



US-CHINA BUSINESS COUNCIL

Statement of Priorities in the US-China Commercial Relationship · March 2017

The US-China Business Council (USCBC) supports a strong, mutually beneficial commercial relationship between the United States and China. The relationship has made many positive strides over the past three decades, thanks to the collaborative work of the governments, business communities, and other stakeholders in both countries.

This sixth priorities statement issued by USCBC's board of directors comes at an important time. The United States has a new administration that is developing its policy approach to manage the US-China relationship. China's reforms are entering their fourth year, but the slow pace and mixed signals of economic reforms so far are leaving the American business community uncertain about policy direction and undermining confidence.

This is a critical time for both governments to work closely with the business community to address the priorities (outlined at right, and detailed in the following pages) with tangible progress in the coming year, in order to build confidence and ensure the commercial relationship remains a source of stability and progress in US-China relations.

SUMMARY OF USCBC'S TOP PRIORITIES

1. Further Solidify the Foundation for Mutually Beneficial Commercial Relations

- Strengthen and improve results-oriented bilateral dialogue
- Reduce foreign investment ownership restrictions
- Quickly resume and complete high-standard Bilateral Investment Treaty negotiations
- Take steps to build confidence in the bilateral relationship
- Apply national security exceptions only when essential and narrowly targeted
- Promote a level playing field for foreign and domestic companies in China
- Move forward with financial sector reforms

2. Reduce Trade Barriers, Enforce Globally Accepted Trade Rules, and Avoid Protectionism

- Ensure that government decisions are not politicized
- Implement laws and regulations consistently across agencies and localities
- Increase the use of internationally harmonized standards for goods and services sold in China
- Eliminate import barriers to facilitate economic rebalancing and consumption
- Accelerate sensible US export control reforms
- Complete the Environmental Goods Agreement

3. Ensure Competitive Neutrality and Improve Transparency

- Reduce cybersecurity tensions and ensure equal treatment for technology products
- Ensure equal treatment in licensing
- Ensure equal treatment in government procurement for all legal entities in China
- Ensure an inclusive and transparent process in the development of China's ecommerce law
- Further improve rule-making transparency
- Curb overcapacity
- Ensure safe and reliable food and agriculture trade

4. Strengthen IPR Protection and Adhere to Mutually Beneficial Innovation Policies

- Continue to strengthen China's IPR regime and enforcement of IPR in China
- Improve enforcement against online counterfeiting and piracy
- Improve market access of IP-intensive products
- Strengthen trade secrets protection
- Follow internationally proven, effective innovation incentives



1. Further Solidify the Foundation for Mutually Beneficial Commercial Relations

Strengthen and improve results-oriented bilateral dialogue

With a new American administration in place, the two governments should move quickly to improve the structure for effective bilateral engagement across all levels of government. An annual presidential summit should be the anchor of engagement, with the first summit taking place as early as possible. The US-China Strategic and Economic Dialogue (S&ED) will be more effective as two separate components with fewer participants. Other useful channels for engagement should continue at appropriate times throughout the year, involving key agencies empowered to address the array of issues in the economic and commercial relationship.

Reduce foreign investment ownership restrictions

China still maintains numerous foreign investment ownership restrictions across many sectors of its economy, including manufacturing, services, agriculture, and resources. Reducing foreign ownership restrictions would allow American companies to contribute more to China's economic rebalancing goals, send a strong signal of economic reform progress, boost confidence, and build support in the United States for a bilateral investment treaty (BIT).

Quickly resume and complete high-standard Bilateral Investment Treaty negotiations

A BIT provides one of the best opportunities to reduce investment barriers in both countries, ensure a level playing field among all enterprises, and improve protections for US and Chinese investors in each other's markets. Finalizing a high-standard BIT with very limited exceptions in the negative list would provide a forward-looking framework for the commercial relationship, contribute to economic growth and employment in both countries, and should be a top priority for the new American administration and the Chinese government.

Take steps to build confidence in the bilateral relationship

- Build on positive initiatives in the relationship, such as the further development of RMB currency trading and clearing capacity in the United States and cooperation on eco-partnership and green finance opportunities.
- Eliminate counterproductive, China-targeted provisions in US appropriations bills. If such provisions are deemed to be technically effective and necessary, they should be applied to all countries, not just China.
- Confirm that the US will no longer use the Non Market Economy methodology in China trade remedy proceedings, but instead will use an alternative methodology as allowed under the Trade Preferences Extension Act of 2015 in cases where market distortions exist, such as sectors in which China has overcapacity.

Apply national security exceptions only when essential and narrowly targeted

Both governments have made important commitments to promote more open trade and investment environments and apply national security exceptions only in limited circumstances to advance legitimate security objectives. The United States and China should incorporate these commitments in existing and future laws and regulations, and refrain from taking steps that would contradict these commitments, such as using "national security" for economic or commercial objectives, or to protect or promote domestic companies versus foreign companies.

Promote a level playing field for foreign and domestic companies in China

Companies legally established under China's Company Law should all be treated equally by regulators, regardless of ownership nationality. China's leadership has stated that it will treat domestic and foreign companies on an equal basis, but further work must be done to implement those commitments. In addition, we recommend a simple approach that would make a significant difference: China's policymakers should move toward eliminating terminology in its laws and regulations that distinguish 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.

Move forward with financial sector reforms

Recent moves to curb capital outflows from China are impacting normal business transactions and cross-border payments, reducing predictability and confidence. China should move forward with market-oriented financial sector reforms that would create more domestic opportunities for capital deployment and returns, allow greater foreign financial institution participation, and create conditions for better integration of the world's second-largest economy into the international economy.



2. Reduce Trade Barriers, Enforce Globally Accepted Trade Rules, and Avoid Protectionism

Ensure that government decisions are not politicized

Government reviews and decision making in areas such as investment security and antitrust reviews, government procurement decisions, administrative licensing, and trade remedies such as anti-dumping and countervailing duties cases must be fact-based, shielded from political pressures, and non-retaliatory.

Implement laws and regulations consistently across agencies and localities

China's central government has streamlined and decentralized many approvals necessary to establish and operate businesses throughout the country. These efforts are welcome, but implementation of laws and regulations by provincial and local authorities remains uneven and inconsistent, impacting both Chinese and foreign companies. In addition, better coordination of policies and their implementation at the central government level would be beneficial. We encourage the formation of interagency "leading small groups" in more fields, such as anti-trust and food safety.

Increase the use of internationally harmonized standards for goods and services sold in China

The use of internationally harmonized standards in China will ensure that Chinese consumers and end users have access to the best products and services, and that Chinese products and services are accepted and competitive internationally. China should adopt more science-based, fair, transparent, and market-led approaches to standards setting and development that are open to all companies regardless of nationality, including domestic, foreign-invested, and foreign-based manufacturers.

Eliminate import barriers to facilitate economic rebalancing and consumption

China maintains high import duties and consumption taxes on a wide array of consumer goods, as well as differential treatment of imported goods through product licenses, distribution restrictions, import inspections, and unique standards. These policies inhibit China's economic rebalancing. Reducing or eliminating tariffs and taxes on consumer goods and ensuring equitable treatment of domestic and foreign-made products would be a simple yet powerful stimulant of domestic consumption. Removing restraints on imports, such as increasing or eliminating the cap on imported movies, would stimulate services sector growth and employment.

Accelerate sensible US export control reforms

Export controls are an important part of ensuring the security of the United States. The incoming administration should continue reform efforts that will ensure US security is not undermined, while boosting US exports to help support and create jobs. The United States should allow greater exports of items that do not present a security risk and are already available on open markets from non-US sources.

Complete the Environmental Goods Agreement

The United States and China should seek more opportunities for mutual cooperation in developing and deploying energy efficiency and environmental sustainability technologies, which will benefit both nations and set an example for the rest of the world. As part of that effort, the United States and China should take more ambitious steps to conclude the WTO Environmental Goods Agreement in 2017 to eliminate tariffs on environmental goods and services.



3. Ensure Competitive Neutrality and Improve Transparency

Reduce cybersecurity tensions and ensure equal treatment for technology products

Cybersecurity is a national security priority for both countries. Cybersecurity laws and regulations are strongest when they provide system operators the flexibility to assess risks, adapt to ever-changing threats, and utilize global solutions. Industry can serve as a valuable resource for the development of effective cybersecurity policies and we encourage its consultation on these increasingly technical matters.

We support both countries' commitment to ensure efforts that enhance information and communication technology (ICT) cybersecurity be consistent with WTO agreements and other international norms; be narrowly-tailored and nondiscriminatory; and not impose unnecessary nationality-based conditions or restrictions on the purchase, sale, or use of ICT products.

Ensure equal treatment in licensing

Over the past decade, USCBC's annual membership survey has highlighted licensing barriers as one of the top areas of discriminatory treatment in China. These licenses include business licenses, branch licenses, product approval licenses, import licenses, distribution licenses, and other licenses and permits in sectors such as banking, electronic payments, healthcare, insurance, construction, legal, entertainment, and value-added telecom services (such as data centers).

We encourage further efforts to reduce licensing barriers and ensure equal treatment in licensing reviews and approvals. Licensing and other government approval decisions should be made without prejudice against type of ownership, without influence from competing entities, and with consistent interpretation.

Ensure equal treatment in government procurement for all legal entities in China

We encourage China to finalize the draft Administrative Measures for Government Procurement of Domestic Products, with modifications to ensure that goods and services provided by all legal entities in China are treated equally during procurement processes, regardless of ownership. If appropriately revised, the rules would roughly parallel similar rules applied to Chinese companies in the United States.

China should also take the necessary steps to join the WTO's Government Procurement Agreement in 2017. Doing so under meaningful terms will positively address many concerns with "Buy American" and "Buy Chinese" procurement practices in each country.

Ensure an inclusive and transparent process in the development of China's ecommerce law

China's electronic commerce market has grown at a remarkable rate in recent years, creating new opportunities for both traditional and online retailers and benefiting China's consumers and economic rebalancing goals. Companies, both domestic and foreign, support the development of this sector in China and can provide important input into how proposed Chinese regulations will impact business operations. China should ensure that both domestic and foreign companies are allowed to provide input and share global best practices during the process of finalizing China's ecommerce law. In cross-border e-commerce, China should develop measures and mechanisms to better protect consumers' rights and ensure that all foreign and domestic companies are subject to the same rules, regulations, and standards.

Further improve rule-making transparency

China's central government has made some progress on improving rule-making transparency over the past several years, but further improvements are needed. China should fully implement its commitment to publish all draft trade and economic related laws, administrative regulations, and departmental rules for a full 30-day comment period, but it should also consider going further by posting draft regulations on a designated website for a 60- or 90-day public comment period.

Curb overcapacity

China's non-market-based credit allocation system serves only to spur inefficient and non-competitive overproduction of key commodities. China should, in the near term, revise such policies that encourage overcapacity and take market-based approaches to shutting down or restructuring insolvent enterprises.

Ensure safe and reliable food and agriculture trade

American companies are strongly committed to supporting China's food and agriculture needs and bringing the latest in agriculture technology to the China market. A predictable regulatory environment — utilizing transparent and non-discriminatory requirements to achieve legitimate, science-based safety standards — is needed to achieve that mutually-beneficial goal. To that end, the allocation of trade-related quotas (TRQs) and approval policies for genetically-modified organisms (GMOs) should be based on international standards such as CODEX, thereby ensuring safe and reliable food and agriculture trade. Regular dialogue between US and Chinese food safety authorities, with private sector participation, would greatly improve regulatory coordination and food safety improvements.



4. Strengthen IPR Protection and Adhere to Mutually Beneficial Innovation Policies

Continue to strengthen China's IPR regime and enforcement of IPR in China

Stronger IPR protection brings mutual benefits. China should continue to improve its IPR legal regime by updating laws and regulations to reflect the latest developments in IPR protection and enforcement. It should also continue to expand resources devoted to IPR enforcement and adopt stronger deterrents against IPR infringement. Adopting the WTO-consistent deterrent of criminal penalties in all cases of commercial-scale infringement and broadening the use of higher penalties and stronger deterrents in both civil and criminal cases against all types of IPR infringement—including patent, copyright, trademark, and trade secrets violations—will benefit all companies and IPR holders in China.

Improve enforcement against online counterfeiting and piracy

Internet platforms are a growing means for counterfeiters to market and sell counterfeit goods and distribute pirated content, but they present special challenges for rights-holders and enforcement officials alike. China should increase enforcement of internet-related IPR to ensure its laws, regulations, and enforcement efforts cover areas such as use of trademarks on websites, trademark-related aspects of domain name registrations, and the use of websites, internet services, and apps as platforms for counterfeit and pirated products. Such rules and their enforcement should establish a framework that promotes accountability while balancing the needs of legitimate IPR holders and internet intermediaries.

Improve market access of IP-intensive products

Import restrictions on legitimate products serve to promote the sale of counterfeit products. Reducing import and distribution barriers of IP-intensive products would reduce counterfeits and ensure Chinese consumers have access to legitimate products.

Strengthen trade secrets protection

The protection of trade secrets is a core component of innovative economies. China can take positive steps to encourage innovation by expanding its efforts to address trade secrets concerns, including the development of a Trade Secrets Law, broader use of judicial procedures on preliminary injunctions and evidence preservation orders, clearer measures requiring government agencies to protect confidential information collected from companies during government review processes, and reducing the high evidentiary burden that plaintiffs face during trade secrets cases.

Follow internationally proven, effective innovation incentives

China should improve two programs to more effectively promote innovation:

- Changes to the High and New-Technology Enterprise (HNTE) innovation incentive program in 2016 included qualification criteria that undermine global innovation best practices. China should revise HNTE criteria that requires IP ownership in China or a five-year global exclusive license to instead allow qualification with non-exclusive license or usage rights or exclusive license rights in China only. These revisions would positively incentivize innovation activity.
- Ensure that provisions related to how companies compensate inventors, such as the draft Service Invention Regulations, fully recognize the legitimacy of existing company policies and contracts that address inventor compensation, and allow room for companies and inventors to freely negotiate compensation on market terms as an important component of an active innovation ecosystem in China.