



**US-China Business Council (USCBC) Comment to Assist in Reviewing and Identifying Unfair Trade Practices and Initiating All Necessary Actions to Investigate Harm from Non-Reciprocal Trade Arrangements
(Docket ID: USTR-2025-0001)**

The US-China Business Council (USCBC) welcomes the opportunity to submit comments to the Office of the United States Trade Representative regarding unfair and non-reciprocal foreign trade practices as part of the administration's work pursuant to the America First Trade Policy presidential memorandum and the Reciprocal Trade and Tariffs presidential memorandum.

USCBC represents around 270 American companies that do business with China. Our membership includes some of the largest and most iconic American brands in addition to small- and medium-sized enterprises. Our members span all sectors of the economy, including manufacturing, healthcare, agriculture, technology, and financial services, and many have been operating in China for decades.

We appreciate the opportunity to assist the Trump administration in identifying and responding to unfair Chinese trade practices that harm American companies. USCBC has long advocated for a level playing field for American companies in China—an objective aligned with President Donald Trump's commitment to achieve a more reciprocal trade environment.

We recognize that this effort continues the work President Trump began during his first administration when he successfully negotiated the US-China Economic and Trade Agreement (Phase One) with China. The agreement provided a valuable framework for the two governments to achieve progress on commercial issues, and the United States should work to ensure China fulfills its commitments under the agreement. As the Trump administration crafts its China policy, USCBC will support the administration's efforts to hold China accountable for fulfilling its Phase One commitments and pressure China to make long overdue changes to its economic, investment, and trade policies that disadvantage American companies. Holding China accountable to fulfill its Phase One commitments is an important first step to unlock further negotiations, which President Trump had intended to do during his first term in office.

To that end, USCBC urges the administration to begin comprehensive commercial negotiations with Beijing as soon as possible. Negotiations should concentrate on addressing structural policy barriers that disadvantage American companies, including China's domestic substitution policies, intellectual property (IP) practices, market access constraints, and more. Achieving

progress in these areas would enable American companies to compete on a more level playing field, enhance US competitiveness, and unlock more exports to China.

USCBC looks forward to being a constructive partner with the Trump administration in executing its China policy. In the sections below, we have outlined specific policy challenges and our recommendations.

Executive summary

To assist the administration in understanding the challenges of doing business in China, and in responding to these challenges in a way that protects US national security while bolstering American competitiveness, USCBC shares the following:

- US companies operate in China primarily to sell to the Chinese market. Their presence in China is key to maintaining the United States' edge as the leading market force on the global stage.
- Bilateral negotiations at all levels of government can be successful in urging China to enforce, discontinue, finalize, and update policies to create a fairer playing field for American businesses in China. This includes policies related to:
 - Domestic substitution initiatives
 - Public procurement
 - IP
 - Agriculture biotech approvals
- Phase One addressed some of the challenges US businesses face in China, such as IP. Successfully enforcing Phase One would not only tackle key US business concerns but also lay the groundwork for further negotiations on structural policy issues.
- Expanding current lines of communication, such as those established by Phase One and the Commercial Issues Working Group between the Department of Commerce and the Ministry of Commerce (MOFCOM), would increase the likelihood of a larger agreement with China and ensure successful outcomes for US entities.
- Avoid blunt force tools that have not proven successful in bringing China to the negotiating table. These measures, such as across-the-board tariffs, empirically hurt producers that manufacture in the United States.

The case for American companies in China

To fully understand the complexities of conducting business in China, it is crucial to examine why American businesses—for over 50 years—have been active in the Chinese market. American companies invest and participate in the China market for multiple reasons, but accessing and serving the Chinese domestic market is the primary rationale. Many American companies have localized production in China to be closer to customers and suppliers, enabling them to meet the needs of the domestic market and expand sales. Many top American companies consider these business activities crucial to their overall success and ability to reinvest in the United States. According to the US Bureau of Economic Analysis, American companies and their subsidiaries [sold](#) approximately \$491 billion in goods and services in China in 2022, the most recent year for which data is available. For many US companies, the profit margins of their China operations outperform their global average. These profits are a vital source of capital investment.

The strategic imperative for American companies to participate in the China market extends beyond generating revenue from selling goods and services to Chinese customers. China is a fast-paced business environment and a major source of global innovation. Competitors from Europe, Japan, South Korea, and China are leveraging domestic innovations in China to develop best-in-class manufacturing processes, enhance efficiency, and launch new products. To be competitive on a global scale, American companies need to maintain and grow their operations in China.

Data from our [2024 Member Survey](#) points to this undeniable truth: 73 percent of respondents underscore that China is a key element of their global operations, with 23 percent highlighting that they would not be globally competitive without China. Leaving this market exposes the United States to the risk of losing its position as the leading market force on the global stage. Staying in this market fortifies the well-known fact that US entities remain the world leader in innovation, efficiency, and reliability.

Promoting a level playing field for competition between US and Chinese companies

US companies, however, are losing market share in China at an unprecedented rate. According to our member survey, 34 percent of respondents have lost market share in China in the past year—a record high in our survey’s history. While companies attribute the increased competition to a mix of factors, China’s domestic substitution and industrial policies are dramatically transforming the competitive environment.

To support President Trump’s goal of addressing of Chinese practices that create an uneven playing field, the US government should encourage China to enact the following policy reforms:

1. Domestic substitution initiatives

China employs an array of industrial policies to promote technological self-sufficiency and replace US technologies in its supply chains. These policies often combine financial tools, including direct subsidies and grants, R&D incentives, and tax credits, with initiatives that develop “secure and controllable” standards for information and communication technology (ICT) products. Secure and controllable accreditations are not generally granted to American companies. On the demand side, China leverages its vast public procurement market to generate purchases of ICT products from accredited suppliers, which include China’s so-called “little giants”—a group of 10,000 domestic technology companies supported by Chinese industrial policies. China also wields a formidable cybersecurity review tool, which has been used to preclude American ICT companies from selling to Chinese customers.

In the healthcare sector, under China’s national health insurance system, Chinese domestic drug manufacturers are often favored for inclusion on the National Reimbursement Drug List (NRDL) over innovative drugs from US companies. It is not unusual for domestic competitors to be favored for their price, even when their products’ clinical value is not supported through evidence.

Recommendation: China should establish a more science-focused NRDL process that is fair and transparent and properly recognizes the clinical value of medicines. More broadly, the Trump administration should urge China to discontinue policies and measures associated with its domestic substitution initiatives. To the extent that China requires standards for certain critical information products, it should base these standards on international standards wherever possible and grant accreditation to US companies. US companies should also be granted equal and fair consideration during subsidy awards processes. At a minimum, China should furnish public lists of subsidies and subsidy recipients, which would increase transparency and ensure a level playing field for companies.

2. Public procurement

Achieving fair and equal access to China’s vast public procurement market is a perennial and growing challenge for US companies in China, ranking as the sixth top challenge in our member survey—the highest in our survey’s history. The challenge stems from China’s uneven and ambiguous treatment of products from foreign companies and preferential treatment of domestic products to the exclusion of needed imports. Under Chinese law, products that are made in China are eligible for preferential treatment in government procurement. However, China has not specified the criteria for determining what qualifies as “made in China.” As a result, some products made by American companies in China have been excluded from

government procurement. This problem is compounded by China's use of secret policy documents directing entities using government funds to purchase Chinese brands.

In the healthcare sector, the Chinese government is actively promoting volume-based procurement (VBP) to lower healthcare costs for pharmaceuticals, biologics, high-value consumables, and traditional Chinese medicines. Domestic competitors that produce generics often outbid US brands on price. For this reason, US companies operating in China find VBP to be a significant challenge, fundamentally altering their market access procedures and business models.

Recommendation: To create a reciprocal trade environment, the Trump administration should advocate for Chinese policymakers to provide fair and equal access to China's procurement market for US companies and imported goods. Chinese policymakers should establish a complete definition of "domestic product" for the purposes of government procurement. The definition of "domestic content" should be clear and thresholds achievable for US companies to satisfy. Thresholds should also account for the totality of intangible investment, such as localized R&D. Procurement standards should be transparent and applied in a way that allows for participation from US companies to maintain a level playing field.

In addition, Chinese authorities should release a detailed timeline of standard setting for different industries, ensure transparency, and allow full participation of all stakeholders, including US companies, in the process.

Finally, we urge the administration to call on Chinese policymakers to publicly nullify the use of secret policy documents that discriminate against foreign-made products in public procurement, such as Document 79 and Document 551. There are no secretive US documents outlining such a goal. Formally abolishing Document 79 and Document 551 would represent a significant achievement for the Trump administration in fostering a reciprocal trade relationship with China.

3. Intellectual property

Protecting IP is a long-held concern of American companies that conduct business in China. Insufficient and inconsistent enforcement continues to be the primary challenge affecting IP protection in China. 73 percent of our member survey's respondents reported at least some concern about the level of IP protection in China. While more than 40 percent of respondents saw improvements in China's protection and enforcement of IP rights in the past year, most companies say this work has stagnated.

While the Chinese government made strides towards protecting both domestic and foreign IP over the last decade, inconsistent enforcement of IP laws and regulations persists. China agreed to reforms during the first Trump administration under Phase One but did not fully carry out its commitments.

Trade secrets

Under Phase One, China committed to reduce forced technology transfer by limiting regulatory processes that collect information required for a license or approval and pledged that agencies would take steps to protect any confidential business information obtained during the licensing process. However, USCBC contends that additional measures are necessary and that this issue should be fully addressed and implemented.

Recommendation: China's Ministry of Justice should finalize the August 2020 draft Guiding Opinions on Strengthening the Protection of Trade Secrets and Confidential Business Information in the Process of Administrative Licensing. Additionally, the Chinese government should continue to support clear judicial decisions, including awards of damages when the rules are violated. China should allow companies to vet third-party experts that participate in licensing reviews to ensure no conflicts of interest. Securing commitments and achieving progress on these issues would represent a significant accomplishment for the Trump administration.

Patent term extensions (PTEs) for pharmaceutical patents

In January 2024, China's Patent Law Implementation Regulations and new Patent Examination Guidelines came into effect, which formally introduced a process to grant PTEs for eligible pharmaceutical patents. However, the legislation employs an excessively narrow and irrelevant definition of "new drugs" that is derived from the drug registration system. This has made it harder for high-value pharmaceutical patents that have already been introduced in other markets but are being launched in China for the first time to qualify for PTEs. This limits the economic reward companies can receive for their innovation in the China market.

Recommendation: To fully enforce the Chinese government's commitments on enhancing pharmaceutical patent protection and ensuring regulatory consistency, the Trump administration should urge China to further improve relevant legislation and practices. It is important for the qualification requirements for PTE to be revised. This includes, but is not limited to, revising or further clarifying departmental regulations, such as the Patent Law Implementation Regulations (2023) and the Patent Examination Guidelines. USCBC believes it would be most effective for China to develop new criteria for "new drug" under the PTE framework while consulting with industry to expand the applicable scope.

Supplemental data to support patentability

Under Phase One, China also agreed to allow the use of supplemental data to satisfy patentability requirements, including sufficiency of disclosure and inventive step during judicial and patent review proceedings. However, recent cases show that China's administrative and judicial IP regulators have applied excessively restrictive, inconsistent criteria in accepting supplemental data, particularly regarding non-composition of matter inventions (e.g., drug formulations, polymorphs, and medical uses). For example, the United States, the European Union, Japan, and other countries routinely accept supplemental data to meet patentability requirements as long as the technical effect supported by the supplemental data is credible and plausible. The China National Intellectual Property Administration (CNIPA) and the Beijing IP court, on the other hand, still require that the technical effect supported by the supplemental data be obtainable from the original patent disclosure. China justifies this approach under the "disclosure-for-exclusivity" principle. However, this principle should not apply to pharmaceutical compound/composition patents with respect to supplemental data because a pharmaceutical compound/composition patent does not claim the supplemental data or the related technical effect and therefore does not seek exclusivity for either the data or the related effect. They are completely outside the scope of the patent that was originally sought.

Recommendation: The Trump administration China should urge China to fulfill its Phase One commitments regarding patentability and reconsider the current standard used by CNIPA and the Beijing IP court for admitting supplemental data.

Patent linkage system for pharmaceutical, biologics, and medical device patents

Also under Phase One, China committed to implement the patent linkage system. However, its implementation has significant deficiencies that impede its effectiveness. The patent linkage regime has limited types of listable patents, inadequate stay periods of nine months (none for biologics), and multiple loopholes that could allow generic or biosimilar companies to infringe upon valid patents even after filing declarations to respect innovators' patents.

Recommendation: The rules and measures relating to patent linkage should be revised to expand the types of listable patents, extend stay periods, and clarify legal obligations of generic or biosimilar companies that have declared respect to the innovative patent rights.

Regulatory data protection (RDP) for biopharmaceutical patents

China still provides pediatric and orphan drugs with a lack of effective RDP or market exclusivities despite its WTO and Phase One commitments. Although RDP and market exclusivities were included in the [draft legislation](#) in 2022 and further stipulated in the recent

[State Council Opinions](#) on reforming pharmaceutical products and medical device administration, none of these efforts made it into finalized legislation or attached to a clear reform timeline.

Recommendation: China should proactively undertake initiatives providing innovative products with RDP, protecting safety and efficacy data generated from lengthy regulatory review processes.

Trademarks

Under Phase One, China committed to take further action to combat bad-faith trademark filings. Despite Chinese policymakers making incremental progress in combating bad-faith filings, US companies in China continue to encounter challenges with registering genuine trademarks because of bad-faith filings from competitors or “trademark squatters.” Bad-faith trademarks are still prevalent, and legitimate brand owners are forced to file opposition and invalidation actions. Bad-faith trademark filings disrupt China’s trademark registration system and tie up limited resources at CNIPA to enforce IP regulations.

Recommendation: The Trump administration should urge Chinese policymakers to fulfill its Phase One commitments and take additional steps to combat bad-faith filings. This includes finalizing and enacting the 2023 draft amendment to the Trademark Law, which explicitly includes bad-faith filings as an independent ground for refusal of a trademark application. The Trump administration should further urge Chinese policymakers to focus on preventing infringers from registering trademarks that are intended to deceive or mislead consumers and combating malicious lawsuits from infringers, which interfere with IP enforcement actions in China.

Counterfeits

Piracy and counterfeiting on China’s e-commerce platforms remain top concerns. Under Phase One, China committed to revising the E-Commerce Law, which holds platforms responsible for developing “an effective notice and takedown system” for counterfeit products. Additionally, China committed to allow rights holders 20 working days to file a judicial or administrative complaint after receipt of a counter notification. However, the E-Commerce Law revisions have not been enacted and remain in draft form.

With the absence of finalized regulations, new channels and business models emerge and sell counterfeits online. Many so-called “outlet stores” in China claiming to sell products from outlets are engaged in selling counterfeit goods. They use the allure of the “outlet” concept, with its promise of discounted brand-name products, to attract consumers, but often the products are

counterfeit. These counterfeit goods are also sold and marketed on livestreaming e-commerce channels like WeChat Mini, Douyin, and Kuaishou—often livestreamed at night to avoid monitoring from Chinese regulators.

The quality of data provided is often limited, as some platforms have no obligation to provide full disclosure and transparency of transactions involving counterfeit goods. There is also no consistent standard across procuratorates and courts. In the name of reciprocity, Chinese platforms should be held to the same standard as US e-commerce platforms.

Recommendation: The Trump administration should urge China to uphold its commitment under Phase One and update its E-Commerce Law to include social media sites as e-commerce platforms used to sell products online. These platforms, including Pinduoduo, WeChat, Douyin, Kuaishou, and others, should be held accountable to the obligations of traditional e-commerce platforms under Chinese law. Further, the Trump administration should urge stronger coordination among China's enforcement agencies to protect copyrights, including enforcing laws imposing financial penalties that provide a deterrent against piracy and counterfeiting.

Standard essential patents (SEPs)

Despite China having pledged to increase judicial transparency, the publication of judicial decisions of all kinds has decreased over the last three years. Relatedly, Chinese courts have been more assertive about setting worldwide royalty rates for SEPs. Although China is not the only jurisdiction to do so, the relative opacity of jurisprudence around rate-setting decisions creates uncertainty. Moreover, China's establishment of binding worldwide royalty rates without the consent of the patent owner adds further unpredictability.

Recommendation: China should assume higher transparency standards and make judicial decisions publicly available, consistent with international best practices. China should also commit to avoiding global rate setting for any patented technologies in the absence of consent of the parties involved in private licensing negotiations.

4. Agricultural biotech approvals

China exploits its regulatory system and its role as the world's largest commodity importer to gain a strategic advantage in emerging agricultural production technologies, such as gene editing. Incremental advances in established technologies like genetic engineering are also hindered by China on a product-by-product basis. China's practices restrict US farmers' access to cutting-edge tools and undermine American R&D investments. Without policy intervention, China's restrictive approach threatens US on-farm competitiveness and innovation. Under

Phase One, China committed to implementing a transparent and science-based system for reviewing and approving imported biotech products and pledged it would conduct regulatory reviews for imports of biotech food and animal feed within an average timespan of 24 months. In the five years since Phase One, China has approved a small number of agricultural biotech products from foreign companies relative to domestic companies. Slow approvals inhibit US companies' ability to scale deployments of genetic engineering and gene-editing technologies on a global basis, hurting US farmers.

Recommendation: The Trump administration should press China for reciprocal and science-based treatment of American agricultural biotech products to maintain US leadership in innovation and ensure farmers have access to critical technologies. This means urging China to immediately begin approving foreign agricultural biotech products for import.

Bilateral negotiations are key

Although the task of addressing the challenges US businesses face in China will be complex and demanding, the Trump administration has the remarkable opportunity to level the playing field for US businesses in China—an objective aligned with President Trump's commitment to a reciprocal trade environment. This starts by promoting fair treatment of US companies, products, and services through comprehensive commercial negotiations with China. By reengaging with Chinese policymakers at all levels, the administration can achieve historic progress through a negotiated agreement—or multiple agreements—that benefit both nations and foster a more fair and enduring bilateral relationship.

Enforcing Phase One

A natural and appropriate first step in bilateral negotiations is for the Trump administration to call on China to finally honor its Phase One commitments. In negotiations with Chinese policymakers, the Trump administration should hold China accountable to its Phase One commitments and seek to unlock commercial opportunities for US companies.

For example, China has not acted in accordance with Article 4.4 of the deal to ensure that its regulatory authorities operate an improved and timely licensing process for US suppliers of electronic payment services (EPS) to facilitate their access to China's market. As of March 2025, only two US EPS suppliers had secured a license to operate in the China market. China should promptly complete the approvals required for all pending applicants to obtain a Bank Card Clearing Institution license.

A commitment to near-term deliverables, such as this, would serve as a confidence building measure and a base for negotiations on the structural policy issues outlined above.

Improve current and former lines of progress

To increase the likelihood of a successful agreement and ensure sustained outcomes for US companies well into the future, the Trump administration should continue to have regular communication with its Chinese counterparts to clarify areas of disagreement and negotiate deliverables. Continuing lines of communication such as the Commercial Issues Working Group between the Department of Commerce and MOFCOM would be a useful avenue for addressing business-specific market access concerns. Successful outcomes as a result of the Commercial Issues Working Group, as well as bilateral exchanges on counternarcotics and financial issues, will create a strong foundation for further negotiations.

Lines of communication established under Phase One should also be revisited. Phase One called for regular engagement and formed multiple channels of communication intended to ensure full implementation of all commitments. This included working-level quarterly and monthly meetings and biannual meetings at the principal level. According to the agreement, if one side believed the other was not acting in accordance with or was not enforcing the agreement, the concern would be raised at these scheduled meetings. This process would ensure face-to-face talks to resolve disagreements and prevent situations from spiraling out of control.

USCBC strongly urges the US government to expand the scope of issues at stake in these bilateral negotiations, coordinate with the interagency to navigate bilateral compromises, and strengthen mechanisms for industry consultations. USCBC is more than willing to serve as a constructive partner in any capacity necessary to organize, promote, or support the Trump administration in achieving goals related to this initiative.

Avoid blunt force tools

USCBC understands why the Trump administration is willing to use tools necessary to compel Beijing to the negotiating table. Nevertheless, these tools should be wielded in a targeted and strategic way. This ensures that the ends do not outweigh the means, and it prevents unnecessary and burdensome costs on US producers and consumers. Non-strategic measures also put US entities at a disadvantage vis-à-vis their foreign competitors. Targeted and measured actions that strengthen the United States' negotiating position are achievable and should be pursued.

If targeted punitive measures are taken, the administration should provide stakeholders with ample opportunities to comment and should open a process to exempt certain products, particularly inputs and products without a national security nexus. Intra-company transactions and shipments of goods should also be exempted from any punitive measures. Innovative materials manufactured with IP or trade secret protection in the United States are often key

components sent abroad, built with, and brought back to the United States as finished, high-value consumer goods. USCBC encourages the continued facilitation of cross-border manufacturing processing for the benefit of the United States economy and consumers.

Consult with industry

When addressing specific challenges arising from China's unfair economic practices, USCBC urges the administration to continue to collaborate closely with the private sector to ensure that any remedial actions not only address these concerns but also bolster US global competitiveness. The private sector continuously conducts benchmarking exercises to assess market conditions, regulatory barriers, and competitive dynamics. Given this expertise, American businesses stand ready to assist the Trump administration in identifying the most pressing obstacles to doing business in China and in developing strategic responses that effectively confront these challenges while preserving the strength and innovation of US industries.

USCBC appreciates the opportunity to comment and hopes to continue to act as a constructive partner with the administration as it levels the playing field for American businesses in China. Regular consultations with US commercial stakeholders will assist the administration's goal of putting America first and creating a more reciprocal trade environment. USCBC looks forward to collaborating further with USTR and the entire Trump administration to achieve this goal. Please get in touch with USCBC Vice President of Government Affairs Richard Harper (rharper@uschina.org) for any clarification on or further discussion of these public comments.