THE US-CHINA BUSINESS COUNCIL
美中贸易全国委员会

US-China Business Council Comments on
Draft Revised Catalogue Guiding Foreign Investment
January 6, 2017

The US-China Business Council (USCBC) and its member companies appreciate the opportunity to participate in the consultation process for revisions to the Catalogue Guiding Foreign Investment (the Catalogue), and to provide feedback in response to the request for comments issued by the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM).This process reflects a continued positive effort to provide greater transparency in the formulation of policy and legislation.

USCBC represents more than 200 member companies with significant investment and operations in China across all industry sectors. Our companies support China’s right to regulate foreign investment, as well as the goals of reducing investment barriers, ensuring a level playing field for all enterprises, and improving guarantees for investors to create a more open investment climate. USCBC welcomes efforts to revise the Catalogue and is pleased to provide constructive recommendations to support the continued improvement of China’s investment climate.

USCBC respectfully submits the following comments on the draft revision for clarification and appropriate changes prior to issuance of the final version.

General comments

USCBC welcomes the reorganization of the draft revised catalogue to move all items with ownership restrictions to the restricted list. This revision greatly simplifies what it means for investment in a sector to be listed as encouraged. USCBC also welcomes the incremental openings apparent in the removal of some items previously listed in the restricted section in the draft revised CGFI. These liberalizations appear to include changes that will allow foreign companies new ability to invest in several sectors, including edible seed oils, biofuels, credit rating services, manufacturing and research and development of electronic equipment for automobiles, design, manufacturing and maintenance of aircraft, and design and manufacturing of helicopters.

We note, however, that the revised catalogue retains numerous foreign investment ownership restrictions across many other sectors. In addition, while the consolidation of restricted and prohibited investments into a two-part “negative list” is an effort to implement a nationwide negative list in accordance with China’s frequently stated intentions, it falls short of genuine progress toward this goal. In some cases, it also creates new ambiguities for foreign investors. For instance, several items that were listed as restricted in the 2015 catalogue do not appear as restricted or encouraged in the draft revised catalogue; it is unclear if these changes should be interpreted as liberalizations to allow foreign investment. The draft revised catalogue also contains a number of contradictory listings, with the same items appearing in both the encouraged section and the "negative list" section. For example, construction and operation of nuclear power stations is listed as encouraged in section 289, but is listed again in the negative list as restricted to Chinese majority control in section 12. The same is true for exploration and development of oil and natural gas, encouraged in section 11 and restricted in section 2; and for construction and operation of electricity grids, listed as encouraged in section 291 and as restricted in section 13.

USCBC recommends removing all apparent contradictions in the draft revised catalogue and minimizing uncertainty. This could best be achieved by adopting a straightforward nationwide negative list. Alternately, USCBC would encourage including annotations in the revised catalogue. Annotations could be used to identify: 1) where items have been removed from the restricted list as a liberalization, and 2) where items are no longer listed because they are covered by other domestic law, and thus still subject to investment restrictions. This would clarify for foreign investors what the changes in the draft revised catalogue mean, and would also help direct them to other relevant domestic regulations.

In addition, in order to better ensure equal treatment of all companies established under China's Company Law, and to enable foreign companies to contribute to China's economic reform and rebalancing efforts, USCBC recommends eliminating terminology that distinguishes between domestic and foreign owned companies, such as "foreign invested enterprises." Continued use of this term invites discriminatory treatment of various types of domestic legal entities, based solely on ownership.

Finally, we encourage China to develop a vibrant services sector by removing ownership restrictions, high capital requirements, and licensing barriers in sectors such as finance, insurance, healthcare, intellectual property rights services, legal services, media, and telecom. This would allow an inflow of investment and expertise, which would help China reach its goal of increasing the services sector share of GDP and creating jobs. Since China's entry to the WTO, opening markets has proven to strengthen key industries, ultimately making them internationally competitive. China's manufacturing sector is a good example of this. From the time of its WTO accession, China's manufacturing sector has become a world leader by opening up to global competition. Fair and open competition would similarly encourage China's services and other industries with current foreign investment restrictions to grow and thrive.

Specific Comments

USCBC respectfully suggests the following specific changes to the draft revised Catalogue:

Agriculture, Forestry, Animal Husbandry, Fishery and Related Industries

- Clarify that processing of edible oils, rice, flour and raw sugar as well as deep processing of corn is no longer restricted to Chinese majority control. Restrictions listed in the 2015 Catalogue do not appear in the draft revised Catalogue, but since these items also are not listed as encouraged, it is not clear if this change constitutes a liberalization.
- Remove "selection and breeding of new types of agricultural goods, and production of seeds" 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. Increased openings for foreign investment in agriculture would promote the continued flow of foreign technology and management expertise into China and spur the development of domestic industry, technology upgrading, and increased operational efficiency.
- Remove “production of genetically modified seeds” from the prohibited category and confirm that the removal of the term “research and development” for genetically modified biotech products means that companies can obtain local cultivation permits for imported genetically modified agricultural products.

Manufacturing

General equipment manufacturing
- Revise existing provisions dealing with manufacture of office machinery to include general office machinery used for industrial purposes, such as inkjet printers; USCBC suggests the following revised language: “manufacture of office machinery for both office and industrial use: multifunctional office equipment (copy, print, fax, scan), color printing devices, high-resolution color printing head with precision of 2400 dpi and above, photosensitive drum, and inkjet printers.”
- Revise “design & manufacture of high-pressure piston pumps & motors with working pressure equal to or above 35 MPa” to eliminate the current upper limit. Lower the limit of the working pressure for high-pressure piston pumps and motors to 21 MPa.

Railway, ship, aerospace and other transportation equipment manufacturing
- USCBC welcomes the removal of equity joint venture requirements for manufacture of critical auto parts and research and development of a variety of specific key technologies, as listed in the encouraged section at Article 206. Article 206 specifically includes variable geometry turbocharger (VGT) technology in the list of specific key technologies. USCBC recommends adding fixed geometry turbocharger technology to the specified technologies in Article 206. Fixed geometry turbocharger technology is a technology with great potential for meeting China’s NS VI emission standards for heavy duty commercial vehicles. Encouraging investment in this technology will help China to effectively achieve its energy efficiency and emission reduction goals.
- Allow foreign companies to establish WFOEs in railway transportation equipment manufacturing. This sector is limited to cooperative joint ventures (CJVs) and equity joint ventures (EJVs).
- While civil satellite design and manufacturing and manufacture of satellite payload testing equipment is encouraged in the draft revised Catalogue at 218, the draft revised Catalogue does not include specific language that was featured in the 2015 Catalogue. The 2015 Catalogue specifically encouraged manufacture of optical, mechanical, and electronic products for spacecraft; temperature control products for space crafts; and structural and mechanism-based products for spacecraft. USCBC recommends clarifying that the removal of this language from the encouraged category does not indicate these items are no longer encouraged.

Electricity, Gas and Water Production and Supplies

- Place smart grid products and technologies in the encouraged category to attract innovative technologies from companies that will also bring their experience in international best practices for long-term sustainable development. This change would be in line with goals set forth in China's National New-type Urbanization Plan (2014-2020). This sector is not currently listed in the catalogue.

Transportation and Shipping, Warehousing, and Post and Telecom

- Allow foreign companies to establish WFOEs to participate in air carrier shipping. This sector currently requires Chinese majority control, and no foreign party can exceed a 25 percent investment share. These equity caps for foreign enterprises prevents the Chinese market from benefiting from international experience, technology, and best practices, and will slow the development of China's logistics industry.
- Move passenger train transportation companies to the encouraged category and allow foreign majority-controlled JVs and WFOEs to participate in both. This sector is currently in the restricted category.
- Move value-added telecom services to 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 JV revenue-sharing arrangements.

Wholesale and Retail Trade

- Remove "procurement of grain; wholesale of grain and cotton; establishment and operation of large wholesale markets for agricultural products" from the restricted category, allowing foreign companies to purchase grain from Chinese farmers and to wholesale agricultural products as their domestic counterparts do, improving agricultural market efficiency.
- Move "construction and operation of gas stations" to the encouraged sector and allow foreign majority-owned JVs and WFOEs to participate. These sectors are currently in the restricted category.

Finance and Insurance

- 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 securities companies to the encouraged category and remove the Chinese majority control requirement for securities firms. This sector is currently in the restricted category. Further liberalization in the securities sector, like other changes to the financial services industry, would benefit China's transition to a services-oriented economy. It would also increase access to credit and diverse investment mechanisms for Chinese businesses and individuals.
- Move stock investment fund companies to the encouraged category and remove the Chinese majority control requirement. This sector 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.
- Foreign investment in credit rating and evaluation services is restricted in the 2015 Catalogue as well as in the FTZ Negative List. It is not listed as restricted in the draft revised Catalogue, but it also is not listed as encouraged. USCBC recommends clarifying that foreign investment is no longer restricted in this sector.
- Place electronic payment card systems in the encouraged category. This industry is currently not listed in the catalogue.

Leasing and Business Services

- Revise the term “intellectual property (IP) service” to “intellectual property business” under the encouraged category so that the encouraged business clearly includes IP trading, licensing, and mortgage services.
- Eliminate “Chinese legal services” from the prohibited category.

Education

- Eliminate restrictions that require foreign companies investing in pre-school, general high school and higher education institutions to participate only as minority partners in Chinese controlled CJVs.

Healthcare and Social Work

- Add “medical establishments” to the encouraged category, and remove any equity caps to permit foreign companies to establish WFOEs. Both of these changes would allow foreign companies to fully bring their investment and experience to China, ultimately benefiting the Chinese healthcare system.

Cultural, Sports, and Entertainment Industry

- Remove “radio and television program and film production services” from the restricted category, and allow foreign-invested companies to participate within the scope of Chinese law. This revision, like those made in this draft of the catalogue as well as additional suggestions in USCBC comments, would work towards Chinese goals of promoting the cultural industry laid out in the 13th Five-Year Plan and other documents.
- Remove “audiovisual products and electronic publications production services” from the prohibited category, and allow foreign-invested companies to participate within the scope of Chinese law. Chinese majority control is currently required.
- Remove “publication of books, newspapers, or magazines” from the prohibited category, and allow foreign-invested companies to participate within the scope of Chinese law.
- Remove “audiovisual products and electronically published materials publication services” from the prohibited category, and allow foreign-invested companies to participate within the scope of Chinese law.
- Remove “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)" from the prohibited category, and allow foreign-invested companies to participate within the scope of Chinese law.

- Remove "radio and television production companies" from the prohibited category, and allow foreign-invested companies to participate within the scope of Chinese law.
- Remove "film production and distribution companies" from the prohibited category, and allow foreign-invested companies to participate within the scope of Chinese law.
- Remove "news websites, web publication services, web streaming audio-visual services, locations with Internet-access services, and administration of culture-related aspects of the Internet (music excluded)" from the prohibited category, and allow foreign-invested companies to participate within the scope of Chinese law.

Conclusion

USCBC thanks MOFCOM and NDRC for providing this opportunity to comment on the draft revisions to the Catalogue Guiding Foreign Investment. We hope that these comments are constructive and useful. We would appreciate the opportunity for further dialogue on these issues and are happy to follow up as appropriate.

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