



United States Council for International Business

Priority Issues for the U.S.-China Joint Commission on Commerce and Trade (JCCT)

April 30, 2015

Introduction

The United States Council for International Business (USCIB) welcomes the opportunity to submit priority issues that our members recommend to be addressed in the 26th U.S.-China Joint Commission on Commerce and Trade (JCCT). USCIB appreciates the commitment to ongoing dialogue the United States and China have made in the JCCT process over the years and encourage continued commitments to focus efforts on improving the business environment for both U.S. and Chinese companies.

USCIB commends the U.S. and Chinese governments for their important and consistent work in bilateral dialogues such as the JCCT and the Strategic and Economic Dialogue (S&ED), as well as in support of working relationships between U.S. and Chinese agencies which provide invaluable opportunities for exchanging information, technical exchanges and addressing agency-specific issues. Additionally, USCIB and its members strongly support the work toward a high-standard U.S.-China Bilateral Investment Treaty (BIT). As part of this process, it is important that China does not undermine existing investments as it reforms its foreign investment regime.

We also urge both countries to utilize the full range of multilateral forums including the World Trade Organization (WTO), Asia-Pacific Economic Cooperation (APEC) Forum and the Organisation for Economic Co-operation and Development (OECD), to work toward improved commercial relations.

In USCIB's 2014 Statement on China's Compliance with its WTO Commitments, members detailed areas of noted improvement and of continuing or new cross-sectoral and industry-specific concern. With respect to the concerns, our members listed examples of compliance issues with regard to China's Antimonopoly Law, Certification, Licensing and Testing Barriers, Express Delivery Services, Government Procurement, Intellectual Property Rights, National Treatment, Technology Policy, Standards, State-Owned Enterprises, and the Regulatory Environment, among others.

In this report we are writing to highlight specific member concerns reported to us which we believe can be efficiently addressed via the valuable opportunities for high-level dialogue afforded by the JCCT process.

We look forward to further progress at JCCT meetings later this year. USCIB appreciates the opportunity to comment and our program staff would be pleased to meet with officials to discuss recommendations and provide additional detail and background on the listed concerns at greater length.

About USCIB: USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and regulatory coherence. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. As the U.S. affiliate of the International Chamber of Commerce, the International Organization of Employers and the Business and Industry Advisory Committee to the OECD, USCIB has a unique global network through which it provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment. More information is available at www.uscib.org.

JCCT ISSUE SPECIFIC CONCERNS

Anti-Monopoly Law (AML)

USCIB applauds China's commitments at the 2014 JCCT to treat domestic and foreign companies equally and to provide increased transparency for companies being investigated under the AML. With this in mind, we nevertheless strongly recommend that the U.S. government continue to address the specific and ongoing concerns of U.S. companies with regard to competitive practices in China and push for continued commitments to increased predictability, fairness and transparency throughout China's investigative processes of the AML enforcement. Specific and ongoing member concerns include those recounted below.

One example is China's use of the AML as an industrial policy tool to reduce China's perceived dependence on foreign intellectual property (IP) while protecting and promoting domestic Chinese companies. National Development Reform Commission (NDRC) officials have communicated that industrial policy considerations should play an important role in antitrust enforcement in China and their intention to broaden significantly the scope of their review of competitive practices in a wide range of "strategic sectors," including automobiles, telecommunications, banking and petroleum.

China has employed the AML to prevent undue concentrations of market power, combat cartels and abuse of market dominance, and pursue other goals that enhance the overall competitive environment in China. However, in many cases involving foreign companies, China's anti-monopoly enforcement agencies have reportedly applied the AML and related laws in a manner which supports China's industrial policy goals, including through discrimination and protectionism. The Chinese companies that benefit from this manner of applying the AML and related laws are often national champions in sectors that China considers strategic, such as the commodities and high-technology sectors.

USCIB members recommend that the U.S. government raise these concerns at the upcoming JCCT. In so doing, USCIB members also recommend that the U.S. government reinforce industry recommendations that China's Anti-Monopoly Law system be separated from industrial policy and that the roles of any third-party government agencies be stated clearly and that such authorities' anti-monopoly-related activities be transparent and based on specifically referenced laws.

Audiovisual

Intellectual property rights violations and the limitations on market access for providing legitimate product into the market constitute the greatest impediments to the development of a healthy Chinese media and entertainment market. Without a proper, functioning market where intellectual property rights are respected and laws are enforced, investment and growth will not reach their full potential. The factors cited above leave the general population little choice but to turn to the black market to satisfy their demand for audiovisual works.

1. Intellectual Property Rights Violations

- Media box piracy continues to be a growing problem and threat to the continued development and sustainability of a vibrant legitimate TV marketplace that informs and entertains consumers. Two types of devices currently pose grave challenges to copyright owners and licensed providers. The latest device is the Internet-enabled set-top boxes that are typically pre-loaded with apps to unlicensed and illegally pirated content. These devices also enable consumers to access unlicensed online streaming websites and load apps to pirate content. Another device is the illegal free-to-air receivers that facilitate unauthorized access to pay-television service. The illegal receivers essentially gain access to stolen keys that unlock signals via real-time Internet or satellite transmissions, mimicking the services of a legitimate set-top box. China remains a hub for manufacturing and distributing these devices and technologies that interfere with the ability of copyright owners to manage a variety of business models that offer consumers lawful access to products and services. China has taken an important first step in passing a regulation that bans the distribution of these boxes within China. However, a vibrant export market remains and China should expand the regulation and take other necessary steps to prevent the exportation of these boxes. Additionally, governments and law enforcement should coordinate on efforts to address the importation of these illicit media boxes.
- Enforcement with respect to all forms of intellectual property theft in China remains inefficient and often ineffectual, with low penalties for violators. However, we are encouraged by steps the Chinese government has taken since the launch of the special campaign of intellectual property rights enforcement, and the establishment of the IPR Leading Group, and we look forward to ways to cooperate to address areas of mutual concern.
- Despite steps to improve enforcement, piracy persists at very high levels. Piracy has a negative impact on the Chinese film and TV industry as shown by China's own operating results that are in inverse proportion to the size of the pirated movies market.
- Internet piracy is another major challenge. Online infringers have used the Internet to distribute a wide range of illegal products that violate copyright protections, particularly those for films and television shows. Without a comprehensive approach to this problem, both domestic and foreign producers of media content will continue to perceive China as an unattractive place to make investments. However, we are encouraged by the current review by the State Council Legislative Affairs Office of the current Copyright Law.
- Necessary elements of this comprehensive approach include measures such as, encouraging consistency with the framework in the DMCA, adoption of rules addressing responsibilities and limitations of liability for Internet Service Providers (ISPs) for copyright offenses and measures for notice-and-takedown of websites offering pirated material, and prohibiting the use of an audiovisual recording device in a cinema to make or transmit part or whole of an audiovisual work.

2. *Market Access Restrictions*

- Market access restrictions inhibit the ability of content providers to build a legitimate market and satisfy consumer demand. Although these restrictions affect each sector differently, the situation is most acute in the sound recording, film, TV and online media markets.
- Present rules in the music sector prevent the establishment of wholly owned subsidiaries, or even equity joint ventures, for the production, advertising, promotion and distribution of sound recordings. As a consequence, the infrastructure for the production and distribution of legitimate recordings is severely underdeveloped, greatly exacerbating the piracy situation.
- Notwithstanding the fact that an additional 14 enhanced format U.S. films can now enter the Chinese market every year due to the Memorandum of Understanding agreed between the U.S. and China as a result of the dispute settlement decision issued by the WTO, impediments to the free release and impediments to U.S. producers' ability to release more films is a substantial factor in driving Chinese audiences to pirated sources. It is a matter of urgency that the Longform agreement that outlines the terms of the importation of the 14 enhanced format films is concluded.
- The Chinese government should refrain from interfering in commercial negotiations, including licensing agreements, and change policies that restrict legitimate access for foreign films and fuel demand for pirated product. Additionally, limits on foreign content in television programming in China should be eased.
- Censorship clearance procedures for films, optical media and on-line distribution should be streamlined and discriminatory treatment toward foreign product abolished, which severely restrict the ability to distribute timely and legitimate film, CD, VCD, DVD and online products in China, and provide yet another unfair and unintentional advantage to pirate producers. Moreover, a new market access barrier has been introduced. The State Administration of Press, Publications, Radio, Film and Television (SAPPRFT) has issued a regulation that prevents foreign TV series from being submitted to censorship until the last episode of a season has aired on television. Domestic TV series are not subject to this practice. Therefore, the U.S. industry's attempt to meet consumer demand through timely legitimate online distribution of TV series is being prevented. This will only serve to fuel an already vibrant pirate marketplace. This regulation also limits the foreign library of legitimate online distribution platforms to 30%. Quotas are not relevant in a digital environment since, unlike more traditional media, there are no technical capacity constraints. China should amend immediately the regulation which came into force on April 1, 2015 to allow censorship episode by episode and eliminate the 30% quota.
- With respect to sound recordings, the current investment regime greatly restricts the ability of foreign record companies to enter the Chinese market, and USCIB requests that the Chinese government reforms its investment and censorship provisions in the music market to facilitate the growth of a healthy record industry in China.

USCIB members recommend that the U.S. government raise the above listed concerns regarding intellectual property rights violations, government interference in commercial negotiations, and market access limitations for providing legitimate products into the Chinese market, especially with practices that are discriminatory to foreign providers, all of which pose barriers to a strong media and entertainment market. It is important to emphasize that the Chinese need to continue to address these law enforcement and intellectual property rights issues, specifically reforming and expanding their regulations and rules in these areas. This is increasingly pertinent in this sector, as the general population is limited by the barriers and often must turn to the black market to satisfy their demands, as well as in others, where these issues are preventing further growth and investment in the Chinese market.

Certification, Licensing and Testing Barriers

In a number of areas, the Chinese government has established certification, licensing, and testing requirements on products, services, and production materials. In most cases, these requirements involve government approval of in-scope products and materials before these are allowed to enter the market (i.e., "pre-market" approvals or certifications). Even where such pre-market requirements apply equally to domestically and internationally (i.e., China and non-China) originating items, the fact that China's system for checking imports is more comprehensive than the system for checking products and materials already within China, (e.g., coming off production lines), potentially enhances the negative effects of any pre-market requirements on imports into China.

Some USCIB members have observed recent improvements in certification program recognition of the market-access burdens that pre-market approvals and certification programs impose on companies. These recognitions include laudable efforts by certain regulatory authorities to encourage the development of compliance or product conformity assurance programs that would reduce burdens for companies with good compliance program/product conformity track records. That said, due to a continuing lack of capacity to administer the requirements in an efficient manner, infrastructure (e.g., sufficient numbers and locations of qualified laboratories) to carry out certification, licensing and testing requirements, certification requirements that mandate disclosure of confidential business (including supplier or competitor) information, and/or China's refusal to recognize testing results and comparable certification issued in other major markets, these requirements raise costs for foreign suppliers and often function as barriers to those products' and materials' access to the Chinese market.

Regarding lab accreditation, USCIB members recognize and applaud China's recent initiatives involving allowing foreign labs to apply for accreditation under China programs and provide such services in China (including Hong Kong SAR). Recent approvals reportedly include one Hong Kong-based lab that has been approved to test for metal toys. Nevertheless, USCIB members urge China to continue to expand foreign-lab approvals and move more aggressively to allow labs based outside of mainland China to be accredited for pre-market testing mandated in China regulatory programs such as the China Compulsory Certification (CCC) program. This approach would be consistent with the expanding needs of non-Chinese and Chinese companies operating around the world.

We appreciate the U.S. government's work in this area and acknowledge that it appears that the JCCT talks have been among the most successful avenues to work with the Chinese Government on this issue. This is due in large part to the fact that different Chinese regulatory agencies administer their own labs for their own regulatory programs. Hence, political and inter-governmental jurisdictional concerns increase obstacles to addressing this concern via a government-to-agency or industry-to-agency approach.

USCIB members recommend that the U.S. government raise these concerns at the upcoming JCCT. In particular, we recommend that the U.S. government urge China to adopt and act in conformity with the OECD Acts concerning the Mutual Acceptance of Data (MAD) in the Assessment of Chemicals, as set forth in Decision of the Council C(81)30(Final) and C(89)87(Final), noting that this conformity would also benefit Chinese companies, and encourage the Chinese government to continue to develop a more flexible pre-market testing system and establish a public time-line outlining next steps.

Express Delivery Services (EDS)

The Chinese government has publicly recognized the importance of EDS to the Chinese economy by supporting modern supply chains through reliable and highly efficient links between distant producers, suppliers and consumers – both internationally and domestically. A robust domestic EDS industry will help China achieve its goals of promoting domestic consumption and reducing its economic dependence on exports. Furthermore, customs reform, modernization and simplification promote the fast, streamlined movement of goods across borders.

Below are ongoing concerns of USCIB members with respect to the development of the EDS industry in China:

1. Transparency of the New “Express Delivery Regulations” Drafting Process

- China's “Express Delivery Regulations,” currently under review by the State Council Legislative Affairs Office based on iterative drafts from the State Post Bureau (SPB) and Ministry of Transportation, will be of great significance to the Express Delivery Services (EDS) industry. The draft Regulations will shape EDS standards, business licensing, and other areas critical to the future development of the sector. Drafting of the Express Delivery Regulations is already underway, and the industry would like to see greater transparency in the process of collecting comments and recommendations. For this policymaking process to yield an industry framework that drives healthy growth and competition in the interest of consumers, private players must be given a greater role in the process. The perspective of industry is key to ensuring that the new Regulations are not only operable from a legal perspective but also reflective of business realities.
- In the case of the Express Delivery Regulations, there has been no published timeline for initial drafting, revisions, input solicitation, to final ratification at the National People's Congress to guide industry on how to engage at different stages of the process. Industry would welcome a more structured mechanism and procedures for public comment (e.g., publication on a website, formal solicitation of comments, agreed number of days for

comment, entry into force a set number of days after final issuance) and a forecast for the overall legislative timeline. To maximize the value and timeliness of input, the Chinese government should also consider providing English translations of draft legislation and regulations that are open for comment.

2. *Administrative Licensing System Reforms*

- As required by the State Council, China's SPB has released licensing, examination, and approval information on EDS operational licenses, which fall under the "Postal Law of the People's Republic of China" (Postal Law) and other relevant regulations. However, the regulations require further clarification, particularly with respect to EDS providers' scope of business.
- Conflicting regulations and the enforcement burden they impose on businesses is a hindrance to healthy industry development.
- In particular, under Articles 52 and 53 of the Postal Law, an enterprise that applies for an EDS license should possess the capacity to provide services appropriate for the regional scope for which it is applying to serve. This may include providing services within its own province, autonomous region, or municipality or providing such services to more than one province, autonomous region, or municipality. The required capacities are further defined in Clause 3 Article 6 (and subsequently in Articles 7, 8, and 9) of "The Regulation for the Management of Express Business Licensing."
- These measures indicate that the scope of business for enterprises providing EDS both between provinces, autonomous regions, and municipalities, and internationally, should span the entire country. However, according to the "Business Scope of Express Business Operation Permits," the business scope for an EDS provider is restricted to the province in which it is registered and has received SPB approval, which in effect restricts business operations beyond that province. Policymakers must clarify this inconsistency between the scope of an EDS operating license as described in the "The Regulation for the Management of Express Business Licensing" and in the Postal Law.
- In line with Chinese leaders' stated priority to upgrade the express delivery sector, USCIB members believe the regulations should support the broadest possible business scope, aligned with the national network business model of express delivery services providers and the interests of consumers.

USCIB members recommend that the U.S. government raise these concerns at the upcoming JCCT. Specifically, we recommend that the U.S. government advocate for the broadest possible business scope for express delivery services in China, supporting a national network model.

Government Procurement

USCIB members welcomed positive government procurement developments at the 25th JCCT in December 2014. On December 31, 2014, the State Council finally passed the "Implementing

Rules of the Government Procurement Law,” effective March 1, 2015, which had been issued for comment in January 2010. The finalized Rules deleted the Net International Investment Position (NIIP) requirement and 20 percent preference for domestic goods.

Also at the 25th JCCT, China committed to publish its draft “Interim Administrative Measures for the Government Procurement of Domestic Goods,” which was issued for comment in 2010. USCIB members hope that China will publish the final regulation with a clear, consistent, and reasonable definition of “domestic product” which enables foreign companies to participate in China’s government procurement in line with international practices.

USCIB welcomes the steps that China has taken following the 25th JCCT. Nevertheless, government procurement program concerns remain among USCIB members. In particular, USCIB members note the following:

- U.S. suppliers are being excluded from government procurement particularly at the provincial and local levels on the basis of government procurement “product catalogues” that require government agencies to extend procurement preferences to domestic suppliers and IP owners for several categories of products. We urge the U.S. government to monitor the government procurement situation closely and to insist that China abandon efforts to exclude foreign products, suppliers, or innovations from the government procurement market.

USCIB members urge the U.S. government to raise these concerns at the upcoming JCCT. USCIB especially requests that the U.S. government continue to encourage China to apply its regulations and rules in an open, non-discriminatory, and transparent manner and to complete China’s accession to the WTO Government Procurement Agreement. USCIB asks the U.S. government to strongly encourage Chinese officials to see that such practices are also put in place at regional and local levels of government.

Intellectual Property Rights

USCIB members acknowledge that China has improved many of its key intellectual property right (IPR) laws and has made progress in combating copyright piracy and trademark counterfeiting since acceding to the WTO. We applaud the agreement made at the JCCT in December 2014 to bring new focus to fostering a better environment for sales of legitimate intellectual property-intensive goods and services in China. USCIB members note that there are still a range of much needed improvements. These include the following concerns:

1. Copyright Infringement Examples and Recommendations:

- Ensure timely conclusion of long-delayed administrative case involving KJMed, an unauthorized provider of online journals. Ensure that the outcome provides effective deterrence against similar services that have emerged while this case has stalled.
- Investigate and pursue swift enforcement against new unauthorized online journal access providers, including copycat sites to KJ Med and document sharing sites.
- Reconvene interagency meetings with the National Copyright Administration of China (NCAC), the Ministry of Education (MOE), the Ministry of Culture (MOC) and libraries,

which was a follow up on the 2009 library directive and resulted in a voluntary inspection campaign targeting online journal piracy. Create an enforcement hotline, where libraries/publishers can report infringing sites directly.

- Address the increased unauthorized dissemination of copyrighted material through personal cloud storage services (e.g., Baidu Cloud, Aliyun, Weiyun).

2. *Trademark and Domain Name Recommendations:*

- Expedite brand owner challenges against bad-faith trademark registration.
- Expedite brand owner challenges against fraudulent domain-name registrations.

3. *Patent and Trade Secret Examples and Recommendations:*

- Clarify the standard for determining legal patent licensing activities versus unlawful/anti-competitive patent licensing activities.
- Ensure the protection of trade secrets, and the transparency of processes for such protections, when confidential technical and commercial information is submitted to Chinese agencies for regulatory compliance purposes.

USCIB members recommend that the U.S. government raise these concerns, including particular examples and recommendations in the areas of copyright infringement, trademark and domain name registration, and patent and trade secret protection, at the upcoming JCCT. USCIB members also request that the U.S. government continue to press for new examples in these areas underscoring China's continued progress toward addressing U.S. industry concerns.

Regulatory Environment

USCIB members recognize the significant efforts Chinese authorities have made to enhance transparency of the legal system and work towards meaningful notice of new and proposed rules and opportunities to comment on proposed rules and other measures.

Nevertheless, USCIB members note that there remains a need for systemic improvements in the China regulatory environment in following areas:

- The need for consistency in the practice of publishing draft laws among agencies with a meaningful (i.e., maximum) period before comments must be submitted, understanding that U.S. companies take these opportunities very seriously and need to coordinate among relevant stakeholders in the company in multiple time zones before submitting comments.
- The importance of meaningful gaps in time between promulgation of a new law or other measure with legal effect or influence and entry into effect of that law or other measure, understanding that even a one-year gap in time between promulgation and effective dates is meaningless if the implementing measures or interpretations needed for understanding

of the law or other measures are not issued and/or available in final form until a time within six months of the law's or other measure's effective date.

- The need for government focus on effective application of already existing laws and standards, understanding that drafting and issuing new laws and standards may be necessary, but that agencies and affiliates should not be evaluated on the basis of how many laws and standards they issue, but on how well existing laws and standards are applied, and whether further adjustments are absolutely needed to address changing business practices and technology.

These systemic issues are often considered “less urgent” in the face of the many pressing and sector-specific industry concerns that USCIB members must address with respect to China. However, USCIB members urge the U.S. government to keep in mind that improvements in these systemic issues can appreciably mitigate U.S. company concerns or even crises in all of the areas included in this “priority issues” submission. Therefore, USCIB members also request that the U.S. government ask China to report on progress towards addressing these concerns.

Standards

USCIB members recognize the value of standards in establishing technical requirements, but are concerned with issues such as the rapid proliferation of standards, accessing such standards, and the varying degree of openness of the standard development process to foreign stakeholders in China.

USCIB members provide examples of these concerns below:

- Standards are generally the most numerous measures, often with binding legal effect, in areas that involve highly technical issues, and are issued with increasing rapidity, which often can significantly affect company China operations and the China market access of company products. China's existing standard development system is complicated, government driven, and has areas of inconsistency with international practice. Further, enforcement of standards is inconsistent among localities, with a lack of coordination among key industries. Multinational corporations, including in particular USCIB members, have difficulties in participating as stakeholders in standard commenting and drafting processes that affect the companies' operations and products.
- Tracking standard development is easier in some aspects, such as via the Standardization Administration of China (SAC) web site. However, this only helps monitor certain types of national standards and does not provide full texts of the standards in all cases. A solution to the problem, involving the development of a centralized location for listing of all final/issued and draft standards (binding or industry/recommendatory), arising from not only the SAC but the multitude of Chinese agencies which issue standards with or without SAC involvement, can only be addressed at the highest levels in China, warrants discussion via the JCCT dialogue.
- China announced a Standard Reform Plan in March 2015, which aims to build a new type of standardization system by 2020 that will enable collaborative work in the areas of

government-led and market-oriented standards. USCIB members applaud the innovation that such initiatives represent. However, USCIB members also ask that the U.S. government push for a unified standard system that will provide opportunities for foreign-invested enterprise participation in standard development, consistent with the level of company stakeholder participation in international standards. USCIB members also ask the U.S. government to continue to push for consistent enforcement of standards at localities in China.

USCIB members recommend that the U.S. government raise these concerns, including particular examples and recommendations included above, to minimize the burdens and barriers that U.S. company operations and products face with respect to standards in China.

State-Owned Enterprises (SOEs)

U.S. businesses are increasingly competing with Chinese SOEs, and State-controlled or “State-championed” entities. This is the case not only in China but also in important third markets and here in the United States. Whether directly state-owned or -controlled or “state-championed,” these entities often benefit from various sorts of preferential treatment by Chinese authorities at the national and sub-national level. USCIB members believe that it is critical that the U.S. government use all available tools, including the JCCT and the S&ED, to press aggressively for level playing fields for U.S. companies as they compete with Chinese entities. These U.S. government bilateral efforts with China should be carefully coordinated with other U.S. government efforts regarding SOEs, State-controlled and State-championed entities, including in the Transpacific Partnership (TPP) negotiations, in the OECD and in other forums.

To this end, USCIB members strongly recommend that the U.S. government continue to use the JCCT Dialogue on SOEs to raise U.S. concerns over preferential treatment accorded to Chinese SOEs and similar entities and to seek clear explanations from the Chinese authorities on its policies on the treatment of its SOEs and similar entities when they compete with private sector companies, including U.S. companies. The U.S. government should obtain concrete Chinese government commitments to the principle of a level playing field when SOEs and similar entities are competing in the commercial space with private enterprises.

In order to assist in the international assessment of Chinese SOE practices, USCIB members strongly recommend that the U.S. government seek binding commitments from the Chinese government on meaningful transparency of Chinese SOE and similar-entity government support – including all measures of support from national and provincial government entities, their treatment on tax, regulatory, procurement policies, and other key criteria. This transparency, especially for the largest and most competitive SOEs, should begin immediately.

Finally, USCIB and its members also recommend that the U.S. government seek the strongest possible SOE commitments (including those involving transparency, level playing field/national treatment, and limitations on subsidies and other preferential treatment for SOEs) in any JCCT discussions aimed at informing negotiations and content for the U.S.-China Bilateral Investment Treaty (BIT).

It is critical that the U.S. government raise the above listed concerns and recommendations regarding Chinese SOEs at the upcoming JCCT. USCIB strongly recommends that the U.S. government use all available tools to dialogue with the Chinese government to ensure a level playing field for U.S. companies as they increasingly compete with Chinese entities benefitting from forms of preferential treatment.

Technology Policy

Over the last 4-5 years, a troubling significant number of new Chinese government guiding policies, laws and legislative proposals were announced affecting, in particular, USCIB information and communications technology (ICT) sector members and their customers. The implementation and influence of these measures will have a significant negative effect on U.S. ICT companies' market opportunities in China, as well as potentially weakening cybersecurity across all sectors, by imposing sweeping indigenous technology requirements, data flow restrictions and other control burdens on ICT products.

These measures raise serious questions regarding China's international trade commitments and its bilateral commitments to the United States by creating or increasing the potential for major market barriers through "secure and controllable" technology mandates and restrictions on data storage and encryption through guiding policies, laws and legislative proposals. Reflecting the widespread concern over this issue, USCIB members along with 30 other international industry associations requested a complete suspension of Guidelines for Secure and Controllable Information in the Banking Industry (2014-2015), issued via Circular from the Ministry of Industry and Information Technology and China Banking Regulatory Commission on December 26, 2014, via letters written directly to the Chinese Government leaders in April 2015. Later that month, Chinese lawmakers announced that the rules would be temporarily suspended pending review.

Nevertheless, trade-restrictive technology mandates are increasingly prevalent and include measures such as the Circular of the People's Bank of China on Urging Banking and Financial Institutions to Undertake Protection of Personal Financial Information (January 21, 2011) (providing among other things in Article 6 that financial information should not be stored offshore) and measures proposed in the draft Anti-Terrorism Law reportedly requiring telecommunications/Internet service providers to restrict certain equipment and user data to China. Cross-border data flows are necessary to companies across all sectors to operate and engage in e-commerce.

In light of the above-described developments, USCIB members urge the U.S. government to continue to press for full suspension of all existing and proposed measures involving trade-restrictive technology standards and data-related requirements, such as the restrictions of cross-border flow of data, and the establishment of a transparent and consultative mechanism to develop privacy and cybersecurity-related measures that reflect global best practices and do not unnecessarily restrict global commerce.