



U.S. CHAMBER OF COMMERCE

September 28, 2015

Terrance J. McCartin
Deputy Assistant United States Trade Representative
United States Trade Representative
1724 F Street NW
Washington, DC 20508

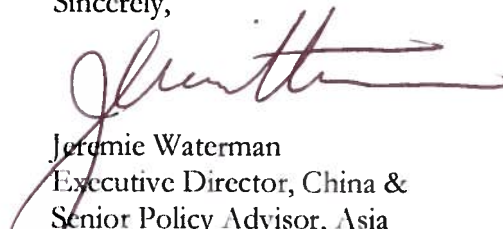
Dear Mr. McCartin,

The U.S. Chamber of Commerce is pleased to share our input for the 2015 meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT) as our written submission for the Trade Policy Staff Committee's (TPSC) evaluation of China's compliance with its WTO commitments. The Chamber will also provide oral testimony before the TPSC at the October 7th hearing at the Office of the U.S. Trade Representative (USTR). We appreciate deeply the U.S. government's significant efforts and year-round work, led by the Department of Commerce and USTR, to advocate on behalf of U.S. business interests with China via the JCCT and other high-level bilateral dialogues.

The U.S. Chamber's submission encompasses a diverse set of policy priorities that reflect the breadth of our membership. In addition to outlining critical sector-specific challenges encountered by our members, we continue to prioritize progress on a range of policy issues impacting our members across sectors, including investment, intellectual property rights, and industrial policy challenges that include competition, government procurement and standards-setting policies.

The U.S. Chamber of Commerce stands ready to support your efforts to address these and other issues outlined in our submission. We look forward to providing testimony in the coming weeks and contributing to the U.S. government's commercial engagement with China.

Sincerely,



Jeremie Waterman
Executive Director, China &
Senior Policy Advisor, Asia
U.S. Chamber of Commerce



**Submission of the
U.S. Chamber of Commerce**

for the

**2015 Submission on the
Joint Commission on Commerce and Trade**

June 2015

Table of Contents

INTRODUCTION	5
CROSS-SECTORAL ISSUES	11
INDIGENOUS INNOVATION & INDUSTRIAL POLICY	11
2. Indigenous Innovation Policies and Product Lists	11
3. Public Procurement	12
4. Standards and Licensing	13
5. Conformity Assessment and Certification Redundancy	14
6. Cyber Security Initiatives	15
7. State-Owned Enterprises and Subsidies	15
8. Trade Remedies	16
INTELLECTUAL PROPERTY	16
1. Enforcement of IPR	16
2. Trade Secrets	19
3. Copyright	20
4. Trademark and Counterfeiting	22
5. Patent Law & TRIPS-Compliant Compulsory Licensing	24
6. Patents/Data Supplementation and Regulatory Data Protection	26
INVESTMENT	27
1. Investment Approvals and the Guiding Catalogue on Foreign Investment	27
2. National Security Review	29
AGRICULTURAL BIOTECHNOLOGY	31
AGRICULTURE	32
1. Foreign Direct Investment	32
2. Tariff Rate Quotas (TRQ)	32
3. Unscientific Restrictions on Imports	33
4. Standards	33
5. Dialogue	33
6. Agricultural Equipment	34
AUTOS	34
1. Investment	34
2. Clean Energy Vehicles	34
3. Automotive Emissions Standards	35
4. Automotive Financing	35
5. Government Procurement	35
BANKING AND NONBANKING FINANCIAL SERVICES	35
CHEMICALS	36
1. Chloroform Import	36
2. Soda Ash	36
3. Coal	36
4. AgroChemical IP	36
5. Electronic customs declaration	37
6. Authorized Economic Operator	37
CIVIL AVIATION	37
ELECTRONIC PAYMENTS SERVICES	37

ENERGY/ENVIRONMENT	38
1. National treatment.....	38
2. Standards	39
3. Bidding criteria	39
4. Regulatory transparency	39
5. Equity and other restrictions	39
6. Oil and gas	40
8. Heavy Duty Commercial Emission Enforcement and Fuel Economy	40
EXPRESS DELIVERY SERVICES (EDS).....	41
1. Customs and Trade.....	41
2. Logistics.....	42
3. Aviation.....	43
INSURANCE, PENSIONS, AND ASSET MANAGEMENT.....	43
1. Equity Restrictions on Foreign Investment.....	43
2. Online Insurance Distribution.....	43
3. Branches, Subsidiaries	44
4. Liability Insurance	44
5. Enterprise Annuities (EA).....	45
6. Insurance Brokerage.....	45
7. Investment of Assets	45
8. Remuneration	45
MEDIA/ENTERTAINMENT/ACADEMIC JOURNALS	46
1. Filmed Entertainment	46
2. Sound Recordings.....	46
3. Cable Television.....	47
4. Academic Journals.....	47
MEDICAL TECHNOLOGY/HEALTH CARE	48
1. Market-Based Health Care Reform.....	48
2. Clinical Trial Approval Processes and Local Participant Requirements.....	49
3. Conformity Assessment, Certification and Licensing Requirements.....	50
RETAIL AND DIRECT SALES	50
1. Retail and E-Commerce.....	50
2. Direct Sales	51
SOFTWARE	51
1. Software Legalization.....	51
2. Copyright, Criminal and Patent Law Reform.....	52
3. Trade Secrets	53
4. Market Access	53
TAX	54
TELECOMMUNICATION SERVICES	55
1. Value-Added Telecom Services Licenses	55
2. High Capitalization Requirements	55
3. Joint Venture Partnership Requirement	55
4. Independent and Impartial Regulator with Transparent Procedures.....	55
5. Draft Telecom Law	56

INTRODUCTION

On behalf of the U.S. Chamber of Commerce and our members, we are pleased to share our priorities for the 2015 meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT) in the attached written submission and to support your annual process of assessing China's WTO compliance. The submission reflects extensive input from across our membership, and we hope it will be useful as you advance your preparations. We appreciate deeply the U.S. government's significant efforts and year-round work, led by the Department of Commerce and the Office of the United States Trade Representative (USTR), to advocate on behalf of U.S. business interests with China via the JCCT and other high-level bilateral, plurilateral, and multilateral dialogues.

U.S. industry continues to see significant economic opportunity in China—even as 2015 has been a challenging year in terms of revenue and profit growth. China is a \$590 billion market for American companies—and should be more.¹ Meanwhile, China exported nearly \$470 billion to the United States in 2014. According to the American Chamber of Commerce's 2015 *Business Climate Survey*, the majority of U.S. companies² anticipate profit growth this year, and China remains among the top three investment destinations for global operations³. The U.S. Chamber appreciates that China is undergoing a difficult economic transition, working to manage economic growth expectations, and emphasizing a new normal based on a shift to consumption, services, and more sustainable development.

In this transitory period, we note that there has been some progress on certain outstanding issues over the last year for our members, including the State Council's April decision that could open the bank-card clearing business to both domestic and foreign investors. We hope this will allow qualified foreign electronic payments firms to set up bank card-clearing operations in the very near future.

The U.S. Chamber also notes the China's Banking Regulatory Commission's (CBRC) decision in April to temporarily suspend the *Implementing Guidelines for Promoting the Application of Secure and Controllable Information Technology in the Banking Sector* (Banking Implementing Guidelines). If implemented, these guidelines would dramatically curtail market opportunities for U.S. Chamber information communications technology (ICT) members, create severe compliance challenges of our U.S. financial services companies, and make the Chinese financial system less, not more secure. It is essential that both governments ensure that U.S. companies are not disadvantaged—through procurement discrimination or IP transfer requirements—by Chinese regulations that use “secure and controllable” standards for Internet and ICT products, solutions, and services in the context of commercial procurement across industry sectors. The U.S. Chamber welcomes China's commitment at the S&ED, re-affirmed and broadened during President Xi's State Visit, to ensure

¹ This includes exports from U.S.-based companies and sales by China-based affiliates of U.S. companies in 2013, the most recent year data is available.

² In the 2015 AmCham China Business Climate Survey, 61% of survey respondents forecast this year's revenue of their China operations would exceed last year's revenue.

³ In the 2015 AmCham China Business Climate Survey, 44% of respondents ranked China as a top-three investment priority, 27% ranked China as one among many destinations, 19% ranked China as a first priority, and 10% ranked China as not a high priority.

that bank ICT regulations will be nondiscriminatory, are not to impose nationality-based requirements, and are to be developed transparently. We note as well that Chinese regulators have indicated plans to issue in early 2016 revised Implementing Guidelines and are actively soliciting input from U.S. industry. The U.S. Chamber appreciates this opportunity to provide input, and we look forward to working with Chinese regulators and like-minded business organizations to ensure that U.S. companies are not disadvantaged by final Implementing Guidelines and related cybersecurity measures governing commercial procurement.

The 2014 JCCT also produced significant outcomes in a number of areas of importance to our membership on which we hope the 2015 JCCT can build. As always, much depends on how the commitments are implemented on the ground, and continued vigilance is key. In particular, we appreciate the efforts of the U.S. government at the 2015 S&ED and during President Xi's State Visit to build upon past innovation-related commitments, including in the areas of technology transfer, IPR and cyber-enabled theft of commercial secrets, and antitrust enforcement. Important commitments in 2014 included:

- **Technology Localization Requirements:** At the 2014 JCCT, China committed to “treat IPRs owned or developed in other countries the same as domestically owned or developed intellectual property rights. Enterprises are free to base technology transfer decisions on business and market considerations, and are free to independently negotiate and decide whether and under what circumstances to assign or license intellectual property rights to affiliated or unaffiliated enterprises.”
- **Trade Secrets:** In the 2014 JCCT, China committed that “trade secrets submitted to the government in administrative or regulatory proceedings are to be protected from improper disclosure to the public and only disclosed to government officials in connection with their official duties in accordance with law.” China also agreed to study how to “optimize . . . relevant administrative and regulatory procedures . . . including by strengthening confidentiality protection measures, limiting the scope of government personnel having access to trade secrets, limiting the information required from companies to include only information reasonably necessary for satisfying regulatory purposes, and stipulating that any requirements on government agencies to publicly disclose information appropriately allow for the withholding of trade secrets.” These commitments presented a further development beyond what was agreed to in the July 2014 Strategic and Economic Dialogue (S&ED).
- **Anti-Monopoly Law (AML):** The U.S. Chamber last year voiced concern that China's enforcement of the AML—China's first comprehensive competition law—functions as a market access barrier. The industries affected by China's enforcement of the AML include high-tech, agriculture, mining, medical devices, pharmaceuticals and automobiles, among others. Through the 2014 JCCT, China made important commitments which, in principle, can ease foreign industry concerns:
 - *Access to Counsel:* China committed to allow local counsel to participate in meetings with AML enforcement agencies (AMEAs) without restrictions. In addition, China committed to allow qualified international counsel to participate subject to approval

by the relevant AMEA, “which shall be granted as normal practice.”

- *More Transparent Penalty Procedures:* China committed that before imposing penalties, AMEAs will “notify the parties of the facts, grounds, and basis according to which the administrative penalties are to be decided, notify the parties of the rights that they enjoy in accordance with the law, and provide the parties with the right to state their cases and to defend themselves.” In addition, China committed that all penalty decisions “will be provided in writing to the party and include the facts, reasons, and evidence on which the decision is based.”
- *Competition-Oriented Remedies:* China committed that AML remedies would “address the harm to competition” rather than “impose enforcement measures designed to promote individual competitors or industries.”

Notwithstanding these commitments and opportunities to improve the quality of bilateral engagement on select issues of importance to our members, serious challenges remain and the overall operating and regulatory environments for our members have grown more difficult in 2015. Our members continue to have significant concerns in the areas of market access and barriers to investment, industrial policy, intellectual property protection and enforcement and cyber-enabled theft of commercial secrets, opaque rules and regulatory practices including AML enforcement, and the overall development and respect for the rule of law. In the area of AML enforcement, for example, the U.S. Chamber, together with the American Chamber of Commerce in China, appreciated the recent opportunity to respond to a National Development and Reform Commission (NDRC) Questionnaire on IPR Abuse in anticipation of NDRC issuing new IPR Abuse Guidelines early in 2016. The U.S. Chamber will continue to monitor closely China’s approach to developing and implementing new IPR Abuse Guidelines to ensure that the legitimate IPRs of our members is appropriately protected and that China “avoids the enforcement of competition law to pursue industrial policy goals.”⁴ Cross-cutting and industry-specific concerns in these areas are detailed in this year’s submission.

In addition, concerns are intensifying in key areas, and new concerns have emerged, on which we encourage the U.S. government to focus at this year’s JCCT and other ongoing dialogues:

National Security Overreach: Beyond the banking measures, China has allowed heightened national security concerns to negatively impact its approach to policies that should be driven by market forces. Namely, the above-mentioned Banking Regulations and the National Security Law, could impose sweeping indigenous production and control burdens on ICT products based on “cybersecurity” justifications. We also have serious concerns about China’s overly broad definition of national security, with the inclusion of economic security criteria as part of China’s definition of what constitutes national security in the recent *Trial Measures for the National Security Review of Foreign Investment in China’s Pilot Free Trade Zones and Revised Free Trade Zone Negative List*. The U.S. Chamber welcomes the

⁴ White House 2015, *U.S.-China Economic Relations Fact Sheet*, September 25, 2015, <<https://www.whitehouse.gov/the-press-office/2015/09/25/fact-sheet-us-china-economic-relations>>

commitment announced during President Xi's recent visit that China will limit the scope of national security reviews of foreign investments to national security concerns, and will not generalize the scope to include economic or public interest issues. We note, however, that the ultimate measure of this commitment will rest on changes to existing and future Chinese laws and regulations, including but not limited to the draft Foreign Investment Law, that contain a broad, comprehensive definition of national security

Rule of Law and Selective Transparency: The U.S. Chamber observes the importance that China is attaching to legal reform under the 4th Plenum. We also continue to monitor the positive trend of increasing transparency among certain PRC government bodies in releasing draft laws, administrative regulations, departmental rules, and normative documents for public comment. Further, the Chamber is optimistic about the establishment of the three IP courts in an effort to provide more expert and more efficient attention to cases related to IPR.

At the same time, we continue to witness significant examples of normative documents, with a substantial impact on foreign trade and investment that are not circulated for notice and public comment while in draft form. For example, the CBRC not only did not provide an opportunity for public comment, but it did not make the Banking Guidelines publicly available. Similarly, the General Office of the State Council released pilot national security vetting rules for foreign investment and a new negative list for China's four trade zones without providing a public comment period. The Chamber encourages both governments to continue to focus on transparency in rulemaking and enforcement in the JCCT. We also encourage the U.S. government to press China to adhere to domestic, bilateral, and multilateral commitments it has made to release all administrative regulations and departmental rules for a public comment period no less than 30 days. Further, the U.S. government should work to secure a commitment from China to expand requirements for public comment to normative documents. This is particularly important in the context of indicative planning and direction of the economy that is characteristic of China's system for managing its economy.

Transparency in rulemaking not only provides the best avenue to mitigate adverse impacts of regulation on the economy and commerce, but also addresses trade and investment concerns before they metastasize into disputes. A more open and inclusive policy making environment leads to a more predictable regulatory environment and increased compliance by domestic and foreign companies. It also increases accountability among Chinese policymakers, which is in line with stated goals in China's 4th Plenum last fall.

In March China's national legislators adopted a revision to its Law on Legislation, delegating legislative power to 288 cities nationwide and underlining the principal of statutory taxation. Mandatory transparency rules in these revisions could make a real difference to the business environment in China, particularly if the revisions reach all measures impacting businesses and provide an adequate opportunity for public comment.

Beyond transparency, there are concerns about China's commitment to free competition and fair administration of the law. In the areas of antitrust, investment, standards setting, and

intellectual property regulation, where challenges persist, there remains a need for procedural fairness and equal treatment under the law. Even with commitments made during the President Xi Jinping's state visit, we remain concerned that China may be intent on continuing to employ administrative and judicial enforcement tools, like the AML, as tools of industrial policy. Consistent with multiple rounds of input from the U.S. Chamber to the U.S. government in support the BIT negotiations, we urge the U.S. government to continue to advance creative approaches in the negotiations—beyond the 2012 Model BIT—to address the unique challenges that U.S. investors face in China arising out of the unusual nature of China's economic, political, and legal systems.

We hope as well that the U.S. government can secure a commitment from the Chinese government that the provision of legal services not be included in China's negative list of industry sectors in the BIT negotiations, and that it will take near-term steps to ease market access restrictions for American law firms in China.

American law firms and lawyers have supported American companies in their efforts to capture market opportunities in China for four decades. Without American law firms in China, it would be far more difficult for American businesses to meet the substantial business challenges in that market. American law firms are key facilitators of American trade and investment in China. Despite this history, American law firms are severely restricted in practicing law in China, and no progress on these issues has been made since China's accession to the WTO. In fact, China has retreated to positions of even greater restrictions on American law firms.

Regulation of Foreign Chambers of Commerce under the Draft Foreign NGO Law:

The U.S. Chamber understands that China's new draft Foreign NGO Law is being considered in light of the greater reform agenda, and in conjunction with other laws on national security currently also under review. We are concerned, however, regarding the breadth and content of the draft law, as it has the potential to seriously disrupt the operations of a wide variety of organizations, including foreign-based chambers of commerce. Foreign-based chambers of commerce play an integral role in supporting the bilateral relationship by advising both governments on two-way commercial opportunities and policy challenges. American business is represented by many different organizations all of which would be adversely affected under the new draft law to the serious detriment of China's economic development and the interests of our members in their commercial engagements with China. We urge the U.S. government to raise our concerns with the Chinese government in the context of the 2015 JCCT, with the aim of ensuring that the important role of foreign-registered chambers of commerce, trade and professional associations, and other organizations engaged in activities relevant to business and economics are not restricted and disrupted under the proposed law.

The Chamber cites these issues because, in the view of our members, they represent significant areas of divergence in the regulatory approaches of the two governments and run counter to the market-opening aims of the ongoing U.S.-China bilateral investment treaty (BIT) negotiations.

The U.S. Chamber has long believed that the most decisive step both countries can take to deepen bilateral economic and commercial relations is to conclude negotiations on a high-standard BIT. A high-standard BIT should include rules preventing discrimination against companies on the basis of nationality; core internationally-recognized protections for investments and investors; protections for cross-border data flows for legitimate commerce; strong commitments that guarantee meaningful transparency, due process, and procedural fairness in administrative and judicial enforcement; rules against localization barriers to trade; effective arbitration of disputes; and a variety of other important commitments that will ensure a level playing field for U.S. companies competing in China's transitioning economy. The U.S. Chamber strongly supports Ambassador Froman's remarks in April that it is "important that the BIT address not only market access but also the kinds of actions that create an uneven playing field or undermine the rules-based system, such as unfair competition by SOEs, the discriminatory enforcement of key laws like China's competition law, and forced technology transfer or localization policies."

If China is willing to commit to significantly reduce its investment restrictions and further open its markets to American manufacturers, agriculture producers, and service providers, the opportunities for U.S. companies—and China's own economic reforms—would be significantly improved. The U.S. Chamber strongly supports efforts to achieve a high-standard, comprehensive BIT and urges the U.S. government to make conclusion of a BIT that embodies the above objectives a top priority for the remainder of its term.

The U.S. Chamber stands ready to support your efforts to address the policy concerns outlined in our submission. We look forward to working with you through the duration 2015 and to providing timely updates on our membership's JCCT policy priorities.

CROSS-SECTORAL ISSUES

INDIGENOUS INNOVATION & INDUSTRIAL POLICY

1. Competition Law

Intellectual Property Rights

- Secure a commitment from China that the NDRC will consult with and solicit input from foreign and domestic industry, academics, experts and other stakeholders regularly during the drafting process of the antitrust guidelines on intellectual property rights.
- Refrain from (i) compelling new licensing of intellectual property solely because its owner unconditionally refuses to grant a license to a third party that needs access to the intellectual property to innovate and/or compete; and (ii) requiring a business justification for a refusal to license when non-essential IP is involved. Recognize that these behaviors can discourage technology owners from deploying their newest and best technologies in China.

Transparency and Due Process

- Secure a commitment from China to revise its regulations and accelerate its judicial reforms in order to increase the transparency of its decision-making process in Anti-Monopoly Law (AML) cases.
- Secure a commitment from China to provide additional guidance regarding the required content of notifications so that more notifications will be complete and accepted when initially filed.
- Secure a commitment from China to implement a fair and transparent procedure when conducting its national security review of mergers and acquisitions by foreign investors.
- Advocate for China to improve the coordination of competition concerns among various agencies with the goal of producing consistent approaches and to be more transparent with parties appearing before its competition agencies about the identity of the agencies expressing them.
- Discuss why it would be in China's strategic interests for MOFCOM to join the International Competition Network and advocate for MOFCOM to do so.
- Encourage China to enable MOFCOM to collaborate more deeply and substantively with competition regulators in other major jurisdictions on M&A cases requiring multi-jurisdictional approvals, including through the remedy phase.

2. Indigenous Innovation Policies and Product Lists

- Regarding the China Banking and Regulatory Commission's Banking Regulations, secure a commitment from China to implement a prudential regulatory framework which reflects internationally-accepted principles and mechanisms to mitigate cyber intrusion risks, and to allow appropriate industry-level benchmarking, in order to avoid the pitfalls associated with mandating prescriptive mechanisms of technology and cybersecurity standard-setting.
- Secure a commitment from China to remove "secure and controllable" requirements from the draft National Security Law and other related measures. Underscore the fact that a product's security is not determined by where it is made, but rather by incorporating the

latest technology, which is constantly changing and reacting to dynamic threats that always emerge. Mandating technology purchases based upon a product's geographic place of origin means that threats will only be addressed in a static environment and not subject to the latest developments.

- Underscore the lack of transparency in the Strategic Emerging Industries (SEI) Initiative. China should immediately make publicly available all the plans and accompanying rules and regulations.
- Seek clarification from China about the integrated circuit (IC) superfund and what measures will be taken to ensure a level-playing field is still available to the foreign business community.
- At the JCCT, the Chamber would like to see China modify the High- and New-Technology Enterprise (HNTE) program such that it:
 - eliminates the current HNTE requirement to own proprietary core technology in China and replace it with criteria that emphasize usage rights;
 - expands the criteria of the licensing conditions to include non-exclusive licensee or usage rights; and
 - reduces the amount of sensitive information that companies must release when they submit an application, limiting it to that which is truly necessary to evaluate a company's high- and new- technology activities, and provides more explicit assurances that this information will be adequately protected.
- Secure a commitment from China that it will repeal remaining policies that provide preferences for domestic products or indigenous IP.

3. Public Procurement

WTO Government Procurement Agreement (GPA)

- In light of China's revised offer to the GPA in December 2014 and China's comments at the February 2015 Committee on Government Procurement that it is unwilling to add any entities to Annexes 1-3 to their offer, secure a commitment from China to reconsider its position and make additional changes to their offer covering additional entities, lowering thresholds and adding more provinces.
- Secure a schedule for regular technical discussions between the U.S. and China on GPA accession with a view towards China acceding to the GPA in 2015. Create opportunities for private sector participation in these discussions.

China's Domestic Government Procurement and Tendering & Bidding Laws

- Secure a commitment from China to revise China's Tendering and Bidding Law regime to be consistent with the Government Procurement Law so that "public works projects" are treated the same as other government procurement items and that public procurement under the Tendering and Bidding Law is open, transparent and completely free of government requirements to transfer technology or know-how. The Chamber was encouraged by China's recognition in the 2012 JCCT that some Chinese government procurement projects are for public service and that some enterprises, including state-owned enterprises (SOEs), procure in the public interest. We hope this recognition will ease the path to revision of the Tendering and Bidding Law.

- Ensure foreign-invested enterprises have equal access to information at the start of a bidding process, that there is transparency and fair evaluation during the tendering process, and that there is efficient and meaningful remediation to raise objections in cases of perceived irregularities.
- Secure a commitment from China to assign an agency to review any potential violations of China's commitment to refrain from discriminatory policies relating to government procurement preferences in pricing and product evaluation.

4. Standards and Licensing

- Secure a commitment from China to (i) align Chinese standards—including national, industrial, and provincial standards—with international standards, and (ii) base Chinese standards and regulations on international standards wherever practical. China should only deviate from international standards to achieve legitimate objectives, such as to protect consumer safety, the environment, health, or national security, which are adequately explained and narrowly drawn. The Chamber was encouraged by the March 2015 release of the State Council Standardization Reform Plan stating its intention to promote industry-driven consortia standardization and to increase the international level of China standards. U.S. government should push for a more timely adaptation of the policy goals stated in the Plan.
- Secure a commitment from China to allow foreign companies access to and voting rights in Chinese standards setting bodies on par with Chinese companies, and ensure that there is no “presumption of participation” in Chinese standards setting laws, rules or administrative regulations that would allow a Chinese standards body to adopt or implement the intellectual property of a foreign company into a Chinese standard on non-market or royalty-free terms.
- In light of the Office of the State Commercial Cryptography Administration’s (OSCCA) decision to revise the 1999 regulations, secure a commitment from China to provide a fair and transparent process for commercial encryption whereby China abides by its WTO commitments to adopt global market based technical standards on a non-discriminatory basis.
- Secure a commitment from China to create a unified channel for making draft versions of all mandatory standards (national, industrial, etc.) and technical requirements available to domestic, foreign-invested, and foreign-based companies for comment at least two months prior to its adoption along with opening all domestic standards development organizations to foreign voting participation.
 - In 2013, the Standardization Administration of China (SAC) announced a plan to streamline and reduce the number of mandatory industry standards. China should use this opportunity to eliminate national standards where an international standard already exists and continue to remove outdated standards that no longer apply.
- Secure commitments from China to agree not to interfere in licensing negotiations between standards implementers and the owners of “essential” patents or other IPRs in the standard, per its 2004 JCCT commitment that has not been followed,⁵ and agree not to adopt policies

⁵ China committed at the 2004 JCCT to remove PRC regulators from negotiations regarding payment terms with relevant IPR holders.

that would have an effect similar to direct interference in licensing negotiations. Furthermore, this topic should be included in the intensive discussions agreed to as part of the 2014 JCCT commitment to continue engaging in discussion on these issues.

- Allow foreign and Chinese companies to enter into intellectual property licensing arrangements freely and without government involvement.

5. Conformity Assessment and Certification Redundancy

- Secure a commitment from China to refrain from categorizing a standard as “voluntary” in the instance where it is actually a mandatory requirement for conformity assessment programs. By doing it in this manner, China bypasses the need to identify the WTO Technical Barriers to Trade (TBT) process.
- Institute new and meaningful safeguards, in consultation with the U.S. government and industry, to prevent coerced disclosure of unnecessary proprietary information as a condition of market access under compulsory certification regimes.
- The Chamber recognizes the Certification and Accreditation Administration of China (CNCA) for accrediting three foreign-invested testing labs for various product categories under electrical appliances (CNCA-01C-016) and A/V equipment (CNCA-01C-017) to the list of all CCC certification bodies and testing labs in July of 2014. This is a step forward since the 2012 JCCT commitment from China to open the CCC testing market to foreign-invested testing labs.
- Secure a commitment from China to streamline type approval (TA) of wireless communications and telecom equipment into a single process, as committed in WTO accession.
- Secure a commitment from China to engage the U.S. in negotiations on a mutual recognition agreement (MRA).
- Secure a commitment from China to only require the minimum amount of information necessary to show conformance and take the measures necessary to adequately protect any confidential business information it receives.
- Secure a commitment from China to avoid onerous and/or discriminatory testing and certification standards for commercial encryption.
- Ensure that China implements its 2006, 2009, and 2010 JCCT commitments to maintain a policy of technology neutrality towards 3G/4G and other telecom standards by allowing operators and end users to adopt technology freely and based upon market principles.
- In light of China’s May 2015 draft of the “Management Methods for the Restriction of the Use of Hazardous Substances in Electrical and Electronic Products,” seek clarification that the voluntary China RoHS testing regime remains voluntary and is implemented based on a self-declaration of compliance by importers and sellers of those products included in the RoHS product scope. RoHS compliance should not require on-site factory inspections or the disclosure of companies’ proprietary information, including material make-up of components as well as the identity of suppliers.
- Recommend China join the APEC Pathfinder for Remanufacturing, alongside most other countries in the region, ensuring that remanufactured products follow the same technical standards as original new products. As such, China would allow the free flow of cores and remanufactured finished goods (RFG) across borders.

6. Cyber Security Initiatives

- Secure a commitment from China to remove all indigenous IPR and information security import, sale and usage restrictions for widely available information security technology and services that are used in the general commercial market including SOEs and non-sensitive government procurement (e.g. Multi-Level Protection System [MLPS] regime and a requirement to use the ZUC algorithm for 4G LTE equipment).
 - China has yet to reveal a form plan to remove the onerous MLPS requirements. The U.S. government should insist that China remove requirements for domestic IP at Level 3 and above for commercial systems along with mandatory product testing in government-owned or affiliated labs. It should also guide China towards adopting internationally accepted best practices and global standards such as Common Criteria.
 - The U.S. and China should arrange a technical exchange on MLPS. U.S. industry would welcome the opportunity to provide input in this planning process.
 - Building off China's 2013 JCCT commitment to not require applicants to divulge the source code or other sensitive business information in order to comply with ZUC provisions, the U.S. government should continue to press China on the importance of not implementing onerous testing and certification requirements for encryption technology and standards that require a review of source code, low/high level design, and other sensitive business confidential IP.
- Secure a commitment from China to:
 - Adopt international standards for information security certification;
 - Apply international norms to those parts of the market where products must carry a certification to be used or purchased;
 - Not require the transfer of protected information to the government to obtain any certification by allowing third-party internationally accredited laboratories to operate in China;
 - Adopt globally accepted norms and best practices in the area of cyber security policy and remove requirements for domestic IP at Level-3 and above systems and mandatory product testing in government affiliated laboratories; and
 - Carry out transparent and robust dialogue with all industry stakeholders – both foreign and Chinese – regarding any new or revised measures for the protection of critical information infrastructure.
- Secure a commitment from China that the National Security Review Commission (NSRC) provides more details about its role, specifically with regard to market access.

7. State-Owned Enterprises and Subsidies

- Notwithstanding China's recent announcement regarding SOE reform, utilize the JCCT dialogue on SOEs to continue to work toward new principles, criteria, and classification measures that would clarify the independence of SOEs from the direction and support of the Chinese government and the Communist Party, thereby facilitating increased Chinese investment by SOEs in the United States.

- Seek public clarification from China at the JCCT on SOEs and the precise meaning and scope of its July 2014 S&ED commitment “to ensure that enterprises of all forms of ownership have equal access to inputs...and to develop a market-based mechanism for determining the prices of those inputs.”
 - Encourage China to allow private sector input as it considers this new mechanism.
- Secure a commitment from China to comply fully with its existing international obligations to notify the WTO, in a WTO-authorized language, of all subsidies and industrial policies, including those under the 12th Five-Year Plan and at the provincial and local levels, that impact trade and investment by the end of 2015.
- Utilize the JCCT dialogue on state-owned enterprises (SOEs) to improve understanding of the role of SOEs in international trade and investment and how they benefit from subsidies, regulatory preferences and export credits under the 12th Five-Year Plan, strategic emerging industry initiatives, and other policies.
- Negotiate new agreements with China that address SOE-related challenges that can address export and investment challenges. Given that many of China’s SOEs appear to not operate solely as commercial entities, ensure that any future investment agreements with China address concerns over the noncommercial nature of SOEs.
- Coordinate with the S&ED effort on regulatory issues arising from China’s SOEs as they list assets, since many of the issues are also relevant to the trade agenda.

8. Trade Remedies

- Secure a commitment from China that use of its trade remedy laws will be governed by facts; meet transparency requirements consistent with other major jurisdictions internationally insulated from political pressures, including retaliatory purposes; and adjudicated in a manner consistent with WTO rules.

INTELLECTUAL PROPERTY

1. Enforcement of IPR

The following recommendations for China’s enforcement system would contribute to better overall compliance with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) obligations (e.g., Article 61), with the goal of reducing IP violations and correspondingly increasing legitimate sales.

- Leading Group: Ensure that the State Council Leading Group on Combating IPR Infringement and Sales of Counterfeit Goods, and its permanent office in MOFCOM, collaborate with the US government and the private sector on programs to improve enforcement of IPR, including the protection of trade secrets, copyrights, and restrictions on the use of compulsory licensing.
- Criminal Enforcement: Eliminate value-based thresholds laid out in the Supreme People’s Court 2004 judicial interpretation that counterfeit and pirated goods must meet to qualify for criminal prosecution and replace them with the WTO-consistent deterrent of criminal

penalties in cases of commercial-scale infringement – in line with China’s 2012 S&ED commitment.

- Evidence Preservation: Advocate for China to strengthen rules related to evidence preservation orders and provide more severe civil sanctions against those who breach court orders, hide or destroy evidence, or repeatedly infringe.
- Injunctive Relief: Increase effectiveness of civil remedies by providing for more effective injunctive relief by successful claimants. To note, China’s Supreme Peoples’ court recently released a draft of the Judicial Interpretation on the Application of Laws in Trial of Behavior Preservation Cases Involving Intellectual Property and Competition Disputes which provides for more effective preliminary injunctive relief during the pendency of a case. Our comments on the draft legislation include modifications to the current draft. In addition, it is important that China enforces injunctive orders obtained in an international arbitration forum preventing disclosure or use of the IP.
- Investigations and Penalties: Secure a commitment from China to explore new ways to strengthen the investigation and penalty powers of administrative enforcement authorities, for piracy, counterfeit and trade secret theft, with appropriate safeguards, such as a court-supervised discovery process, imposing statutory minimum fines, raising or eliminating the statutory maximum on fines, and encouraging enforcement officials to levy larger fines to serve as a deterrent. Such changes could later be implemented through amendments to the Trademark Law, Anti-unfair Competition Law (for trade secrets, as well) and Copyright Law.
- Patent Administrative Enforcement: As mentioned in our comments on the draft Fourth Amendment to the Patent Law, while we appreciate the Chinese government’s heightened attention to patent enforcement, China should not vest the administrative bodies in the patent area with investigative responsibility on patentability and allow them to impose fines and punitive damages, due to the complexities of patent disputes and the adequacy of judicial sanctions.
- Raise Penalties: Increase the effective level of penalties for IPR infringement – both judicial damages and administrative penalties – by instituting statutory minimums and raising or eliminating the statutory maximums on fines and damages for IPR infringement, and by encouraging enforcement authorities to levy larger fines that will serve as more effective deterrents. Revise existing standards for calculating the value of infringing goods so that standards are based on the market value of the infringed goods (i.e. what the original goods would sell for in the same marketplace).
- Increase resources for IPR enforcement personnel at all levels, including enforcement officials and IPR regulators and judges. In particular, increase resources and authority for local public security bureaus, industry and commerce administrations, and local copyright bureaus to proactively tackle counterfeiting, piracy, and other IPR infringement, including online sites and services, mobile networks and apps that intentionally facilitate infringement. Establish benchmarks for IP protection in regular performance evaluation of government officials.
- Increase monitoring and enforcement investigations of Internet sales and distribution platforms for counterfeiting and piracy, and provide regular reporting of enforcement activity. Ensure that efforts to boost enforcement balance the needs of legitimate IPR holders and responsible Internet intermediaries.

- Strengthen the legal framework for enforcement of IPR online, including by drafting new regulations relevant to Internet-related trademarks and copyrights. Ensure that these laws and regulations balance the needs of legitimate IPR holders and responsible Internet intermediaries.
- Ensure implementation of the Supreme People's Court Judicial Interpretation Relating to Infringement of the Right to Network Dissemination throughout China and provide during implementation that rights-holders may submit take-down requests based upon declaration of ownership (under penalty of perjury if necessary).
- Destruction of Equipment/Blue Prints and Drawing Specification: If the final appeal court upholds a decision to exclude products, mandate that infringing goods—and, provided that the equipment, blue prints or drawing specification was used exclusively to create the infringing goods or the equipment used to produce them, —be destroyed and not be permitted to re-enter the market under any circumstances. Blueprints or drawing specification should be returned to owner.
- Encourage PRC courts to accept petitions to enforce foreign court judgments related to IPR protection, and to issue court orders to enforce those judgments in greater numbers.
- Proof of Infringement: Allow and admit forms of evidence such as affidavits, brochures of infringers, and live testimonies to prove infringement in judicial proceedings and to provide the defendant a full opportunity to respond to the alleged acts of infringement.
- Training: Conduct regular, targeted, and continual professional training for IPR personnel—including IPR enforcement officials, judges, and patent and trademark examiners—on common IPR legal issues, including trademark oppositions, trademark cancellations, and patent invalidation to ensure reasonable, consistent, and accurate application of the law.
- 3-1 Court System: Some jurisdictions in China have been experimenting with what is called a 3-in-1 court system for IPR cases. These courts enable an IP tribunal with expertise on the issue to hear all civil, criminal and administrative cases on IP. This promotes consistency in enforcement decisions and may encourage adoption of more consistent procedures for IP cases across China. The U.S. should encourage the Supreme People's Court to continue to promote the implementation of 3-in-1 specialized IP courts in additional jurisdictions.
- Accountability and Transparency: Recently, China has made progress toward a more open and transparent enforcement system by announcing that administrative enforcement agencies should proactively disclose information regarding cases involving IP infringement and also begin to publish IP court decisions. The U.S. should encourage continued progress in this area through the expansion and implementation of recent initiatives to publicly release and publish IPR-related decisions, including administrative, civil, and judicial decisions and encourage publication through a unified, searchable channel that is updated on a regular basis.
- Communication: Continue efforts to strengthen communication links between IPR stakeholders—including between central and local-level government agencies, between government and Chinese IP owners, and between enforcement agencies and PRC legislators—to facilitate the exchange of experiences and best practices between IPR regulators at various levels and to promote more consistent IPR enforcement across regions and jurisdictions.

2. Trade Secrets

- Suggest State Council Leading Group on Combating IPR Infringement and Sales of Counterfeit Goods take the lead on working with US government and industry in both countries on developing and sharing best practices on protecting trade secrets and confidential business information.
- Improve the use of “expert panels” in the permitting process by 1) clearly defining and limiting the specific scope of authority and technical area under panel review; 2) allowing companies to reject experts with a competitive conflict of interest from sitting on the panel; and 3) requiring regular training of panel members on their responsibilities, including expectations regarding the scope of “necessary” information and for protecting confidential business information and trade secrets.
- Engage in follow up discussions across a variety of Chinese agencies to clarify and articulate what constitutes “necessary” information to be disclosed in the various permitting processes, focusing on what is essential for evaluation of the permit and/or administrative license.
- Given that many approvals have been delegated to the local level, designate an office/point-of-contact at the local level (either in the municipal government’s general office or at the working office of the local IP leading group if the municipality has one) from whom the company can seek clarification (or appeal) on questions related to what is “necessary” to be disclosed for a permit and/or license.
- In line with the government’s goal to simplify and streamline administrative licensing processes, discourage government agencies from creating new licensing and permitting requirements that duplicate existing ones. In areas where duplication exists, such as between the SAWS’ Safety Assessment and the First Introduced Process, eliminate duplicative processes.
- China committed to “enforcement, transparency, and specialized IP courts.” The U.S. should encourage the Supreme People’s Court to include complex trade secret cases within the type of cases eligible for the cross-territorial jurisdiction and advocate for a broad definition of “technical trade secrets” that are within the jurisdiction of the specialized IP courts.
- China committed to vigorously investigating and prosecuting trade secret theft cases and ensuring that civil and criminal cases are tried and the judgments are published according to law. The U.S. should advocate for the development of more robust discovery procedures related to infringement and damages, with appropriate judicial oversight and protections of confidential information. The U.S. should also support training on trade secret cases for judges and court staff.
- China has also indicated it is developing a “blacklist,” or social credit system to hold individuals and entities accountable. Currently, [they] are promoting construction of the enterprise credit file data exchange platform. Information related to administrative penalty cases disclosed in various regions will be gathered after construction of such platform, and the disclosed information will be integrated and used to serve society. It may be appropriate for the U.S. to engage China in a roundtable discussion to share knowledge and best practices on such credit systems and discuss how this platform could be most effective at combating trade secret and other IP infringement.
- Encourage more consistent IPR and trade secret enforcement across regions and jurisdictions by providing clearer guidance and fostering increased communication between

central- and local-level government agencies, including greater information sharing and dialogue between provincial and local IPR regulators to share experiences and best practices.

- Encourage publication of a judicial interpretation (JI) on civil trade secret protection to provide greater transparency to users of the court system, establish consistent application of current laws as well as assist courts in keeping a trade secret owner's sensitive information confidential.
- Amend the Criminal Code to unequivocally discourage the theft of trade secrets.

3. Copyright

- Media Box/Set Top Box (STB)/Over-The-Top (OTT) Box Piracy: Request China's Leading Group to take a firm stand against this type of infringing activity and take steps to eradicate the problem. The manufacture, distribution, and use of these devices facilitate massive infringement. These devices are generally manufactured in China and exported to overseas markets, particularly throughout Asia. These devices are often manufactured or promoted and advertised to enable infringement of copyright or other illegal activities. Chief among these are: 1) enabling users to decrypt without authorization encrypted pay television programming; 2) facilitating easy access to remote online sources of unauthorized entertainment content including music, music videos, karaoke, movies, games, published materials and TV dramas; and 3) permitting storage of unauthorized content, including the ability of manufacturers to pre-load devices with hundreds of high definition (HD) motion pictures prior to shipment, allowing vendors to load content upon import and prior to sale or as an "after sale" service, or allowing users to employ direct download sites or torrents to download materials onto the devices.
- Copyright Law Amendments: The U.S. Chamber submitted comments on China's latest copyright revisions
- Peer to Peer Systems: Work actively with all responsible stakeholders to develop a plan to address copyright infringement through peer-to-peer systems, including measures to deter repeated acts of infringement.
- Evidentiary Standards: Reduce unreasonably high evidentiary standards and allow and admit other forms of evidence (such as affidavits, brochures of infringers, and live testimonies) besides documentary evidence to prove infringement and ownership of intellectual property in judicial proceedings, including those dealing with copyright and with trade secrets.
- Increase Resources: Urge the Chinese government to commit to expand resources at the National Copyright Administration of China (NCAC), local Copyright Administrations, and Law and Cultural Enforcement Administrations (LCEAs), commensurate with the scale of the piracy problem.
- Hold Government Accountable: Follow through with respect to China's commitment to implement mechanisms, including transparent performance indicators, to hold local government officials responsible for effectively enforcing IP violations, including the Internet and mobile piracy and the unlicensed use of software by enterprises.
- Live Sports Event Broadcast and Non-Interactive Streaming: Provide clarification that live sports event broadcast and non-interactive streaming are forms of creativity protected by the Copyright Law and can be protected without revision to the copyright law under Article 3(9) where copyright protection is provided to "other works as provided for in laws and administrative regulations."

- We propose that the appropriate authority issue a regulation making clear that live television broadcasts are copyrightable works in China. This would provide the needed legal protection to prevent pirated Internet retransmissions of valuable live broadcasts.
- The protection of all audiovisual works is clearly envisioned by the publicly released draft of the amendments to the Copyright Act and is also necessary if China plans to implement the Beijing Treaty on Audiovisual Performances.
- Online Infringement: Run a new campaign and impose maximum administrative penalties on Internet infringers; increase resources to agencies to revoke business licenses and halt online services by enterprises whose business is primarily focused on providing access to infringing materials and shut down websites that engage in such activities; implement a framework for the forwarding of infringing notices by ISPs to subscribers identified as distributing infringing content using peer-to-peer systems, including measures to deter repeated acts of infringement; and encourage the use of cutting-edge technologies to identify online infringement.
- Combating Unauthorized Camcording: Urge the Chinese government to make it a unlawful to use, or attempt to use an audiovisual recording device to make or transmit a copy of a cinematographic work or other audiovisual work, or any part thereof, from a performance of such work in an exhibition facility; and implement watermarking in theatrical prints and ensure that the Chinese government and those involved in the value chain for theatrical distribution step up efforts to deter illegal camcording.
- Broadcast Royalties: Immediately commence bilateral consultations into the non-payment of royalties for broadcasts of works from the period 2001-2009, and seek commitments to increase royalties in commercially relevant increments royalty payments to be made going forward.
- Voluntary Government-Backed Online Copyright Bulletin Boards: Enhance “pre-release” administrative enforcement for motion pictures, sound recordings, and other works, e.g., by establishing voluntary government-backed online copyright bulletin boards.
- Establish Authority to Track Cases: Seek a commitment by the Chinese government to establish a central authority responsible for compiling statistics of ongoing and completed civil, administrative, or criminal enforcement actions and cases involving copyright infringement; and provide those statistics to the U.S. government and affected stakeholders.
- Inadequate Staffing Permitted Within Foreign Right Holder Associations: Urge the Chinese government to allow foreign right holder associations to increase staff and conduct anti-piracy investigations.
- Criminalization of Key Copyright Offenses: The Chinese government should commit to lower the threshold for criminal enforcement actions to be taken against infringers, including Internet infringers, and including infringements undertaken for purposes other than commercial gain. China should also criminalize:
 - *unauthorized use of software* by enterprises. China recognizes that the “for profit” requirement for criminal prosecution fails to recognize the significant value of copyrights, adds to the vulnerability of copyright works in the digital era - constraining enforcement efforts in China to deal with many types of blatant piracy such as hard disk loading of software and uploading to file-sharing sites;
 - *hard disk loading* of software or other copyright materials, including third party confidential information;

- *internet piracy* including the communication to the public or the making available of any work/related right; and
- *circumvention of technological protection measures*, trafficking in circumvention technologies and providing circumvention services.
- Concurrent “Civil Claim” to a Criminal Prosecution: Urge the Chinese government to commit to allow right holders as victims to file collateral civil claims for compensation during the trial of criminal IPR cases.
- Copyright Law Revisions: Among the many opportunities for improvement to the substantive coverage of the Copyright Law, the term of protection accorded to copyrighted works ought to be extended in accordance with the growing international standard. It is also critical that improvements to the Copyright Law facilitate civil and criminal enforcement, including clearly establishing in the Copyright Law that unlicensed software use is an infringement of the right of reproduction (whether the unauthorized copy is a permanent or temporary reproduction), clarifying that enterprise use of unlicensed software and Hard-Disk Loading (HDL) may be subject to criminal penalties, strengthening rules related to evidence preservation orders, increasing statutory damages for copyright infringement, and providing for criminal liability for circumvention of technological protection measures (TPMs) as well as production and distribution of tools and methods to circumvent TPMs.

Lastly, we would advise against the requirement in the Copyright Law to regulate the awards provided for developers.

4. Trademark and Counterfeiting

- Trademark Law: Ensure effective implementation of the new trademark law, particularly measures relating to bad faith filings, destruction of goods and equipment used in counterfeiting, tougher penalties and enforcement measures, contributory liability, and streamlining the registration process.
- Physical Markets: Continue to press for greater dialogue and cooperation in dealing with hot-spot markets – such as the Silk Street Market in Beijing as well as markets in Yiwu and Shenzhen – many of which are engaged in wholesale, as well as retail trade.
- Online Counterfeiting: As Beijing courts have done with the Silk Street market—a physical market—Chinese courts should impose clear duties on online markets (particularly Taobao) regarding intermediary liability. Clear duties regarding a deemed knowledge standard for online markets will lead to a prevention of repeat offences.
- Advocate for a substantial increase in the number of referrals of cases – large and small – to authorities in Guangzhou, one of the primary locations where online traders in fakes are located.
- Fully implement State Administration for Industry and Commerce (SAIC) Order 49 to promote the registration of complete and accurate details of the identities of online traders and the linking of counterfeiting data to corporate registration records, particularly at the provincial level. Most importantly, Order 49 should be implemented to fulfill its promise as a tool to facilitate the deletion of counterfeit material online upon a notice from the brand owner.

- In implementation of the Supreme People's Court Judicial Interpretation relating to Infringement of the Right to Network Dissemination, allow rights holders to make take down requests based upon declaration of ownership (under penalty of perjury if necessary).
- State-Promoted Counterfeits: Counterfeits and infringing goods on Alibaba networks claim association with the Fujian Government. If this is true, the Fujian Government has engaged in the official promotion of businesses on the Alibaba Network which are selling counterfeit and/or infringing products. We ask the U.S. government to address this practice with the Fujian government and other government officials. Reference to the Fujian government is providing credibility in the eyes of consumers to illegal products and damaging the brand integrity of U.S. businesses.
- Alibaba's Global Spread of Counterfeit Products: Alibaba and its platforms are undoubtable the largest source of online counterfeit products across a number of products and is fast-becoming the internet platform of choice in many countries around the world; for example, it is the leading platform of choice in Brazil. Aliexpress is expanding into the United States and offering translation services in multiple languages. There is no way that right holders have the resources individually to combat this global supply of counterfeits and no government has adequate resources to seize all small package infringing goods at the border. In addition, Alibaba's good faith takedown process is inadequate, does not follow global best practices and requires an unsupportable amount of resources from the right holders. Test buy program is nominal and there is not enough follow-up with PSB, AICs and Customs to find the source offender. This situation is untenable and requires immediate U.S. government engagement with its Chinese government. While Alibaba is not the only source of counterfeits online, the size and scope of the illegal product on its platforms must be dealt with.
- Enforcement: The Chamber underscores the need for more innovative measures to allocate responsibilities for individual counterfeiting cases and to promote cooperation between administrative authorities and the public security bureaus (PSBs) in the course of investigations.
- Pharmaceutical Counterfeiting: As China reviews changes to the intellectual property provisions in the Criminal Code and other enforcement reforms, underscore the need for clarification on how administrative authorities and the PSBs will allocate responsibility for investigations in the absence of formal numerical thresholds.
- Assess outcomes and develop best practices based on China's recent crackdown of illegal online drug sellers. Implement best practices as part of the National Drug Safety Strategy
- Like finished drugs, APIs must be strictly regulated in order to protect against adulteration or counterfeiting that may cause injury to or loss of human life. Although APIs may be considered drugs under China's Drug Administration Law (DAL) and registered in compliance with that law, some API manufacturers in China do not register their APIs with the Chinese regulatory authority (CFDA). These manufacturers are not required to produce APIs and bulk chemicals in accordance with relevant good manufacturing practices, creating significant quality and safety risks. In addition, it is difficult for foreign manufacturers to verify good manufacturing practice certifications where they do exist, and to track the APIs' movement throughout the supply chain.
- Ensure that China follows through on its commitment, made during the process of revising the DAL, to develop and seriously consider amendments to the DAL requiring regulatory

control of the manufacturers of bulk chemicals that can be used as active pharmaceutical ingredients (APIs), including “export only” producers and distributors.

- Continue to examine its authority to exclude from importation bulk chemical firms not registered with CFDA. China can also demonstrate its commitment to addressing these issues by participating in and making progress on the technical exchanges, trainings, and regulatory cooperation efforts as part of the JCCT Pharmaceutical Subgroup.

5. Patent Law & TRIPS-Compliant Compulsory Licensing

Utility Model Patents (UMPs)

- Secure a commitment from China to strengthen examination of utility model patents (UMPs) and to ensure that remedies for UMPs are not as substantial as for invention patents. Under the current Patent Law, the same damages are allowed for both invention and utility model patents. Because a utility model patent, by definition, should represent a lesser technical achievement than the invention patent, the penalty for infringing the utility model patent should also, by definition, be lower.
- While the draft Patent Examination Guidelines provided patent examiners the authority to assess novelty in their examination process, it did not require that the examiners assess the novelty of the patent. Without explicit direction in the patent examination guidelines, the examination process will be inconsistent and will still allow in some cases for low-value patents to enter the patent system. This examination could match that undergone by invention patent or could be a modified version of a full examination.
- The Chamber was concerned that the 2014 “Certain Provisions of the SPC on Issues Concerning Application of Law in Trying Cases Involving Patent Disputes” no longer requires a utility model or design patent owner to present the patent search report or the patent evaluation at the time of filing the lawsuit. Secure a commitment from China to develop a mechanism to deter frivolous lawsuits, especially from owners of utility model or design patents (e.g. require utility model or design patent owners to deposit a bond that is sufficient to compensate the accused infringer that wins in defense of an improperly brought lawsuit).
- Secure a commitment from China to reduce or eliminate government subsidies for UMPs and design patent filings and mandate substantive examination of these patents prior to initiating litigation. Further, UMPs and Invention Patents shall be subject to the same standards for patentability.

Services Invention Remuneration and Awards:

- Draft regulations released on April 1, 2015 by SIPO were greatly improved from the 2014 draft however we still have significant concerns. It contains provisions that link compensation for inventions to ambiguous and difficult to define market valuations, thereby introducing potential unlimited risk and cost for research and development undertaken in China.
 - Secure China’s commitment to conduct more extensive research before passage of any regulation in this field. Absent that commitment, secure an agreement from China to amend its Service Invention Regulations to clarify that a contract between

- the employer and the inventor overrides all the provisions laid out in the Service Invention Regulations.
- Building from the 2014 U.S.-China Innovation Dialogue “to respect the rules and policies” developed between employers and inventors concerning award and remuneration “in line with their domestic laws,” seek further clarity about how existing contracts will be evaluated *vis-à-vis* the Service Invention Regulations and how companies will be able to avoid going against domestic laws while also having their existing contracts respected.
- The Chinese government should ensure that the amendment to the *Law of Promoting Transformation of Scientific and Technological Achievements*, which also includes provisions governing service invention remuneration and awards, takes careful consideration of the views of domestic and foreign research and development intensive firms.

Patent Law

- 3rd Amendment to China’s Patent Law: Ensure that the 3rd Amendment to the Patent Law is properly interpreted to provide the same scope of patent protection for inventions implemented in software as is presently accorded to inventions implemented in hardware, and to be consistent with TRIPS Article 27.1, which requires all WTO members to extend patentability and patent protection to inventions “without discrimination as to the . . . field of technology.”
- Proposed 4th Amendment to China’s Patent Law: Ensure changes to the patent laws designed to enhance patent enforcement do not create an environment of over-enforcement, significant sham litigation, and unfair leverage over alleged infringers, particularly through the offensive or defensive assertion of low-quality UMPs.
- Secure a commitment from China to permit no further expansion to the “ex officio” powers beyond those existing in the 3rd Amendment to China’s Patent Law.
- Press the Chinese government to remove the State Intellectual Property Office’s (SIPO) proposed “ex officio” patent enforcement powers against ill-defined “market-disruptive” activities.
- Compulsory Licensing: Secure a commitment from China to ensure that both the wording and the implementation of the compulsory licensing provisions in the 3rd Amendment to China’s Patent Law Implementing Regulations, in particular Article 49(2), are consistent with WTO Agreements on TRIPS.
- Secondary Liability Guidelines: Secure a commitment from China and the SPC that indirect patent infringement cases will be accepted and that clarifying guidelines will be provided regarding the application of secondary liability principles to indirect patent infringers.
- Evidence Collection: Provide authority to administrative judges to obtain sales figures during the evidence gathering phase so that more realistic damage awards can be awarded. Current statutory awards significantly undervalue patents and tend to create an incentive to infringe until caught.
- Patent Linkage: Ensure that China improves and enforces its mechanism to ensure that patent disputes may be resolved prior to market entry by follow-on pharmaceutical products. If a follow-on company actually begins to market a drug that infringes the innovator’s pharmaceutical patents, the damage to the innovator may be irreparable even if it later wins its patent litigation.

- Following the model of other countries, China, through the Drug Administration Law (DAL) reforms, should enable patent holders to file patent infringement suits before marketing authorization is granted for follow-on products.
 - Revise the DAL to institute mechanisms that ensure the originator manufacturer is notified of relevant information within a set period of time when a follow-on manufacturer's application is filed.
 - Further, provide sufficient time for patent disputes to be resolved before marketing occurs through, for example, automatic postponement of drug registration approval, either pending resolution of the patent dispute or for a fixed period of time.

6. Patents/Data Supplementation and Regulatory Data Protection

- Data Supplementation for Patents: We continue to see problems in the area of data supplementation as implementation of the 2013 JCCT commitment is incomplete. Therefore, it is time to seek an additional commitment for SIPO to revise its examination guidelines to allow supplementation data (a provision changed back in 2006). At the 2013 JCCT, China agreed to permit applicants to submit additional data after filing their patent applications and confirmed that this change is in effect for representations before SIPO, PRB and the courts. However clarity is needed within SIPO, PRB and the courts and a revision of the guidelines would be confirmation of SIPO's commitment to this practice. It would also bring SIPO in line with the other IP5.

Despite U.S. efforts to monitor this commitment, China has not addressed pending cases and also adopted the same approach of not allowing data supplementation from objections raised on the basis of Article 26.3 to objections raised on the basis of Article 22.3. We have found a growing number of cases where SIPO and PRB are denying admissibility of later filed comparative data to address objections on non-obviousness grounds under Article 22.3 and thereby denying or invalidating patents.

The JCCT commitment is broad and comprehensive enough to include supplementation of data that may be required with respect to inventiveness as required in Article 22.3. However, it is clear that this has not been fully adopted at SIPO, PRB or the courts and a revision of its examination guidelines will provide necessary demonstrable implementation.

- Regulatory Data Protection (RDP): Meaningful implementation of China's commitment made during the 2012 meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT) related to RDP is needed. Due to this, we ask that U.S. government engage in in-depth discussions with China at the highest level to resolve the implementation of this commitment.

In the 2012 U.S.-China Joint Commission on Commerce and Trade, China committed to define new chemical ingredient (referred to as — “new chemical entity” in that commitment) in a manner that is consistent with international research and development practice to ensure clinical test and other data prepared by innovators at great cost in terms of time and resources to secure regulatory approval is protected against unfair commercial use and unauthorized disclosure. Little progress has been made on this commitment.

Although China committed as part of its accession to the World Trade Organization (WTO) to provide a 6-year period RDP, in practice the protection has not been effective. In addition, RDP should be granted to any product that is “new” to China, i.e., has not been approved by CFDA. In practice, however, China grants RDP only to pharmaceutical products that are “new to the world” – or products that make their international debut in China. This is at odds with the approach of other regulatory systems and even at odds with the approach taken in China for RDP for agricultural chemicals.

In addition, the international norm is to provide RDP to all new medicines, both those biologically synthesized and those chemically synthesized. NCE includes all innovative pharmaceuticals, including both biologic and non-biologic drugs.

INVESTMENT

1. Investment Approvals and the Guiding Catalogue on Foreign Investment

- Accelerate negotiations and finalize a “high-standard” and comprehensive bilateral investment treaty as soon as possible that lives up to the ambition set by Presidents Obama and Xi during the recent State Visit by President Xi, as well as China’s June 2015 S&ED commitment to improve its negative list offer. Also, urge China to provide a commercially meaningful negative list that provides significant market opening and not merely a replacing of existing investment restrictions as soon as possible. In addition, secure commitments from China that a high-standard BIT also accomplishes the following:
 - delivers enhanced disciplines that go beyond the 2012 Model BIT that ensures that the behavior of China’s SOEs and state-supported enterprises, as well as the government regulation that assists them, is covered under the agreement;
 - ensures competitive neutrality based, at a minimum, on the U.S. government’s tabled Trans-Pacific Partnership (TPP) text on SOEs;
 - addresses serious deficiencies in transparency regarding China’s investment approval and investment notification processes;
 - extends new investor protections against technology transfer performance requirements in the 2012 Model BIT to instances where such practices are encouraged through government subsidies and applies these commitments to government procurement, based on China’s past S&ED commitments;
 - addresses deficiencies in state-to-state and investor-state dispute settlement that arise from China’s penchant for non-rules based retaliation against foreign companies within or seeking to access its market as well as transparency shortcomings, which can impede the ability of a foreign company or government to gather evidence for dispute settlement;
 - contemplates China’s increasing use of its Anti-Monopoly Law as a discriminatory industrial policy that is circumscribing the ability of foreign companies to compete, including in markets outside of China;
 - addresses the likely absence of coverage under an agreement of sub-central policies in China that fail to conform to the treaty in light of the U.S. carve out for local non-conforming measures domestically under Article 14 of the 2012 Model BIT, and

- ensures Non-Conforming Measures (NCMs) be drawn very narrowly so that it does not undercut China's agreement to abide by a negative list.
- Pursuant to China's efforts to transform its investment regime and unify the existing primary laws governing foreign investment into the draft Foreign Investment Law (FI Law), ensure that the FI law abides by the spirit and intention of the ongoing BIT negotiations to create a level-playing field, further open the market, and improve the predictability, transparency and fairness of the foreign investment regime. Furthermore, the FI Law should ensure that foreign invested enterprises and all other enterprise are treated equally in the areas of: market access, including government procurement; innovation incentives; law enforcement standards, especially enforcement of competition laws; and product certification, examination and approval, and license granting
 - In light of the adoption of a negative list approach under the FI Law, request that Chinese authorities clarify the relationship between the negative list, the existing Guiding Catalogue on Foreign Investment in Industry and the Catalogue of Special Management Measures (to be promulgated in the future under the draft Foreign Investment Law). Request that the restricted and prohibited categories be abandoned and unified into a simple and efficient negative list. The arrangement of two categories contradicts the negative list model.
- Moreover, all other issues should be governed by the Corporate Law (such as organizational form, registration, accounting, taxation) in a manner that provides national treatment to foreign companies in China.
 - In accordance with the reform of the administrative examination and approval system, encourage China to rely less on cumbersome pre-establishment approval systems and develop a supervision process instead. Investments outside the 'negative list' should no longer use an approval system, but rather a filing system in order to streamline the investment process.
- Given the adoption of a negative list approach to foreign investment in both the FI Law and the ongoing BIT negotiations, secure a commitment from China to move away from an industrial policy-like approach to regulating foreign direct investment under the Guiding Catalogue on Foreign Investment and other industrial policies issued by the State Council and sector regulators that encompasses the following:
 - an early harvest of new market opening, consistent with China's past commitments to implement a more proactive opening up strategy for foreign investment, that reduces substantially or eliminates foreign ownership restrictions in sectors such as financial services, basic and value-added telecommunications, express delivery services, cloud computing and data centers, refining of petrochemicals, energy-intensive industries, and audiovisual and other media industries;
 - elimination of exceptions, licensing requirements and other non-transparent barriers that block access and restrict the ability of foreign investors to grow the investments they have already made in the market;
 - nationwide removal by the end of 2015 of administrative review and licensing requirements for investments listed as "encouraged" in the Guiding Catalogue on Foreign Investment, to mirror the approach being taken in Guangdong and other pilot investment projects in China.

- Pursuant to statements by China's leaders, secure a commitment from China that it will treat foreign capital as private capital in the context of any liberalization of monopoly/oligopoly sectors currently dominated by China's state-owned enterprises.
- Secure a commitment from China to modify investment approval processes under the National Development and Reform Commission (NDRC), the Ministry of Commerce (MOFCOM), the Anti-Monopoly Law Commission, and industry regulators to require that projects and investments be approved unless they violate specific laws and regulations, and to mandate compliance with China's international obligations.
- Secure a commitment from China, in the event an investment application is denied, to provide a written statement within a prescribed deadline detailing the specific laws and regulations that would have been violated if the investment had been approved.
- Secure a commitment from China to publish timelines for stakeholder, expert, and outside government agency consultations and other approval process steps that currently lack deadlines.
- Secure a commitment from China to provide definitions in investment-related laws and regulations when vague words or concepts such as "public benefit" or "obvious unfairness" are used.
- Secure a commitment from China to ensure that relevant regulations are in place to allow foreign investors to apply and obtain approval to engage in business activities in sectors where China has made market access commitments (e.g. electronic payment services).
- Secure a commitment from China to eliminate the requirement to establish separate legal entities across various levels of government (i.e. city, provincial, national) for individual business operations to satisfy local authorities' desire to generate tax revenues. These practices increase unnecessary administrative costs and raise the overall cost for business operations, which deters foreign investment.
- Secure a commitment from China to allow foreign investors to participate with their proposed JV partners in submitting JV investment approval applications and communicating directly with approval authorities.
- Pursuant to the announcement of the adoption of the negative list approach in the four Pilot Free Trade Zone (PFTZs) – Shanghai, Guangdong, Tianjin, Fujian, secure a commitment from China to significantly reduce the contents of the negative list that will provide commercially meaningful opening for foreign enterprises and be consistent with the spirit of ongoing BIT negotiations. Foreign firms, particularly in the financial services sector set up in the PFTZs, should be permitted to operate beyond the geographical boundaries of the PFTZs, which will be critical to making the pilot efforts a meaningful testing group for national level reforms.

2. National Security Review

- Secure a commitment from China that any measures or laws pertaining to national security review of foreign investment balances the twin objectives of maintaining openness to foreign investment and protecting national security.
- Ensure that China lives up to the commitment announced during President Xi's recent visit that China will limit the scope of national security reviews of foreign investments to national security concerns, and will not generalize the scope to include economic or public interest

issues—as articulated in a number of documents⁶— which have provided broad definition of what constitutes national security: such as economic security, cultural security, social order, public morality. This is inconsistent with principles of non-discrimination, fairness, and openness embodied in a high-standard BIT, and raises fundamental questions about whether future commitments by China under a potential BIT to open its markets to foreign investment will produce the intended results.

- Any laws or measures governing national security review should provide precise, narrowly tailored definitions for the key considerations governing the national review of foreign investment process. Economic security (or related economic references) as a criterion to define national security is inconsistent with U.S. practice as well as OECD guidelines because such economic tests could become a vehicle for domestic industries seeking to block foreign competition
- The recent banking regulations requiring the use of technology products and services developed and controlled by Chinese companies, in the name of national (economic) security concerns, are evidence that economic considerations in national security reviews could result in discrimination against foreign companies and undermine competition in the market.
- Secure a commitment from China to clarify definitional wordings in connection with the types of transactions that will attract review that go beyond traditional national security interests and other terms in these measures and laws that are vague, at best (e.g., “important agricultural products,” “important energy and resources,” “important infrastructure,” “important transportation services” and “key technologies”).
- Secure a commitment from China to eliminate provisions in the Final Provisions of the Ministry of Commerce on Implementing a Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors that (i) allow interested third parties, such as national industry associations or domestic enterprises operating in the same sector as a proposed domestic target company, to submit to MOFCOM comments and objections in connection with a proposed transaction and (ii) unwind a transaction after it has closed if it is determined to have a potentially serious impact on national security.

⁶ Draft FI Law, National Security Law, Trial Measures for the National Security Review of Foreign Investments in China’s PFTZs

INDUSTRY SPECIFIC ISSUES

AGRICULTURAL BIOTECHNOLOGY

- Based on the joint statement issued at the conclusion of President Xi's visit to the United States, continue to pursue a commitment by Chinese authorities to streamline and create a regulatory approval process for seed imports that is predictable, timely, transparent, and science-based. The rules are currently administratively complex, unpredictable, and time-consuming.
 - Genetically Modified Organism (GMO) Office should allow technology developers to submit applications whenever technology developers believe they are ready to initiate the review and assessment process, such as when the technology developer has submitted an application to USDA or Brazil CTNBio.
 - In addition, China requires one season of in-country field trials for biotech crops even for food and feed import approvals. Accepting applications, conducting preliminary reviews, and approval for testing seed movement to China would allow in-country field trials to proceed without further delay.
 - China should also adopt and establish low level presence (LLP) policy on biotechnology derived products according to the Codex Alimentarius Commission guidelines to alleviate issues of asynchronous approvals. LLP refers to the potential low level presence in imports of GM material already authorized and being produced in other countries, but not yet approved in the importing country such as China. This gap has the potential to cause significant trade disruptions, as well as placing significant burdens on Chinese regulators when such presence is detected. The situation will only become more prevalent as more new GM plants are developed and enter into commerce. Adoption of guidance related to food safety assessments of LLP is essential to facilitate international trade while regulating incidental or trace amounts of biotechnology events in food and feed products.
- Secure a commitment from China for event-based approvals instead of variety-based approvals.
- Secure a commitment from China to adopt a timelier and efficient seed/hybrid registration process.
- Secure a commitment from China to coordinate approval of corn hybrids at the provincial level with the national approval system for agricultural biotechnology products.
- Secure a commitment from China to reevaluate corn seed import and export restrictions with the United States and Mexico.
- Secure a commitment from the PRC government to repeal its ban on foreign direct investment in the transgenic seed businesses.
- Secure a commitment from the PRC government that GMO risk assessments shall be completed, decisions promulgated, and relevant permits and certificates issued within the parameters of existing Chinese law and official guidance. Existing law and official guidance include the following: 1) the 2001 State Council regulations stipulates that the Ministry of Agriculture (MOA) has up to 270 days to grant a safety certificate required for import of GMOs. This timeline was reaffirmed under the 2002 MOA Import Measures. Current

review timelines extend well beyond this statutory limit. 2) 2013 MOA Guidelines indicate that MOA shall issue necessary GMO material import permits and biosafety certificates within seven months of the submission of an application. However, industry experience suggests that current review timelines are also well beyond the 2013 Guidelines. Industry requests a commitment from China to issue necessary permits and certificates within seven months of each application window, in accordance with official guidance. This includes continuation of three submission windows (March, July, and December) and three subsequent regulatory actions, a practice which was routine prior to 2011.

- Using the commitments China made during President Xi's visit to the United States to enhance capabilities in safety administration and approval, secure a further commitment from the PRC government at a high-level and across ministries to synchronize risk assessments and approvals of agricultural biotechnology events with those of major exporting countries.
- Secure a commitment from the PRC government to advance the queue of products currently in the regulatory system by 2016, particularly for traits that have met all the technical requirements and are awaiting final import approval.

AGRICULTURE

1. Foreign Direct Investment

- Secure a commitment from China to remove restrictions on foreign direct investment from global agribusiness in areas such as seed production, grain origination and storage, oilseeds and corn processing, and grain logistics (see the 2011 Guiding Catalogue on Foreign Investment).
 - China's restriction on corn processing has expanded in practice to value-added downstream products.
 - China's restriction on seed production has expanded beyond field crops, and the restriction on oilseeds processing has also expanded beyond soybean to all oilseeds crops.
- Secure a commitment from China for favorable treatment for investment in large-scale livestock husbandry, which is listed in the encouraged category of the Guiding Catalogue and a priority in the 12th Five-Year Plan.
- Secure a commitment from China to reduce complex and inconsistent administrative licensing requirements for investment approvals for new food production plants.
- Urge China to follow the objectives in its 12th Five-Year Plan, which emphasize the need to shift more resources to agriculture and food production in order to improve people's lives.

2. Tariff Rate Quotas (TRQ)

- Secure a commitment from China to abolish nontransparent quotas and registration systems and ensure that tariff-rate quota (TRQ) allocations for corn and other commodities are large enough to be commercially viable. To increase transparency and administrative efficiency, China should consider releasing lists of TRQ holders.

- Secure a commitment from China to increase the corn import quota and open the corn import market according to domestic market demands.

3. Unscientific Restrictions on Imports

- Secure a commitment from China to remove unscientific restrictions on importation of U.S. beef, poultry, pork and genetically modified organism (GMO) products. The Chamber appreciates the approval of the three outstanding biotechnology products as a result of the 2014 JCCT, however the industry needs a long-term regulatory commitment that prioritizes science as a basis for import decisions.
- Continue to ensure industry has the opportunity to contribute input into the new Strategic Agriculture Innovation Dialogue (SAID). The Chamber greatly appreciates the establishment of this new mechanism and the invitation for private companies and trade associations to actively participate in the first Dialogue. We and our members are eager to continue to provide relevant background and expertise for this important bilateral exchange.
- Building off of China's 2013 JCCT commitment to resume U.S. beef access by July 2014 based on mutually agreed conditions, secure a commitment from China to re-open dialogue on partially or entirely removing its import ban on U.S. beef, such as U.S. beef imports from cattle less than 30 months of age.
- Secure a commitment from China to eliminate the “test and hold” policy on U.S. pork for ractopamine.
- Secure a commitment from China to set up a science-based threshold on low level presence (LLP) of GMO events in order to facilitate trade and also meet food safety requirements.
- Urge China to remove the zero tolerance policy on LLP of GMO events, which has served as a technical trade barrier and a deterrent to normal grain trade.
 - While most GMO corn events commercialized in the United States have not been approved in China yet, the LLP issue will be an immediate threat to U.S.-China corn trade when China increases its corn import.

4. Standards

- Secure a commitment from China to integrate overlapping and conflicting national and industrial standards in agriculture set and supervised by various ministries and administrations.
- Secure a commitment from China to prioritize the setting and amending of thousands of national food safety standards—in particular in the vegetable oil, grains and food additive areas—so that compliant enterprises are able to conform to binding regulations and mandates.
- Implement standardized customer information quality (CIQ) regulations consistently in all ports throughout China.

5. Dialogue

- Continue to encourage through bilateral dialogue such as the SAID, workshops, and in-depth scientific exchanges smooth agricultural commodity trade flow into China through the

implementation of a transparent, science-based regulatory system, transparent and WTO-compliant agricultural policies, and open market access and investment opportunities in China.

6. Agricultural Equipment

- Secure a commitment from China that any subsidies offered to customers, dealers/distributors, or manufacturers of agricultural equipment are equally available to domestic Chinese brands and to multinational brands.
- Encourage the Ministry of Agriculture to structure existing subsidy programs so that lessees, not just owners, of agricultural equipment are able to take advantage of those subsidies.
- Secure a commitment that Stage III emissions standards for off-road equipment, and specifically agricultural equipment, are fully enforced. The full implementation of Stage III emissions standards will support the Chinese government's goal of reducing air pollution.

AUTOS

1. Investment

- Secure a commitment from China to allow foreign auto companies to invest more than 50% in complete auto manufacturing.
- Decouple automotive distribution network ownership from manufacturing JV's and allow for greater than 50% ownership.
- Secure a commitment from China to ease the conditions required for approval of new JVs, branches and expansion of both manufacturing and distribution capacity (e.g., 80% saturation clause, consolidation requirement, local brand requirement, new energy production requirement, etc.).
- Secure a commitment from China to reduce the number of items subject to "approval" ("hezhun") and/or "filing" ("beian") at the central authority level, and simplify the process.

2. Clean Energy Vehicles

- Secure a commitment from China to remove explicit and implicit requirements for participation in the new energy vehicle industry that mandate technology "mastery" and creation of new, indigenous brands.
- Secure a commitment from China not to expand restrictive requirements to other participants in the NEV industry.
- Ensure that all qualifying vehicles, regardless of brand or place of manufacture, are afforded equal treatment in awarding of energy saving and other incentives.
- Remove the 50% ownership cap on manufacturing of key components of new energy vehicles (such as high energy power batteries).
- Secure a commitment from China to allow foreign-invested entities, including automotive JVs, to compete for R&D funding, and to conduct one or more workshops on how foreign-

invested entities can apply for and participate in R&D funding opportunities for China-based research.

3. Automotive Emissions Standards

- Secure a commitment from China to expand capability at national, provincial, and local levels to enforce environmental and emissions standards consistently.
- Secure a commitment from China to confirm, apply, and implement truck emissions standards on time and in a manner consistent with global practices.
- Secure a commitment from China to adopt, apply, and implement auto safety, emissions and fuel regulations in a manner that is consistent with global practices.

4. Automotive Financing

- Consistent with China's S&ED IV commitment to allow foreign and domestic auto financing companies to issue bonds regularly, including issuing securitized bonds, ensure equal access to capital market funding options, such as corporate bonds and asset backed programs, for automotive finance companies through published rules and less restrictive qualifications.

5. Government Procurement

- Secure a commitment from China, consistent with the high-level commitments of national treatment for foreign investors by Chinese leaders in the S&ED and other fora, to limit the procurement criteria to attributes of the vehicle by removing or revising the IP ownership and R&D spending requirements.
 - Following up on China's 2013 JCCT commitment to not publish the *Draft Party and Government Organ Official Use Vehicle Selection Catalogue*, seek confirmation from China that it will comply with this commitment at all levels of the government.
- China should agree to revise the Ministry of Information and Industry Technology's (MIIT) eligibility criteria for government procurement of vehicles to ensure that U.S. auto companies invested in China are able to participate in vehicle procurement opportunities on the same footing as their domestic counterparts.

BANKING AND NONBANKING FINANCIAL SERVICES

- Building on the past commitment of the Chinese government to increase foreign ownership levels for securities firms, futures companies and fund management firms, secure a commitment from China to permit foreign financial services firms to own 100% of the operations in which they invest and to establish themselves in a juridical form that best suits their business model (branch, subsidiary, joint venture).

- Continue to streamline the approval process of foreign bank subsidiaries in terms of location selection.
- Allow foreign banks to submit multiple network expansion applications simultaneously.
- Secure commitment from China to put in place a precise and transparent roadmap that would permit foreign securities firms to engage in a full range of securities activities as domestic securities firms and eliminate the need for a “seasoning” period.
- Allow foreign banks to offer a full line of products and services, such as online banking and credit and debit cards supported by payment brands and issued on networks of their choice.
- Urge China to continue the process of rapid liberalization of the current Qualified Foreign Institutional Investor (QFII) restrictions on an agreed transition schedule.
- Permit underwriting by locally incorporated banks of foreign banks of Commercial Paper (CP), short-term notes (STNs)/medium-term notes (MTNs) and improve upon the application review criteria.
- Secure commitments from China that provide for equal access to regulatory proposals; require public availability of proposed regulations; provide an adequate public comment period on new regulations; and mandate the enforcement of regulations in a non-discriminatory manner. Encourage strengthened coordination of different regulators to reduce reporting requirements.

CHEMICALS

1. Chloroform Import

- Secure commitments from China to issue import/distribution licenses to large chloroform suppliers.

2. Soda Ash

- Secure a commitment from China to eliminate the value-added tax (VAT) rebate provided to Chinese soda ash exports, which create an un-level playing field for soda ash exporters competing with China in third markets. At the 2014 S&ED, China committed to “improve its Value Added Tax rebate system, including actively studying international best practices, and to deepen communication with the United States on this matter, including regarding its impact on trade.” While the Chamber recognizes this commitment as an accomplishment, we would encourage China to adopt changes to its rebate system to reflect its efforts to meet international best practices.

3. Coal

- Allow foreign companies to establish wholly foreign-owned enterprises in large-scale coal and chemical product manufacturing and ethane manufacturing with annual production of 800,000 tons or more. (Chinese majority control is currently required.)

4. AgroChemical IP

- Continue to crack down on agrochemical counterfeiting in order to improve IP protections and prevent counterfeit product-related accidents.

5. Electronic customs declaration

- Currently electronic declaration is rolled out partially. It should be rolled out completely as soon as possible and the roll out should cover all products including chemicals.
- Standardized and simplified document requirement for customs clearance.

6. Authorized Economic Operator

- This facilitates trade flows due to less interference by Customs in the clearance process: The focus is on the responsibility of the individual company, who is being supervised by means of regular audits.
- Promotion of mutual Authorized Economic Operation (“AEO”) recognition. Companies with the highest Customs rating (i.e. AA Customs rating) are able to enjoy the trade facilitation to the highest extent in the import/export from both China Customs and Customs of ship-to/ship-from country or region.

CIVIL AVIATION

- Secure a commitment from China at senior, political levels to move toward a more flexible and open airspace and airway structure in support of economic development, reform, and opening up.
- Encourage the Chinese government to rebate maintenance, repair and overhaul (MRO) companies the VAT assessed on freighter conversion services conducted on both domestic and foreign airliners.
- Secure a commitment from China to reduce the high VAT and import duty for regional and general aviation (GA) aircraft.
- Secure a commitment from China to streamline and expedite review procedures for foreign investment in commercial aviation and related ventures.

ELECTRONIC PAYMENTS SERVICES

- Fully implement the WTO Panel ruling on July 16, 2012 regarding the electronic payment service (EPS) dispute between the United States and China, by issuing new regulations to: (1) implement China’s WTO commitment to give full market access to EPS providers; (2) permit foreign EPS suppliers to provide RMB-denominated EPS in China on equal terms with domestic competitors.
- The CBRC and PBOC should consult the whole industry, not only state-owned banks and China Unionpay, during the regulation drafting process.

- Any prudential conditions in the regulation should be pro-competition, pro-innovation and not overly burdensome, including immediate market access.
- Free cross-border data flow for EPS should be allowed, as strict in-country requirements for servers and data storage will not resolve security and privacy concerns and instead result in higher costs to consumers and an inability to take advantage of the best available technology.
- Ensure that foreign EPS providers currently engaging in the processing of cross-border foreign currency transactions would not need to establish on-soil operations in China and can continue current business.
- The PBOC 3.0 standard, a chip standard issued by PBOC based on universally accepted EMV (Europay, MasterCard and Visa) chip standards, should remain voluntary for the issuers of IC cards. PBOC should not mandate the use of the PBOC 3.0 standard and issuers should have the freedom to choose the EPS providers and the chip standards that suit them best. We encourage full compatibility of different standards.

ENERGY/ENVIRONMENT

1. National treatment

- Provide equal treatment to foreign or foreign-invested companies and not favor locally owned manufacturers through government/SOE procurement preferences, de jure and de facto localization requirements, and product standards.
- Request full implementation of China's commitment to remove requirements on foreign participation in new clean energy industry that mandate technology "mastery", such as those applied to new energy vehicles.
- Provide foreign-invested companies equal treatment with regard to Strategic Emerging Industries (SEIs) related policies and incentives, such as in energy saving & environmental protection, new energy, new energy vehicle, and high end equipment manufacturing.
- Remove requirement that requires applicants to have indigenous intellectual property when applying for relevant SEI incentives at local levels (in Shanghai, Jiangsu, Sichuan). Such requirements discriminate against foreign-invested companies, which do not have locally-owned intellectual property.
- Completely delink indigenous IP with government procurement at local levels.
- Ensure full implementation of China's JCCT commitments regarding wind turbine market access and local content requirements.
- Remove the localization requirements at both national and local levels, for example 90% for small & medium sized gas turbine by 2015; 60% for major natural gas distributed energy equipment by 2015; 80% for wind power generator with 2MW+ capacity by 2015.

2. Standards

- Urge China to increase engagement with and participation of foreign invested enterprises in the development of laws, regulations, standards, pilot programs and financial incentive programs relating to clean technology.
- Secure commitment from China to develop new clean energy standards that build on existing international standards so as to reduce duplications and improve effectiveness.
- Request full implementation of the JCCT commitment to ensure that the processes for developing standards of smart grid products and technologies are open and transparent, allow foreign stakeholders to participate in the development of standards, technical regulations and conformity assessment procedures on no less favorable terms than it affords domestic stakeholders.
- Ensure U.S. companies can, without limitation, participate substantively and fully in all clean technology standard-setting groups.
- Ensure that high-quality, practical, internationally harmonized standards are in place for all sectors of the clean technology industry, and that they are effectively implemented and enforced.
- Encourage government agencies to share best practices related to standards enforcement, including applicable penalties for violations, in order to further ensure a fair, competitive playing field.

3. Bidding criteria

- Request China amends government and SOE procurement practices to adopt full life cycle assessments in the evaluation of clean technology products/projects. Ensure China adopts international standard bidding processes in which China's local public tender and bidding processes and terms and conditions for clean energy infrastructure projects are based on the quality, rates of return, and long-term viability of projects, rather than primarily on price alone.
- Request China adopts standard templates across relevant ministries for bidding documents and draft concession agreements, and to minimize material modification to selected bids.

4. Regulatory transparency

- Encourage the PRC government to publish in advance for public comment by local and foreign stakeholders, all trade and economic-related administrative regulations and departmental rules that are proposed for adoption and to provide a public comment period of not less than 30 days from the date of publication.

5. Equity and other restrictions

- Remove restrictions that limit foreign investment to 50% or less in high-energy propulsion batteries for new energy vehicles.

- Lift equity restriction on foreign investment in liquid natural gas which would allow foreign companies greater flexibility to structure their operations and bring technology and expertise to the Chinese market more rapidly.
- Lift restrictions on foreign firms investing in cogeneration plants, which limit operational bandwidth and hinder their ability to compete on a level playing field with Chinese domestic competitors.

6. Oil and gas

- Encourage the Chinese government to initiate comprehensive oil and gas legislation, to include the designation of a specific regulator for the oil and gas sector.
- Encourage the acceleration of market-oriented pricing reforms of domestic natural gas and petroleum products.
- Encourage China to develop a clear regulatory framework for shale gas production sharing contracts that addresses the unique aspects of shale gas exploration, development, and production, as well as investor concerns.
- Encourage China to accelerate long-term shale gas pricing and market reform and clearly communicate the results of these reforms.
- Request China relaxes restrictions on the availability of data by opening up data on targeted basins for industry analysis.
- Encourage China to develop regulations for the administration of shale gas mineral rights, which should clearly provide for market access, permitted investors, and exit procedures.
- Liberalize the JV requirement for exploration and development of unconventional gas.

8. Heavy Duty Commercial Emission Enforcement and Fuel Economy

- The low or loose enforcement and improper testing method for fuel economy will bring barriers to international companies' participation to the market in China.
- Urge enhanced in-use regulation for vehicles to make sure that vehicles are operated in compliance with the NS IV standards. In-use regulation can help ensure that pollution control devices are not removed or disabled after certification.
- As mentioned in the agriculture equipment section, secure a commitment from China that Stage III emissions standards for off-road equipment are fully enforced.
- Encourage China to meet its commitment for nationwide availability of low-sulfur diesel fuel beginning Jan. 1st, 2015. It is also important that Diesel Emission Fluid (DEF or Urea) is available. Application of urea into the exhaust stream is necessary to achieve NSIV emission requirements. If the requirement for using urea is not enforced, vehicle operators will operate without it, resulting in higher emissions. It will also drive down demand for urea resulting in urea providers no longer investing in developing nationwide urea infrastructure. Enforcing the use of urea and requiring diesel stations to stock urea will ensure that it is available for all.
- On Fuel Economy, urge China and the United States to work together to share best practices on achieving measurable fuel economy gains from commercial vehicles. The best way to achieve real CO₂ reductions from vehicles that are sustainable over the life of the

vehicle is to set separate criterion to regulate engine fuel consumption to make the regulation more sustainable and easier to be enforced. By setting a separate efficiency standard for the engine, fuel economy gains due to engine efficiency will not be lost when the purpose of the vehicle or any of its major features are changed. Further, as China considers new fuel economy regulations, there are several agencies that have jurisdiction over the issue. And we would therefore recommend smoother inter-agency collaboration.

EXPRESS DELIVERY SERVICES (EDS)

1. Customs and Trade

- Establish a U.S.-China government-industry customs working group (similar to the successful U.S.-China Express and Postal Symposium) to address customs bottlenecks in the supply chain, which, among other things, hamper the growth of U.S. imports to China (e.g., see General Administration of Customs (GAC) Order No. 33 (2010), which essentially bars individuals and smaller traders in China from importing goods via a cumbersome importer registration system). Invite China to collaborate with the U.S. government and the EDS industry to develop GAC measures that enable EDS providers to effectively connect other points in China to their hubs and major markets, and to sort shipments on those connecting flights at those locations, consistent with U.S. cargo carriers' aviation rights under the U.S.-China air transport agreement.
- Encourage China to pursue standards that conform to global practices (e.g., World Customs Organization guidelines and standards).
- Secure a commitment from China to establish low value and *de minimis* customs clearance levels consistent with U.S. levels and with China's position as one of the world's largest participants in global trade.
- Encourage China to establish a system similar to that in the United States, enabling a 24-7 customs handling of China's trade activity.
- Secure a commitment from China to remove the GAC's proposed and State Post Bureau's (SPB) existing 100% open-box inspection requirements for express delivery packages, as well as provisions that shift liability for inaccurate descriptions of a shipment's contents from shippers/recipients to transportation service providers.
- Secure a commitment from China to remove the GAC's proposed restrictions on express delivery service (EDS) providers' use of domestic service contractors for localized services, as well as its proposed requirement for EDS firms to use a China-specific airway bill rather than the branded air waybills they use throughout the rest of their global networks.
- Encourage China to improve on the GAC's four-hour prior to loading advanced commercial information requirement for export goods and standardize China's export requirements with international norms and industry practices.
- Invite China Customs to study the U.S. user fee system with a view toward regularizing the payment of similar charges in China.

2. Logistics

- Ensure that any licensing at a higher level of government should not be moved to a lower level of government such that the licensing process becomes more extensive and burdensome (e.g. national to provincial, provincial to city-level, city-level to prefectural, etc.). Ensure that licensing, particularly for the establishment of new branches, must be transparent and not significant discretion to the local postal administrators .
- Request clarification of the SPB's Postal Law of the People's Republic of China (PRC). In particular, Articles 52 and 53 are inconsistent with the "Business Scope of Express Business Operation Permits." The Chamber recommends that the SPB clarify the difference and support the broadest possible business scope, aligned with the national network business model of EDS providers and the interests of consumers.
- Encourage China to provide greater transparency in the drafting of the Express Ordinance currently under review by the State Council Legislative Affairs Office. This draft is based on iterative drafts from the State Post Bureau (SPB) and the Ministry of Transportation, and will be of great significance to the Express Delivery Service (EDS). Industry looks forward to the opportunity to submit comments and recommendations to ensure a framework that drives healthy growth and competition in the interest of consumers.
- Unify tax identification for the entire transportation industry and related industries, including freight forwarding and express delivery services, across China.
- Seek national vehicle identification standards pertaining specifically to the EDS industry, ensuring vehicles that conform to these standards are allowed to operate at a maximum level of efficiency and convenience.
- Clarify that China's Express Service National Standards, published in 2011, are recommended industrial standards, which should not be cited in any postal regulation with compulsory enforcement. China should ensure that any mandatory measures must be developed and approved through proper legislative or administrative procedures and not simply converted from non-binding recommended standards to binding measures with compulsory enforcement.
- Secure a commitment from SPB that all proposed regulations must be published for comment. SPB must respond in detail regarding whether the recommendations are being adopted and, if not, the reasons they are being rejected.
- Clarify that China's Postal Law and related SPB measures allow foreign EDS providers to contract with Chinese domestic delivery permit holders to provide local pick-up and delivery, trucking and other services related to express delivery.
- Secure a commitment from China to remove restrictions in China's Postal Law that prevent foreign EDS providers from providing their Chinese customers with domestic document delivery services.
- Ensure that security measures related to SPB's licensing processes are focused on security and are necessary to accomplish a stated security objective. These measures should be non-discriminatory, developed and implemented transparently and after full industry consultation, and not trade-restrictive..
- Secure a commitment from SPB that it will notify applicants immediately when any necessary additional information is required for their application. Otherwise, in accordance with Chinese law and regulations, U.S. applicant-companies must assume respective

applications have been properly submitted, and SPB will grant them the requested permits in the very near term.

3. Aviation

- Improve coordination between China's Civil Aviation Administration (CAAC) and GAC to ensure their respective rules and policies are consistent with China's commitments in the U.S.-China air transport agreement and to ensure that major markets and Chinese industry in Beijing, the Pearl River Delta, and the Yangtze River Delta are effectively and efficiently connected to global express cargo networks.
- Consistent with China's commitments under the U.S.-China air transport agreement, remove CAAC restrictions on change of gauge operations and co-terminalized flights between Beijing, Guangzhou, Shenzhen and Shanghai.
- Provide transparency and improved certainty for slot coordinators and carriers by reforming China's slot allocation procedures to meet the International Air Transport Association (IATA) Worldwide Scheduling Guidelines and to ensure fair and equal rights for airlines to compete in the international air services market.
- Increase airport and airspace capacity by: opening significantly more of China's airspace to civilian air operations; improving coordination between civilian and military airspace authorities; appropriately prioritizing resources to expand airports and other infrastructure in China's highest demand markets rather than directing resources first to lower demand markets; and improve air traffic control capacity, capabilities and flexibility to meet ever increasing demand in China's airspace.
- Simultaneously update and improve China's Air Traffic Management Bureau (ATMB) policies and procedures to provide more flexibility and responsiveness to an increasingly time-sensitive market, especially with regard to necessary flight plan changes and schedule modifications resulting from severe weather, mechanical and maintenance issues, and other unforeseeable circumstances.

INSURANCE, PENSIONS, AND ASSET MANAGEMENT

1. Equity Restrictions on Foreign Investment

- Relax the 50% equity restrictions on foreign investment and allow foreign insurers to own up to 100% of a life insurer in China, and allow foreign insurers their choice of juridical form: branch, wholly-owned subsidiary or joint venture. The 50% equity cap, imposed by China to protect its nascent insurance industry from foreign competition since China's WTO accession, is unnecessary in present-day China. It hinders insurance penetration and deprives consumers of best in class financial products and services. Lifting the cap will help China achieve its objectives to deepen financial reforms and promote financial inclusion.

2. Online Insurance Distribution

- Recommend China expand the list of products covered under the Measures on the Administration of Internet Insurance Business, which was released in July and takes effect on October 1. The measures should be applauded for expanding and deepening financial inclusion in China by lowering costs to consumers, simplifying and improving sales and services, and providing access to digital insurance for all Chinese citizens without geographic restrictions. However, the product list should be expanded to include products such as critical illness.

3. Branches, Subsidiaries

- Secure national treatment for foreign insurers in branch licensing and request CIRC to issue an administrative notice to clarify and implement in practice that all insurers, both foreign-invested and domestically-owned, are authorized to submit multiple concurrent applications for branch approval, which, if approved, will be granted concurrently within a reasonable timeframe. Although current branch application procedures have formally leveled the playing field between foreign-invested insurers with respect to branch as well as sub-branch approvals, foreign insurers still suffer stricter and lengthier approval procedures in comparison to domestic entities and the *de facto* refusal to concurrent branch applications.
- The abilities to expand geographically and diversify risk portfolios are basic, fundamentally important insurance principles which allow insurance companies to avoid concentration of risk and unbalanced, over-exposed books of business.
- In support of China's commitment to address the moratorium on new licenses for regional sales offices, amend the regulations for the three structures that perform functions comparable to regional sales offices, i.e., sub-branches, central sub-branches and departments, to allow foreign-invested insurers to apply directly to the local CIRC office under the same procedures as domestically-owned insurers and not through the International Department of central CIRC.
- Request CIRC to adopt global best practices in terms of branch requirements, regulatory maintenance and compliance costs in order to reduce the burdensome costs for foreign insurers to operate in China. The cost of operating in China is very high compared to most other markets. Administrative burdens and compliance are particularly onerous, including CIRC's I/T requirements and rules regarding claims, finance and compliance personnel for new branches.

4. Liability Insurance

- Request CIRC to help advance an understanding of the new Tort Liability Law and its relevance to the insurance sector, in line with the State Council's explicit goal to build a liability culture and improve food and product safety. To shift financial burdens away from the state, it is essential that Chinese companies purchase liability insurance to protect their balance sheets. In particular, product liability insurance should be required for companies bidding on government contracts.

5. Enterprise Annuities (EA)

- Establish a transparent and public procedure for formulating CIRC recommendations to Ministry of Human Resources and Social Security (MOHRSS) as part of the ongoing licensing process for EA providers where the licensing authority is held by MOHRSS in consultation with CIRC, the China Banking Regulatory Commission (CBRC) and the China Securities Regulatory Commission (CSRC).
- End the informal moratorium on EA licensing (last batch of licenses were awarded in November 2007) and publish the necessary process for companies to apply for EA authorization on an ongoing basis.
- Allow 100% foreign equity ownership in EA-related companies.

6. Insurance Brokerage

- Allow international and regional brokers to service Chinese small and medium enterprises (SMEs). If approved, this development would lead to a better understanding of loss control and risk-management techniques among companies currently not being served by foreign brokers.
- Liberalize the rules for setting up brokerages and allow captive agents to convert to brokers which would broaden market access for insurers.

7. Investment of Assets

- Recognize the global experience, capital, and organizational resources for all seasoning or staffing requirements for Insurance Asset Management Companies (IAMC) and/or other investment requirements, focusing on the desired risk management standards, rather than the number of bodies necessary to guide each type of investment class.
- Allow foreign invested insurers the option to work with mutual fund companies (several of which have foreign partners) to leverage their extensive experience and global best practice on fund management.

8. Remuneration

- Allow foreign-invested insurers to use the "Rules and Guidelines for the Management of Remuneration of Insurance Companies" issued by CIRC in July 2012 for consideration and reference only. The rigid remuneration standards set by the Guidelines are likely to lead to obstacles in the competition for talent and also unfairly handicaps foreign-invested insurers whose management remuneration structure is inherently different because foreign insurers operate globally and generally from their home offices.

MEDIA/ENTERTAINMENT/ACADEMIC JOURNALS

1. Filmed Entertainment

- Seek specific commitments to ensure the comprehensive implementation of all aspects of the February 2012 U.S.-China Film Agreement including: finalize long-form contract consistent with MOU terms; actively promoting and approving additional companies to engage in national distribution of theatrical films; providing for transparency in the censorship process; eliminate or at least minimize black-out periods for foreign films; allow foreign film producer to select release date; allow foreign film producers to engage in marketing, and cease other actions taken by the government and SOEs which have a discriminatory impact on foreign producers. Also consider further liberalization upon the built-in review of the MOU.
- Allow foreign enterprises to hold a majority share in entities engaged in the production, distribution, and publication of audiovisual products and games in all formats, including new media.
- Enforce a ban on the sale of audiovisual media by street vendors.
- Increase steps to curtail online piracy, including unauthorized streaming of U.S. television programming and other audio-visual content from sites in China.
- Ensure that the censorship process for audiovisual works is transparent and is conducted in a timely fashion, and work to establish a transparent and consistent film ratings system.
- Broaden the carriage of foreign TV content beyond hotels and foreign compounds, and eliminate foreign content restrictions on Chinese TV channels, including the limit on foreign-produced animation during primetime.

2. Sound Recordings

- Secure a commitment from China to allow the U.S. sound recording industry to invest and operate in China in all facets of the music business, in the same manner as Chinese record companies. This would include the right/ability to sign artists, record, produce, market, and distribute recorded music in physical form as well as over Internet and mobile platforms.
- Secure a commitment from China to allow U.S. record companies to acquire or establish foreign-invested enterprises (which can be wholly foreign-owned, majority foreign-owned or controlled, or minority foreign-owned or controlled, at the election of the U.S. company) for the purpose of engaging in the above full range of activities.
- Secure a commitment from China, consistent with the recent WTO decision on trading rights, to ensure that any entity may freely import sound recordings into China, invest in and operate companies involved in the digital distribution of music, and enjoy the same rights and privileges as their Chinese counterparts.
- Secure a commitment from China to terminate the discriminatory censorship regime that it maintains with respect to foreign music for physical release. Chinese censorship restrictions delay or prevent U.S. copyright owners from providing legitimate products to the market in a timely fashion. For example, PRC government censors are required to review any sound recording containing foreign repertoire before its physical release, while domestically

produced Chinese repertoire is only recorded, not censored (and, of course, pirated product is wholly uncensored and is the dominant form of music accessed by Chinese society).

- Regarding online distribution of foreign-produced sound recordings, it is noted that a trial period for 1 year for the licensed platforms to self-censor the sound recordings was started in late 2013. This self-censorship scheme should be maintained after the trial period. Up to now, the aforesaid pilot project is still on-going and no progress or problem is reported.
- Secure a commitment from China to abolish the requirement for foreign music producers to have exclusive licensee for the purpose of content self-censorship for online distribution of foreign-produced music. There is no written confirmation from MOC regarding the abolishment of the requirement for exclusive licensee.
- Push for the early adoption of the Copyright Amendment Bill which includes the introduction of rights for producers to collect royalty for the use of sound recordings in public performance and broadcast programs.
- Secure a commitment from China to extend the term of protection for sound recordings to at least 70 years as soon as possible.
- Encourage the Chinese government to introduce additional regulation, supervision and control over the collecting societies so that right owners can be adequately and properly compensated for the uses of their works.

3. Cable Television

- Secure commitment from China to revise the catalogue for foreign investment to allow foreign enterprises to set up companies to produce and distribute TV programs, own TV channels and provide telecom valued-added services over China's cable TV networks.
- Eliminate the ban on foreign animation during primetime television.
- China remains a hub for manufacturing and distributing Internet-enabled set top boxes⁷ and illegal free-to-air decoders⁸ that interfere with the ability of copyright owners to manage a variety of business models that offer consumers lawful access to products and services. Criminalization as well as targeted, deterrent actions against manufacturers, distributors and facilitators of media box piracy is critical to minimizing the negative impact on the legitimate media sector around the world and the global economy. Additionally, governments and law enforcement should coordinate on efforts to address the importation of these illicit media boxes.

4. Academic Journals

- Fully implement the 2009 *Notice on Strengthening Library Protection of Copyright* commitments by the National Copyright Administration, Ministry of Culture, Ministry of Education and

⁷ Internet-enabled set top boxes 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

⁸ Illegal free-to-air decoders facilitate unauthorized access to pay-television service. The illegal decoders 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.

National "Anti-pornography" Office to strengthen copyright protection in libraries in all provinces, autonomous regions and municipalities through:

1. adoption of model inspection guidelines,
 2. regular inspections,
 3. development and adoption of individual library copyright protection plans,
 4. regular progress reports from provincial authorities about enforcement of the library directive, and
 5. a library roundtable on copyright in the educational and research setting.
- 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 KJMed 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).

MEDICAL TECHNOLOGY/HEALTH CARE

1. Market-Based Health Care Reform

- Secure a commitment by China to further encourage private investment in healthcare by fully implementing the initiatives in Document 58 at all government levels and add healthcare services to the encouraged category of the Foreign Investment Catalogue.
- Lower the tax rate for private hospitals.
- As the PRC government continues to implement its healthcare reform plan, secure a pledge from the government to continue market economic reform in the healthcare sector and avoid limiting patient choice through interference in the market, such as restrictions on healthcare services, preferential market access treatment for domestic products, inappropriately low reimbursement rates, or the introduction of price caps and markup limitations.
- Encourage China to take measures to meet the existing guidelines that the National Reimbursement Drug List (NRDL) must be updated at least every two years, and over the medium term, improve timelines further commencing the reimbursement assessment process in parallel to the drug registration approval.
- Streamline and harmonize competitive bidding practices for medical devices and pharmaceuticals at the provincial level.
- In response to the CFDA's recent registration fee notice, secure a commitment from China to provide equal treatment to local and foreign manufacturers, to lower their user fees, and to develop metrics that evaluate the progress over specified periods of time.
- Improve the medical device tendering process by:

- utilizing a more integrated evaluation of product quality, price, service, and innovation;
- not artificially limiting the number of products, brands, companies, or distributors participating in the tender;
- increasing industry engagement in the development of tendering policies; and
- conducting tenders in accordance with transparent and standardized procedures, guided by clear rules and criteria from the Ministry of Health (MOH), and carried out in a consistent, unified approach.
- In order to support access to technologies that benefit the Chinese patients, society and economy, particularly those in the life sciences area, secure a commitment by China to fairness and transparency in the implementation of quota and related licensing requirements, including establishing and making public the timeframes within which quota and related licensing decisions are to be made.
- Secure a pledge from China to implement China's commitment made during the 2012 meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT) related to regulatory data protection (discussed above).
- Encourage the Chinese FDA (CFDA) to continue its constructive engagement with the medical device industry and other stakeholders as it pertains to the ongoing implementation of recent medical device regulations (Order 650). Secure a commitment from CFDA to continue its dialogue with the medical device industry to ensure the design and implementation of a reasonable and fair registration fee system for medical devices.

2. Clinical Trial Approval Processes and Local Participant Requirements

- The long regulatory review timelines for a clinical trial application pose the biggest challenge to involve China in global drug development programs for new medicines. While regulatory agencies in the US, Europe, and Japan can provide regulatory review and approval within one to three months, it takes on average twelve to eighteen months for a clinical trial application (CTA) to be reviewed in China. The Chamber appreciates the 2014 JCCT commitment to accelerate the regulatory review and approval system and to eliminate the drug application backlog within 2-3 years. Underlying the CTA delay is the imbalance between CFDA staff and resource capacity and rising industry innovation activities.
- Encourage China to shorten the CTA review process timeline to foster simultaneous participation in global registration studies, speed up drug development, and reduce the time it takes for innovative new medicines to reach the patient.
- Support China's work toward a well-resourced, well-funded regulatory agency equipped with the latest technology, adequate staffing levels, and scientific expertise – all of which have a direct impact on encouraging innovation, protecting public safety, and promoting good public health.
- Secure a commitment from China to harmonize process and regulatory requirements to International Conference of Harmonization (ICH) standards in order to help build capabilities, enable participation in the global marketplace, and attract foreign and domestic investment in innovation.
- In order to register a product in China, clinical trials must be conducted in China. Requirements for the minimum number of Chinese patients recruited into clinical trials are

predetermined and do not take into account the rarity of disease or other science-based determinations. While the Chamber appreciates that China agreed to allow a drug to have clinical trials in foreign countries at the same time that it is conducting trials in China at the 2014 JCCT, China should implement clinical trial data requirements that are science-based, and conform to international best practices so that China may be included in simultaneous global development programs.

3. Conformity Assessment, Certification and Licensing Requirements

- Secure a commitment from China to ensure national treatment and to harmonize China's medical device pre- and post-market conformity assessment, registration and re-registration, and adverse event reporting/recall provisions with international practice as embodied by ISO 13485 and Global Harmonization Task Force guidance.
- Secure a commitment from China that the development and implementation of a Chinese Unique Device Identifier (UDI) system will be consistent with relevant international standards, including guidelines of the International Medical Device Regulators' Forum (IMDRF). As part of this undertaking, China should also commit to regular and open consultation with industry and other stakeholders as it implements its UDI system.
- Secure a commitment from China to harmonize its regulatory framework with international regulatory standards and practices. China should commit to accept the Clinical Trial Approval (CTA) amendments after initial submission, to recognize and accept clinical trial data from patients in other countries, and to allow submission of the Certificate of Pharmaceutical Product (CPP) in parallel to the New Drug Application (NDA) process, or just prior to approval.
- Remove the prior country of original approval requirement for the drug component of combination drug and medical device products.
- Streamline and clarify China's labeling and Instructions for Use (IFU) requirements as outlined in the 3rd Edition of Decree 276.

RETAIL AND DIRECT SALES

1. Retail and E-Commerce

- Revise the Measures on the Administration of Foreign Investment in Commercial Sectors and other related regulations in line with China's WTO commitments and common international practices.
- Secure a revision to the Tentative Regulations of SAIC on the Proportion of the Registered Capital to the Total Amount of Investment of Sino-Foreign Equity Joint Ventures to make minimum capital requirements consistent with the Company Law, and to ensure foreign and domestic retailers are treated equally in regard to the minimum registered capital requirements.
- Remove the ownership restrictions and restrictions on the number of stores for foreign retailers, as stated in Article 18 of the Measures on the Administration of Foreign Investment in Commercial Sectors.

- Eliminate the requirement for local governments' opinions and public hearings on foreign-invested retailers' zoning plans before approving new stores applications. Lift all geographical restrictions on foreign-invested retailers.
- Eliminate restrictions on retail networks of foreign majority-owned companies with more than 30 stores that prohibit selling particular goods, including DVDs, CDs, books, petroleum, tobacco, and pharmaceuticals, or at a minimum, ensure that regulations on the distribution restrictions are applied equally to Chinese and foreign retailers.
- Issue guiding policies to provincial and municipal governments to standardize requirements of wholly-foreign owned enterprises (WFOE) for foreign retailers.
- Provide guidance to local authorities to ensure that the MOFCOM issued Administrative Measures on Single-purpose commercial Prepaid Card is implemented in the same manner across the country, so domestic and foreign companies face a consistent regulatory environment in all localities.
- Secure a commitment from SAIC to publish clear guidance to all local AICs that channel fees should not be regarded as commercial bribery under Chinese law, thus ensuring national law will be implemented consistently nationwide.
- Formulate and promulgate regulations on the application for online sales by foreign-invested retailers to encourage the development and improvement of e-commerce in China. Revise the Foreign Investment Catalogue to move e-commerce from the "restricted" to "encouraged" category and allow foreign telecommunications e-commerce companies to set up and operate open online marketplaces, including providing basic and value-added telecommunications services.

2. Direct Sales

- Enhance market access and increase transparency by simplifying and increasing speed of the license approval process according to the ninety-day process in the direct selling regulations and duly informing companies regarding the approval progress.
- Simplify the approval process by requiring only provincial level approval of service center establishment plans; eliminate multilevel government approvals and sales initiation approvals.
- Revise the requirement for having a service center in each district to one per city and ensure that local requirements are consistent with national regulations.
- Review and revise the Direct Sales Regulations, the Regulations to Prohibit Chuanxiao, as well as their associated administrative directives, to bring them in line with China's WTO commitments, standard international practices, and business reality in the China market.

SOFTWARE

1. Software Legalization

- Press the Chinese government to fully implement its JCCT and S&ED commitments on government and SOE software legalization in a comprehensive and transparent manner. It

is essential that software legalization encompass all types of software, not just select categories. China should commit not to influence, either formally or informally, the software purchasing decisions of SOEs in any way and to eliminate all explicit or *de facto* mandates or preferences for the procurement of domestic software brands by government agencies or SOEs, including measures such as price controls or preferences for certain types of licenses or licensing terms. In order to hold government and SOE officials accountable for these efforts, the Chinese government should develop performance indicators for government and SOE officials linked to measurable progress on software legalization.

- For SOE legalization, China should develop a legalization program that encompasses all SOEs under the authority of CBRC or directly supervised by the State-owned Assets Supervision and Administration Commission (SASAC), including central, provincial and municipal-level SOEs, and requires SOEs to utilize software asset management (SAM) best practices and third-party audits and certify annually that all their software is fully licensed. China should ensure that all government agencies tasked with overseeing SOE legalization are adequately resourced in terms of funding, manpower and appropriate audit tools, and ensure that SOE software procurement budgets are transparent and sufficient to meet software legalization needs.
- For government legalization, China should implement ongoing legalization programs for government agencies at all levels - central, provincial, municipal and county – and at all institutions that are funded by and report to these agencies. This includes providing sufficient and transparent budgets for software purchases and implementing SAM best practices.

2. Copyright, Criminal and Patent Law Reform

- Secure a commitment from the Chinese government to continue to consult closely with industry stakeholders and move the process forward to amend the Copyright Law, Criminal Code and related laws and judicial interpretations to include needed changes to facilitate civil and criminal enforcement against the unlicensed use of software by enterprises. This includes clearly establishing in the Copyright Law that unlicensed software use is an infringement of the right of reproduction (whether the unauthorized copy is a permanent or temporary reproduction), clarifying that enterprise use of unlicensed software and Hard-Disk Loading (HDL) may be subject to criminal penalties, strengthening rules related to evidence preservation orders, increasing statutory damages for copyright infringement, and providing for criminal liability for circumvention of technological protection measures (TPMs) as well as production and distribution of tools and methods to circumvent TPMs.
- In regards to Patent Law, press the Chinese government to remove the State Intellectual Property Office's (SIPO) proposed “ex officio” patent enforcement powers against ill-defined “market-disruptive” activities and permit broad patentability of graphical user interfaces (GUI).
- As mentioned in the IP section above, press SIPO to remain open to further comment and engagement on the recently published revision of the draft *Service Invention Regulations* (SIR), in particular to ensure that employer-employee contracts or agreements supersede the provisions of the SIR regarding employee compensation. Also press Chinese government to

ensure that the amendment to the *Law of Promoting Transformation of Scientific and Technological Achievements*, which also includes provisions governing service invention remuneration and awards, takes careful consideration of the views of domestic and foreign research and development intensive firms.

- Press the Chinese government to take into account industry concerns with the current draft Rules of the Administration for Industry and Commerce on the Prohibition of Abuses of Intellectual Property Rights for the Purposes of Eliminating or Restricting Competition which raise significant potential liabilities for IP-intensive companies in China and may limit innovation in the market by prohibiting pro-competitive IP licensing practices.

3. Trade Secrets

- Press Chinese government to implement its Action Program on trade secrets protection and enforcement with effective enforcement actions and public awareness initiatives, and undertake necessary legal reforms.

4. Market Access

- **Software Procurement:** Revise new Ministry of Finance rules on software procurement to eliminate price controls and preferred licensing terms that have the effect of discriminating against or excluding foreign brands and broaden the definition of “standard configurations” of desktop software to include all types of software used by government agencies. Moreover, these rules should not be used to direct or influence procurement by SOEs.
- **Telecom Services Catalogue:** Eliminate from coverage under the Catalogue IT services offered by software companies that should not be considered telecom services, e.g., cloud computing, content delivery, information security services and call centers.
- **ICP, ISP and IDC Licenses:** Address restrictions that prevent foreign companies from obtaining internet content provider (ICP), internet service provider (ISP) and internet data center (IDC) licenses, which they need in order to offer cloud computing and other internet-based services.
- **MLPS:** Remove the restrictive provisions of the Multi-Level Protection Scheme (MLPS) requiring that information security and other IT products procured for a broad array of information systems be Chinese-owned products with Chinese-owned IP.
- **Encryption Products:** Push for a transparent revision process of China’s current commercial encryption regulations that rescinds the ban on importing, distributing, and selling foreign commercial encryption products to domestic commercial organizations in China. Ensure the government of China is not informally requiring or pressuring companies to use indigenous encryption algorithms like ZUC through SOEs, unwritten and discriminatory incentives, or otherwise.

- **Standards-Setting Process:** Urge China to institute meaningful reforms in its standards-development processes to allow participation by both foreign and domestic companies on an equal footing, to encourage development and adoption of industry led standards and ensure that such standards efforts proceed in an open and transparent manner, and to adopt internationally accepted standards when available. Encourage China to avoid using the international standardization process to standardize prescriptive technologies, like the ZUC algorithm, so they can then mandate them domestically in a way that stifles innovation and competition, and is contrary to the spirit of the WTO Agreement on Technical Barriers to Trade.

TAX

- Provide clarity as to when the VAT Reform will be extended to all types of services in China and a fixed timetable for such implementation.
- Provide greater clarity as to when exported services will qualify for VAT exemption.
- Provide greater clarity on tax treatment of outbound remittances by PRC subsidiaries of U.S. companies, which currently are being held up by the tax administration pending tax clearance.
- Devote additional resources to clear the backlog of Advance Pricing Arrangements applications to give greater tax certainty to U.S. companies which have transactions with their PRC subsidiaries such as licensing transactions or services or exports of manufactured goods.
- Obtain commitment to provide more preferential individual income tax treatment to foreign professionals working in China including expanding the scope of exempt benefits-in-kind, more favorable treatment of equity compensation, and eliminating the tax gross-up calculations where tax is borne by employers.
- Exempt from Circular 698 reporting requirements for genuine corporate restructuring taking place within a majority owned group, to encourage more efficient consolidation of Chinese subsidiaries by U.S. entities.
- Provide greater certainty regarding the commencement of business timing for tax loss carry forward rules by establishing an SAT advance ruling mechanism on the commencement of business date which will be binding on all levels of the tax administration.
- Introduce a tax consolidated filing regime for corporate income tax purposes. This would allow foreign investors with multiple legal entities in China to offset their tax losses from some of their legal entities against the taxable profits in other legal entities. Tax losses in China can only be carried forward for 5 years under China's Corporate Income Tax Law so there is a significant tax cost for large scale investment projects if tax losses cannot be recouped within the first 5 years of operations of the legal entity that incurred the tax losses. Tax consolidated filing is possible in many mature tax jurisdictions such as Australia, Japan and in the U.S. and helps attract more foreign investment.
- Permit settlement of salary cost reimbursements for foreign employees on secondment to China from overseas without the imposition of any taxes such as Business Tax or Value Added Tax. This is a problem faced by many U.S. MNC's in their efforts to have top executive talent work on their investments in China. Currently U.S. executives seconded to the China branch must continue to have employment with a U.S. entity to continue to participate in the U.S. retirement savings plan. However, when the U.S. payroll entity

charges the salary costs to the Chinese subsidiary, these salary cost reimbursements are subjected to China's Business Tax unless certain strict requirements are satisfied. This has left many Chinese subsidiaries unable to remit the salary cost reimbursements to the U.S. payroll entity.

TELECOMMUNICATION SERVICES

1. Value-Added Telecom Services Licenses

- Secure a commitment from China to revise the draft MIIT *Catalogue of Telecommunication Services* to incorporate the broad functional definition of value-added telecom services as anything other than ownership of transmission facilities. We urge China to eliminate from coverage under the Catalogue computing, digital and other IT services that should not be considered telecom services, e.g., cloud computing, content delivery, information security services and call centers. We encourage a senior level discussion on the barriers presented in the latest draft Catalogue with an emphasis on China's incorrect classification of new technologies and services that use the telecom infrastructure as "telecom services". The U.S. industry has serious concerns that the draft Catalogue introduces new investment barriers and licensing requirements, which will impede foreign companies' abilities to compete in the China internet and telecom markets, including cloud computing, content delivery and e-commerce.
- Secure a commitment from China to remove remaining caps to FDI in this sector and remove joint venture requirements. Eleven years after China's WTO accession, China continues to use its discretionary interpretational authority to limit the number of foreign invested telecom entities to only 20 to 30 and all in the VAT's area.
- Secure a commitment to reconsider the capital structure required of service providers as defined in the *Resale Services Circular* so that both incumbent and new entrant carriers can acquire capacity at wholesale rates and interconnect their networks to deliver services to a broader customer base. The very narrow definition in the Circular means that foreign investors are essentially excluded from the market.

2. High Capitalization Requirements

- Secure a commitment from China to lower capitalization requirements for basic service licenses and allow foreign companies access to the market.

3. Joint Venture Partnership Requirement

- Secure a commitment from China to eliminate the requirement that a foreign company must select a state-owned and licensed telecom company as a joint venture partner.

4. Independent and Impartial Regulator with Transparent Procedures

- Secure a commitment from China to establish a regulatory body that is separate from, and not accountable to, any basic telecom supplier, and that is capable of issuing impartial

decisions and regulations through transparent procedures.

5. Draft Telecom Law

- Secure a commitment from China to go beyond codifying existing rules in the draft Telecom Law by incorporating the above suggestions. Finalizing and adopting a market opening Telecom Law should be a top priority. Any revision of the Telecom Law should allow both foreign and domestic companies to provide cloud computing services in the China market.
- Urge China to not adopt unique indigenous technical standards for cloud computing that would create market access barriers for foreign firms operating in China.