necessary to meet the needs of continued growth. We recommend that the number of representatives be approved according to the circumstances of each representative office, and that each representative office be allowed to have a chief representative.

Article 35 limits foreign NGOs to employing overseas personnel for no more than 50 percent of its total staff. While USCBC typically meets this ratio in its representative offices based upon our own assessment of staffing needs, there may be circumstances when we would not, such as staff departures, redefining existing or creating new staffing roles, or if there is a need to have additional overseas personnel to meet our service objectives. A rigid staffing ratio will unnecessarily limit the ability of associations like USCBC to provide the services needed to expand commercial relations. USCBC recommends eliminating this requirement.

**Conclusion**

We appreciate the opportunity to comment on this measure and hope that the modifications that we have recommended will be factored into the final law. We would be pleased to discuss our proposals in detail as appropriate. Please do not hesitate to be in touch with our Beijing office with questions.

— END —

Local Contact:

The US-China Business Council  
Contact Person: John Lenhart, Director and Chief Representative, Beijing  
Phone: 010-6592-0727  
Fax: 010-6512-5854  
E-mail: jlenhart@uschina.org.cn
On behalf of the approximately 210 members of the US-China Business Council (USCBC), we appreciate the opportunity to provide comments to the National People’s Congress on the latest draft of the National Security Law. Our member companies are firmly committed to China’s development, including many of the goals described in Article 1 of the draft law such as reform and opening, modernization, and consumer interests.

USCBC and our members recognize that this law reflects the desire of the Chinese government to promote national security. This is a goal shared by governments around the world, including many markets where our members are able to operate successfully and collaboratively. Countries – and economies – thrive when national security goals do not stifle vital national goals like economic reform and stable growth.

National security should not be used for protectionist purposes or to unduly discriminate against companies based on their nationality. The use of such provisions for that purpose do not ultimately promote national security. Instead, putting up these types of barriers to foreign technology and products undermine countries’ goals of safer and more secure systems in both the short and long term. In addition, Chinese companies seeking to “go global” will be negatively impacted if they are not permitted to incorporate the best technology options for their own systems, and will be hampered in their ability to guarantee their own security. Such policies also have a negative impact specifically on Chinese technology companies, ultimately isolating them from the fast-moving global marketplace, narrowing the scope of innovation, and limiting their development potential.

As such, we have significant concerns about language in the draft law that could be used to discriminate against foreign products. For instance:

- Article 25 calls for “indigenous innovation” and development of strategic technology with “independent intellectual property rights”; and
- Article 26 sets “secure and controllable” networks, infrastructure, and systems as a key goal.

The US and Chinese governments have spent considerable time and effort in recent years discussing both “indigenous innovation” and “secure and controllable” technology requirements. Most recently, the China Banking Regulatory Commission announced in April 2015 after intense discussions with stakeholders the suspension of proposed rules that would require all banks in China to use “secure and controllable” technology. These terms were defined in a separate circular with requirements that foreign technology companies either could not or would not comply with — such as disclosing source code, restricting the flow of cross-border commercial data, and using local encryption algorithms. The regulation’s guiding principles also included encouraging indigenous innovation, without justification of how the use of domestic technology would improve the security of China’s banking system. The two governments
remain in active discussions about this and other regulations that include similar technology restrictions and language such as “secure and controllable.”

Given the concerns that have been consistently raised by stakeholders about these issues and the connotations this language has been known to have in previous initiatives, we urge China’s government to refrain from issuing new policies that implement these initiatives. Doing so would undermine the positive movement in those ongoing discussions and, as noted, would hinder, not help, China’s larger goal of promoting national security. It is our recommendation that both articles be revised to remove references to “indigenous innovation” and “with independent intellectual property rights” in Article 25, as well as “secure and controllable” in Article 26. Other similar references should also be removed from the draft law. Should it not be possible to eliminate these provisions, any policy containing these terms should include clear definitions that explicitly illustrate that such policies will not exclude foreign products and technologies, and will not be used for protectionist purposes. Elimination of these terms altogether, however, would represent a positive step in ensuring that the National Security Law best promotes the goals laid out in Article 1 without unduly discriminating against products and technologies based on political considerations such as national origin.

Finally, we noted several articles in the draft law that refer to other security goals, such as food security and safety in Articles 19 and 24, environmental protection in Article 27, and energy management in Articles 28 and 29. We encourage Chinese government agencies to ensure that efforts to meet these goals, including enforcement, are conducted in a fair, transparent, and non-discriminatory manner. Our members believe collaborating with foreign companies is one of the best options for China to achieve many of these goals. We recommend the Chinese government seek to work actively with industry through public-private voluntary partnerships and other forums to best achieve the goals described in these articles.

CONCLUSION
USCBC thanks the National People’s Congress for providing this opportunity to comment on the draft regulations. We hope that these comments are constructive and useful to the National People’s Congress Legislative Affairs Commission as it reviews the draft measures, and welcome the opportunity to continue to discuss these points with you in the future.

—END—

The US-China Business Council
Contact: John Lenhart, Chief Representative in Beijing
Tel: 010-6592-0727
Fax: 010-6512-5854
E-mail: jlenhart@uschina.org.cn
April 13, 2015

TO: Chinese Communist Party Central Leading Group for Cyberspace Affairs

By CC to: Office of the Central Leading Small Group for Cyberspace Affairs
225 Chaoyangmen Nei Dajie, Dongcheng District, Beijing 100010

To the Honorable Members of the Chinese Communist Party Central Leading Group for Cyberspace Affairs:

The undersigned 31 trade associations, representing leading segments of the global business community, are writing to express our continued strong concerns regarding the China Banking and Regulatory Commission (CBRC) guidelines and other related policies that discriminate against foreign providers of Internet and information and communications technology (ICT) products, solutions and services. Although security is cited as one reason for drafting these policies, specific provisions within the guidelines – and language calling for development of strategic emerging industries – mean that these policies would in practice likely limit the ability of Chinese companies to select technology solutions that best meet their security needs.

Our organizations understand Chinese banks are continuing to implement new procurement practices favoring domestic products and services consistent with the guidelines, creating urgent challenges for companies whose products and services are affected by them. We therefore urge the Chinese leadership to officially suspend implementation of the guidelines through a written public notice, publicize them as a proposal, and initiate a formal public consultation consistent with China’s international obligations. This would allow an opportunity for a transparent and open discussion and dialogue between interested global stakeholders and the government agencies responsible for this and other similar initiatives.

Some of our associations have initiated dialogues over the past few months with the CBRC and other Chinese government agencies regarding these guidelines, and appreciate the initial discussions to date. However, we remain concerned that stakeholder input has not been fully considered and basic steps to achieve transparency consistent with China’s international obligations have not been taken.

The CBRC guidelines in particular, which require use of “secure and controllable” or Chinese-developed and/or controlled Internet and ICT products, solutions, and services, will have far-reaching negative impacts not only on the ICT sector but also on financial institutions and their clients. Financial institutions have every incentive to build and maintain secure, interoperable, and resilient ICT infrastructures, and must be able to choose the technologies that best meet their unique needs. Although the banking guidelines are the most pressing, we also are concerned about emerging examples of these “secure and controllable” initiatives in other sectors, such as telecommunications, and more broadly the establishment of an overarching “Cybersecurity Review Regime” to assess Internet and ICT products and services for security risks through a testing and auditing process that emphasizes “security and controllability.” We also ask that these related initiatives do not proceed without robust and formal consultation with all stakeholders, including foreign companies, consistent with China’s international obligations.

Sovereign interest in a secure and development-friendly cyber economy is best served, in any country, by policies that encourage competition and customer choice, both of which necessitate openness to non-indigenous technologies, as well as an ongoing dialogue between industry and government. Approaches that keep out certain technologies would likely render China’s affected industries slower to innovate, more costly to operate, and less capable of managing dynamic security threats leaving Chinese networks less secure.
Thank you very much for your consideration. We stand ready to work with the Chinese government and China’s domestic ICT, financial, and other sectors to discuss constructive, alternative approaches.

Signed,

Alliance for Network Security (ANS)
American Chamber of Commerce in China
American Chamber of Commerce to the EU
American Chamber of Commerce in Shanghai
BSA | The Software Alliance
Coalition of Services Industries (CSI)
Communications and Information Network Association of Japan (CIAJ)
Computer & Communications Industry Association (CCIA)
Consumer Electronics Association (CEA)
DIGITALEUROPE
European Services Forum (ESF)
Information Technology Industry Council (ITI)
International Chamber of Commerce Commission on the Digital Economy
Japan Business Machine and Information System Industries Association (JBMIA)
Japan Chamber of Commerce and Industry (JCCI)
Japanese Chamber of Commerce and Industry in China
Japan Electronics and Information Technology Industries Association (JEITA)
Japan Information Technology Services Industry Association (JISA)
National Association of Manufacturers (NAM)
National Foreign Trade Council (NFTC)
Semiconductor Industry Association (SIA)
Semiconductor Equipment & Materials International (SEMI)
Software and Information Industry Association (SIIA)
TechAmerica, powered by CompTIA
TechNet
Telecommunications Industry Association (TIA)
Transatlantic Business Council (TABC)
US-China Business Council (USCBC)
United States Chamber of Commerce
United States Council for International Business (USCIB)
United States Information Technology Office (USITO)
US-China Business Council Comments on The Draft Foreign Investment Law of the People’s Republic of China

February 17, 2015

The US-China Business Council (USCBC) has supported the expansion of mutually-beneficial US-China commercial relations for over 40 years. With more than 210 American companies as members, USCBC welcomes China’s current reform initiative to allow the market to play a decisive role in its economy.

Within that context, USCBC is pleased that the Ministry of Commerce (MOFCOM) is taking significant steps to reform China’s foreign investment regime. These reforms are essential for China’s future economic development and can play an important role in attracting more foreign investment to support China’s economic goals.

We are pleased to have the opportunity to offer comments on the draft Foreign Investment Law, which replaces three current foreign investment laws: the Wholly Foreign-Owned Enterprise Law (“WFOE Law”), the Sino-Foreign Equity Joint Venture Enterprise Law (“EJV Law”), and the Sino-Foreign Contractual Joint Venture Enterprise Law (“CJV Law”).

This draft law has many positive elements, such as removing articles in the current foreign investment laws on governance and registered capital and allowing the Company Law to govern these aspects of foreign investment. The draft law also appears to streamline the approval process for a significant portion of foreign investment. Finally, the draft law integrates important principles established during negotiations for the bilateral investment treaty (BIT) with the United States, including pre-establishment national treatment and a negative list (the “Catalogue of Special Management Measures”). A high-standard BIT will benefit the American and Chinese economies and is a top priority for USCBC.

On the other hand, the draft law continues to maintain a distinct class of enterprise in China—the foreign-invested enterprise (FIE)—with requirements and limitations for foreign investors and FIEs that do not apply to their domestic counterparts. USCBC greatly appreciated Premier Li Keqiang’s January 2015 statement at the World Economic Forum in Davos, Switzerland that “Chinese and foreign companies will be treated as equals.” We believe that a distinct class of enterprise for foreign investment invites continued differential and discriminatory treatment, and contradicts the spirit of national treatment. We encourage China’s policymakers to do away with the “FIE” classification and govern all legally-established companies in China under the same laws and regulations that apply to domestic enterprises, such as the Company Law.
With this in mind, USCBC proposes the following general principles for the draft law on foreign investment:

**Eliminate provisions that discriminate between foreign and domestic investment**
USCBC recommends revisions that would make foreign-invested companies subject to the same legal and reporting requirements as domestic companies. This would be in line with some of the most positive developments in the current draft to remove requirements for corporate governance and registered capital and instead refer companies to the Company Law. Such revisions would also be in line with the spirit of national treatment and support China’s ongoing negotiations with the US for a Bilateral Investment Treaty (BIT). To achieve this goal, regulators should consider making changes to the draft law such as eliminating extensive reporting requirements and additional supervision and inspection requirements that apply to foreign-invested but not domestic companies.

**Clarify the scope, form, and revision process for the negative list** While USCBC appreciates the shift to a negative list approach, we remain concerned that dividing the negative list into “prohibited” and “restricted” categories will encourage the inclusion of more—not fewer—restrictions, resulting in a list that is not in line with the spirit of a negative list approach. Designing a negative list in this way would hinder progress on China’s BIT negotiations, limit the ability of the Chinese economy to benefit from competition with world-class companies in key sectors, and ultimately slow progress on China’s own domestic reform campaign. Additionally, this model contradicts the current approach being used in the Shanghai Free Trade Zone, undermining the central government’s stated goal of allowing the Shanghai model to spread nationally. We recommend that MOFCOM reconsider using a streamlined, unified negative list with a very specific and limited listing of industries in which investment is prohibited, clarifying its relationship to the existing Catalogue Guiding Foreign Investment.

Furthermore, USCBC requests that MOFCOM indicate how frequently the negative list may be revised and the process for doing so, as well as ensure that the drafting and subsequent revisions to the negative list are carried out in a transparent manner, with inputs from all stakeholders, including foreign business.

**Increase transparency in all review procedures** Language in the current draft permits MOFCOM to collect input from other ministries and stakeholders, including Chinese companies, during market entry review and national security review processes. While we recognize potential value in gathering input from a variety of sources, we are concerned that this process creates an opening for protectionism, as it would allow input from parties who could potentially hold conflicting interests with foreign investors. Article 38, in soliciting public opinions on foreign investor applications, and Article 55, in allowing third parties to raise suggestions to the Joint Conference reviewing national security, create opportunities for discrimination against foreign investors by allowing stakeholders with conflicts of interest—including industry competitors—to participate and influence the process. We recommend structuring all review mechanisms in a transparent and efficient manner that limits third-party influence, increases administrative efficiency by reducing industrial licensing requirements,
and narrows the scope of national security review criteria to consider the positive effects of open trade and foreign investment while also considering national security concerns.

**Clarify the relationship between this law and other relevant laws and regulations** We note and appreciate reference to the Company Law to guide company governance after a three-year transition period (Article 157). However, it remains unclear how the draft law, once enacted, will affect other existing regulations related to foreign investment. For instance, it is unclear whether the numerous foreign investment regulations ancillary to these three foreign investment laws will continue to be binding. Those regulations include the Provisions on the Takeover of Domestic Enterprises by Foreign Investors, the Guidelines on Market Access Administration for Foreign Investment, additional corresponding implementation regulations, and other regulations on foreign exchange. In addition, it remains to be seen what, if any, regulatory overhaul will occur, and whether there are any legislative plans to follow up on those regulations. We suggest providing additional clarity on these matters.

In addition to the above general principles, USCBC respectfully submits the following specific changes for consideration during the revision process of the draft law.

**Chapter 2: Foreign Investors and Foreign Investment**

USCBC remains concerned about vague and potentially discriminatory definitions contained in this chapter and asks for clarification concerning the scope of the following items.

- **Articles 14 and 15**– These articles seek to define what is considered a foreign-invested entity. They seem to suggest that no matter the percentage, any company with foreign investment shall be considered an FIE. This is different from the regime established by the EJV Law, under which any enterprise with a foreign investment of less than 25 percent is not considered a foreign-invested company. In reality, these companies are essentially already able to operate as domestic entities, as such low levels of investment do not afford meaningful operational control. In addition, we note that this article—when coupled with Article 13—creates confusion about the delineation between a FIE and a domestic enterprise, as all of the FIEs defined under Article 14 could also fall under the definition of domestic enterprises in Article 13. This confusion could lead to different interpretations by officials and agencies at different levels. To ensure equal treatment for all companies, China should move away from such designations entirely. If such a change is not possible, we suggest adding language to explicitly state that FIEs should be considered domestic enterprises in matters of Chinese regulation outside of the scope of restrictions listed in this law or its implementing regulations.

Additionally, we note that Article 15 would appear to halt the use of variable-interest entities (VIEs) as an investment model. Despite concerns about the nature of VIEs in China and the desire to better regulate them, VIEs have brought benefits to both foreign and domestic companies, including providing Chinese entrepreneurs access to international financial markets. We encourage Chinese regulators to consider a streamlined process to “grandfather”
existing VIEs and ensure that provisions related to VIEs – and their implementation – treat foreign-invested and domestic-invested VIEs equally.

- **Article 16** – This article suggests that a national security review is mandatory for a foreign-invested company that has property rights in China, including property ownership or land usage rights. It is not clear whether these provisions apply to all foreign-invested enterprises, or just FIEs in certain sectors, such as real estate. Such provisions, if applied to all companies using Chinese land, would require a significant number of companies to undergo national security reviews, straining capacity and significantly slowing MOFCOM’s ability to approve new foreign investment. We recommend clarifying this article to limit the scope of national security reviews.

- **Article 18** – This article lists several ways to determine if a party has control over an enterprise, but it does not sufficiently define many of the terms used for such an assessment. For example, the term “material impact” in Article 18.2.3 and the term “decisive influence” in Article 18.3 are difficult to define. In practice, even minority shareholders lacking meaningful operational control could still be interpreted as exerting a “material impact” on decision making, depending on how that impact is defined. Additionally, this provision does not provide sufficient guidance for cases in which the shareholding structure is complex. For example, it is not clear how the draft law would deal with a dispersed shareholding structure, multiple levels of investment, or fund-controlled companies whose actual capital contributors are limited partners or a managing general partner. Lack of clarity in these areas could cause officials to interpret the provision in very different ways, leading to uneven implementation and feeding further doubts about the value of this concept. We suggest eliminating this provision or providing greater clarity as to how control of an enterprise will be determined.

**Chapter 3: Market Entry Management**

USCBC applauds the adoption of a negative-list approach in governing foreign investment in China as an important step in reforming China’s investment regime. However, we have concerns about provisions related to market entry review. Of particular concern is the involvement of parties with potentially conflicting interests—especially competitors, as this can create opportunities for protectionism and discrimination against foreign companies.

- **Article 21** – This article states that “competent foreign investment departments” will be responsible for managing the market entry review, but it does not clarify whether this means MOFCOM, provincial and local commercial agencies, other government stakeholders, or a combination of the above. We recommend that this language be clarified to ensure a streamlined and efficient administrative process that contains no unnecessary departmental overlap.

- **Article 22** – We applaud the adoption of a negative-list approach to governing foreign investment in China. We encourage regulators to take a pragmatic approach when determining the industries to be included, limiting them to what is truly key to protecting core national security, and excluding sectors in which open competition will promote government goals of innovation and industrial upgrading. We suggest that MOFCOM clarify
when the catalogue will be revised and ensure that its drafting and revision are carried out in a transparent manner. To do this, MOFCOM should consult actively with outside stakeholders, including foreign business. This will ensure that the catalogue is developed in tandem with principles China is using in its negotiations of the US-China bilateral investment treaty.

Additionally, we recommend that the provision clearly state that the Catalogue of Special Management Measures is a comprehensive list of all provisions governing foreign investment. It should be regarded as the only authority that exclusively applies to foreign investment. Invalidating all regulations not listed in the negative list will create a clear, streamlined foreign investment regime convenient for both regulators and foreign investors.

We also note language stating that this new catalogue will list all circumstances in which foreign investors are granted treatment less favorable than their domestic counterparts. As noted earlier, such differential treatment contradicts the spirit of Article 6 and statements by senior Chinese leaders that Chinese and foreign companies will be afforded equal treatment. We would encourage MOFCOM to work with other government agencies to reduce this list of exceptions to only those sectors that are concerned with core national security. In the past, investment ownership restrictions were not listed in one clear document; while most were included in the Catalogue Guiding Foreign Investment, some were included in ministry-specific regulations. This made it challenging for companies to clearly know what restrictions might be in place, and it also permitted ministries to restrict investment approval through guiding opinions and development plans. Current wording could duplicate this situation. Additionally, we suggest adding the following language: “This catalogue shall serve as the definitive list of all such differential treatment or restrictions; any sectors not listed shall be regulated under domestic laws and regulations and shall receive equal treatment with domestic companies.”

Finally, we recommend further written clarification that once enacted, this new negative list will supersede other legislation currently regulating foreign investment—namely, the Catalogue Guiding Foreign Investment and the National Development and Reform Commission Administrative Measures for the Approval and Filing of Foreign Investment Projects.

- **Articles 24-26** – We recommend eliminating the two-part negative list in favor of a unified and simplified negative list. As noted previously, we remain concerned that dividing the negative list into “prohibited” and “restricted” categories will encourage the inclusion of more restrictions, not fewer, resulting in an extensive list that does little to address investment barriers. These articles raise a few additional questions:
  - Article 25, which details the types of domestic companies with foreign investment that are barred from investing in prohibited industries, is extremely broad. As written, this provision would treat any domestic company whose shares, equity, voting rights, property shares, or other rights and interests are held by a foreign investor as a foreign-invested company. For example, the terms “other rights or
interests” could be interpreted to mean that any domestic company with liability to foreign investors, such as a small bank loan, is a foreign company.

- Article 26 states that a monetary threshold will trigger a requirement for market entry review, but it does not specify the amount of that threshold. We recommend clearly specifying this amount.
- Additionally, it is not clear whether the difference between total investment and registered capital still exists under this new investment regime.

Based on these concerns, we suggest that Article 24 and the first paragraph of Article 25 be eliminated. The first paragraph of Article 26 should be rewritten to read: “The list of restricted investment shall include the following scenarios:

(1) Investments exceeding the relevant monetary thresholds prescribed by the State Council; and
(2) Industries listed in the Catalogue of Special Management Measures.”

Finally, we suggest that the State Council provide more information about the “monetary thresholds” listed in Article 26 to afford greater clarity to regulators and companies alike. This should be done in further consultation with international and domestic stakeholders to ensure a proper definition that takes into account pragmatic business realities.

- **Article 30** – The negative-list approach for foreign investment has the potential to provide clearer guidance and greater convenience to foreign investors, but Article 30 requires licensing in unspecified industries with no similar catalogue of ministries that require industrial pre-approvals. This vague wording may cause confusion about which sectors need further licensing procedures, leading to investors inadvertently neglecting to apply for required licenses and increasing the time and cost for investors and the investment approval authority. We encourage Chinese authorities to eliminate unnecessary industry licenses to streamline investment approvals and reduce opportunities for protectionism. We also suggest that MOFCOM coordinate with the industrial regulators to compile a comprehensive list of industries that require pre-approval and required licenses. We encourage all industrial regulatory review processes to be conducted in an open and transparent manner that limits interference from third parties. These developments would demonstrate improvements to China’s reform efforts in streamlining administrative processes.

- **Article 32** – This article includes vague factors for consideration during the market entry review process, which could be interpreted to cover nearly any foreign investment. Such broad standards could permit opportunities for protectionism and discriminatory regulatory behavior. Specific areas of concern include clauses that discuss national security, industrial development, and technological innovation. Such broad standards could lead to a vast number of cases, causing excessive processing times for a significant portion of foreign investment transactions, straining regulator capacity, and dampening interest in foreign investment in China. We recommend defining the list of factors as narrowly as possible to avoid domestic protectionism and excluding sectors in which open competition will promote government goals of innovation and industrial upgrading.
• **Article 33** – USCBC encourages communication among industry regulators involved in the market entry review mechanism to be conducted in an open and transparent manner, such that industrial ministries or other industry participants do not have undue influence in the market entry licensing process. Additionally, the relationship between market entry review and industry licensing has not been clearly defined—it is unclear how prior and non-prior industry licensing would be folded into the scope of market entry review. We recommend clarifying this relationship and taking steps to streamline these processes as much as possible.

• **Article 35** – To best assure timely review of market entry licenses, limit the risk of regulator backlog, and better align with international best practices, USCBC recommends amending this article to grant automatic approval if no decision is issued within the review period. USCBC notes that similar automatic grant provisions are included in other regulatory areas where reviews are required, such as competition reviews under Article 25 of the Antimonopoly Law.

• **Article 37** – This article discusses the range of conditions that investment authorities can apply to a potential investment based on its market entry review. While the previous article states that authorities shall provide reasons for their investment decisions—approval, rejection, or conditional approval—it does not clearly state that they must provide written rationales for their remedies. We recommend that regulators be required to provide these written rationales to all applicants.

• **Article 38** – USCBC encourages communications between investment authorities and relevant departments to be conducted in an open and transparent manner to ensure that industrial ministries or other industry participants do not have undue influence in the market entry licensing process. Additionally, we note that this article allows for “other stakeholders” to participate in market entry review processes, allowing for potentially discriminatory input from industry participants or competitors with conflicting interests. We recommend revising this article to eliminate “and other stakeholders.”

• **Article 39** – This article allows for public hearings and panel discussions on matters related to “public interests.” We appreciate the efforts of investment authorities to provide greater transparency, and we hope that this process will run efficiently and smoothly. To best ensure the success of these hearings, we recommend clarifying the scope of applicable topics that qualify as “public interests” to limit the risk of potential protectionism. We also recommend including provisions that ensure the protection of foreign investors’ commercial secrets during such public hearings and panel discussions.

• **Article 40** – USCBC appreciates the opportunity for administrative self-defense as an important step in ensuring transparency and due process in these proceedings. We suggest providing more details to help make the process run smoothly for all parties. This should include information about when and how an investor will be notified about an intended conditional approval or denial, whether that notification will include the reasoning behind the review mechanism’s decision, how long the investor has to submit its response, what format discussions and arbitration will take, and whether a written decision will be issued at the conclusion of said deliberations.
• **Article 43** – This article also seeks to improve transparency in market review decisions, a step that can help all parties better understand and prepare for this review process. At the same time, protection of trade secrets and confidential business information is an important factor. To consider both of these factors, we recommend revising this article to read: “The competent foreign investment department shall make public its market entry licensing decisions on foreign investment in accordance with the law, with consideration to trade secrets and personal privacy as described in Article 84 of this law.”

• **Article 47** – We recommend amending this article to allow investors to inquire about the status of ongoing applications and to require foreign investment authorities to provide a timely response for such inquiries.

**Chapter 4: National Security Review**

• **Article 49** – This article describes the body that will conduct the national security review. However, it does not clarify whether this review would take place at the central government level, or whether it could be delegated to lower-level government agencies. We recommend clarifying this point and designating the central government as the entity tasked with these reviews.

• **Article 50** – Foreign investors can apply for national security reviews with the foreign investment authorities if the investments in question might jeopardize or endanger national security. We recommend providing guidance to indicate the types of investment activities that could affect national security and instruction for foreign investors when conducting self-assessments. Such steps will ensure that foreign investors consider national security implications as they plan potential investments in China. They could also help cut down on the number of national security reviews that government agencies must conduct.

• **Article 53** – We appreciate that this article requires the foreign investment authority to notify an investor within 15 working days of its decision on whether a national security review is needed. To standardize this process and make it clear for all parties, we recommend that this article be amended to state that the authority shall “inform the applicant concerned in writing” whether a national security review is necessary.

• **Article 54** – This article states that foreign investors are not permitted to withdraw an application for a national security review without the consent of the relevant foreign investment department. Foreign investors may have a variety of legitimate reasons why they may wish to no longer proceed with a national security review that they have initiated, and they should have the ability to withdraw that application. We would note that such requests are often granted in other jurisdictions, including the United States. As such, we recommend that this provision be modified to state: “After submitting an application for national security review, a foreign investor may request to withdraw that application for any reason. Such requests will ordinarily be granted, unless otherwise determined by the Committee.”

• **Article 55** – This article states that various stakeholders—including industry associations, competitors, upstream and downstream enterprises, and other concerned parties—can raise
suggestions to competent investment authorities for investments that require a national security review. Such a process can create opportunities for discrimination against foreign investors by allowing input from parties who may hold conflicts of interest. We recommend that a mechanism be included to limit the role of competitors or other interested parties in the national security review process. This could include creating a transparent complaint application process, in which stakeholders that lodge complaints can be held accountable for their assertions.

When a suggestion is made by an outside party, we recommend that the government authority notify the applicant in writing and make a decision on whether to initiate a review within the same prescribed timeframe to avoid uncertainty and safeguard normal business operations.

Additionally, this article does not set any specific time period during which an *ex officio* review can be launched. To provide better clarity for all parties involved, we recommend that the law clearly states how long an investment may be subject to an *ex officio* review.

- **Article 57** – The factors to be considered during national security reviews, as currently stated, are vague and could be interpreted to cover nearly any investment. Such broad standards could lead to a large number of national security reviews for a significant portion of foreign investment transactions, straining regulator capacity while also dampening interest in foreign investment in China. These standards could also permit opportunities for protectionism and discriminatory regulatory behavior. We recommend narrowly defining the list of factors eligible for review to those that protect legitimate national security concerns without interfering in economic growth and development. We strongly recommend that the national security review consider both the positive and negative dimensions of increased investment. For example, foreign investment in agriculture could benefit China’s efforts to meet its long-term demand in grains, affecting Article 57 (clause 7).

- **Article 65** – This item provides the opportunity for applicants to propose conditions for an investment before a decision is issued. However, no mechanism exists for communication between the applicant and the authority during review. We recommend adding language to establish such a mechanism or to provide guidelines for investor-authority communication. This will allow investors to make proposals in a timely manner when the authority believes a need has arisen.

- **Article 70** – This article states that foreign investment authorities can impose “necessary provisional measures” to protect national security while a review is underway. However, there is no specific guidance on what types of interim measures are permitted, leaving potential investors with many questions. We suggest clarifying this term to specify which concrete measures may be taken and under what circumstances.

- **Article 73** – The draft law in its current form does not allow for administrative reconsiderations or administrative lawsuits to challenge national security decisions. The absence of a meaningful system of appeal contradicts efforts to promote more transparent administrative decision making and runs directly counter to goals laid out at the Fourth
Plenum of the 18th Chinese Communist Party Congress to promote rule of law in China. Recent experiences in the US system provide a good example of this, in particular Ralls Corporation’s successful CFIUS appeal. To promote these high-level reform goals, we recommend revising this article to state that parties may appeal national security review decisions through China’s court system. We also recommend revising this article to specify—either in this law or in follow-up implementing regulations—the specific mechanism and level of court that can hear these cases.

Chapter 5: Information Reporting

As stated in the General Principles above, USCBC believes that the information reporting mechanism as currently described conflicts with the principle of national treatment and is a step back in China’s efforts to streamline its administrative systems. Many of the provisions overlap with State Administration of Industry and Commerce (SAIC) requirements in the Annual Reporting and Publication System, as well as the Annual Joint Inspection System covered by the Ministry of Commerce, the National Statistics Bureau, the State Foreign Exchange Administration, the Ministry of Finance, and the State Taxation Administration.

Beyond overlapping with these two existing systems, the scope of information required is significant. Foreign companies that have shown the greatest commitment to investing in China may be impacted most, because of the amount of information required and the frequency with which they must provide it. We encourage MOFCOM to eliminate overly burdensome reporting requirements, particularly ongoing reporting requirements, and instead work with SAIC to ensure an information collection system that would cover both foreign and domestic companies. If there is a need to strengthen reporting requirements beyond those already required by SAIC for companies doing business in China, then changes should be made to relevant laws and regulations such as the Interim Measures for Examining and Approving Enterprises’ Investment Projects and the 2014 Provisional Rules on Enterprise Information Disclosure. Those changes should cover all enterprises operating legally in China.

If it is not possible to eliminate this process as an independent requirement for foreign investors, we submit the following suggestions for Chapter 5:

- **Article 75** – SAIC, via the State Council, has already enacted the Provisional Regulations on the Disclosure of Enterprise Information in 2014 that covers both domestic and foreign enterprises. This draft law would require additional information reporting obligations only for foreign-invested companies. Moreover, the two regulations require different information from investors. Thus, the information disclosure requirements laid out here create an extra burden for foreign companies, raising costs and taking time and resources away from efforts to grow in the Chinese economy. USCBC recommends that foreign investment authorities coordinate with SAIC to build a unified and integrated information reporting system, ensuring that MOFCOM has sufficient data about foreign investment while not placing extra reporting burdens on foreign companies.

- **Article 84** – This provision does not specify the definition or scope of commercial secrets and personal privacy. In practice, investment authorities may have differing interpretations of
what information should be kept secret. Information required in Article 92 (specifically clauses 4, 5, 6, and 7) could involve commercial secrets. USCBC recommends clarifying the definition and scope of commercial secrets under this article. Such changes could allow companies to identify trade secrets and other sensitive intellectual property in disclosures to authorities, with the assurance that regulators would take the proper steps to maintain confidentiality. Additionally, we recommend specifying the mechanism to be used in settling disputes or seeking consultancy when any conflict arises regarding the disclosure of confidential information.

- **Article 92** – The scope of information required in clause 2 of this article, including the “source of investment,” is not clearly defined. The experience of US companies shows that defining sources of investment is much more complicated than this law indicates. We recommend further discussion with international and domestic stakeholders to ensure a clearer definition for “source of investment,” so as to avoid regulatory confusion and ensure that companies are able to fully comply with the law.

Additionally, clause 5 of Article 92 calls for the submission of financial accounting information from the previous year—a requirement that is generally only provided during tax audits or company restructuring. Because this provision is repetitive and will increase administrative costs for both government regulators and companies, we recommend its simplification or removal.

Finally, much of the information required comes from annual auditing reports, which are not usually available until May or June of each year. This, combined with the excessive requirements on companies that may have to coordinate reporting requirements among many corporate entities, leads us to recommend that the deadline to be postponed until June 30 each year.

- **Article 94** – Quarterly reporting requirements are unnecessarily frequent, and will increase administrative costs for both foreign investors in China and government regulators. We recommend eliminating this requirement in favor of a single annual report. If that is not possible, we recommend streamlining the list of required information to balance regulatory needs and the administrative burden for companies. In addition to clarifying that all financial information should be kept confidential, the article should state that for a foreign-invested enterprise that has more than 10 subsidiaries, the parent company shall be responsible for reporting.

### Chapter 7: Investment Protection

- **Article 111**: We recommend further clarifying key terms in this provision, including “public interest of society,” and setting standards for value determination, compensation timing, the currency of compensation in expropriation cases, and other related matters.

### Chapter 8: Coordination and Handling of Complaints

- **Article 123** – In order to ensure efficiency in handling complaints, we recommend that the Complaint Coordination and Handling Organizations only hear complaints against
government regulators at lower administrative levels. Under such an approach, provincial authorities would hear complaints against county-level authorities, and national authorities would handle complaints against provincial-level authorities. In this manner, investors can be confident that complaints will be handled fairly, and that they will not face barriers or interference from parties with conflicting interests.

Chapter 9: Supervision and Inspection

As stated in the General Principles above, USCBC believes that subjecting foreign investors to supervision and inspection procedures beyond those required by domestic companies is inherently discriminatory, and violates the principle of national treatment. We recommend eliminating any such provisions from this law and stating that foreign-invested enterprises are subject to equal supervision and inspection requirements to their domestic counterparts under other laws and regulations. If it is not possible to eliminate these processes as unique requirements for foreign investors, we submit the following comments:

- **Article 126** – The inclusion of “etc.” in appears to provide an unlimited number of government departments the right to conduct inspections of foreign companies. Any necessary inspection authority of various government departments should be specified other laws and regulations, apply equally to all companies, and refrain from allowing unlimited inspections. We recommend removing this clause.

- **Article 131** – Criteria laid out in this article as possible triggers for foreign company inspections are extremely broad. In particular, criteria number seven states that an inspection can be triggered if “a foreign investor has committed any acts detrimental to national security and public interests.” These terms are undefined, and no standards are provided as to the legal basis or process that can justifiably trigger an inspection. We recommend either the removal of this statement or the inclusion of specific, limited criteria as to what national security suspicions are sufficient to launch an inspection.

- **Article 133** – We recommend that the inspectors conducting field verifications present not only certificates to prove their identities, but also documents issued by the competent government authorities granting them the ability to conduct on-site inspections. Additionally, we recommend that this law make clear that legal counsel has the right to be present for all on-site inspections.

- **Article 135** – The scope of materials eligible for examination as detailed in this provision is vague and potentially unlimited. We recommend providing clear guidelines for information that is allowed to be kept confidential by investors, especially with regard to provisions detailed in Article 141, which establishes a foreign investment integrity file system and potentially makes this information public.

- **Article 138** – In order to ensure uniform enforcement and orderly administrative implementation of the supervision and inspection function, we recommend that only provincial-level administrations or above be responsible for inspecting foreign investors, if such a function continues to exist in future versions of this law.
• **Article 141** – We recommend clarifying the scope of this mechanism, including information to be collected and made public and methods of ensuring that confidential information will not be made public. In the interest of adhering to fair and equal treatment for all companies operating in China, we recommend clarifying whether this mechanism will apply to domestic companies as well.

• **Article 143** – This provision details how to correct wrong information in the credibility archive system. In order to prevent damage to company reputation for any incorrect information made public, we recommend amending this article to include “if a company’s credibility information has been inaccurately published, only to be corrected later, the foreign investment authority shall immediately make a public announcement of such corrections on its official website.”

Chapter 10: Legal Liabilities

• **Article 147** – As this provision concerns serious legal and criminal consequences, we recommend clarifying this article to differentiate between key terms and the severity of various violations. This includes how “failing to report on time” will be different from “providing false or misleading information during information reporting,” and what exactly constitutes “grave circumstances.”

Chapter 11: Supplementary Provisions

• **Article 157** – This article states that a foreign-invested enterprise shall have three years to revise its organizational structure to comply with the Company Law and other relevant regulations. While we appreciate the need to ensure compliance, such language could require both foreign and domestic companies to renegotiate key aspects of their existing joint ventures. Such renegotiation could cause significant disruption to business for key companies across a range of sectors, and harm both domestic and foreign companies. As such, we recommend adding new language to state: “The competent foreign investment authority shall deem provisions in existing joint venture contracts that apply to the powers of the board of directors to be applicable to the powers of the shareholders’ meeting.” In addition, we recommend that the time period for this transition be extended from three to five years.

• **Article 165** – This “countermeasures” clause is unnecessary and we recommend removing this provision.

Conclusion
USCBC would like to thank MOFCOM again for this opportunity to submit comments on the draft law on foreign investment. USCBC hopes these comments will prove constructive in facilitating investment by foreign companies in China, and in contributing to the continued development and advancement of the Chinese economy. We welcome any feedback that MOFCOM may have on these comments, and we would be pleased to further discuss the content and various provisions at MOFCOM’s request.
February 6, 2015

Ms. Susan F. Wilson
Assistant U.S. Trade Representative for Intellectual Property and Innovation
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ms. Wilson:

On behalf of the US-China Business Council (USCBC) and our more than 210 members doing business in China, I am pleased to submit comments and recommendations for this year’s Special 301 Review of global intellectual property rights protection. We appreciate the US government’s continued efforts to provide a fair and comprehensive assessment of China’s record in protecting intellectual property rights – as affirmed in the joint fact sheet for the 2014 Joint Commission on Commerce and Trade (JCCT) – and hope that the below information may prove helpful in preparation for that report.

Intellectual property (IP) enforcement has long been one of the top challenges that US companies face as they seek to expand their business and investment in China, but in recent years this concern has become even more prominent. In our most recent annual member company survey, IP protection rose to rank second among issues of top concern, ranked only behind competition with Chinese companies. Nearly half of our respondents in 2014 indicated they were “very concerned” about IP enforcement in China; overall, 91 percent of respondents said they had some level of concern.

Despite these concerns, USCBC and our member companies continue to see measured progress on IPR issues in China, in both its legal framework and its enforcement environment. China’s revised Trademark Law and its Implementing Regulations – with improvements in areas ranging from penalties for counterfeiting to bad-faith trademark registration to multi-class trademark applications – went into effect on May 1, 2014. China remains in the middle of an active round of revisions to its core IP laws, with outstanding drafts of its Patent and Copyright laws and planned changes to its legal framework for trade secrets, and continues to work on other IP-related regulations and judicial interpretations touching on priority areas of IP for many foreign and domestic companies.

Our members also note that Chinese policymakers and influencers also appear to be more aware of the benefits of promoting IP protection – and the costs of IP infringement – in meeting China’s goals of building an innovative, market-driven economy. Such recognition can make it
easier for companies to engage with policymakers and find areas of alignment with local stakeholders to promote further improvements to the IP landscape in China. Outcomes from the 2014 Joint Commission on Commerce and Trade (JCCT) and Strategic & Economic Dialogue (S&ED) on trade secret legislation, equal treatment for foreign and domestic IP, inventor remuneration, online piracy, and other priority topics reflect this increasing awareness and the priority that both governments place on these issues.

Such efforts are also reflected in our companies’ evolving views on the IP landscape. In response to a survey question about how IP protection in China had changed from the previous year, 39 percent of USCBC respondents indicated that it had improved (with the vast majority of these respondents noting that it had “somewhat improved”) and an additional 57 percent saying that it had not changed. In contrast, only 4 percent said that IPR protection had deteriorated over the previous year. These numbers align closely with survey responses for the last several years, indicating slow but steady progress on IP protection. It is important in offering a fair assessment of China’s IP landscape not to overlook – or to fully recognize – such progress.

Alongside this progress, however, we also note that US companies still face significant challenges in seeking to use and protect their IP in China. The concerns raised by our member companies are diverse, cutting across industry sectors, company size, and IP type, and including patents, trademarks, copyrights, and trade secrets. However, in that diversity is a common message: additional progress on the IP landscape is critical for the success of their business in China. Such progress would include further revisions to the legal and regulatory landscape, greater resources and political will to address IP infringement, and improvements to China’s existing IP enforcement channels.

USCBC remains concerned with Chinese official statements and policies that call for the development of domestic innovation and IP, creating the potential for discrimination against IP and products owned by foreign and foreign-invested companies. This has manifested itself in a broadening range of formal and informal policies that provide tangible benefits primarily to domestic companies, including policies that continue to link indigenous innovation with preferences in government procurement, IP-specific criteria in programs to award companies tax incentives such as high- and new-technology enterprise (HNTE) status, and government funding programs for the development of specific industries such as semiconductors and strategic emerging industries (SEIs).

Our members also report significant operational impact from policies and practices that cite national security as a means to limit foreign companies’ ability to obtain necessary business licenses, or to participate in procurement activities. These policies include sector-specific policies in banking and telecommunications requiring use of “secure and controllable” technologies that would require US information technology products to contain indigenous Chinese IP, notably local encryption algorithms, and to file sensitive IP such as source code with the Chinese government. Anecdotally, we have begun to hear from other companies that national security considerations have been cited by local governments as a rationale for selecting domestic products over foreign products, even when the products in question have no clear
security dimension. These policies raise new questions about China’s treatment of foreign IP and the ability of US companies to compete fairly in the market.

China’s current IP enforcement channels continue to receive mixed reviews. In general, China’s civil courts and administrative agencies, such as the State Administration for Industry & Commerce (SAIC) and the Public Security Bureau, are viewed as being the most viable options for IP enforcement. Some respondents to USCBC’s 2014 member company survey indicated that they had brought successful IP enforcement cases in China, and a comparison of those who have successfully brought a case versus those who brought unsuccessful cases – 24 percent to 3 percent for administrative cases; 14 percent to 2 percent for civil cases; 8 percent to 6 percent for criminal cases – indicates a strong win rate in these cases. However, for each of China’s three main enforcement channels – administrative, civil, and criminal – a significant number of survey respondents in 2014 indicated that those channels were not a viable means of pursuing IP enforcement: 23 percent for administrative channels; 33 percent for civil channels, and 49 percent for criminal channels. China’s recent launch of three new specialized IP courts in Beijing, Shanghai, and Guangzhou has generated some hope for improvements, but much remains to be seen in terms of how much impact they may have.

The impact of these concerns is clear and measurable: China’s current IP environment continues to have a negative operational impact on the products and technologies that US firms are willing and able to research, manufacture, and sell in the China market. Nearly half of companies (48 percent) in our 2014 survey indicated that China’s level of IP protection limits their R&D activities in China; more than one-third indicated that it limits the types of products they are willing to manufacture (38 percent) or to license or co-manufacture (37 percent) in China. Increased foreign investment in IP-intensive products – notably R&D – would help to create the kind of innovative, value-added jobs that China’s government says it seeks to develop.

While we recognize the progress that China is making in improving its IP environment, USCBC recommends that USTR keep China on the Priority Watch List in 2015 due to the level of continued concerns from our member companies. In support of these efforts, we are attaching a set of documents to provide more detailed views of the IPR landscape in China. We also list below several priority areas of concern where we would recommend that USTR and its counterpart US government agencies focus their efforts with China.

We encourage the US government to pursue these issues through all existing bilateral dialogues and cooperative channels, including the JCCT, S&ED, and the US-China IP Cooperation Framework.
1) Continue to strengthen China’s IPR regime and enforcement of IPR in China

Stronger IPR protection benefits both the United States and China. The US government must encourage China to continue to expand efforts to address both the legal regime and IP enforcement efforts.

Legal Regime

The US government should encourage China to further improve its IP legal regime by updating laws and regulations to reflect the latest developments, both domestic and international, in IP protection and enforcement. Additionally, it should urge China to promote greater and more consistent transparency in drafting IP-related laws, regulations, and policies, and should release such measures for multiple rounds of public comment, with each round lasting at least 30 days, if not 60 or 90 days. Such transparency will promote better and more widely accepted regulatory outcomes.

Specific concerns include:

- **Trade Secret Law:** USCBC applauds China’s acknowledgement at the 2014 JCCT that it will conduct a legislative study of a revised law on trade secrets. We hope this is the first step of substantive work to 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. The US government should take active steps to engage actively with government and industry throughout this process.

- **Patent Law:** Recent drafts of the fourth revision of China’s Patent Law continue to include language granting local branches of the State Intellectual Property Office (SIPO) new authorities to enforce patents; while the broader goal of improving patent enforcement is positive, companies have continued concerns that patent administrative officials lack the experience and expertise to properly adjudicate complicated patent disputes and would prefer for such authority to remain with the courts.

- **Trademark Law and Implementing Regulations:** Despite positive revisions to the new Trademark Law and its Implementing Regulations, some members report that they have not seen practical improvements in their trademark enforcement, especially with regard to bad-faith trademarks. The Supreme People's Court is drafting Provisions on Certain Issues Related to Trials of Administrative Cases Involving the Grant and Confirmation of Trademark Rights that could provide new tools to address infringement; these are not yet completed but could be as soon as early 2015. Separately, member companies report continued concerns with the revised law, including negative ramifications of the elimination of the Trademark Review Adjudication Board (TRAB) appeals process for opposition hearings; inadequate timelines for companies to respond to information requests from the China Trademark Office (CTMO) and TRAB; the lack of authority for local administrations of industry and commerce (AICs) to confiscate illegal counterfeits from companies that provide evidence that they unknowingly acquired illegal goods; and the inadequate scope of counterfeiting-related business activities included under the term “facilitating infringement.”
• **Copyright Law**: The latest draft Copyright Law – still in the revision process – proposes some key improvements for rights holders, including updated definitions for what is eligible for copyrights, more choice for copyright owners in calculating infringement value, and increased punitive damages. However, the law still shows a more limited view of copyright-eligible products in comparison with the US and other locations. For example, copyright protection does not extend to areas such as live television broadcasts (such as sporting events), even though these telecasts include sufficient creative elements (including camerawork, editing, music, graphics, and commentary) to merit copyright protection. Other concerns include language on penalties for camcording of films and a limited scope of activities that count as copyright infringement.

• **SIPO Service Inventor Remuneration Regulations**: These draft regulations remain a key concern for many of our member companies, who are concerned first and foremost that the remuneration standards included in the regulations will invalidate existing agreements with their employees or make the cost structure of their R&D operations in China unsustainable. Some members have noted recent court cases in this area in Shanghai in which high awards have been granted to inventors in cases against their employers, raising concerns about the trajectory of these issues. The US government should urge China to further revise the draft Service Invention Regulations in close consultation with all stakeholders, including foreign businesses, to address concerns related to the existing inventor-employer agreements, and issues with provisions that inappropriately extend remuneration to cover “know-how” or trade secrets, and that set standards limiting the ability of inventors and companies to openly negotiate appropriate remuneration.

• **SAIC IP Abuse Rules**: The July 2014 draft – the eighth since SAIC began drafting these rules in 2009, still contains problematic language that limits companies from carrying out the legitimate exercise of their IPR, including language related to “essential facilities,” patent pools, IP-related trading activities, IP-related conduct in standard-setting processes, and imposition of fines.

We are also closely watching other IP-related provisions and policies – such as the Ministry of Industry and Information Technology’s draft template for Intellectual Property Rights in Industry Standards Organizations, accreditation rules for HNTE status, and the aforementioned policies in banking and telecommunications requiring use of “secure and controllable” technologies – to ensure that they do not discriminate against foreign IP or limit the ability of foreign companies to exercise their IP and compete fairly in the market.

**Enforcement**
Companies continue to report that IP enforcement efforts, particularly at the local level, are hampered by weak deterrents against IP infringement. Administrative penalties and judicial damages levied against offenders remain too low to deter infringement and are often viewed by the offender as merely a cost of doing business. Moreover, existing value-based thresholds to determine potential criminal penalties are too high, effectively limiting the number of criminal cases each year.
The US government should encourage China to act on its 2012 S&ED commitment to further strengthen measures for the pursuit of criminal liability for IPR infringement, and to begin the process of revising key regulatory and judicial documents, such as the Criminal Law and the December 2004 judicial interpretation setting specific criminal thresholds for IP infringement cases (Interpretation on Certain Issues Related to the Specific Application of Law in Handling Criminal Cases Related to Intellectual Property Rights Infringement released by the Supreme People’s Court and Supreme People’s Procuratorate). 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. Specific changes in this area include:

- Eliminating value-based thresholds laid out in China’s December 2004 judicial interpretation that IP infringement cases must meet to qualify for criminal prosecution, and replace them with a system that applies criminal penalties for commercial-scale infringement in line with World Trade Organization (WTO) practices.
- Further increasing the effective level of penalties for IPR infringement – both judicial damages and administrative penalties – by instituting statutory minimums and raising or eliminating the statutory maximums on fines and damages. In addition, encourage local regulators and judicial officials to levy higher fines that will serve as more effective deterrents and reward those who do so.
- Revising 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 marketplace), rather than using the market value of the infringing goods (i.e. what the counterfeit goods would sell for in the same marketplace).

In addition, our member companies note inadequate staffing and resources at IP enforcement agencies that prevent them from being able to robustly enforce IP. The US government should urge China to:

- Increase funding, personnel, and training devoted to IPR enforcement, including for local administrative agencies (particularly in trademarks and copyrights) and judicial bodies at multiple levels (particularly in patents and trade secrets);
- Upgrade and expand the work of the National IPR Leading Group to actively coordinate IP-related efforts of various government agencies through enforcement campaigns, work plans, and other means;
- Add benchmarks for IP protection to the process of regular performance evaluations of provincial and municipal government leaders;
- Strengthen internal monitoring and reporting mechanisms to control IP-infringing goods, including market surveillance, monitoring of exports, and internal mechanisms for communicating and responding to reports of IP theft;
- Expand work on non-traditional programs – such as credit systems and blacklists – that would make it more difficult for IP infringers to continue to act in bad faith;
- Broaden and encourage use of judicial procedures, such as preliminary injunctions and evidence preservation orders, to reduce the evidentiary burden plaintiffs face in IP court.
cases, while considering changes to judicial practice that would allow shifting the burden of proof from the plaintiff to the defendant and greater admissibility of evidence; and

- Increase its engagement with the US government and private sector on IP enforcement issues.

2) 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.

The US government should encourage China to increase enforcement of Internet-related IP rights to ensure its laws and regulations cover not only traditional areas such as copyright piracy via online sharing sites like Xunlei and sales of counterfeit products via online B2B platforms like Taobao, but newer issues such as counterfeit versions of company websites, search engine results that prioritize counterfeit products, websites that provide points for uploading pirated content and allow users to use those points to download content, unauthorized use of company trademarks online, and domain name squatting. Such rules and their enforcement should establish a framework that promotes accountability while balancing the needs of legitimate IPR holders and Internet intermediaries and encouraging cooperation between IP owners and service providers.

Our members have noted new Ministry of Commerce Interim Administrative Provisions for Online Retail Third-Party Platforms to Set Trading Rules, which require online trade platforms to publish rules and procedures relevant to IP protection. While such increased transparency is positive, some trading platforms – such as Taobao – have published rules that may increase burdens for IP owners.

3) 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 (mentioned above), better protection of the broad range of business and confidential information that companies view and treat as trade secrets, 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.

More information and detailed recommendations for trade secrets are provided in USCBC’s September 2013 Recommendations for Strengthening Trade Secret Protection in China, attached to this submission.

4) 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. Although the US and Chinese governments have held multiple rounds of discussion on this issue – and on the related provisions Article 22.3 and Article 26.3 of the current Patent Law – companies continue to report challenges with existing invalidation proceedings as well as new cases. The US government
should work actively with SIPO, judicial officials, and others to ensure the successful resolution of these cases in line with the above criteria and with Chinese commitments made during US Vice President Joseph Biden’s November 2013 visit to China and the 2014 JCCT.

Additionally, Chinese government agencies collect significant amounts of data from companies about their business, operational practices, products, and services that may be sensitive as a part of government approval processes, including patent reviews, investment approvals, product registrations, environmental impact assessments, and business licensing. Such sensitive information is often critical to companies’ competitiveness; should this information fall into the hands of their competitors, companies would be harmed both financially and competitively. Yet in many cases, companies have little concrete evidence that the information being requested by government agencies will be protected either during or after the government approval process.

China and the United States made positive progress on this issue at the 2014 JCCT, with China confirming that such trade secrets would be protected from improper public disclosure, limited only to that information necessary for fulfilling regulatory purposes. In addition, China stated clearly that government officials who illegally disclose such trade secrets are subject to administrative or legal liability. The two sides agreed to exchange information on the scope of protection of trade secrets and confidential business information under their respective legal systems – a positive step forward.

We strongly encourage the US government to actively pursue this area in discussions with the Chinese, and to encourage the Chinese to ensure that its practices for collecting, accepting, reviewing, and protecting sensitive company information, including both patent-related information and trade secrets, are consistent with international regulatory practices. In addition, the US government should also urge the Chinese to draft and enforce 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.

5) **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 HNTE program that currently requires IP ownership in China or possession of 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 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.
o Fully implement former President Hu Jintao's January 2011 commitment to break links between China's innovation and government procurement policies. To do so, China should implement the State Council's November 2011 notice requiring all provincial and local governments to halt implementation of provisions within regulatory documents that link innovation and government procurement, revise those provisions to eliminate such links, and publish the results. Of equal importance, the central government should continue to instruct local governments that such links are illegal, as USCBC has begun to notice the increasing return of such policies at the provincial and local levels.

Other priority recommendations

We also recommend that USTR and relevant US government agencies encourage the Chinese government to address additional areas, such as:

- **Uneven enforcement**: Encourage consistent IPR enforcement across regions and jurisdictions by providing clear guidance to local government agencies and fostering increased communication between central and local government agencies. This should include information sharing and dialogue between provincial and local IPR regulators to share experiences and best practices. Additionally, encourage provincial and local IPR enforcement officials to increase communication with US government and industry, both domestic and foreign, to discuss progress on enforcement and emerging issues.

- **Judicial procedures**: Take steps to lower formal and informal barriers that prevent greater use of judicial channels, such as the limited use of judicial procedures on preliminary injunctions and evidence preservation orders, as well as unnecessarily high administrative burdens to document and legalize evidence faced by foreign plaintiffs.

- **Patent quality issues**: Reform China’s patent system to address the number of patents that have questionable validity, notably utility-model patents (UMPs). Possible reforms include increasing the examination level for UMPs by requiring substantive examinations for both novelty and creativity, requiring evaluation reports for UMP applications, or allowing third parties to comment on UMPs or to request an evaluation report.

- **IP and competition issues**: Ensure that Chinese regulatory processes and investigations, including those related to competition, pricing, and standard-setting, are conducted in keeping with provisions in the Patent Law that permit the legitimate exercise of IPR. For competition and pricing-related investigations, interpret the Article 55 of the Antimonopoly Law (which states that the law does not govern the legitimate exercise of IPR under other laws and regulations) in ways that best promote innovation and IP development and avoid undue use of compulsory licenses that hinder industry development.

- **Counterfeiting tools**: Revise existing laws and regulations, such as the Criminal and Trademark Laws, to mandate that infringing goods—and the equipment used to produce them—be destroyed upon seizure and not be permitted to re-enter the marketplace under any circumstances.

- **Online journal piracy**: Promote timely enforcement in cases of online journal piracy, including the high-profile case against the online journal access provider KJ Med, and ensure that the outcome provides effective deterrence against other such services that have popped up while this case has stalled. Additionally, engage Chinese officials to discuss copyright
concerns related to “sharing services,” including ineffective notice and takedown procedures for reporting and addressing copyright infringement.

- **Software legalization:** Promote the use of legal software, as agreed by China and the United States in multiple high-level dialogues. To pursue this goal, China should fully implement existing policies and regulations focused on boosting use of legal software, increase funding to government agencies to purchase legal software, audit use of legal software by government agencies, publish the results of those audits broadly, and actively promote the use of legal, licensed software in state-owned enterprises and private companies. To achieve the latter objective, China should promote use of various monitoring means, including software asset management programs.

- **Copyright barriers:** Remove market access and distribution barriers for legitimate copyrighted products, such as imported feature films and television programs, to better meet domestic demand with legitimate products as opposed to pirated ones. This objective aligns with the 2009 WTO Dispute Settlement panel decision on this topic.

We look forward to working with USTR and other US government agencies to promote an improved environment for IPR protection in China. Please do not hesitate to contact me or my colleague Ryan Ong (ryan.ong@uschina.org; 202-429-0340) with any questions or clarifications, or if we can provide further detail on any of the above.

Sincerely,

Erin Ennis
Vice President

**Attachments**

- Appendix 1: USCBC Member Company Survey (September 2014)
- Appendix 2: USCBC Board of Directors’ Statement of Priorities (January 2015)
- Appendix 3: USCBC Comments on SAIC Draft Regulations on the Prohibition of Conduct that Eliminates or Restricts Competition through Abuse of Intellectual Property Rights (July 2014)
- Appendix 4: USCBC Comments on Draft Regulations on Service Inventions (December 2012)
- Appendix 5: Recommendations for China’s High- and New-Technology Enterprise (HNTE) Program (September 2013)
- Appendix 6: China’s Progress on Meeting Bilateral Commitments on Indigenous Innovation and Government Procurement at the Provincial and Local Level (May 2014)
- Appendix 7: Trade Secrets Paper (September 2013)
USCBC 2014 China Business Environment Survey Results:
Growth Continues Amidst Rising Competition, Policy Uncertainty
Executive Summary

» The China market continues to deliver important revenue opportunities to American companies, even as GDP growth moderates. Nearly 50 percent of survey respondents report double-digit revenue expansion – fewer than in prior years, but still impressive compared to other markets around the globe.

» US companies remain overwhelmingly profitable in the China market, but increasing local competition and rising costs are combining to pressure profit margins.

» Policy uncertainty continues to temper executive optimism. Companies have seen little tangible impact from China’s economic reforms and report little improvement in any of the top 10 issues over the past year.

» There has been a steady 30 percentage point shift over the past four years in how companies view prospects in China’s market, from “optimistic” to “somewhat optimistic.” However, few executives are pessimistic about their prospects in China, a view consistent with other surveys.

» Uncertainty over policy direction is moderating expansion plans. Fifty percent of companies plan to boost resources in China over the next 12 months, down from almost 75 percent just three years ago. On the other hand, only 2 percent of companies say they will reduce resources in China, with the remainder neither increasing nor decreasing resources.

» Differential treatment of domestic and foreign companies in China runs throughout the top 10 issues and beyond. Real progress in implementing the market-based reforms announced by China’s new leadership and in concluding a US-China Bilateral Investment Treaty are necessary to put the commercial environment on a more positive trajectory.

» While American companies report that their primary competition is with other US and foreign companies in China, competition from domestic industry is growing. Some observers focus concern on preferential treatment received by Chinese state-owned enterprises, but survey data shows again that nationality may trump ownership – Chinese companies, whether state-owned or private, receive benefits that foreign companies do not.

» The lingering challenges of protecting intellectual property rights in China are well-known. While the enforcement environment continues to slowly improve, such improvements have been modest. American companies continue to limit their operations and IP exposure in China because of the lack of adequate protections.

» China’s environmental pollution is starting to impact staffing. Forty percent of companies report that air pollution has made it difficult to retain or assign expatriate staff to China. Pollution has also increased the use of sick leave by expatriate and local staff in China.

» China’s ramped-up enforcement of its relatively new antitrust and competition regime has garnered significant attention in recent months. While both foreign and domestic companies are being investigated, foreign companies appear to be facing increasing scrutiny. Eighty-six percent of respondents are concerned about the lack of transparency, due process, and other issues surrounding competition-related investigations.

» USCBC’s annual survey continues to stand out for the quality and unique profile of its respondents. Half of its respondents are China-based and half are based in the United States, resulting in responses that blend the on-the-ground experience with the global perspective and context. Eighty-five percent of participating companies have been in the China market for more than 10 years, with the majority bringing more than 20 years of experience to the survey’s results.
USCBC 2014 China Business Environment Survey Results

Growth Continues Amidst Rising Competition, Policy Uncertainty

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Doing business in China can be a study in contrast for American companies. On the one hand, it remains a strong and growing market for American goods and services. On the other, it is a challenging and sometimes frustrating place to do business for multinational companies, with numerous regulatory barriers preventing the market from being as accessible — and large — as it should be.

This contrast is reflected in the results of the US-China Business Council’s (USCBC) 2014 member survey results. While most American companies continue to view China among the top five markets globally, their optimism about business prospects in China continues to moderate. Why? In addition to operating challenges such as increasing competition and rising costs, uncertainty about China’s policy direction colors perceptions about the business environment.

Foreign companies’ moderating optimism toward China is a significant trend. There has been a steady 30-point shift in outlook over the past four years from “optimistic” to “somewhat optimistic.” At the same time, it is important to note that this shift is within the optimistic side of the spectrum — hardly anyone is pessimistic. In fact, only 1 percent of USCBC members identified themselves as pessimistic or somewhat pessimistic in 2014, largely consistent with prior years (Fig. 1).

USCBC survey data is also consistent with surveys conducted by other business advocacy groups. A significant majority of respondents to surveys by the American Chambers of Commerce in Beijing and Shanghai indicate similar trends (Fig. 2).

Chinese policymakers should take note of the sagging confidence of foreign investors and its causes, particularly as they consider additional economic reforms. China’s leaders have frequently stated their intent to allow the market to be a driver of China’s economy. Doing so — and in a manner that treats domestic and foreign companies equally — will be a powerful signal that the period of policy uncertainty has come to a close.

**Business Outlook**

American companies continue to view China as a top five priority market (Fig. 3), but the number of companies increasing their resource commitment in China continues a slow taper. Fifty percent of companies report plans to boost resources in China over the next 12 months, down from almost 75 percent just three years ago (Fig. 4). Virtually no companies are cutting back on their operations in China, however. Those that are not expanding their operations in China are maintaining current levels and few are redirecting investments from China to other countries (Fig. 5).
Almost three-quarters of companies saw an increase in revenue last year, with nearly half seeing double-digit increases. Fifteen percent of companies reported a decrease in revenue in 2013. Most companies anticipate that their revenue will increase again in 2014 (Fig. 6, 7).

Overall, 83 percent of respondent companies are profitable—consistent with prior years—but at lower margins. Even so, 70 percent report that their China operations are performing better or the same as their global operations. (Fig. 8-10).

What’s squeezing profit margins? Competition from domestic companies and rising costs, as well as Chinese government policies and regulations that put foreign companies at a disadvantage against their domestic competitors. These issues rank among top company concerns in 2014 and are explored in detail later in this report (Fig. 11).
Market challenges remain largely unchanged

This year’s top 10 challenges include many issues that have made the list in previous years, though the order has changed from year to year. As with previous survey results, however, it is clear that issues that move down in rank are not necessarily doing so because the situation has improved. Rather, those issues are most likely eclipsed by more pressing concerns or by increased public scrutiny of other issues. Overall, companies report that little progress has been made in addressing many of these persistent challenges.

For instance, cost increases dropped from the top slot to the fifth, despite separate survey data that indicate costs have not moderated in China. In fact, most respondents note that the challenges associated with cost increases have gotten worse over the past year. This same trend holds true for other policy-related challenges.

To genuinely confront the recurring issues that foreign companies face in China, regulators must focus on major policy changes, such as the conclusion and implementation of a US-China bilateral investment treaty (BIT). Addressing this issue and others will help make real progress on persistent challenges, like investment restrictions, uneven enforcement of laws and regulations, licensing barriers, and lack of national treatment.

Challenges in the services sector

The US economy is largely based on services rather than manufacturing, and Chinese officials have set the development of services as an important imitative goal. Despite such an opportunity for cooperation, China has yet to make the transition from manufacturing to services due in large part to significant restrictions placed on foreign investment in the services sector. Such restrictions insulate Chinese companies from true global competition and prevent foreign companies from bringing knowledge, experience, and product innovation to China. Analyzing the 2014 survey inputs from services companies shows those realities.

Unsurprisingly, services firms rank restrictions on foreign investment as their top concern, followed by competition with Chinese companies and licensing challenges — all of which illustrate the limits China maintains on foreign services companies. Those issues are also reflected in the top constraints on growth in the services sector.
China’s government has regularly stated in broad policy documents and official speeches that it intends to build its services sector. That goal will be best and most effectively achieved by lifting the numerous ownership restrictions that limit American companies from fully participating in the market (Fig. 12). China made such a choice for its manufacturing sector when it joined the World Trade Organization in 2001. Competition is necessary for China to achieve its goals for developing its services sector.

### Are Your China Operations Profitable?

<table>
<thead>
<tr>
<th>Year</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>2010</td>
<td>87%</td>
<td>13%</td>
</tr>
<tr>
<td>2011</td>
<td>85%</td>
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</tr>
<tr>
<td>2012</td>
<td>89%</td>
<td>11%</td>
</tr>
<tr>
<td>2013</td>
<td>91%</td>
<td>9%</td>
</tr>
<tr>
<td>2014</td>
<td>83%</td>
<td>17%</td>
</tr>
</tbody>
</table>

### Profitability Compared to Previous Year

<table>
<thead>
<tr>
<th>Year</th>
<th>Increased</th>
<th>Decreased</th>
<th>Remained essentially unchanged</th>
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<tbody>
<tr>
<td>2010</td>
<td>58%</td>
<td>28%</td>
<td>14%</td>
</tr>
<tr>
<td>2011</td>
<td>62%</td>
<td>28%</td>
<td>15%</td>
</tr>
<tr>
<td>2012</td>
<td>55%</td>
<td>30%</td>
<td>15%</td>
</tr>
<tr>
<td>2013</td>
<td>49%</td>
<td>30%</td>
<td>21%</td>
</tr>
<tr>
<td>2014</td>
<td>44%</td>
<td>29%</td>
<td>27%</td>
</tr>
</tbody>
</table>

### Profit Margin Rate of China-based Operations Last Year Compared to Overall Operations

- Better: 42%
- Same: 27%
- Worse: 31%

### Primary Restraint on Increased Profitability in China

- Competition from domestic competitors: 31%
- Rising costs: 26%
- PRC government policy/regulation: 20%
- Competition from international competitors: 8%
- Insufficient managerial personnel: 8%
- Insufficient capacity to meet demand: 1%
- Other: 6%
What’s not in the top 10

Other important issues in the US-China commercial relationship do not rank among the top 10, but still remain a challenge for companies. Key issues that fall outside of the top 10 explored in detail later in this report include technology transfer (ranked 11th), antitrust enforcement (ranked 22nd), and innovation policies (ranked 24th).

Cybersecurity concerns have moved up slightly since 2013, from number 14 to number 13. While the US and Chinese governments recently have been at an impasse on cybersecurity, the theft of commercial information and trade secrets remains a serious issue for companies. At this point, companies are well aware of the risks of cyberintrusions and are taking actions to put in place the best defenses possible. That said, individual companies can only do so much to combat these types of intrusions on their own. Effective government-to-government dialogue is needed to get at the sources of these activities and find common ground. USCBC urges both sides to put in place an effective dialogue on these issues and find ways to ensure that commercial espionage does not undermine the important economic relationship between the United States and China.

The impact of China’s exchange rate value on company competitiveness ranks near the bottom of company concerns once again. While the currency topic is one that periodically gets a great deal of attention on Capitol Hill, it is yesterday’s problem, not today’s. China’s currency has appreciated over 30 percent since the country removed its peg against the US dollar. Most economists, including some previous critics on the issue, now agree that the renminbi is at most only modestly undervalued. China needs to continue to move toward a fully-convertible, market-driven exchange rate -- but this is an issue tied to China’s financial reforms and is not a trade or commercial issue.

How do we move forward?

The remainder of this report provides a detailed account of the challenges that American companies face in their China operations. It is important to keep in mind the contrast that China presents for companies: an extremely difficult business environment along with a vital, growing market for foreign businesses.

By USCBC’s calculations, China is at least a $300 billion market for American companies -- but it should be bigger. Depending on which official statistical source is used, US firms have invested around $70 billion dollars in China since the early 1980s. Chinese companies are only now beginning to ramp up their investments in the United States, which will create additional jobs and opportunities for the American economy as well as tax revenue for local, state, and federal governments.

It is vitally important that the United States and China have a forward-looking framework to guide the commercial relationship, rather than allowing the issues detailed in the following pages to define the relationship between the world’s two largest economies.
Removing barriers that hold back the potential of the bilateral commercial relationship is essential. That is why a successful conclusion of BIT negotiations should be the top priority in the US-China economic relationship (http://uschina.org/reports/bilateral-investment-treaties-what-they-are-and-why-they-matter). USCBC will continue to push both governments to achieve passage of this treaty. A US-China BIT will level the playing field for American and Chinese companies and provide meaningful market access for American companies into China.

**Top 10 Challenges**

When assessing the challenges that American companies face in China, it is important to recognize that many issues overlap. In this year’s top 10, at least six issues are related to preferential treatment for China’s domestic companies:

» Competition with Chinese companies

» Foreign investment restrictions

» Uneven enforcement/implementation of Chinese laws

» Licensing

» Transparency

» Nondiscrimination/national treatment

These preferences are structural in some cases, such as foreign investment restrictions, but are simply a part of how rules and regulations are implemented in most areas. In all cases, they are mechanisms for protecting domestic enterprises. American companies report a variety of areas in which they are seeing signs of protectionism in China that are similar to the areas identified in the top 10 challenges (Fig. 13).

Regardless of type, differential treatment of domestic and foreign companies in China distorts how the economy functions and limits China’s ability to reach its ambitious economic reform goals. As Chinese regulators have noted, fair and vibrant competition is the only way to build a sustainable Chinese economy. As a consequence, it is in the interest of China’s policymakers to treat each of these challenges as priority areas to implement policies that treat domestic and foreign companies equally.

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Fig. 13  **Signs of Protectionism in China**

![Chart showing signs of protectionism in China](chart)

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*Multiple responses allowed*
As China’s economy has grown in size and strength, so have its domestic companies — both private and state-owned. While American companies report that their primary competition is with other US and foreign companies in China, the competition they face from domestic industry has grown stronger, and it now ranks as the top challenge in the 2014 survey (Fig. 14).

Robust competition in itself is not a concern for foreign companies doing business in China. American companies are accustomed to strong competitors, which they face in markets all over the world. However, competition based on favoritism for one group of companies over others is a significant concern. While many have focused on preferential treatment for Chinese state-owned enterprises, survey data show that in reality the issue is not ownership structure, but simply nationality. Chinese companies, regardless of ownership, receive benefits that foreign companies cannot (Fig. 15).
Importantly, preferential treatment of domestic enterprise is not in the long-term interest of China or its companies. Access to preferential benefits, such as those shown above, does little to create the type of efficient and innovative companies that China hopes will lead its economy to the next stage of development (Fig. 16, 17). As senior leaders such as China’s Premier Li Keqiang have noted in public statements, Chinese companies will become internationally competitive only through increasing fair and robust competition in China’s market.
The lingering challenges of protecting intellectual property rights in China are well known, and this year’s survey findings reinforce that more must be done to address the issue. IP protection is not just an issue for American companies doing business in China — it also affects Chinese companies. USCBC’s annual membership surveys have consistently found that while some improvements have been made year to year, they are modest. As one survey respondent put it, “IPR enforcement is ever improving, but by far not enough (Fig. 18).”

The improvements that American companies have seen are varied, and they include more administrative actions, greater attention to the IPR legal framework, and the creation of IP-focused courts in Beijing, Shanghai, and other locations (Fig. 19).

However, challenges remain. Improved IP enforcement is not simply a matter of ensuring that IP owners are compensated for the fruits of their work — it is also an economic issue for China. The lost opportunities for job creation and innovation can be seen in the areas where American companies are limiting their operations in China because of the lack of
full protection for IP rights. Notably, almost 50 percent of companies hold back on investment and research and development (R&D) in China because of IP concerns; less than 25 percent say the IP environment has no impact on investment decisions (Fig. 20). Increased foreign investment in R&D would help to create the kind of innovative, value-added jobs that China’s government is actively seeking to develop. As a consequence, improving IP enforcement will be an important component of China’s innovation drive.

China has several specific IP enforcement channels, all of which receive mixed reviews from American companies that have considered or used them. In general, China’s civil courts and administrative agencies, such as the State Administration for Industry & Commerce (SAIC) and the Public Security Bureau, are viewed as being the most viable options for IP enforcement, though not in all cases (Fig. 21).

China’s criminal courts are viewed most skeptically by companies, with nearly 50 percent of companies indicating that pursuing criminal cases is not a viable option. A similar percentage of companies said that they have not had cases that would be eligible for criminal enforcement. These results are a strong reminder of USCBC’s longstanding recommendation that China impose criminal penalties for commercial-scale theft of IP and eliminate minimum value thresholds. If such a change were made, more criminal cases could be brought and enforced, and views on the viability of criminal courts would likely improve (Fig. 22).

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**Fig. 20** Impact of China's Level of IPR Enforcement on Types of Activities Companies Undertake in China*

<table>
<thead>
<tr>
<th>Activities Undertaken in China</th>
<th>Not viable</th>
<th>Viable in some cases</th>
<th>Viable in most cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limits R&amp;D activities in China</td>
<td>48%</td>
<td>38%</td>
<td>30%</td>
</tr>
<tr>
<td>Limits products manufactured in China</td>
<td>48%</td>
<td>38%</td>
<td>23%</td>
</tr>
<tr>
<td>Limits products co-manufactured or licensed in China</td>
<td>40%</td>
<td>30%</td>
<td>37%</td>
</tr>
<tr>
<td>Limits products sold in China</td>
<td>30%</td>
<td>23%</td>
<td>48%</td>
</tr>
</tbody>
</table>

*Multiple responses allowed

---

**Fig. 21** Viability of China's IPR Enforcement Channels

- Criminal courts: 49%
- Civil courts: 33%
- Administrative agencies (e.g. SAIC, PSB): 61%

**Fig. 22** Success Rate of China's IPR Enforcement Channels

- No eligible cases: 48%
- Have not brought case: 44%
- Unsuccessfully brought case: 37%
- Successfully brought case: 30%
Foreign ownership restrictions in China continue to serve as widespread market access barriers for American companies. While there were few, if any, new regulations issued in the last year to increase restrictions on foreign investment in China, the issue has been a top priority for many companies. That is due, in part, to China’s announcement in 2013 that it would use the US approach to negotiation of a US-China bilateral investment treaty (BIT).

Specifically, China agreed to use a “negative list” approach in which the terms of the investment treaty apply to all sectors except those expressly excluded in the final treaty. That approach is based on the concept of “pre-establishment,” or equal treatment of foreign and domestic companies even before an investment is made. That format contrasts with China’s current investment approval framework, set up in the Catalogue Guiding Foreign Investment, which restricts foreign companies from participating in over 100 industries and sectors throughout China based on a “positive list.”

China’s domestic economic reforms, announced after the Chinese Communist Party’s Third Plenum in late 2013, focused appropriately on goals such as letting the market play a more decisive role in the economy and widening investment access. For those reforms to be successful, China’s policymakers will need to ensure that foreign and domestic companies are treated equally. A BIT is an important tool to help achieve this objective.

Successful conclusion of US-China BIT negotiations is a high priority for American companies. Success will be assessed in significant part based on the number and range of sectors that China is willing to open to foreign companies. A Chinese negative list that simply codifies existing restrictions, reduces the list only modestly, or removes only low-priority sectors will not be well received by American companies and will significantly reduce the chances of the treaty securing passage by the United States Senate.

That said, Chinese regulators could build support in the American private sector by reducing the number of restricted and prohibited sectors within China’s Catalogue Guiding Foreign Investment prior to the conclusion of BIT negotiations. Steady reductions in investment restrictions in China would be the best sign to international stakeholders that China is serious about undergoing inclusive reforms to its economy, thus building support for passage of a US-China BIT.
While the majority of issues in the top 10 list are challenges that are unique to foreign companies in China, issues such as human resources difficulties impact all companies doing business there. The issue has been among the top five challenges identified in USCBC’s survey for all eight years that the survey has been conducted.

In the most general terms, American companies are paying wages to their Chinese employees at rates that are higher than their domestic competitors (Fig. 23). Even with that difference, most American companies report that they have been increasing wages between 5 and 10 percent annually for at least the last three years (Fig. 24). USCBC member companies anticipate further wage increases in the coming year, as China’s labor market becomes tighter (Fig. 25). Wages
have risen fastest among skilled technical staff and middle management positions, yet turnover remains highest in middle management positions — an indication that these employees are among the most sought after and command higher wages (Fig. 26, 27).

Despite these significant annual wage increases, 55 percent of companies still plan to expand headcount in China in the next year. Although this represents a 15 percent decline from 2013, it still represents a majority of companies, indicating that companies are still actively looking to expand in China despite headwinds (Fig. 28).
Fig. 27  At What Level Was Turnover Most Acute?

![Bar chart showing turnover levels for different positions and years.]

Fig. 28  Company Head Count in Next Year Expected to...

![Bar chart showing expected company head count for different years.]

IN FOCUS:
Impact of China’s environmental pollution

China’s environmental pollution has created a related challenge for USCBC member companies. While environmental pollution can have a broad operational impact for companies, human resources are an important dimension: 40 percent of companies report that air pollution and environmental issues have made it difficult to retain staff and transition international talent to China. Pollution has also increased the use of sick leave by staff in China, and it has forced some companies to change operations in order to comply with new pollution policies (Fig. 29).

Fig. 29  Impact of China’s Air and Environmental Pollution

- Difficulty retaining staff and attracting international talent to China: 40%
- Increased cost due to high environmental standards: 27%
- Improved competitiveness of Chinese companies to comply with high environmental standards: 19%
- Increased sick leave: 17%
- Required changes to company operations to comply with pollution policies: 15%
- Other: 20%
- No impact: 13%
Cost increases remain a nearly universal concern for American companies operating in China. Unsurprisingly, given its tied rank in the top 10, human resources costs top the list of specific cost concerns. Costs are increasing across the board, however, for energy and utilities, materials, product and operational compliance, and land and rental fees (Fig. 30, 31).

**Challenge #4 [Tie]**
**Cost Increases**

**Progress on Issue in Past Year: Deteriorated**
- Rank in 2013: 1
- Rank in 2012: 4
- Rank in 2011: 3
- Rank in 2010: 5
- Rank in 2009: 13
- Rank in 2008: 3
- Rank in 2007: Not asked
- Rank in 2006: Not asked

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**Fig. 30 Are Rising Costs in China a Concern?**

- Yes: 90%
- No: 10%

**Fig. 31 Top Cost Concerns***

- Human resources costs: 94%
- Rising costs of energy and utilities: 33%
- Rising costs of materials: 32%
- Rising costs of product/operational compliance: 30%
- Land purchase or rental costs: 30%
- Rising tax burden: 26%
- General inflation outlook: 26%
- Payroll taxes / social insurance for expats: 1%
- Other: 1%

**Fig. 32 Did Your Company Reduce or Stop Planned Investment in China in the Past Year?**

- Yes: 14%
- No: 86%

*Multiple responses allowed
Despite these concerns, few companies report that they reduced or stopped a planned investment in China in the last year — and no companies indicate they did so due to rising costs (Fig. 32, 33). If companies are reaching the threshold for tolerable cost increases in China, it is not yet impacting their investment plans in that market. As one respondent put it, “Costs are increasing at a pace that is difficult to offset.”

**Fig. 33 Why Did Your Company Reduce or Stop Planned Investment in China in the Past Year?**

- Better business prospects in another country: 31%
- Increasing market access restrictions: 23%
- Reduced capital investment globally: 23%
- Rising costs: 23%
- Other: 0%
American companies have consistently reported that they are treated differently than their domestic counterparts in the implementation and enforcement of Chinese laws and regulations. One such concern relates to the uneven enforcement of labor and environmental laws in China, which allows companies with lower standards to violate established laws and puts those who bring their international standards to China at a competitive disadvantage. Another concern is the harsher enforcement of product safety regulations on foreign companies, despite their strong track records in these areas and rapid resolution of problems when they are identified. One survey respondent said that there has, “definitely [been] increased scrutiny since early 2013. Although [the laws also cover] local companies… MNCs [multinational companies] do seem to be getting special attention.”
Antitrust enforcement

This year, the area that has garnered the most attention from foreign companies is enforcement of China’s antitrust law, known as the Antimonopoly Law (AML). In recent months, the press and the public have paid considerable attention to this issue. While both foreign and domestic companies have been targets of investigations, foreign companies appear to have faced increasing scrutiny in recent months. Eighty-six percent of companies are at least somewhat concerned about these issues, with over half specifically citing enforcement as the issue, rather than the legal framework for the law (Fig. 34, 35).

Even though most American companies report that they have not been targeted with antitrust investigations, almost 30 percent of USCBC member companies are concerned they will be subjected to one. Among the most significant concerns for foreign companies are challenges with due process, lack of transparency, and fair treatment in investigations (Fig. 36, 37).
Challenge #7
Licensing

Licensing remains a top issue for American companies, though the issue slipped in the top 10 rankings — likely due to the higher profile of other issues in 2014. Almost 60 percent of companies report that they have experienced licensing problems in China, including securing product approvals, investment approvals, business expansion, renewing business licenses, and even routine business activities (Fig. 38-40). Just over half of companies, 52 percent, report that their domestic competitors do not face the same licensing challenges (Fig. 41).

**Fig. 38** Has Your Company Experienced Challenges with Administrative Licensing in China?

*Multiple responses allowed*
From one survey respondent, “The playing field is increasingly leaning in the favor of [Chinese] national champions, who continue to increase capacity and receive preferential treatment. We’re also seeing lengthy or stalled licensing and investment approvals, and a general lack of government action to move files forward in the approval process.”

Another respondent put it more simply, “[There are] significant delays in license application reviews and approvals for foreign firms.”

Many, though not all, of the licensing delays appear to be happening at the central government level, but they decline steadily as the level of the decision maker moves closer to the local and investment zone level. This may be a reflection of progress made in decentralizing licensing approvals. Still, most companies report that they have not seen a material impact from those changes, and questions remain about how evenly licensing and approval processes are conducted (Fig. 42). Regardless of reason, more needs to be done to ensure equal treatment of domestic and foreign companies in licensing (http://uschina.org/reports/improving-china%E2%80%99s-licensing-system-recommendations-key-sectors-2014).
Transparency and national treatment are two central components of a well-functioning and competitive market. Providing an opportunity for public comment on laws and regulations prior to implementation enables companies to provide constructive input on how policy goals can effectively be reached without hindering business and impacting consumers. Treating domestic and foreign companies equally ensures that the market allows the best products and most competitive companies to reach consumers.

American companies have seen some progress in these issues over the years. As one survey respondent noted, “Transparency has improved of information disclosure online, but overall [it is] still far from enough.” However, issues still remain with transparency throughout the regulatory process. USCBC’s 2014 transparency report highlights some of these challenges and how well key government agencies are doing in improving on these issues (http://uschina.org/reports/china-2014-regulatory-transparency-scorecard).

These issues are fundamental and relate to many of the challenges discussed elsewhere in this report, including licensing, IPR protection, competition, and preferences for domestic companies. Transparency and national treatment will also be included in US-China bilateral investment treaty (BIT) negotiations. They should both be priorities for China’s policymakers beyond the BIT negotiations, however, as they are the cornerstones of a well-functioning, market-based, competitive economy.
As with transparency and national treatment, overcapacity has an impact on markets. In China’s case, the impact can be felt both domestically and internationally. Overcapacity issues have arisen in a number of Chinese sectors, from cement and steel to glass and chemicals.

China has made some progress at stemming overcapacity issues. China’s movement toward market-determined prices for energy, for example, should help to slow overproduction by companies who are continuing to make products even as demand has slowed. While such changes will likely result in some businesses closing or consolidating, the appropriate balancing of supply and demand is in China’s best economic interests. At the same time, Chinese policymakers should consider methods to address overcapacity issues that are balanced and fair, and that do not unfairly burden foreign companies.
Innovation promotion policies and Strategic Emerging Industries

China’s innovation policies have been the focus of international attention since at least 2009, when the central government’s indigenous innovation policies were first released.

While China has made modifications to address some foreign company concerns about provisions that favored domestic companies, American companies have mixed views of the impact innovation promotion policies have on market access in China. Fifty-six percent of respondents view these policies as a strategic opportunity or have already seen a positive impact on their sales and operations. The remaining 44 percent view these policies as strategic concerns or have seen a negative impact on their operations (Fig. 43).

One survey respondent explained the opportunities created by China’s innovation policies this way: “The products we sell are high-end and allow our customers to create more differentiated and innovative products. As Chinese companies move away from simply competing on cost/price, and more towards innovation/differentiation, it creates more demand for high-end technology.”

By contrast, the risks of China’s innovation policies were explained this way by another respondent: “[China’s] national champion approach risks [creating an] unfair playing field.” Favoring certain companies has a negative impact on innovation in China, as it does not create the proper system of incentives to drive companies to pursue rigorous processes that promote product and process innovation.

The High and New Technology Enterprise (HNTE) designation, one of China’s primary innovation incentive programs that provides tax credits for innovative companies, has yet to be significantly accessed by American companies. Almost 30 percent of companies report that they have been approved for HNTE status and another 30 percent may apply in the future (Fig. 44). No companies report that they have applied for the status and been denied. That said, some companies have reported problems with local implementation of HNTE rules such as local IP ownership and information disclosure requirements that make the program less attractive to innovative foreign companies. In addition, some companies that have previously received HNTE status have faced challenges when trying to renew their approval, again due to new interpretations by local officials.

Similarly, China’s Strategic Emerging Industries (SEI) program has had limited impact for American companies. Seventy-two percent of companies assess their ability to participate in SEI programs as good or moderate, but only 35 percent report that they are very interested in doing so. Another 64 percent report that they are somewhat interested in receiving SEI benefits, but that participating in the program is not a top company priority (Fig. 45-48).

One potential issue for foreign companies may be the lack of clarity about the benefits of being characterized as an SEI.

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### Impact of China’s Innovation Promotion Policies

**Fig. 43**

<table>
<thead>
<tr>
<th>Impact of China’s Innovation Promotion Policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Positive impact on sales or operations</td>
</tr>
<tr>
<td>No real impact on sales, but is a strategic opportunity</td>
</tr>
<tr>
<td>No negative impact on sales, but is a strategic concern</td>
</tr>
<tr>
<td>Significant negative impact on sales or operations</td>
</tr>
</tbody>
</table>

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### Has Your Company Applied for the High and New Technology Enterprise (HNTE) Program?

**Fig. 44**

- Approved for HNTE status: 27%
- Applied but not approved: 0%
- No, but might apply in the future: 31%
- No and do not intend to apply: 42%
As one survey respondent put it, “Our products fall into the SEI category, but we don’t know/understand the real implications and potential impact on our business.”

Questions remain about future policies in this area, and how policymakers may approach development in these industries. (http://uschina.org/government-change-course-china%E2%80%99s-strategic-emerging-industries)

Ultimately, American companies’ concerns about these policies were summed up by a respondent, “We just want to make sure innovation is competition-neutral.”

**Fig. 45** Participate in the Development of SEI Incentives and Projects

- **Good**: 35%
- **Moderate**: 37%
- **Poor**: 28%

**Fig. 46** Company Interest in Accessing SEI Incentives and Projects

- **Very interested**: 35%
- **Somewhat interested**: 64%
- **Not interested**: 1%

**Fig. 47** Success Rate in Accessing SEI Incentives and Projects

- **Have not applied**: 94%
- **Applied but not approved**: 2%
- **Applied and approved**: 4%

**Fig. 48** Access to Information and Ability to Participate in SEI Programs Versus Previous Year

- **Improved**: 11%
- **Deteriorated**: 2%
- **Unchanged**: 87%
Technology transfer
Related to China’s drive to become more innovative is its interest in having foreign companies transfer technology to Chinese companies in its market, thus significantly shortening the timeline for developing innovative products. This issue has gotten considerable attention from US policymakers and companies: Sixty-two percent of companies report that they are concerned about transferring their technology to China, particularly as it relates to the protection of intellectual property rights and proprietary information and the enforcement of technology licensing agreements (Fig. 49, 50).

The reality, however, is more nuanced. Despite these concerns, 80 percent of companies report that they have not been asked to transfer technology to China in the last three years (Fig. 51). Of those that have been asked to transfer technology, only 15 percent report that the technology would be controlled by a Chinese entity (Fig. 52, 53).

An important aspect of the discussion of these issues is the options that companies have when such requests are made. Only 7 percent of companies report that they had to comply with a technology transfer request even when they deemed it unacceptable. The other companies indicate that the requests were either acceptable or that they were able to modify, avoid, or withdraw from the transaction (Fig. 54, 55).

<table>
<thead>
<tr>
<th>Fig. 50</th>
<th>Top Concerns about Transferring Technology to China*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protection of IP</td>
<td>85%</td>
</tr>
<tr>
<td>Protection of proprietary information during certification</td>
<td>77%</td>
</tr>
<tr>
<td>Enforcing licensing agreements</td>
<td>67%</td>
</tr>
<tr>
<td>Government dictating licensing negotiations</td>
<td>27%</td>
</tr>
<tr>
<td>Difficulties in negotiating licensing fees</td>
<td>10%</td>
</tr>
<tr>
<td>Other</td>
<td>4%</td>
</tr>
</tbody>
</table>

*Multiple responses allowed
There is an important link between these issues and the investment barriers that American companies face in China. Due to current restrictions on foreign investment, some companies are forced to partner with domestic companies to operate in China. In those circumstances, companies may need to negotiate technology transfer agreements with current or potential investment partners — a business transaction that has implications for the protection of the company’s intellectual property. Eliminating these types of joint venture requirements would allow companies to maintain control of their IP in China and implement company-wide procedures to protect it.

**Fig. 52 Who Asked that Technology Be Transferred?**

- Company: 54%
- Central government: 38%
- Local government: 23%

*Multiple responses allowed

**Fig. 53 Who Would Control the Technology in China?**

- Our company: 70%
- Our company and a Chinese entity: 15%
- Chinese entity: 15%

**Fig. 54 How Did Your Company Respond to This Requirement?**

- Acceptable and transferred: 43%
- Unacceptable and avoided request entirely: 7%
- Unacceptable and only transferred some: 14%
- Unacceptable but had to comply: 7%
- Unacceptable and withdrew from transaction: 29%

**Fig. 55 Negotiation of Licensing Fees for Transferred Technology**

- Able to negotiate commercially acceptable payments for technology transferred: 43%
- Able to negotiate some fees, but below commercially acceptable amount: 43%
- Unacceptable but had to comply: 14%
Respondent Profile

US- and China-based executives
The US-China Business Council (USCBC) annual membership survey incorporates a unique mix of US- and China-based executives. Respondents were almost equally divided between those based in China and those based in the United States. The remainder were located elsewhere in Asia (Fig. 56).

In addition, respondents range from CEOs of global corporations to executives based in the field. Survey results incorporate both strategic and tactical perspectives.

Cross-sector representation
USCBC members who completed this year’s survey represented a cross-section of US companies doing business in China. Sixty-three percent of respondents represented manufacturing companies, and 42 percent represented service providers. Many respondents’ companies are active in both sectors. Nine percent worked for companies in primary industries, such as agriculture and oil and gas. Of USCBC’s 220 member companies, 110 participated in the survey (Fig. 57).

Fig. 56  Respondent Location

Fig. 57  Type of Operations in China*

*Multiple responses allowed
**Long experience in the China market**

USCBC member companies have a long history of doing business in China: Fifty-six percent of respondents’ companies have been in China for more than 20 years, and 29 percent have been in China for 11–20 years (Fig. 58).

**Chinese customers**

The overwhelming majority of USCBC member companies report that they are doing business in China to access China’s domestic market. Twenty-one percent use China as an export platform to reach other markets around the world, though only 13 percent use their China operations to produce products that are shipped back to the United States (Fig. 59).
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:
  
  o 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.
  
  o 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.
US-China Business Council Comments on
Draft Regulations on the Prohibition of Conduct that Eliminates or Restricts
Competition through Abuse of Intellectual Property Rights (IPR)

July 10, 2014

The US-China Business Council (USCBC) appreciates the opportunity to participate in the public comment solicitation process for the draft Regulations on the Prohibition of Conduct that Eliminates or Restricts Competition through Abuse of Intellectual Property Rights (“draft Regulations”). This process reflects a continued positive effort by China’s State Administration of Industry and Commerce (SAIC) to provide greater transparency in the formulation of policy and legislation.

USCBC has approximately 220 member companies, including global leaders in innovation that hold thousands of patents in manufacturing, information technology, pharmaceuticals, services, and other areas. Our companies support China’s right to regulate a fair and competitive market, as well as its goals of promoting innovation and competition, enhancing efficiency, and safeguarding consumer and public interests. Developing laws and regulations to promote these goals is the foundation of a modern economy. The comments contained in this submission represent the views of many leading US companies engaged in business across all industries and sectors in China.

This is the eighth draft since SAIC first began work on these regulations after the 2008 implementation of the Antimonopoly Law (AML). These regulations deal with issues that fall under the scope of SAIC’s implementation of the AML and the intersection between the legitimate exercise of intellectual property rights (IPR) and anti-competitive behavior. These regulations cover the exercise of intellectual property broadly, including patents, trademarks, copyrights, and trade secrets.

USCBC supports Chinese government efforts to foster a more innovative society and to ensure a fair and competitive market environment. At the same time, USCBC member companies have concerns about a number of articles in the draft regulations that need further clarification to effectively achieve the objectives stated in Article 1 of the draft regulations: to protect competition, promote innovation, and prevent business operators from abusing IPR to eliminate or restrict competition.

Recognizing that there are many provisions that may be addressed in other organizations’ comments, USCBC respectfully submits the following comments on the draft Regulations for further clarification and appropriate changes prior to issuing the final version.

Article 3
We appreciate that this article provides definitions for key terms used throughout this regulation, including “operator,” “IPR abuse to eliminate or restrict competition,” and “relevant market.” This language provides companies seeking to operate legally and fairly in the market with greater clarity and allows them to better understand how SAIC approaches these issues. To further clarify these terms and ensure that SAIC is able to efficiently address anticompetitive behavior in relevant markets, we encourage
SAIC to add language to Article 3 defining the term “restriction of competition” as substantial restriction of competition in the relevant market, as opposed to competitive business activities that may only impact a single competitor.

Further, the definition of “relevant market” states that a relevant market can be a “technology market,” but does not provide further details as to how a technology market is to be defined. The lack of clear guidance could lead to inconsistent application of these rules, causing problems for regulators and companies alike. Based on our knowledge, no regulator in either of the world’s two leading competition jurisdictions – the US and the European Union – has successfully enforced a case based on a relevant technology market, due to the challenges of defining such markets. We suggest that in order to best ensure that these regulations are clear and enforceable, SAIC revise Article 3 to remove the last two sentences that make reference to technology markets. If SAIC believes that applying the regulations to a technology market is absolutely necessary, we recommend that it add language to these draft regulations to provide clear, definite and narrowly tailored guidance to regulators and companies, such as authorizing regulators to consider using a technology market only if the product market is inadequate for assessing competitive effects because of the unique nature of the competitive impact.

**Article 6**
Article 6 states that undertakings that hold a dominant market position shall not abuse that position to eliminate or restrict competition when exercising their IPR, and then defines “dominant market position.” This is an important article that serves as the basis for subsequent provisions (such as Articles 8 and 9) that prohibit specific behaviors for business operators that hold such a dominant market position. However, broad application of these articles could include not only cases where an operator intentionally carried out illegal activities but also circumstances where an operator and other parties may have mutually agreed on actions to address competition concerns that might otherwise fall under these articles. The US (in Section 2 of the Sherman Act and various court proceedings) and other international jurisdictions apply language stating that monopoly power must be “willful” in order to balance pro-competitive and anti-competitive needs. We recommend amending Article 6 to read: “ Undertakings with dominant position shall not willfully or intentionally abuse their dominant market position to eliminate or restrict competition during the exercise of IPR.” Such additional language will help to focus limited regulatory resources on the most troublesome competition cases, while also reducing ambiguity for both business operators and enforcement authorities in an antitrust investigation.

**Article 7**
According to Article 7, business operators that have a dominant market position shall not, without justification, refuse requests from other operators to license IPR that constitutes an essential facility for business operation under reasonable terms. While we acknowledge China’s efforts to integrate international legal concepts such as the “essential facilities” doctrine into its legal framework, we are concerned that the language used could lead to interpretations of “essential facilities” provisions in ways that would discourage innovation, contradict existing provisions in China’s current Patent Law, and conflict with international practice.

Key provisions in China’s Patent Law permit patent holders to exclude others from producing, selling, or importing products using a licensed patent without authorization (Article 11) and limit compulsory licensing to specific narrow circumstances (Chapter VI). Applying the “essential facilities” doctrine broadly to IPR, as laid out in Article 7, would not only conflict with the current Patent Law, but it would discourage companies from developing their own IPR by allowing them to more easily practice their competitors’ IPR. This scenario would create long-term disincentives to innovate and hamper China’s attempts to build an innovative society.
Additionally, the proposed language to apply the “essential facilities” doctrine to IPR conflicts with international legal practice in jurisdictions that foster the type of innovation that China seeks to promote. The “essential facilities” doctrine has not been broadly applied to the patent context in any other jurisdiction, and has been applied carefully—and only under specific, narrow circumstances when it has been invoked.

To best ensure that China has a solid legal framework for balancing its goals of promoting consumer interest and fostering innovation, we suggest that Article 7 be deleted. Alternatively, if SAIC keeps language on the “essential facilities” doctrine, we suggest that this article be revised to specify that invoking the “essential facilities” doctrine to issue a compulsory license should balance the interests of patent owners and consumers by requiring proof that compelled access to the IP in question is critical to furthering the legitimate interest of consumers. Additionally, we request that language be added to state that in determining whether the offered consideration is reasonable, regulators should consider the impact on incentives for the patent owner and others to invest in R&D that will allow them to invent and develop new or improved technologies.

**Article 8**
This article states that operators that have a dominant market position cannot, while exercising IPR, engage in various types of exclusive dealing without justification. We appreciate that this provision—and other provisions (including Articles 7, 9, 10, and 11) that lay out IPR-related anti-competitive conduct—adds this language, as it indicates greater awareness among policymakers and enforcement agencies that such conduct can promote market competition under the right circumstances. To better clarify what might constitute appropriate justification, we recommend that language be added to Article 8 (and other relevant articles) to state that such behavior shall be considered to be “without justification” if the conduct is shown to eliminate or restrict competition, consistent with Article 55 of the AML and Articles 2 and 3 of the draft regulations.

**Article 10**
Article 10 states that business operators with a dominant market position shall not impose unreasonable restrictions in the exercise of IPR and lists a set of these restrictions, including restraining a trading partner or licensee from challenging the validity of the IPR (Article 10(2)). While USCBC respects the authority of the Chinese government to protect against IPR abuse, we note that companies in most international jurisdictions are permitted to include in their patent licenses an agreement by the licensee not to challenge the validity of the patent if both parties agree. Such language is important in reducing the risk of disputes between licensor and licensee, and thus forms an important foundation to ensure a vibrant patent licensing market. China has stated in key policy documents its desire to promote just such a market, and revising this language would be an important step in that direction. USCBC suggests that this limitation on challenging the validity of IPR be removed from the list of “unreasonable restrictions.”

Separately, we note that Article 10(1) states that business operators with a dominant market position shall not require the licensee to exclusively grant back the technology improved by the licensee without appropriate justification. As written, it is not clear whether this provision would apply to all types of grant-back arrangements, or just those that do not include appropriate consideration. To provide better clarity to patent licensors and licensees, we suggest inserting the word “unreasonably” before “requiring”, and adding the following statement: “For the purposes of this regulation, such a grant-back provision shall be considered unreasonable only if it eliminates or restricts competition. Exclusive grant-backs that provide appropriate financial consideration to the licensee shall be permitted.”

Article 10(6) states that business operators with a dominant market position shall not require the licensee to agree to other unreasonable restrictive conditions. This provision is vague, permitting local officials considerable discretion to judge business activity as “unreasonably restrictive.” Such broad discretion could
result in local AIC officials in different jurisdictions applying these rules differently, or could allow them to launch antitrust investigations based on local protectionism and not on sound competition principles. All of these factors would severely limit the effectiveness of these provisions, while also creating considerable uncertainty for business operators and challenges for them to properly order their behavior in order to appropriately comply. As such, we recommend deleting Article 10(6).

Article 11
Article 11 prohibits a business operator with a dominant market position, when exercising IP rights, from discriminating against licensees under equal conditions. Price and licensing discrimination can at times serve pro-competitive goals by allowing companies to more efficiently serve a variety of consumer groups and by promoting technology development and economic growth. Operationally, it is very challenging for both regulators and companies to fully determine equality of treatment, as technology licenses are increasingly complex and have many substantial and subtly differing terms across parties. In addition, comparing licensees is very challenging, since no two licensees will be the same size, have the same mix of businesses or have the same products. As such, we suggest deleting this provision.

Article 12
Article 12 regulates the behavior of patent pools in eliminating or restricting competition during the exercise of IPR. We appreciate that Chinese authorities are trying to find appropriate ways of regulating pro-competitive and anti-competitive elements of patent pools, as opposed to ruling that patent pools themselves are pro- or anti-competitive. Article 12(2) states that patent pool organizations with dominant market positions shall not abuse their position by “restricting patent pool members or licensees from developing competing technologies independently or in cooperation with a third party.” This restriction, as written, may inherently prohibit patent pool members from taking action to protect against infringement of their patents by other pool members outside of the context of the patent pool itself. To address this issue, USCBC recommends altering the provision to state that patent pools are prohibited from “restricting patent pool members or licensees from developing competing technologies independently or through cooperation with a third party, unless those activities infringe upon IPR owned by those members or licensees in ways that violate patent pool rules.”

Article 13
Article 13 states that business operators shall not take advantage of standard setting or standards implementation to eliminate or restrict competition. While the provision indicates that standards setting includes “mandatory requirements stipulated by national technology specifications,” USCBC would appreciate a clearer definition of all types of standards covered under this article, including whether the article covers mandatory or voluntary standards as well as national, local, or industry standards. Given that “relevant markets” defined in Article 3 are likely to be national in scope, we suggest that national standards are the appropriate level of standards for these provisions. Additionally, given that only mandatory (versus voluntary) standards set specific requirements for companies that have a significant market impact, we would suggest that mandatory standards are the appropriate type. We therefore recommend that this provision be revised to read: “Operators shall not take advantage of the setting or implementation of mandatory national standards to eliminate or restrict competition during the exercise of IPR.”

Additionally, Article 13(1) states that a company failing to disclose patent information to a standard setting organization and subsequently asserting that patent against implementers shall constitute anticompetitive behavior. While we recognize the need to ensure good-faith behavior by participants in the standard-setting process, we suggest that patent disclosure requirements should only apply to parties that are active participants in standard-setting processes. As drafted, a business operator holding a dominant market position would be required to license its patent under fair, reasonable, and non-discriminatory terms (FRAND) even if it did not participate in the standard-setting process or participated
but did not make a FRAND commitment. This is inconsistent with the “Regulatory Measures on National Standards Involving Patents” (released in December 2013), which state that there is no requirement mandating a patent license from a party outside of a standards development process. Limiting this provision to participants who make a FRAND commitment will make it more reasonable and consistent with other regulations. Previous drafts of SAIC’s regulation (such as the sixth draft) included more specific rules governing the circumstances under which non-disclosure of patents could be considered anti-competitive behavior. These rules provided clear guidance to all parties and were consistent with international best practices.

To clarify the scope of this regulation, USCBC suggests altering the language to read: “(i) deliberately not disclosing patent information relevant to the drafting of a standard, where the patent holder is an active voting participant in the standard-setting organization, knows that the patent is to be included as that standard, and has made a commitment to license its patent under fair, reasonable, and non-discriminatory terms; or after explicitly waiving its rights during the standard setting process, reasserting its rights after its patent has been deemed a standard-essential patent.”

**Article 17**

Article 17 specifies the factors that should be considered in analyzing whether an undertaking is abusing IP rights to eliminate or restrict competition. We recognize the greater clarity provided in this provision as a means of providing regulators and companies with more information about how regulators will implement the principles laid out in Article 55 of the AML and Article 2 of these regulations to balance the needs of competition and IPR. In that spirit, we recommend that SAIC revise Article 17(5) to state: “Analyzing the impacts of exercising IPR by the undertaking on competition in the relevant market, specifically balancing the pro-competitive effects and the anti-competitive effects of that activity.”

**Article 19**

While we recognize that Article 19 sets limits – both minimum and maximum levels – as fines for anticompetitive behavior in order to curb excessive fines, the currently proposed minimum and maximum penalties will create challenges for regulators and companies alike.

- Given that the competitive impact assessed in these investigations will generally be focused on the relevant market in China, we suggest that fines based on turnover should be based on an undertaking's net revenues in China only.
- Additionally, we recommend deleting the minimum fine as a percentage of turnover, as it may discriminate against large companies, both domestic and foreign, and limit the flexibility of local officials to fine based on the level of the infraction.
- Finally, the 10% maximum fine could lead to excessive fines for large entities. We recommend creating a fixed cap for a maximum fine that would be appropriate for companies of all types.

**CONCLUSION**

USCBC thanks SAIC for providing this opportunity to comment on the draft regulations. We hope that these comments are constructive and useful to SAIC as it reviews the draft measures, and welcome any further discussion that SAIC may wish to provide on these comments.

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The US-China Business Council
Contact: John Lenhart, Chief Representative in Beijing
Tel: 010-6592-0727
Fax: 010-6512-5854
E-mail: jlenhart@uschina.org.cn
US-China Business Council Comments on Draft Regulations on Service Inventions

December 3, 2012

The US-China Business Council (USCBC) appreciates the opportunity to participate in the public comment solicitation process for the draft Regulations on Service Inventions (“draft Regulations”). This process reflects a continued positive effort on behalf of China’s State Intellectual Property Office (SIPO) to provide greater transparency in the formulation of policy and legislation. The comments contained in this submission represent the views of many leading US companies engaged in business across all industry sectors in China.

USCBC has approximately 230 member companies that include global leaders in innovation that hold thousands of patents in manufacturing, information technology, pharmaceuticals, services, and other areas. Our companies support China’s goals to foster innovation and the development of intellectual property in China. Developing laws and regulations to promote these goals is the foundation of a modern economy. USCBC companies have invested considerable time and resources in research and development (R&D) activities in China that have benefited both companies and individual inventors.

Recognizing inventors at the time of invention and providing appropriate incentives to reward their work is an important method of encouraging innovation. USCBC supports Chinese government efforts to foster a more innovative society and to protect the rights of inventors. At the same time, USCBC has concerns that the current draft Regulations may not be the most effective way to achieve the objectives stated in Article 1 of the draft Regulations: building an innovative and talent-rich country, improving innovation capabilities, promoting development and implementation of service inventions, and protecting the legal rights of both companies and individual investors.

Strong corporate investment in R&D – by both domestic and foreign firms – is a necessity for an innovative economy. Yet language in the draft Regulations would create an unreasonable cost burden on companies conducting R&D in China by driving up compensation levels well above international norms and creating significant administrative burdens for companies with active patent portfolios. These high costs and administrative burdens would make it difficult for domestic and foreign companies to invest in R&D in China, ultimately reducing the amount of innovation that occurs in China.

For the reasons above, if new regulations on inventor remuneration are deemed necessary, USCBC respectfully suggests SIPO take into consideration the following three principles, which would help to achieve goals stated in Article 1 while also better aligning these rules with international best practices for fostering innovation. Companies and associations from multiple countries agree that these principles would enable SIPO to develop a remuneration system that appropriately balances the rights and responsibilities of inventors and companies alike:

- Suspend final passage of the draft Regulations until thorough outreach to all interested stakeholders can be carried out.
Recognizing that there are many provisions on which to comment that may be addressed by other organizations, USCBC respectfully submits the following comments on selected provisions.

**SCOPE OF LAW**
USCBC and its members appreciate that the draft Regulations attempt to provide clarity in how inventor remuneration agreements should be understood and enforced. To further streamline the process and to ensure that regulators and companies fully understand and are able to comply with the regulations, we respectfully make the following suggestions:

*Limit Scope to Patentable Matter Only*
USCBC is pleased to see that SIPO continues to recognize that protecting trade secrets is an important part of a robust IPR regime. USCBC respectfully suggests that the extension of the draft Regulations to “know-how,” or trade secrets, is impractical for these regulations. Most trade secrets are not directly examined and approved by a government agency. As such, they are difficult to identify and measure, and it is exceedingly difficult for a company to formally track all trade secrets held by every employee. In addition, the vague definition of trade secrets – which allow companies flexibility in protecting key proprietary information – can lead employers and employees to different understandings of what constitutes a trade secret. These challenges are well-known internationally: it is worth noting that even countries with a long history of inventor remuneration-related laws, like Japan and Germany, limit the scope of their laws to patents.

As such, USCBC suggests that all references within the law to “know-how” be deleted, including in articles 4, 8, 14, and 25. USCBC further suggests that the scope of the draft Regulations be clarified as being limited to patentable inventions only.

*Notification of Inventors of “Economic Benefit” of Invention*
The second paragraph of Article 20 requires companies to inform all inventors of “the economic benefit earned by the entity by exploiting, assigning, or licensing of their invention.” In practice, hundreds or even thousands of patents or patent applications (or future patents or patent applications) are often cross-licensed in a single transaction, making it difficult for a company to calculate the precise economic benefit for each individual patent and inform each inventor. As a consequence, such provisions would be impractical to enforce and the increased administrative costs could lead companies to reconsider complex cross-licensing arrangements. This would decrease opportunities for the sharing of patented technology and information in China.

Additionally, the economic benefit of these transactions is very likely to be a trade secret of the entity, as it would contain confidential information about company financing and proprietary business transactions that would be damaging if it falls into the hands of competitors. Thus, it is inappropriate to inform all inventors of the economic benefit. Such a disclosure may lead to a breach of confidentiality agreements the entity entered into with the assignees or licensees, or even the invalidation of the trade secret itself due to disclosure. This is particularly dangerous if the entity has to notify a former employee that is now employed by a competitor.

For the reasons above, USCBC recommends that the second paragraph of Article 20 be deleted.
Right of First Refusal

Article 29 allows the inventor the right of first refusal (ROFR) on any IPR that the company may decide to assign. USCBC understands this article is meant to protect the rights an inventor has in creating IP, but USCBC also notes that ROFR would make it difficult for an employer to enter into reasonable business transactions.

As written, Article 29 may prove difficult for regulators to enforce due to how IP is managed in practice. First, joint inventions can lead to conflicting ROFR rights for each inventor involved. This could lead to complex legal proceedings involving regulators, companies, and inventors to determine the primary rights’ holder. Second, patents are often assigned in bundles (known as assignment “on a package basis”) as part of a company’s overall business strategy, often including the exchange of hundreds of patents in one deal. Article 29 would give any individual inventor the ability to block business deals much broader in scope than the original individual patent, thus impeding a company’s ability to disseminate and commercialize patents in line with China’s broader IP and technology development goals. Lastly, seeking opinions from each inventor before patent assignment may expose the entity to confidentiality leakage or breaches, hindering or undermining the patent transaction process.

For the above reasons, USCBC respectfully suggests that Article 29 be deleted.

AUTHORITY OF COMPANY POLICIES AND AGREEMENTS

USCBC respects the motivations behind the draft Regulations to protect the rights of inventors as a means to encourage innovation. USCBC supports inventors’ rights to proper rewards and remuneration as an important part of the innovation process. Based on company experience in China and other markets, the best means to ensure fair compensation for inventors is to allow open negotiations between inventors and entities.

Some provisions of the draft Regulations may unnecessarily disrupt the relationship between an entity and its employee, and could, in practice, question or even invalidate existing company policies or inventor-employee agreements. USCBC respectfully makes the following suggestions as a means to promote innovation in China while also ensuring stable relations between entities and employees:

Ownership Rights for Inventions in Company Policy
USCBC welcomes the draft Regulations’ reference to inventor-employer agreements in Articles 6, 9, and 19. In particular, Article 9 allows the entity and employee to make agreements regarding the ownership of inventions that are relevant to the business of the entity, while Articles 6 and 19 separately allow the company to establish company policy or enter into an agreement with inventors. To ensure consistency throughout the regulation, we recommend that Article 9 be amended and expanded to be consistent with Articles 6 and 19, clarifying that invention ownership can be established not only through an agreement entered into between inventors and the entity, but also through company policy established by the entity.

Validity of Agreements “Limiting” the Rights of Inventors
USCBC respects that Article 19 references inventor-employer agreements and attempts to protect inventors from unfair agreements. The second paragraph states that “any agreement or provisions eliminating or limiting the rights which the inventor is entitled to in accordance with these regulations are invalid.” The broad wording of the second paragraph of the Article appears to undercut the authority of other Articles in the draft Regulations, including Articles 6 and 9, and calls into question the validity of relevant company agreements. Determining what constitutes a “limit” on inventor rights is subjective, and may lead to differing interpretations by individual regulators, companies, and inventors. This clause would call into question the validity of existing and proposed company policies or contracts, which could
result in an excessive administrative burden on regulators to attempt to determine which policies or contracts might be limiting inventor rights.

USCBC strongly recommends that the phrase “or limiting” be deleted from the second paragraph of Article 19. The final draft should read, “Any agreement or provisions eliminating the rights which the inventor is entitled to in accordance with these regulations are invalid.”

**Individual Agreements to Override Timeframe Obligations**

Articles 10, 12, 13, 14, 16, and 24 enact obligations and time limits for certain operations to be completed between the entity and its employees. Currently, many companies already have existing programs and procedures for signing inventor-employer agreements that cover employment arrangements more comprehensively than the obligations put forth in these articles. At the same time, USCBC recognizes that some companies have yet to adopt this important practice. To avoid conflict while encouraging greater usage of agreements that protect inventor rights, USCBC recommends that the draft Regulations include specific language clearly stating that the timeframes in the draft Regulations would only apply in the case that no such inventor-employer agreement exists, and that company policies and agreements would supersede the draft Regulations.

**Determining Proper Economic Compensation**

Articles 21 and 22 are designed to set default remuneration levels for inventors of IPR. Such language, however, conflicts with Articles 77 and 78 of the Implementing Regulations of the Patent Law, which assumes either a formal agreement between employee and employer, or the existence of legally compliant company rules and regulations that address remuneration. Articles 77 and 78 also include default provisions covering compensation amounts and the timeframe for when patents are granted or exploited. Consequently, an existing, widely understood body of PRC law has already made adequate provision for determining minimum remuneration thresholds. To prevent significant regulatory confusion, USCBC recommends that direct references to remuneration levels be removed from the final version of the draft Regulations, and that Articles 77 and 78 of the Implementing Regulations of the Patent Law be referenced as the authority on default remuneration levels. Additionally, as market-based negotiations remain the best means to determine remuneration levels that are appropriate for the industry, invention, and inventor, USCBC further recommends that the draft Regulations stipulate that companies may sign separate inventor-employer agreements with remuneration provisions to supersede these default levels.

**Right of Disposal of IPR**

Article 16 appears to allow inventors to request assignment of IPR to themselves upon learning of an attempt to abandon it by the employer, stating “where the entity intends to stop the process of applying for intellectual property of a service invention, it shall inform the inventor one month in advance.” This prior notice obligation would bring an unreasonable administrative burden for companies, and lead to inconsistent implementation for regulator. For example, in the course of an annual maintenance review a company may decide to abandon 500 patents for strategic or financial reasons. Article 16 would require the company to notify all inventors of those 500 patents, which would likely be thousands of people. It would be especially difficult to notify inventors who had retired, resigned, or gone to work for a competitor. In the case of the latter, notification would also result in a breach of confidentiality.

USCBC strongly suggests that Article 16 be deleted, or modified to clearly specify that the entity may establish a policy or reach prior agreement with the inventor in dealing with matter related to the abandonment and assignment of IPR, as mentioned above.

**CONCLUSION**

USCBC thanks SIPO for providing this opportunity to comment on the draft Regulations. We hope that
these comments are constructive and useful to SIPO as it reviews the draft measures, and welcome any further discussion that SIPO may wish to provide on these comments.

—END—

The US-China Business Council
Contact: John Lenhart, Manager, Business Advisory Services
Tel: 010-6592-0727
Fax: 010-6512-5854
E-mail: jlenhart@uschina.org.cn
ADVANCING INNOVATION: Recommendations for China’s High- and New-Technology Enterprise (HNTE) Program
September 2013

China has made notable advances in recent years in technology innovation. For example, in 2012, China’s State Intellectual Property Office (SIPO) received more than 650,000 applicants for invention patents, an increase of more than 26 percent from 2011 and the largest number received by any patent office in the world. Investment in research and development (R&D) activities is also growing, with spending on R&D in 2012 growing more than 17 percent, according to official Chinese statistics.

As a part of these efforts, Chinese authorities have recognized that nondiscriminatory tax policies and a robust legal and regulatory system for protecting intellectual property rights (IPR) play a vital role in fostering innovation. The US-China Business Council (USCBC) acknowledges the efforts of Chinese central and local government agencies to set fiscal and IPR protection policies and programs that advance innovation. USCBC also appreciates the ongoing dialogue between USCBC and various central government agencies to discuss the value of tax and IP protection policies that align with international best practices and the realities of corporate structures. Through this submission, USCBC hopes to continue this constructive conversation about best practices for tax and IP policies that benefit all stakeholders to promote China’s development as an advanced, high-tech industrial economy.

One of China’s core innovation tax policies, the High- and New-Technology Enterprise (HNTE) program, offers qualified company locations a 15 percent tax rate regardless of the company’s investment type and where the company is headquartered. HNTE status is granted by provincial tax authorities for company facilities located within their jurisdictions. To qualify a facility for HNTE status, companies are required to own the proprietary IPR of the core technology used in their products and services in China, or they must give their Chinese subsidiaries a global exclusive license for that IP for at least five years.

While China’s current HNTE program allows both domestic and foreign companies to apply for HNTE status, the structure of the HNTE program presents innovative global companies with three particular challenges, discussed below. These challenges limit the ability of these companies to participate in the HNTE program. The end result is that the innovative companies that officials aim to attract cannot fully contribute to China’s efforts to promote innovation. In addition to discussing these three challenges in greater detail, USCBC recommends potential solutions to address these challenges.

Challenge: HNTE Criteria Deviate from International Norms and Best Practices
Most foreign companies manage their IP portfolios globally based on commercial considerations, the legal environment, and accessing top talent and resources where they may be found, rather than on national borders. The result is a dynamic, globally integrated IP development structure, uniquely suited to each company’s needs and promoting innovation and technology development to the benefit of both businesses and consumers.

By contrast, China’s HNTE program requires companies to own or hold an exclusive global license for their IP in China to qualify for the preferential tax rate. Such a requirement prevents companies from fully utilizing their own IP throughout their company and in the most appropriate location for their business goals. As a consequence, companies must choose between benefits they can receive under HNTE by bringing IP to China and the benefit they may receive by using that IP in other markets. Faced with that choice, some companies may choose not to bring the IP to China, limiting their ability to innovate in China. Consequently, Chinese companies are closed off from the global innovation network. Both of these dynamics ultimately hinder central government innovation goals.
Recommendations

- Modify the current HNTE requirement that license rights held by the applicant must be global, exclusive rights (not merely the right to exploit the relevant IP in China) with a term of not less than 5 years. Options for such a change can be:
  - Eliminating the requirement for ownership of core proprietary IPR in China; or
  - Expanding the criteria to include legally acquired, non-exclusive licensee or usage rights; or
  - Narrowing the criteria to be exclusive license rights in China only.

Challenge: Limited Applicability of HNTE Incentives

Under existing HNTE rules, legal entities must have both a manufacturing and an R&D component and generate revenue to qualify for HNTE status, since eligibility criteria focus on sales of high-tech products and services as well as on R&D spending and employment of technical personnel. These requirements do not take into account modern international corporate structures that manage and promote joint corporate R&D activity, often by using single R&D centers to support multiple corporate units.

Under China’s framework, many entities that carry out innovative and high-tech activities are ineligible for HNTE. This includes R&D centers without manufacturing capabilities, manufacturing entities that use R&D innovations generated elsewhere in the products they sell, and companies whose innovative products are manufactured in China but not sold through their manufacturing entities. China’s government should allow all legal entities that develop, use and commercialize R&D, technology, IP, or high-tech products to qualify for the tax incentive.

Recommendations

- Revise existing HNTE rules—such as the Management Rules of High- and New-Technology Enterprises—to allow all legal entities that develop, use and commercialize R&D, technology, IP, and high-tech products to qualify. All entities that do so – including R&D centers without manufacturing capabilities, manufacturing entities selling products are commercialized using innovation generated elsewhere, and manufacturing entities that do not themselves sell in China the innovative products that they produce (e.g. a foreign-invested manufacturing enterprise whose products are sold by a separate foreign-invested commercial enterprise) – should qualify for HNTE status based on innovation and commercialization they are conducting.

- Review and revise other tax-related laws and regulations to eliminate location-specific IP ownership and registration requirements that hinder innovation.

Challenge: High Risk of Trade Secret Theft

The HNTE application process requires companies to disclose a significant amount of information that may be considered to be trade secrets or highly sensitive. These disclosures include the number of R&D projects a company is undertaking, names of personnel who work on them, types of activities taking place on the projects, and other confidential business information. The amount of information required by provincial authorities for these applications has been increasing. Fearing loss of trade secrets and other IP, qualified companies often do not apply for HNTE status because of these invasive procedures that put their IP at risk due to the lack of clarity about how such information will be protected.

Recommendations

- Revise existing HNTE rules, including the Management Rules of High- and New-Technology Enterprises, to limit the amount of sensitive company information that companies are required to compile and submit with their application, including project details and personal information about employees. Officials should work with companies to limit required information disclosures to that which is truly necessary to evaluate a company’s high- and new-technology activities such as supporting evidence of R&D expenditure.

- Release specific guidelines outlining the responsibilities of officials involved with HNTE certification to protect confidential business data gathered during the application process, including ramifications for officials that fail to protect such data.
Conclusion
Innovation that happens in China benefits China, regardless of the nationality of the company that does it and regardless of where the company registers the IP connected to it. To that end, China can best advance its innovation and industrial modernization goals by adopting tax policies and programs to promote innovation that align with international best practices, including policies that do not explicitly or implicitly link the location of IP ownership to incentives. Improving the HNTE program and similar tax programs that reward innovative activities regardless of the location of IP ownership would be an important step in that direction.
Status Report: China’s Innovation and Government Procurement Policies

May 2014

Executive Summary

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

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

- As of May 2014, 19 provinces have released notices and announcements to comply with central government requirements. Fourteen provinces — Anhui, Beijing, Chongqing, Guangdong, Guizhou, Hebei, Hunan, Inner Mongolia, Jiangsu, Jiangxi, Jilin, Liaoning, Tianjin, Xinjiang, and Yunnan — have complied to some degree after the November State Council notice was issued. An additional 4 provinces — Fujian, Gansu, Shandong, and Shanghai — did so before the notice.
- An additional 39 sub-provincial units — ranging from Chengdu, Sichuan to Wuxi, Jiangsu — have issued notices and announcements to comply with central government requirements.
- However, significant work still remains: 12 provinces have not released any measures since January 2011 to implement central-level pledges, including some notable locations where foreign companies have investment such as Sichuan and Zhejiang provinces.
- In addition, USCBC has found seven local regulations formally linking indigenous innovation and government procurement released even after such links were prohibited by the State Council’s November 17 notice, suggesting that further vigilance is needed on these issues.
- USCBC recommends that US government officials continue to raise this issue to ensure full and consistent compliance, including at the Strategic & Economic Dialogue, Joint Commission on Commerce and Trade, and other relevant bilateral meetings.

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

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

Such discriminatory links, however, remained at the sub-national level, with policies and regulations such as the accreditation rules for indigenous innovation products and catalogues for those products. As confirmed at the JCCT, the State Council on November 17, 2011 released a notice stating that sub-national governments at all levels must halt implementation of any measures that link innovation and government procurement within regulatory documents by December 1, 2011. The notice also requires these governments to announce to the public which regulatory documents remain in effect, which are eliminated and which are suspended, and to report progress to the State Council by the end of December 2011. (For a copy of the notice, see referenced at www.cqbn.gov.cn/gwquery.asp?id=2301).

Recent government actions to amend or eliminate some of these regulations and catalogues demonstrate that the government is keeping its commitments. Based upon publicly available information, 23 of China’s provinces and provincial-level cities can show some kind of specific, concrete action since early 2011 to implement pledges at the provincial or local level, with many of those doing so in direct response to the November 2011 circular.

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

- Rules to support local enterprises released in June 2012 by the local government in Zhenjiang, Jiangsu, that encourage use of the indigenous innovation product catalogue and government procurement to support local enterprises.
- A notice reviewing 2012 government procurement work released in December 2012 by the local government in Yantai, Shandong that listed a scoring mechanism to evaluate government agencies’ procurement work with points given for their procurement of indigenous innovation products.
- A notice announcing 2013-2014 government procurement work released in February 2013 by the Hangjinhouqi county government, Inner Mongolia claiming that the government should “actively support” indigenous innovation products through government procurement, and should give prior consideration of procurement for domestic indigenous innovation companies, if they have the same quality or price conditions.
- Rules to support local enterprises released on August 2, 2013 by the local government in Yangzhou, Jiangsu that encourage government procurement of high-tech and software products above municipal and provincial levels to support local indigenous innovation products.
- A notice announcing budget management of government procurement in December 2011 by the local government of Cheng County, Longnan City, Gansu indicating that the county government should purchase domestic goods, projects, and services and support indigenous innovation products through government procurement.
- A circular listing 114 indigenous innovative products as the government procurement preferences in March 2013 released by the local government in Yinzhou District, Ningbo, Zhejiang, stating that government agencies should preferentially procure products from this catalogue when other conditions are equal.
- Opinions to promote the local cultural industry released in February 2013 by the local government of Xiangshan County, Ningbo, Zhejiang, stating that the county government should preferentially purchase indigenous innovative cultural products from the county in order to promote local enterprises.
In addition, despite the central government push to delink indigenous innovation and government procurement, data from USCBC’s 2012 member company survey reveals that 85 percent of companies surveyed said they had seen no positive change in sales opportunities to PRC government entities at the national, provincial, or local levels since the 2011 release of the State Council notice, implying that the delink effort on paper has yet to translate into real change. In direct advocacy with the PRC government and in government-to-government meetings and dialogues, USCBC will continue to ensure that resolution of this issue remains a priority.

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

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

Anhui


- In late November or early December 2011, the Anhui provincial government issued a circular that is believed to order all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. (Full text unavailable; referenced in [www.czzwgk.gov.cn/XxgkNewsHtml/MA001/201112/MA001020503201112004.html](http://www.czzwgk.gov.cn/XxgkNewsHtml/MA001/201112/MA001020503201112004.html))


- On December 8, 2011, the Chuzhou municipal government released a circular announcing the launch of its work to eliminate measures linking innovation and government procurement. The notice required relevant departments to draft a list specifying which regulatory documents would remain in effect, and which would be discarded or suspended. Departments should eliminate such documents by December 12, 2011, and should report results to the public and to the Anhui provincial government. [www.czzwgk.gov.cn/XxgkNewsHtml/MA001/201112/MA001020503201112004.html](http://www.czzwgk.gov.cn/XxgkNewsHtml/MA001/201112/MA001020503201112004.html)

Beijing

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

cwc.bjedu.gov.cn/publish/portal13/tab784/info18781.htm

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

www.bjshy.gov.cn/Item/48041.aspx

Chongqing

• On July 14, 2011, the Chongqing Finance Bureau announced that it would no longer award extra points for indigenous innovation products in the Chongqing municipal government procurement process. The bureau also said it would eliminate such points from the 2010 standard text for tendering documents.


• On November 29, 2011, the Chongqing municipal government released a circular announcing that all government entities at or below the municipal level must halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Agencies and district governments must submit lists of regulations that will remain in effect, as well as those that will be eliminated or suspended, to the city government by December 15. The Chongqing Legislative Office will summarize progress reports and submit its final report to the State Council by December 25.


• On December 5, 2011, the Banan district government under Chongqing city released a circular announcing that government entities within the district must halt implementation of any regulations linking innovation and government procurement by December 1, 2011, and must also halt implementation of any regulations based on related regulations now invalidated by NDRC, MOST, and MOF. Agencies must submit suggested regulations to eliminate to the Banan Legislative Office by December 12, which must then report the results of such work to the Chongqing Legislative Office by December 15.

www.cqbn.gov.cn/gwquery.asp?id=2301

• On January 17, 2012, the Chongqing municipal government announced the results of its round of regulatory changes, stating that county governments had eliminated five regulatory documents linking innovation and government procurement and had revised two others. Chongqing’s government is also currently revising Article 8 of the 2008 Opinions on Encouraging Enterprises to Expand Research & Development Investments to Increase Indigenous Innovation Capabilities.

govinfo.nlc.gov.cn/search/htmlflash4 Radar?docid=2800307

Fujian

• On July 11, 2011, the Fujian Finance Bureau announced that it would suspend implementation of 2007 provincial rules regulating government procurement of indigenous innovation products, as well as all policies on government procurement preferences for indigenous innovation products.

www.fjicpa.org.cn/article.cfm?f_cd=56&s_cd=404&id=82FB052A-D605-5850-CBD6FFA4714C7316

• On July 11, 2011, the Xiamen Bureau of Science and Technology released a circular announcing that the city would “temporarily suspend” its 2011 work on accrediting indigenous innovation products in light of the July central-level interagency circular. Xiamen’s circular made no reference to existing catalogues in Xiamen.
www.xminfo.net.cn/index.php?m=content&c=index&a=show&catid=12&id=17176

• On July 20, 2011, the Zhangzhou Government Procurement Center released a circular announcing that it would suspend implementation of any policies providing preferences in government procurement to indigenous innovation products that appear in the center’s bidding documents.
www.zzzfcg.gov.cn/viewbody.cfm?id=9078

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

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

Guangdong
• On August 2, 2011, the Guangdong Finance Bureau announced that it would suspend implementation of the 2009 guidance on government procurement of indigenous innovation products starting on August 1, 2011.

• On August 16, 2011, the Qingyuan municipal government released a circular referencing the August 2011 Guangdong Finance Bureau circular and requesting relevant government agencies, including finance and science & technology bureaus at the city, district, and county level, to comply.
qingyuan.gdgpo.com/gdgpmsPortal/jsp/article_content.jsp?articleId=4028708332b5d20e0132f752ffde0c92

• In late 2011, the Guangdong provincial government released a circular that is believed to order on all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents. (Full link not available, but referenced in zwgk.gd.gov.cn/007335807/201204/t20120405_311243.html)

• On January 9, 2012, the Chaozhou municipal government released a circular calling for governments at or below the municipal level to eliminate or revise regulatory documents linking innovation and government procurement. Such regulatory changes must be completed and reported to the Chaozhou Finance Bureau by February 15, 2012.
zwgk.gd.gov.cn/007335807/201204/t20120405_311243.html

• On January 9, 2012, the Xinhui district government under Jiangmen city released a circular calling on governments and agencies at or below the district level to eliminate or revise regulatory documents linking innovation and government procurement. Such regulatory changes must be completed and reported to the Xinhui Legislative Office by February 15, 2012.
www.xinhui.gov.cn/zwgk/GBYTJ/QZFGB/201205/P020120524638115803821.doc
On March 8, 2012, six Jiangmen municipal government agencies, including the Jiangmen Science and Technology Bureau and the Jiangmen Finance Bureau, released a circular announcing revisions to the 2009 Jiangmen Provisional Management Rules for Indigenous Innovation Product Accreditation, including the elimination of Article 10, which had called for advantages in government procurement for indigenous innovation products.

On March 13, 2012, the Zhuhai municipal government released a circular calling for all relevant government agencies to eliminate or revise regulatory documents linking innovation and government procurement. Such regulatory changes must be completed before December 1, 2011, and must be posted for the public on the municipal government website as well as reported to the Zhuhai Finance Bureau and the Zhuhai Legislative Office.

On April 17, 2012, the Guangzhou municipal government released a circular announcing that the city would immediately halt the implementation of Guangzhou Management Rules for Indigenous Innovation Product Accreditation.

On January 5, 2012, the Liuzhou municipal government autonomous region released a circular announcing that the city would start cleaning up regulatory documents linking innovation and government procurement. The notice stated that the municipal government would halt implementation of any such regulatory documents by December 1, 2011. Agencies must submit suggested regulations to eliminate to the Liuzhou Legislative Office by January 20; that office must then report the results of such work to the municipal government by January 16.

On January 9, 2012, the Liunan district government under Liuzhou city released a circular announcing that the district would start cleaning up regulatory documents linking innovation and government procurement. The notice stated that the district government would halt implementation of any such regulatory documents by December 1, 2011.

On January 16, 2012, the Fangchenggang municipal government announced the results of its work to clean up regulatory documents linking innovation and government procurement released before December 20, 2011. According to its report, the review included five documents released by the municipal government, all of which remain in effect, and four departmental documents, of which one remains in effect and three have been suspended.


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

**Hunan**

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

- **On December 14, 2011,** the Yueyanglou district government under Yueyang city released a circular announcing that government entities, in accordance with Hunan provincial measures, must eliminate or revise any regulatory documents linking innovation and government procurement and announce which documents remain in effect, and which are eliminated or suspended. The notice called on all relevant departments to submit results of removal work by December 20, 2011. www.yylq.gov.cn/html/zhengwugongkai/zwgkzcwj/11216.html

- **On December 19, 2011,** the Hengyang municipal government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Agencies must submit suggested regulations to eliminate to the Hengyang Legislative Office by December 20, 2011. Regulatory changes must be completed by December 25, 2011. www.hengyang.gov.cn/main%5Chyzw/zfxxgk/fggw/szfbgswj/1_17888/default.shtml

- **On December 19, 2011,** the Beihu county government (Chenzhou city) released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Regulatory changes must be completed by December 20, 2011. www.czbeihu.gov.cn/dtxx/tzgg/content_61384.html

- **On December 19, 2011,** the Changsha municipal government released a circular announcing that it will revise regulatory documents that link innovation and government procurement no later than December 31, 2011. Regulatory changes would be implemented as soon as revisions are released. www.changsha.gov.cn/xxgk/szfbmxxgkml/szfgzbmxgkml/szffzb/tzgg_1966/201201/t20120104_299869.html

- **On December 31, 2011,** the Taoyuan municipal government released a circular announcing that it had completed the required document removal work, confirming that the two existing regulations dealing with government procurement were both valid and that there were no documents that required elimination or suspension. www.taoyuan.gov.cn/html/2011/12/31/22016.html


www.xiangtan.gov.cn/new/wszt/wjgz/zfwj/szfgfxwj/content_26596.html

Inner Mongolia

On December 21, 2011, the Inner Mongolia autonomous regional government issued a circular referencing the November 17 State Council notice and calling on governments below the provincial level to implement the policy and submit progress reports to the Inner Mongolia Legislative Office by January 31, 2012.

www.nmfzb.gov.cn/information/fzb17/msg548586222.html

On February 24, 2012, the Inner Mongolia Health Department announcing that it would halt implementation of a 2007 notice aimed at implementing the spirit of MOF rules on indigenous innovation and government procurement.


Jiangsu

In November 2011, the Jiangsu provincial government released a circular that is believed to order on all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011.

(Full link not available, but referenced in www.jscz.gov.cn/pub/jscz/zfxxgk/zfxxgkmzl/zfgc/11/201112/t20111231_22292.html)

On November 25, 2011, the Changzhou Municipal Working Group for Comprehensive Promotion of Legal Administration Work released a circular announcing that implementation of any measures that link innovation and government procurement within regulatory documents should be halted no later than December 1, 2011, and that all government agencies at or below the Changzhou municipal level should review existing regulations for compliance. The municipal committee, city government, and directly administered offices should report initial results of their review and recommended changes to the Changzhou Legislative Office by December 5, 2011, while all municipal-level government organs, district governments, and governments of other directly administered cities should report to the same office by December 10, 2011.

www.changzhou.gov.cn/gi_news/133994310012279

On November 29, 2011, the Qidong municipal government released a circular announcing that any measures that link innovation and government procurement within regulatory documents should be eliminated and implementation halted no later than December 1, 2011. Regulatory changes should be completed by December 10, 2011, with progress reports given to the Qidong Legislative Office the same day.


On December 6, 2011, the Wuxi municipal government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Relevant departments and agencies should submit progress reports to the Wuxi Legislative Office by December 10, 2011. That office will summarize and submit a final report to the municipal government by December 15, 2011.

www.wuxi.gov.cn/zfxxgk/szfwxgkmzl/zcfg/szfbgswj/5969581.shtml
On December 8, 2011, the Donghai municipal government released a circular announcing that government entities, in accordance with Jiangsu provincial measures, must eliminate or revise any regulatory documents linking innovation and government procurement and announce which documents remain in effect, and which are eliminated or suspended. The notice called on all relevant departments to submit results of removal work by December 20, 2011.

xxgk.jsdh.gov.cn/zhengfuxinxigongkai/xianzhengfubangongshi/2011-12-31/2583.html


On January 10, 2012, the Nanjing municipal government issued a decision announcing the elimination and revision of a broad mix of documents – including some of those related to innovation and government procurement. These changes include the elimination of 2008 measures to promote innovation in enterprises and revisions to 2009 measures on promoting enterprise growth and stable, rapid development and to 2010 policies for promoting the software and information service industries. While revisions removed explicit ties between government procurement and innovation, the notices do still call for government support and promotion of indigenous innovation software products and services.

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

On February 3, 2012, the Xuzhou municipal government announced the results of its round of regulatory changes designed to eliminate or revise regulatory documents linking innovation and government procurement, stating that city government agencies had eliminated specific provisions in the 2006 Circular on Encouraging and Promoting Scientific and Technological Innovation and Start-ups and the 2009 Outline of Xuzhou’s Intellectual Property Strategy.

(link inactive, but formerly available at 58.218.194.33/xzgxkg/nrglIndex.action?catalogID=ba5a42a118c5e8140118c5e6898046&type=2&messageID=ff80808135a7cdd0135ebc1c7f604a2)

Jiangxi


www.ncinfo.gov.cn/Newsite/content_detail.asp?id=40904

Jilin

- On November 28, 2011, the Jilin provincial government released a notice rejecting a proposed policy that would have offered preferential government procurement to a local computer brand, Zhuo’er. In its rationale for rejecting the proposal, the notice cites the June 2011 Ministry of Finance notice and states that Jilin provincial authorities had halted implementation of relevant policies linking indigenous innovation and government procurement as a primary rationale for rejecting the proposal.


Liaoning
  www.fd.ln.gov.cn/web/detail.jsp?id=8a98819d34cfac22013540d6d25b02d1
- On January 11, 2012, the Shenyang Finance Bureau released a circular announcing that it would halt implementation of 2009 implementing measures to promote model government procurement bidding activities no later than January 1, 2012.

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

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

Shanxi
- On December 13, 2011, the Anze county government called for governments at all levels to eliminate or revise regulatory documents linking innovation and government procurement in line with China’s external commitments. Such regulatory changes must be completed by December 25, 2011, and should post online a list of which documents are still in effect and which have been eliminated or suspended. Regulatory documents that are not listed online in this manner should cease implementation after January 1, 2012.
  www.anze.gov.cn/info/news/shows/2697.htm
- On February 12, 2012, the Gujiao municipal government released a circular announcing that all government entities at or below the municipal level must halt implementation of any measures that link innovation and government procurement within regulatory documents, and must begin work to eliminate or revise regulatory documents linking innovation and government procurement. Results of the work must be reported to the Gujiao Legislative Office by February 20, 2012.
  (Link inactive, but formerly available at www.sxgujiao.gov.cn/gfgw/bgtwj/2010bgt/201203/561314199.html)
Shanghai
• On July 1, 2011, the Shanghai branches of MOST and MOF announced the immediate invalidation of Shanghai’s catalogue of indigenous innovation products.
  www.czj.sh.gov.cn/zcfg/gfxwj/zfcg/201107/t20110708_128211.html

Sichuan
• On July 11, 2011, the Chengdu Government Procurement Service Center announced that it would no longer award extra points for indigenous innovation products during the evaluation process for five specific municipal-level government procurement projects as of July 1.

Tianjin
• On July 1, 2011, the Tianjin Finance Bureau announced that it would no longer award extra points for nationally and locally accredited indigenous innovation products in the evaluation process for government procurement programs starting July 1, and released a list of bidding projects prior to July 1 that would need to be reviewed for compliance with the new notice.

  www.tjjj.gov.cn/upload/File/20111215160915059.pdf

• On June 26, 2012, the Tianjin municipal government released a circular, announcing that the city would halt implementation of the 2009 Tianjin Provisional Management Rules for Indigenous Innovation Product Accreditation Management Rules.
  www.tjzfxgk.gov.cn/tjep/ConInfoParticular.jsp?id=33352

Xinjiang
• On November 23, 2011, the Bayingolin Mongol autonomous prefectural government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Regulatory changes must be complete by December 13, 2011, and reported to the Bayingolin Legislative Office.

• On November 30, 2011, the Xinjiang Science and Technology Bureau released a circular announcing that it would halt implementation of the 2009 Xinjiang Provisional Indigenous Innovation Product Accreditation Management Rules as of December 1, 2011.

• On December 8, 2011, the Hutubi county government released a circular announcing that it would halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. Relevant departments and agencies should complete regulatory changes and report to the Hutubi Legislative Office by December 10, 2011.
  www.htb.gov.cn/arc,70,769.php

Yunnan
• On August 16, 2011, the Yunnan Finance Bureau released a circular referencing the June 2011 State Council and requesting relevant government agencies at all levels to comply.
  www.ynwscz.gov.cn/show.asp?id=1925
• On September 20, 2011, the Wenshan municipal government released a circular referencing the August 2011 Yunnan Finance Bureau circular and requesting relevant government agencies, including finance bureaus at the city, district, and county level, to comply. www.ynwscz.gov.cn/show.asp?id=1925

• In late November or early December 2011, the Yunnan Legislative Office released a circular that is believed to call on all government and agencies at or below the provincial level to halt implementation of any measures that link innovation and government procurement within regulatory documents no later than December 1, 2011. (Full link not available, but referenced in www.cxlaw.gov.cn/show.asp?id=4674)

• On December 8, 2011, the Chuxiong Yi autonomous prefectural government issued a circular, referencing a similar notice from the Yunnan provincial government, calling on that government entities to carry out regulatory changes and should submit progress reports to the Chuxiong Legislative Office by December 16, 2011. www.cxlaw.gov.cn/show.asp?id=4674

• On December 20, 2011, the Qujing municipal government in a report released on its performance in 2011 stated that it had begun the work of eliminating or revising documents that link innovation and government procurement measures. (Link inactive, but formerly available at qj.xxgk.yn.gov.cn/canton_model25/newsview.aspx?id=1645716)

• On January 17, 2012, the Yongshan county government released a notice, soliciting comments on the results of work to eliminate or revise regulatory documents linking innovation and government procurement. The government asked for comments on elimination or revision of eleven relevant documents. Comments and recommended changes are due to the government by February 20, 2012. zt.xxgk.yn.gov.cn/ztmode/newsview.aspx?id=1666995
Recommendations for Strengthening Trade Secret Protection in China
September 2013

Executive Summary

- Trade secrets have increasingly become a critical component of companies’ intellectual property (IP) portfolios in China alongside more visible forms of intellectual property, such as patents and trademarks. According to respondents of the US-China Business Council (USCBC) 2013 member company survey, 40 percent of respondents selected trade secrets as the IP of most concern.
- In response to such views, Chinese government agencies have paid greater attention to trade secrets, gradually prioritizing trade secrets on the domestic IP agenda and increasing engagement with their international counterparts.
- But insufficient trade secret protection hampers the growth and development of companies, products, and technologies that use such trade secrets.
- Further progress can be made to increase the recognition by Chinese government agencies, companies, and citizens that trade secrets hold the same property rights as other forms of IP.
- Additional steps to improve China’s legal environment for, and protection of, trade secrets would promote the growth and success of enterprises in China and around the world.
- Based on ongoing conversations with members, USCBC has compiled a detailed summary of the trade secret-related challenges that companies face as well as constructive recommendations to improve trade secret protection.
- Some of the challenges that companies face in trade secrets parallel challenges that they face in other areas of IP, such as value thresholds that can inhibit companies from using criminal channels to pursue trade secret enforcement and low administrative fines and court damages that encourage IP-infringing behavior by companies and individuals.
- In this paper, USCBC focuses on six trade secret challenges with concrete recommendations to address each of the following areas of concern:
  - A fragmented legal framework;
  - Questions about trade secret disclosure during government licensing and regulatory processes;
  - Limited government and judicial experience;
  - The high evidentiary burden faced by plaintiffs in court cases;
  - Limited use of relevant and potentially useful judicial procedures; and
  - Insufficient information about relevant judicial procedures and practices.

Trade secrets—confidential technical or business information that is not known to the public and has economic benefits for the rights-holder—are an important piece of a company’s overall portfolio of proprietary technology and information. Strong recognition and protection of trade secrets can significantly benefit the development of both domestic and foreign companies operating in China.
Recognizing the value of stronger trade secret protection, the Chinese government has recently paid greater attention to trade secrets and increased their engagement with their international counterparts. The 2013 priorities for the high-level State Council Leading Group on Combating Intellectual Property Rights (IPR) Infringement and Sales of Counterfeit Goods (IPR leading group), released in May 2013, specifically includes the need to strengthen trade secret enforcement. In May 2012, a group of leading Chinese judges—including current Supreme People’s Court IPR Tribunal Chief Judge Kong Xiangjun—published a book that discusses China’s efforts to promote judicial protection of trade secrets and Chinese views of the most significant challenges the country faces in boosting trade secret protection. The US-China Business Council (USCBC) recognizes and appreciates these important developments.

Such government actions reflect a growing understanding within the Chinese government about the negative consequences of insufficient trade secrets protection. If a company is unable to protect its trade secrets and thus cannot economically benefit from products and technologies that depend on them, it weakens the company’s incentive to develop and use new technologies in China. A lack of trade secret protection can also lead the company to withhold its latest, most advanced technologies from China. Both factors can severely limit the products and technologies available to Chinese consumers and businesses, thus hampering China’s innovation development.

In today’s increasingly competitive commercial landscape, companies are paying greater attention to trade secret protection. Trade secrets became the IP of greatest concern for the first time in the USCBC 2012 member company survey, and have only become more of a concern since then. According to respondents to the 2013 member company survey, 40 percent of respondents selected trade secrets as the intellectual property of most concern. Trade secrets ranked ahead of trademarks (27 percent), patents (20 percent), and copyrights (8 percent). As a result of this growing concern, trade secret protection has become an increasingly prominent part of bilateral discussions on IPR issues. For example, at the July 2013 Strategic and Economic Dialogue, the United States and China agreed to share information about trade secret enforcement—an important step forward for building a constructive dialogue.

<table>
<thead>
<tr>
<th>Table 1: Type of IP Infringement of Greatest Concern</th>
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<td><strong>Type</strong></td>
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<tr>
<td>Trade secret</td>
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<tr>
<td>Trademark</td>
</tr>
<tr>
<td>Patent</td>
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<tr>
<td>Copyright</td>
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<td>Other</td>
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Source: USCBC member company surveys (2011, 2012, and 2013)

USCBC is pleased that there is greater interest in improving China’s legal framework and implementation of trade secret protection. Doing so would promote the growth and success of enterprises in China and around the world. Over the past eighteen months, USCBC has engaged in active conversations with companies from a
variety of sectors on their views of trade secrets, including company views of the legal and enforcement environment and best practices that companies use to proactively protect trade secrets. This report is designed to provide a detailed summary of the challenges that companies face on trade secret issues, as well as constructive recommendations for how to make concrete progress on protecting trade secrets.

**Challenges and Recommendations**

Companies appreciate the growing attention that the Chinese government is paying to trade secret protection, and look forward to progress on specific challenges they face in fully protecting their trade secrets, proprietary technology, and confidential information in China. In USCBC’s 2013 member company survey, the largest number of companies ranked “enforcing agreements” as their primary concern related to trade secret protection (38 percent). “Enforcing agreements” can include but is not limited to confidentiality, non-disclosure, and licensing agreements. Concerns were also raised about the legal framework (26 percent), a lack of regulatory clarity (12 percent), lack of employee understanding (6 percent), evidence-gathering for trade secret cases (3 percent), and getting evidence admitted in enforcement proceedings (an additional 3 percent).

Companies noted that they typically face several of these concerns at the same time, with one company noting, “It is impossible to pick one [top concern with trade secrets]. These are all very significant concerns.”

<table>
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<th>Table 2: What Aspect of Trade Secret Protection in China Is of Greatest Concern?</th>
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<tr>
<td>Enforcing agreement</td>
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<tr>
<td>Lack of legal framework</td>
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<td>Lack of regulatory clarity</td>
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<td>Lack of employee understanding</td>
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<tr>
<td>Gathering evidence for trade secrets cases</td>
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<td>Getting evidence admitted in enforcement proceedings</td>
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<tr>
<td>Other</td>
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</tbody>
</table>

*Source: USCBC 2013 Member Company Survey*

In this paper, USCBC will focus on six challenges that companies face specific to trade secrets: a fragmented legal framework for trade secrets, questions about protection of trade secrets collected during government regulatory processes, limited government experience with trade secrets, the high evidentiary burden that plaintiffs face during trade secret cases, limited use of judicial procedures that would promote trade secret protection, and insufficient information about judicial procedures and practices related to trade secret protection. For each of these challenges, this report describes not only what the challenge is and why it is problematic, but also makes concrete recommendations to address the challenges.

**Challenge 1: Fragmented legal framework for trade secrets**

Unlike many other countries, such as the United States, Russia, and South Korea, China lacks a national, unified trade secrets law and instead protects trade secrets through a series of laws and regulations. The most important trade secret-related regulatory document is the 1993 Anti-Unfair Competition Law (AUCL), but aspects of trade secret protection are included in laws such as the Contract Law, Labor Contract Law, Company Law, Labor Law, and the Criminal Law, as well as regulations such as the 1998 Provisions Regarding the Prohibition of Trade Secret Infringement and judicial documents such as the 2007 Interpretation on Certain Issues Related to the Application of Law in Trials of Civil Cases Involving Unfair Competition.
China’s fragmented legal framework creates challenges for all stakeholders in trying to protect trade secrets, making it difficult for regulators and companies alike to understand the scope of trade secret protection. Such a legal framework is also difficult to update easily, since a change to one aspect of trade secret regulation may require changes to several other laws and regulations. This creates disincentives for officials to update China’s trade secret regime despite the fact that trade secret enforcement is evolving rapidly, making it easier for the legal framework to become outdated.

Many Chinese and foreign experts have discussed the benefits of creating a unified trade secret law, and these calls have been increasing as Chinese government agencies and businesses have become more cognizant of the importance of trade secrets. For example, trade secret protection and the lack of a clear trade secret law were among topics discussed during the March 2013 meetings of the National People’s Congress (China’s national legislature) and the Chinese People’s Political Consultative Conference (CPPCC) (a high-level deliberative body that discusses social, economic, and legal issues). These meetings included a specific recommendation by Ying Yong, chief judge of the Shanghai Higher People’s Court, for a unified trade secret law and calls for improvements to trade secret regulations and enforcement by CPPCC delegates such as Zhu Jianmin and Wang Xin. However, there are currently no indications that Chinese officials plan to draft a unified trade secrets law, or even to revise China’s existing trade secrets laws, such as the 20-year-old AUCL.

Recommendations

- Launch substantive work to draft a unified Trade Secret Law that would incorporate and expand upon trade secret-related provisions in the AUCL, Labor Contract Law, Company Law, Criminal Law, and other laws and regulations (see also Challenge 5).
  - Actively consult with foreign and domestic stakeholders—including PRC government agencies, foreign and domestic companies, and foreign and domestic experts—through the drafting process to ensure the best possible law with the broadest support.
- As an interim option, prioritize revisions to the AUCL to improve China’s efforts to adequately and fully protect trade secrets. Ensure that provisions to fully protect trade secrets are included in efforts to revise other laws, such as the Criminal Law.

Challenge 2: Questions about trade secret disclosure during government licensing and regulatory processes

As a normal part of its regulatory responsibilities, Chinese government agencies collect significant amounts of data from companies about their business, operational practices, products, and services. Such data can be requested during a variety of government approval processes, including investment approvals, product registrations, environmental impact assessments, and business licensing. Requests can include information about company structure and operations, employee information and hiring practices, work safety procedures, manufacturing technologies and processes, product details and testing results. US companies recognize that government data collection is a necessary part of those agencies’ regulatory responsibilities, and generally seek to cooperate with government agencies wherever possible.

However, some of the information that government agencies request—such as company operating conditions, manufacturing process details, product formulas, or some types of product information—touches on trade secrets and other proprietary information that are core to the competitiveness of these companies and as such are carefully protected. Should this information fall into the hands of their competitors, companies would be harmed both financially and competitively. Company concerns about releasing this information are exacerbated by the expert panel review process that is required in some regulatory processes, as these expert panel reviews often expose a company’s trade secret information to individuals who are employees or former employees of competitors. While companies want to comply fully with local regulations, they are also careful about providing such sensitive information and seek to strike an appropriate balance to meet both goals.

In other jurisdictions, governments and businesses have engaged in constructive dialogue about this balance, leading many governments to institute procedures to increase transparency about the need and value of
collecting company and product data. For example, many developed and developing countries—including the United Kingdom, New Zealand, Russia, and Mexico—have adopted a regulatory impact analysis (RIA) approach that requires government agencies to analyze the impact of both proposed and existing regulations on various stakeholders (including companies). Many governments also provide clear and specific ramifications for government officials that purposefully or accidentally disclose sensitive regulatory data to best protect against trade secret leakage.

Such steps allow governments to collect the data they need while also ensuring the proper balance that encourages companies to provide necessary data and to plan for the data they need to provide. These reforms would also provide important assurances to both Chinese and foreign companies that the data they provide will be fully protected over the long term, enabling them to more easily and smoothly work with government regulators to promote optimal regulatory outcomes.

Recommendations

• Increase transparency in, and actively engage with government and industry stakeholders on, China’s current policies and practices to determine what regulatory data is collected, how it is used, and what steps are taken and implemented to protect that data after its collection. These dialogues can build on existing dialogues that touch on regulatory data protection in specific sectors.

• Exchange views with industry to arrive at a better understanding of and define what counts as “essential” information from both the regulator and company perspective. Consider adopting international best practices to assess new and existing regulations, such as RIAs, to ensure that any Chinese regulations that propose collecting information from companies fully consider whether such information is necessary to carry out the required regulatory goals, and how collecting such information might impact companies.

• Draft and consistently enforce State Council regulations that require government officials—and those acting in a government capacity, such as expert panelists—to keep confidential for a reasonable time period all data collected during regulatory reviews and product approvals and outline specific consequences when such provisions are violated.

• Continue and expand work proposed by Premier Li Keqiang and the State Council to simplify and streamline administrative licensing and approval processes to limit unnecessary administrative approvals and decrease opportunities for trade secrets leakage. In doing so, we encourage the Chinese government to limit agencies of jurisdiction to those that are absolutely essential, and require agencies to closely coordinate the information they collect and to limit it only to information that is truly necessary for project approval.

Challenge 3: Limited government and judicial experience with trade secrets

Despite the growing attention paid to trade secrets, Chinese government officials still have limited experience in dealing with these issues. Much of this is due to the small number of trade secrets cases that are brought to administrative and judicial bodies. Trade secret cases still represent a very small proportion of IP enforcement cases, giving officials fewer opportunities to become familiar with these types of cases. For example, according to the Supreme People’s Court 2012 White Paper on IPR protection (available online in English and Chinese), of the 7,684 criminal cases that found IP infringement in 2012, only 43 (less than 1 percent) were trade secret cases. The white paper did not report trade secret civil cases, but of the nearly 85,000 new civil cases accepted related to intellectual property, anti-unfair competition cases (a category that includes trade secrets as well as several other types of cases) numbered only 1,123 (just over 1 percent).

Trade secret cases present enforcement officials with particular challenges, as trade secrets differ significantly from other forms of IP. Unlike patents and trademarks, trade secrets are not formally registered with government authorities, meaning that officials dealing with trade secret cases do not have a formal written document to prove that a company holds a purported trade secret. Additionally, the legal definition of trade secrets in China (as in most jurisdictions) is written to cover a wide variety of possible information, including formulas, blueprints, product designs, manufacturing processes, customer lists, sales strategies, and management techniques. This adds considerable complexity to trade secret cases that may not exist for other types of IP cases.
These factors mean that Chinese officials are still actively learning how to effectively regulate trade secrets, and that many officials and judges do not yet have much experience with or a full understanding about how to handle trade secret cases. Further steps to elevate trade secrets on the domestic IP agenda and to help educate Chinese government officials and judges about trade secrets would greatly benefit China’s efforts to promote a robust trade secret enforcement environment.

**Recommendations**

- Make trade secrets a priority for the IPR Leading Group and its constituent agencies by formally adding trade secret protection as a consistent work item in the group’s quarterly workplans and encouraging agencies to prioritize trade secret education and protection in agency workplans, legislative agendas, and enforcement campaigns.
- Release judicial guidance from the Supreme People’s Court related to trade secrets, including:
  - A judicial interpretation specifically focused on trade secret cases, building on the broader 2007 Interpretation on Certain Issues Related to the Application of Law in Trials of Civil Cases Involving Unfair Competition, to educate provincial judges on the proper handling of trade secrets cases (see also Challenge 4 and 6); and
  - A set of model cases related to different aspects of trade secret protection for provincial courts to follow in adjudicating trade secret cases.
- Strengthen training and information-sharing on trade secrets through varying means, including workshops and training programs with national and local government and judicial agencies. Such workshops can include what types of information may constitute trade secrets, proper handling of trade secret cases, and international best practices for trade secret cases.
  - Consider working with outside stakeholders—including international organizations, foreign governments, industry associations, non-profit organizations, and companies—to implement such training programs.

**Challenge 4: High evidentiary burdens faced by plaintiffs in trade secret cases**

Companies seeking to protect their trade secrets in China often face a practical problem: collecting and using evidence to prove trade secret infringement. A potential plaintiff in a trade secret civil case must spend the time and resources to accomplish several tasks. The plaintiff must prove that the infringed information meets the definition of a trade secret; prove that the defendant is using information that is substantially similar to the trade secret; and be able to clearly document when and how that information was obtained illegally by the defendant using internal sources. Each of these steps requires significant time and resources.

In addition, this task is complicated by a number of important features of trade secret enforcement in China, including:

- De facto requirements for a company seeking police help to launch a trade secret criminal investigation to essentially prove the case by gathering and presenting a full set of evidence before approaching police, as local police are often reluctant to accept trade secrets cases without such clear evidence;
- Practices that limit a plaintiff’s ability to use evidence collected by private investigators in civil trials;
- Provisions that place the burden of proof in trade secret civil trials on the plaintiff and do not explicitly allow it to be shifted to the defendant, despite some judicial opinions (December 2011 Supreme People’s Court Opinions from the Supreme People’s Court of China on Giving Full Play to the Functional Role of Intellectual Property Trials) that appear open to the option of shifting the burden of proof to the defendant under specific circumstances;
- Regulations that require clear evidence of the instance of trade secret infringement, as opposed to “common sense” tests used in the United States and other countries that allow judges to find trade secret infringement when it is a reasonable inference based on other evidence;
- Judicial practices that limit the admissibility of non-documentary evidence such as witness testimony in trade secrets cases; and
- Civil procedures in some courts that require purported trade secrets to be first certified as such by outside expert panels.
These challenges often discourage companies from bringing trade secret enforcement cases in China, with a number of negative effects for China’s own economic and legal development. First, for those companies that decide to pursue trade secret enforcement in China, these challenges drastically increase the cost, leaving the company with fewer resources to devote to important tasks such as product development and process innovation. Second, they cut the number of trade secret cases that enforcement officials and courts see, which limits opportunities for these officials to learn the most effective means to manage these cases. Finally, these challenges foster a broad perception that trade secret enforcement is difficult in China, discouraging companies from bringing their products, services, and know-how to China, which prevents Chinese consumers and businesses from having access to the latest technologies.

Additionally, this evidentiary burden is complicated due to a lack of clear information about how such evidence will be protected during and after a judicial trial. Trade secrets, by their very definition, are information unknown to the public, yet must be proven (and thus revealed) in the context of a judicial trial. Yet there is little judicial guidance regarding the protection of trade secrets disclosed during civil trials. In 2010, the Jiangsu Higher People’s Court released the Trial Guidelines for Handling Trade Secret Infringement Cases stating that all parties involved in a trade secrets trial, including third-party expert panelists, must sign a guarantee letter to the court not to disclose or use trade secrets disclosed during the trial. However, there are no similar guidelines at the national level, and no clear obligations for courts to maintain confidentiality for confidential information disclosed during the trial unless the verdict is in favor of the plaintiff. Thus, unless a plaintiff is fairly sure that they will prevail in a trade secrets case, they often determine that the risk of further trade secret exposure outweighs the possible benefit of a favorable verdict.

Recommendations

- Release judicial guidance from the Supreme People’s Court (see Challenges 3 and 6) — building on language in Section 5 of the December 2011 Supreme People’s Court Opinions from the Supreme People's Court of China on Giving Full Play to the Functional Role of Intellectual Property Trials — that would categorically permit the plaintiff to shift the burden of proof to the defendant once the plaintiff can legally establish:
  - That it owns the trade secret in question;
  - That the defendant had access to that trade secret; and
  - That the defendant’s product, service, or internal operations are substantially similar to the plaintiff’s.
- Actively encourage judges handling trade secret cases to admit and consider a broader array of evidence in trade secret cases, specifically non-documentary evidence such as witness testimony, that would better allow plaintiffs to prove trade secret infringement. Offer guidance or education on best practices for admitting and using such evidence.
- Encourage courts to admit and consider evidence collected by qualified private investigators, including IP investigative firms and forensic computer experts, with appropriate procedures to ensure the validity of such information.
- Encourage judges at all levels to use greater leeway in applying “common sense” tests, such as the doctrine of “inevitable disclosure,” which allows courts to find trade secret infringement even in cases with limited documentary evidence based on the presumption that the defendant could not proceed with current actions or operations without having misappropriated the plaintiff’s trade secret. Such tests, which are in line with international judicial practices, would allow courts to find trade secret infringement even in cases where the direct act of trade secret infringement cannot be formally documented.
- Engage with judges and industry experts to understand the challenges that companies and courts face in protecting trade secrets and other confidential company information disclosed during civil trials to lower the risk of disclosure and to ensure that trade secrets holders have greater confidence in the courts as a viable channel for protecting trade secrets.
- Actively engage with stakeholders, including domestic and international legal and industry experts, to develop a set of rules to determine the credibility of non-documentary evidence in trade secrets and other types of IP cases.
**Challenge 5: Limited use of relevant and potentially useful judicial procedures**

China’s laws and regulations include a number of key judicial procedures that are relevant to potential trade secret cases and are used effectively in other jurisdictions. For example, preliminary injunctions in trade secret cases permit plaintiffs to prevent a defendant from further using or benefiting from a stolen trade secret before a final ruling is issued, based on a reasonable likelihood of finding trade secret misappropriation. Such injunctions can prevent further financial losses stemming from trade secret theft, but are particularly important in trade secret cases because they can limit the likelihood of further trade secret dissemination. The very definition of a trade secret depends on its secrecy: once a trade secret is publicly disclosed, it is no longer eligible to be considered a trade secret. Thus, preliminary injunctions could be particularly powerful in enforcing trade secrets rights.

Evidence preservation orders—court rulings that require a defendant to preserve and turn evidence over to the court—can also be an effective tool in trade secret cases. A plaintiff must apply to the court for such an order, and may be required to post a bond with the court. Though use of evidence preservation orders in trade secrets cases to date has been limited, this tool has been used increasingly for companies in other types of civil IP cases, and could alleviate the high evidentiary burden that companies face (see Challenge 4).

Unlike other forms of IP—such as patent, trademarks, and copyrights—there is no clear legal provision that explicitly gives plaintiffs in trade secrets cases the option of using such orders. However, recent developments indicate that preliminary injunctions may be a more viable option going forward. Article 100 of the revised Civil Procedure Law, which went into effect on January 1, 2013, permits plaintiffs in civil cases—including trade secrets cases—to apply for preliminary injunctions and evidence preservation orders. In August 2013, the Shanghai No. 1 Intermediate Court cited the Civil Procedure Law in granting US pharmaceutical company Eli Lilly and Co. a preliminary injunction in their trade secret case against a former employee. While this decision reflects judicial views in only one court and does not set any formal legal precedent for other jurisdictions, it points to the possibility of greater use of these tools for plaintiffs in trade secrets cases. Greater comfort with such orders, and increased use by Chinese courts at all levels, would tangibly contribute to China’s efforts to improve the environment for trade secret enforcement.

**Recommendations**

- Revise China’s current legal framework for trade secrets (see Challenge 1) to explicitly include evidence preservation orders and preliminary injunctions for trade secrets.
- Actively encourage courts at all levels to make greater use of evidence preservation orders and preliminary injunctions in trade secrets cases, when plaintiff applications meet appropriate requirements under Chinese law.
  - Consider using the August 2013 Shanghai case involving Eli Lilly as a model case, to be circulated to provincial courts as an example of a trade secrets case with a successful preliminary injunction.

**Challenge 6: Insufficient information about relevant judicial procedures and practices**

Many companies use agreements with their employees—including non-compete and non-disclosure agreements—as an important tool to protect against trade secret misappropriation or infringement. Recent changes to the legal framework governing such agreements, including the 2008 implementation of the new Labor Contract Law, have raised questions for many companies about how best to structure and implement such agreements to ensure their enforzability. While some companies have indicated that they expect no problems with their current agreements, others have reported inconsistencies between court rulings in different jurisdictions, and still have questions about their ability to enforce these agreements through Chinese courts. Providing further information and guidance to both courts and potential plaintiffs about the process and outcomes of such cases would considerably help to alleviate potential questions and would better ensure that companies drafting these agreements do so within the scope of the Labor Contract Law and other relevant regulations.

Companies also have questions in trying to understand another important piece of China’s trade secret regime: expert panels used in civil trade secrets cases. These experts often play an important role in trade secrets cases, assessing the technical aspects of trade secrets claims, but it is not always clear to the parties in a given case how these experts are qualified and selected. Questions also arise about potential conflicts of interest for experts, and what requirements and procedures might exist for experts to withdraw from a case due to a conflict of interest. Company experience indicates that the answers to these questions may differ from province to province. Providing more transparent information about the rules governing certification, selection, use, and operating conduct for these expert panels—and standardizing these rules between different local jurisdictions—would improve the quality and efficiency of trade secret cases.

Recommendations

- Release judicial guidance from the Supreme People’s Court (see Challenges 3 and 4) that would provide clear, useful information to court officials, plaintiffs, and defendants about the proper judicial handling of cases involving trade secrets disputes involving non-disclosure agreements and confidentiality agreements. Such guidance could include a judicial opinion, a batch of model cases, or both.
- Work with provincial courts to provide clear information to court officials, industry and the public via a judicial notice, public seminars, or other means about the rules governing certification, selection, use, and operating conduct for expert panels, including obligations for experts to withdraw from considering a particular case based on a conflict of interest.
  - Increase standardization of such rules across provinces through SPC guidance and promoting greater information sharing among provincial court officials.

Conclusion

Intellectual property protection is an important foundation of China’s efforts to upgrade its economy and promote the growth and development of innovative sectors. Recent reforms clearly show that the Chinese government is aware of this need, and has taken many of the necessary steps to improve the IP legal framework and boost intellectual property enforcement. Yet much of this progress has been targeted at traditional forms of IP—patents, trademarks, and copyrights.

Some of the challenges that companies face in protecting trade secrets parallel challenges that they face in protecting other types of IP, including low administrative fines and court damages, the challenge of persuading local enforcement officials to tackle difficult cases, judicial procedures that do not include a discovery process, and high criminal thresholds that can inhibit companies from using criminal channels to pursue trade secret enforcement. These areas present more general challenges to IP protection, and would require broader structural reforms that are addressed in other USCBC reports on China’s IPR environment (see, for example, USCBC’s May 2013 IPR Review and Recommendations). The recent surge in attention to trade secrets, nevertheless, shows the continuing challenge that companies face in trying to protect trade secrets.

The unique challenges that companies face in seeking to protect their trade secrets are wide-ranging—related to the legal framework, structural barriers to robust trade secret protection, and judicial practices. Many of these concerns require joint efforts by government agencies and companies. For example, a considerable amount of trade secrets theft stems from incidents of misappropriation caused by current or former employees. This can be addressed by companies, government agencies, and other stakeholders conducting educational initiatives to promote the importance of preserving the confidential nature of this type of information. Steps to address these challenges would thus necessitate a range of actions, including changes to existing laws and regulations, new policies and practices, and better information on a number of key topics. Such reforms would significantly advance China’s trade secrets regime and encourage more companies to develop, use, and protect trade secrets in China.