



USCBC Recommendations for Revisions to the 2011 Catalogue Guiding Foreign Investment in Industry

The US-China Business Council (USCBC) represents more than 220 US companies with significant investment and operations in China and a strong interest in China's foreign investment regime. We thank the State Council for providing the public with the opportunity to offer comments on the draft 2011 Catalogue Guiding Foreign Investment in Industry ("draft catalogue") for a full 30-day period, reflecting a positive effort to provide more transparency and produce outcomes more widely supported by varying stakeholders in China.

USCBC was pleased to see a number of positive developments in the newly released draft catalogue. At the same time, we remain concerned that the revised draft retains many investment restrictions included in the previous version and incorporates additional industry specifications and new production thresholds that effectively limit foreign investment.

Foreign investment plays a critical role in spurring economic growth and creating high-quality, well-paid jobs in any economy, and such investment will continue to play a significant role in helping the PRC government achieve the broad policy goals outlined in important policy documents such as the 12th Five-Year Plan and the Medium-and Long-Term Science and Technology Development Plan. An open investment environment without pre-conditions for access allows all companies to equally contribute their experience and best practices to China's economic development, especially in the areas important to PRC policymakers such as high-tech manufacturing, advanced technologies, and new materials. Foreign investment in these areas will assist PRC policymakers in meeting these goals while also assisting in the modernization of key manufacturing and services sectors.

Foreign investment has also been a strategic focus for central government officials. The State Council's April 2010 Opinions on Further Improving the Utilization of Foreign Investment ("State Council opinions") recognized the value of foreign investment by noting that foreign investment contributes to technological innovation, industrial upgrading, and regional development. The State Council opinions also pledged to promote foreign investment in more manufacturing and services sectors. In addition, the opinions noted that the State Council planned to revise the catalogue to encourage foreign investment in high-end manufacturing, new and high-tech technologies, modern services, the new-energy and energy-saving sectors, and environmental protection. USCBC respectfully suggests that the final version of the catalogue follow the State Council's opinions regarding the importance of foreign investment and demonstrate substantial *new* openings in these and other sectors.

Central government policymakers have made great strides over the years in guiding the Chinese economy to achieve sustained growth and development, to the overall benefit of the Chinese people. During President Hu Jintao's January 2011 visit to the United States, China and the United States reaffirmed the importance of open trade and investment in fostering economic growth, job creation, innovation, and prosperity and affirmed their commitment to take further steps to liberalize global trade and investment. PRC policymakers have the opportunity to continue that momentum by allowing increased access for foreign investment across sectors. To fully achieve China's goals of building a sustainable services-oriented economy with advanced technology and manufacturing, USCBC respectfully requests that the following principles be followed when drafters make decisions about how to treat foreign investment in the catalogue and other documents:

- Allow companies to select the investment vehicle of their choosing by removing existing ownership restrictions and not applying new ones. This would encourage more foreign companies to bring the capital, technology, international best practices, and employment opportunities to further develop China's economy.
- Encourage a vibrant services sector by removing ownership restrictions, high capital requirements, and licensing barriers in important sectors, especially in financial, healthcare, intellectual property rights, legal, media, and telecom services sectors. This would allow an inflow of investment and expertise that help China reach its goal of increasing the services sector share of GDP, creating jobs, and developing "greener" industries.
- Enable robust development of strategic emerging industries by allowing foreign-invested enterprises to participate in the market under the same conditions as Chinese enterprises. This will help the central government more quickly reach its goal of building up these industries and deploying innovative technologies in the market.

USCBC respectfully requests the following specific changes on the draft 2011 Catalogue Guiding Foreign Investment in Industry.

Agriculture

- Remove research and production of genetically modified crop seeds from the prohibited category of the catalogue. Allow foreign companies to engage in gene-modified related research and development activities.
- Remove "breeding of new types of agricultural goods" from the restricted category and allow foreign majority-controlled joint ventures (JVs) and wholly foreign-owned enterprises (WFOEs) to participate. Chinese majority control is currently required.
- Move edible oils processing to the encouraged category and allow foreign majority-controlled JVs and WFOEs to participate. This sector is currently listed in the restricted category. Prior to the 2007 catalogue revisions, WFOEs were permitted to participate in this sector.
- Move biofuel production to the encouraged category and allow foreign majority-controlled JVs and WFOEs to participate. This sector is currently in the restricted category, and Chinese majority control is required.

Chemicals

- Add nylon 6,6 polymers, adiponitrile, and hexamethylene diamine (HDM) to the encouraged category to accommodate high domestic demand and a scarcity of market players.
- Allow foreign companies to establish WFOEs in large-scale coal chemical industrial equipment sets. This industry is listed in the encouraged category but is limited to CJVs and EJVs.
- Allow foreign companies to establish WFOEs in ethylene manufacturing with an annual production of 1,000,000 tons or more. This sector is listed in the encouraged category, but Chinese majority control is required.

Transportation Vehicle and Equipment Manufacturing

- Remove the 50 percent limit on foreign capital in key components of new energy vehicles, thus allowing foreign companies to establish majority-owned JVs and WFOEs.

Electric Machinery and Equipment Industries

- Allow foreign companies to establish WFOEs in power transmission equipment manufacturing. These sectors are currently listed in the restricted category and limited to contractual JVs (CJVs) and equity JVs (EJVs).
- Allow foreign companies to establish WFOEs in railway transportation equipment manufacturing. These sectors are listed in the encouraged category but are limited to CJVs and EJVs.
- Allow foreign companies to establish WFOEs in manufacturing of complete sets of equipment and key equipment for new-energy power generation. These sectors are listed in the encouraged category but are limited to CJVs and EJVs.
- Place mercury alkaline manganese button battery production in the encouraged category. This sector was in the encouraged category prior to the 2007 catalogue revisions and has been newly added to the prohibited category.

Financial Services

- Move securities companies to the encouraged category and raise the 33 percent cap on foreign ownership in securities firms. This sector is currently in the restricted category.
- Move stock investment fund companies to the encouraged category and remove or raise the 49 percent cap on stock investment fund firms. This sector is currently in the restricted category.
- Place the trading of renminbi (RMB) and RMB-linked products in the encouraged category to allow participation of foreign-invested banks. This is not listed in the most recent draft of the category.
- Move currency and insurance brokerages to the encouraged category. This industry is currently in the restricted category.
- Place life insurance in the encouraged category, eliminate the 50 percent cap on foreign ownership in life insurance companies, and allow foreign insurers a choice of investment vehicles—whether it be a WFOE or a JV, a branch or a subsidiary. Life insurance is currently in the restricted category.

- Move futures trading companies to the encouraged category and allow foreign majority-controlled JVs and WFOEs to participate. This industry is currently in the restricted category, and Chinese majority control is required.
- Place electronic payment card systems in the encouraged category. This industry is currently not listed in the catalogue.
- Place finance companies and financial leasing companies in the encouraged category. Foreign-invested holding companies (regional headquarters companies) have already been permitted by law to set up finance companies to provide service to their group companies, but they remain in the restricted category. Financial leasing companies are not listed in this draft of the catalogue.

General Machine-Building Industry

- Specify that the lower limit of the working pressure for high-pressure piston pumps and motors is 21 MPa, and eliminate the current upper limit of 35 MPa for these products listed in items 8 and 9 of the general machine-building manufacturing industry section of the encouraged category.

Special Purpose Equipment Manufacturing Industry

- Decrease the capacity limit for off-highway automatic dumpers to 60 tons or less and remove them from the restricted category. They are currently capped at a 135-ton capacity under the restricted category.

Health Industries

- Place foreign investment in medical treatment establishments into the encouraged category, and remove equity caps to allow foreign companies to establish WFOEs. This category was removed from the restricted category in the draft revisions, but it should be moved to the encouraged category. In addition, this category still faces an equity cap limit of 70 percent (according to the 2000 Provisional Measures on Management of Sino-Foreign Equity and Contractual Joint Medical Institutions). Both of these changes would allow foreign companies to fully bring their investment and experience to benefit the Chinese healthcare system. List the manufacture of vaccines and the manufacture of biologics as separate items in the encouraged category to reflect their different purposes: vaccines are preventive and biologics are treatment. These are currently combined in the encouraged category as “manufacture of biologic vaccines.”

Leasing and Business Services

- Revise the term “intellectual property (IP) service” to “intellectual property business” under item 5 of the leasing and business services section of the encouraged list, so that the encouraged business clearly includes IP trading, licensing, and mortgage services.

Legal Services

- Move legal consulting to the encouraged category. This sector is currently listed in the restricted category.

Logistics and Transportation

- Move freight train transportation and passenger train transportation companies to the encouraged category and allow foreign majority-controlled JVs and WFOEs to participate in both. Both sectors are currently in the restricted category.
- Allow foreign companies to establish WFOEs to participate in air carrier shipping. This sector is currently in the encouraged category, but Chinese majority control is required.

Manufacturing Industries—Farming Subsidiary Foodstuff Industry

- Specify that “deep processing of corn” under the restricted category shall include “cornstarch, ethanol, and MSG production based on domestic corn supply.”

Media and Publishing

- Place the publication of books, newspapers, or magazines in the encouraged category. These sectors are currently listed in the prohibited category.
- Move the publication and production of videotape products and electronic journals to the encouraged category. This sector is currently in the prohibited category.
- Put all administrative levels of radio broadcasting channels or stations, television channels or stations, and television transmission networks (including transmission stations, relay stations, TV broadcast satellites, satellite uplink stations, satellite receiver platforms, microwave stations, monitoring platforms, and cable television transmission coverage networks) into the encouraged category. This sector is currently listed in the prohibited category.
- Move radio and television production companies to the encouraged category and allow foreign majority-controlled EJVs and WFOEs to participate. This sector is currently in the prohibited category.
- Remove film production and distribution companies and cinemas from the prohibited category.
- Move news websites, web-streaming audiovisual services, locations with Internet-access services, and administration of culture-related aspects of the Internet (excluding music) to the encouraged category. This sector is currently listed in the prohibited category.

Power, Gas and Water Production and Supply

- Move construction and operation of electricity grids to the encouraged category and allow foreign majority-controlled JVs and WFOEs to participate. This sector is currently restricted, and Chinese majority control is required.
- Place smart grid products and technologies in the encouraged category. This sector is not currently listed in the catalogue

Telecommunications and Electronics

- Place value-added telecom services in the encouraged category. Allow diversified forms of foreign investment including equity and other profit-sharing forms, and allow foreign majority-controlled JVs and WFOEs to participate. This sector is currently in the restricted category, and Chinese majority control is required.
- Allow investment models other than the EJV model in the telecom sector, such as CJVs or by revenue-sharing.

Retail Services

- Remove the newly added “grain procurement and storage” from the restricted list.
- Place wholesaling of refined petroleum as well as construction and management of gas stations in the encouraged sector and allow foreign majority-owned JVs and WFOEs to participate. These sectors are currently in the restricted category.
- Place direct sales, mail-order, and online selling in the encouraged category. These activities are currently listed in the restricted category, even though other laws and regulations permit foreign investment in these sectors. For example, the 2004 PRC Administrative Measures for Foreign Investment in the Commercial Sector allow the establishment of foreign-invested commercial enterprises. Moving these activities to the encouraged category would make the rules regulating these activities more consistent.
- Place wholesale, retail, and distribution of products such as grain, cotton, vegetable oils, sugar, medicine, tobacco, crude oil, pesticide, agricultural film, and fertilizers in the encouraged category. These activities are currently in the restricted category. Remove current restrictions that require Chinese majority-owned JVs and that limit such operations to retail operations of more than 30 chain stores that sell different types and brands from multiple suppliers.

Real Estate

- Move the real estate secondary market exchanges, intermediaries, and brokerages to the encouraged category and allow foreign majority-controlled JVs and WFOEs to participate. This market is currently listed in the restricted category.
- Move land development, as well as construction and management of luxury hotels, high-end office buildings, and international conference and exhibition centers to the encouraged category and allow foreign majority-controlled JVs and WFOEs to participate. These activities are currently in the restricted category.

Resource Industries (oil, gas, mining, power)

- Allow foreign companies to establish WFOEs to participate in the survey, development, and extraction of oil and natural gas deposits. These sectors are currently on the encouraged list, but investment is limited to CJVs and EJVs.
- Allow foreign companies to establish WFOEs to participate in new energy, including the manufacture of complete sets of equipment and key equipment for power generation in new-energy fields. These sectors are currently on the encouraged list, but investment is limited to CJVs and EJVs.

—END—

The US-China Business Council

Contact: Robert Poole, Vice President (Overall responsibility for China)

Tel: 010-6592-0727

Fax: 010-6512-5854

E-mail: rpoole@uschina.org.cn