THE US-CHINA BUSINESS COUNCIL
美 中 贸 易 全 国 委 员 会

April 19, 2022

Dear Bipartisan Innovation Act Conferee,

I am writing to you on behalf of the US-China Business Council (USCBC), an association of over 260 US companies that do business with China. USCBC's mission is to expand the US-China commercial relationship to the benefit of its membership and, more broadly, the US economy. USCBC supports provisions in the United States Innovation and Competition Act (USICA) / Make It in America Act (S 1260) and the America COMPETES Act (HR 4521) to strengthen investments in US innovation and competitiveness. We recognize growing US-China geopolitical tensions and believe this Bipartisan Innovation Act conference demonstrates a serious bipartisan effort by Congress to boost US competitiveness.

USCBC also supports efforts to ensure that sensitive and national security-focused goods, services, and technologies do not fall into the hands of US adversaries. In this regard, we applaud the House and Senate inclusion of CHIPS for America Act language in their respective bills. Across industries, our members are feeling the effects of semiconductor shortages and are prepared to use that $52 billion in funding to meet American consumer demand, create high-paying domestic jobs, and restart previously stalled US operations.

We strongly support the Section 301 tariff exclusion process outlined in Section 73001 of USICA that reinstates expired exclusions and creates a new exclusion process that is both robust and retroactive. While we welcomed the Biden administration's recent decision to reinstate some exclusions, we were disappointed that the administration did not approve the full 549 categories requested. US businesses, workers, and consumers would benefit from Congress prescribing a clearer and fairer tariff exclusion process going forward.

While we agree with the legislation's aims to remain competitive with China, USCBC is strongly opposed to the National Critical Capabilities Defense Act (NCCDA), a House provision that would establish an outbound investment review mechanism. We stand ready to work with Congress as it seeks to address national security concerns related to US investments in China, but we have the following concerns with the NCCDA's proposed scope, process, and unilateral nature:

> ***Scope.*** The potential scope of the review proposed under the NCCDA is far too broad. According to the Rhodium Group, up to 43 percent—over $100 billion—of American foreign direct investment to China between 2000 and 2019 would have merited review. This includes many sectors not central or critical to U.S. national security interests. Further, many of the

terms in the legislation are either inadequately defined or leave substantial room for interpretation to the Executive Branch without Congressional direction. For example, the NCCDA would create the Committee on National Critical Capabilities (CNCC), which would, among other things, have purview over transactions that shift or relocate national critical capabilities to “entities of concern.” The bill considers “entities of concern” to include entities “subject to the influence of a foreign person that has a substantial nexus with a country of concern,” but fails to define “influence” or “substantial nexus.” If Congress moves forward with such a substantial grant of authority to the Executive Branch, Congress should carefully consider and circumscribe such terms.

Process. The process set out under the NCCDA would create tremendous uncertainty for US regulators and the US business community. For example, the bill would allow the leadership of twelve different congressional committees to call for the review of any transaction. The potential politicization of such a process would create a high level of uncertainty. Additionally, the NCCDA would put USTR as the lead agency of the CNCC. With a mandate for negotiating trade agreements and roughly 200 employees, USTR does not have the resources to lead such a review process. The review process should also include strict guardrails that protect sensitive information submitted by companies.

Unilateral. If the US government acts on its own and not in concert with its allies, it risks: (1) other countries establishing their own review regimes that would further hamper the international trade system, creating a patchwork of new and costly compliance obligations for companies; or (2) other countries not adopting such reviews, which would reduce the competitiveness of US-based companies, many of which must place supply chains in China in order to effectively sell into the market.

USCBC and its members hope to be a partner with you and your staff as you seek to resolve differences and pass the Bipartisan Innovation Act. We look forward to working with you all to shape this legislation in a manner that allows US businesses to thrive among their foreign competitors and bring profits back home to support US innovation and fuel the American economy and job market.

Sincerely,

Craig Allen
President, US-China Business Council
US Ambassador (ret.)