



U.S. CHAMBER OF COMMERCE

AmChamChina
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**Submission Regarding the U.S. Trade Representative's
Request for Comments Concerning China's Compliance with
World Trade Organization Commitments**

from the

U.S. Chamber of Commerce

and

American Chamber of Commerce in China

September 15, 2021

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Executive Summary

On behalf of the U.S. Chamber of Commerce (“the U.S. Chamber”) and the American Chamber of Commerce in China (“AmCham China”), we respectfully provide the enclosed submission and accompanying annex to share our views on China’s compliance with its WTO commitments. Our submission reflects extensive input we have received from across our collective memberships.

The U.S. and China are deeply integrated by virtue of their direct economic relationship and their respective roles in the global supply chain. Prior to the imposition of bilateral tariffs in 2018, the U.S.-China trading relationship accounting for goods and services stood at \$737.1 billion. Since then, the scope of U.S. goods and services trade with China has decreased to an estimated \$634.8 billion in 2019¹ and \$615.8 billion in 2020.² This downward trend reflects both trade disruption due to the COVID-19 pandemic and concurrent “decoupling” policies being enacted on both sides. Our organizations have persistently urged both the U.S. and Chinese governments to consider the enormous costs and dire consequences of continued tariffs and economic decoupling,³ and we remain unequivocally opposed to such policies.

In addition to recognizing the mounting risks of decoupling, for more than 10 years our organizations have also documented extensively⁴ the evolution of PRC policies that have fundamentally called into question China’s compliance with its WTO commitments, and have provided roadmaps to help the U.S. government address these critical issues. Indeed, many of these recommendations were incorporated as part of the bilateral negotiations that led to the January 2020 U.S.-China Economic Agreement (the January 2020 Agreement). As part of its implementation of the January 2020 Agreement, China has:

- lifted restrictions on full foreign ownership of life insurance, futures, mutual fund, and securities companies;
- expanded access to the Chinese market for U.S. exporters of beef, pork, poultry, seafood, dairy, feed additives, and infant formula;

¹ USTR, “The People’s Republic of China,” <https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china>.

² BEA, “International Trade in Goods and Services,” <https://www.bea.gov/data/intl-trade-investment/international-trade-goods-and-services>.

³ U.S. Chamber of Commerce, “Understanding U.S.-China Decoupling: Macro Trends and Industry Impacts,” February 2021, <https://www.uschamber.com/report/understanding-us-china-decoupling-macro-trends-and-industry-impacts>.

⁴ See: U.S. Chamber of Commerce reports on Indigenous Innovation, Made in China 2025, ICT deglobalization, and the PRC patent system and antitrust practices, accessible at <https://www.uschamber.com/international/china/publications-and-reports>. Also see: AmCham China’s annual White Papers, the 2021 version of which is accessible at: https://www.amchamchina.org/white_paper/2021-american-business-in-china-white-paper/.

- issued measures to implement an early resolution mechanism for pharmaceutical patent disputes; and
- announced numerous policies and judicial interpretations designed to crack down on bad faith trademarks, trade secret misappropriation, and online piracy and counterfeiting.

During a year which presented unprecedented public health challenges, supply chain issues, and economic dislocation, our organizations recognize and appreciate USTR’s efforts to secure progress on the aforementioned reforms, many of which have already resulted in greater market access and fairer treatment for U.S. companies operating in the Chinese market. Likewise, we applaud USTR’s ongoing efforts to ensure full implementation of other aspects of the January 2020 Agreement, and to bring China into closer alignment with its 2001 WTO accession commitments.

In spite of China’s notable progress in the abovementioned areas, our organizations continue to observe a number of deeply concerning trends in Chinese policies and practices – many of which are fundamentally inconsistent with its WTO obligations, and others that are explicitly designed to circumvent its obligations (for example, policies that roll back WTO commitments to allow cross-border trade in a variety of services). In particular, since our previous submission in September 2020, China has:

- passed a Data Security Law and Personal Information Protection Law mandating potentially discriminatory data localization requirements, as well as black-box cybersecurity and data security reviews for networks deemed to pose risks to “national security” and “the public interest”;
- leveraged its court system to issue anti-suit injunctions⁵ and rulings⁶ in standard-essential patent (SEP) disputes that pressure foreign patent right holders to license patents to Chinese entities at artificially low rates and abandon efforts to secure compensation from Chinese entities violating their patent rights in lawsuits abroad;⁷
- continued to support non-transparent, unnecessarily burdensome anti-dumping and countervailing duty (AD/CVD) practices designed to disadvantage foreign companies, including massive subsidies and implicit guarantees made available to national champions and state-owned enterprises (SOEs);⁸

⁵ See: <https://chinaipr.com/2021/01/04/due-process-and-asis-wuhan-and-texas/>

⁶ See: <https://www.dlapiper.com/en/hungary/insights/publications/2021/07/framing-patents-as-essential-facilities-in-chinese-antitrust/>

⁷ These actions seemingly violating the spirit of China’s commitment to refrain from forcing technology transfers under Chapter 2 of the January 2020 Agreement, as well as TRIPS Article 28, which guarantees patent protection rights.

⁸ This practice—broadly used in China’s shipbuilding, semiconductor, and electric vehicle industries—violates Part I, Section 10 of the Protocol on the Accession of the People’s Republic of China, which requires China to notify the WTO of any subsidy under the Agreement on Subsidies and Countervailing Measures (SCM). Additionally, SCM’s scope for what constitutes a “subsidy”—defined as a “final contribution” by a government or public body which “confers a benefit”—does not capture non-financial forms of support the PRC government provides to domestic companies, such as censorship policies and national security requirements that *de facto* prevent foreign companies from accessing the Chinese market.

- continued to adopt government procurement policies that discriminate against foreign companies by mandating the purchase of domestic goods and services;⁹ and
- continued to rely on vaguely defined concepts of “national security” and “the public and social interest”—enshrined in a proliferating array of extraterritorial provisions¹⁰ in numerous laws and regulations—that have been leveraged as loopholes that enable China to establish market access barriers and censorship requirements that violate the language and spirit of its WTO commitments.

The abovementioned policies and practices appear to contravene numerous provisions under the WTO Technical Barriers to Trade Agreement (TBT), Agreement on Subsidies and Countervailing Measures (SCM), General Agreement on Trade in Services (GATS), Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), and Agreement on Trade-Related Investment Measures (TRIMs), as well as many other promises made under China’s accession agreement.

Addressing these areas of concern will require additional direct consultations and the implementation of policy solutions that are both verifiable and enforceable. As we have consistently emphasized, it is critical that the two governments resume negotiations as soon as possible on China’s policies and practices in the areas of subsidies, competition, standard-setting, technology transfer, digital trade, and core areas of intellectual property (e.g., patents, trade secrets) that have created a considerable gap between China’s WTO obligations and its actions to circumvent them.

Regarding each of these issues and others, we strongly support the Biden administration’s efforts to substantially expand avenues of collaboration with allies and partner governments that face similar concerns, including via the G7, OECD, the U.S.-EU Trade and Technology Council, the U.S.-EU China Dialogue, the Quadrilateral Security Dialogue, and ongoing trilateral discussions among the U.S., EU, and Japanese governments, among others. Furthermore, we strongly urge the Biden administration to embrace an ambitious trade agenda that ensures a level playing field for U.S. companies worldwide and raises standards in the Asia-Pacific region in collaboration with U.S. allies and partners, particularly in the digital space.

As stated above and in the industry letter the U.S. Chamber co-led and submitted to the Biden administration in August 2021,¹¹ we maintain that untargeted, punitive tariffs imposed in response to China’s harmful practices undermine American competitiveness, escalate a counterproductive cycle of retaliation, and lead to unintended, damaging consequences.¹² For this reason, we urge both governments to restart negotiations to directly address longstanding structural issues and disagreements, to provide tariff exclusions via a fair and transparent process, and to broaden the scope of tariff reductions agreed to in the January 2020 Agreement.

⁹ This practice runs in contravention to China’s still-unfulfilled promise to join the Agreement on Government Procurement (GPA), which requires open, fair, and transparent conditions of competition be ensured in government procurement.

¹⁰ See: PRC Data Security Law (Art. 2); PRC Personal Information Protection Law (Art. 42); PRC Biosecurity Law (Art. 56)

¹¹ See: <https://www.politico.com/f/?id=0000017b-4b3f-d1e7-a1fb-7bffa660000>.

¹² In light of China’s retaliation and its corresponding impact on American business, we believe the U.S. and Chinese governments should, at a minimum, mirror each other’s granted tariff exclusion requests while seeking to fully eliminate Section 301 tariffs over the negotiating period.

When both governments re-engage on negotiations to address outstanding issues, our organizations recommend the following three objectives to guide U.S. negotiators:

I. Prioritize Structural Issues that Restore Fairness and Open Markets

Negotiations should address systemic issues in the Chinese economy—like industrial subsidies—that result in unfair competition and non-market outcomes. Integral elements of China’s economic model are (a) difficult to square with China’s WTO commitments to the rule of law, market access, non-discrimination, and rejection of forced technology transfer; and (b) impose strains on the global trading system. The distortionary impacts of China’s industrial policies and the subsidies that underpin them are harming U.S. companies, workers, consumers, and competitiveness. While the January 2020 Agreement contained commitments to implement important intellectual property rights (IPR) reforms, open financial markets, and facilitate greater market access in a number of sectors, we urge the U.S. government to prioritize outcomes that address remaining structural challenges posed by China’s industrial policies and protectionist practices.

II. Eliminate All Forms of Forced Technology Transfer

China’s regulatory regime sets unnecessarily burdensome requirements for foreign companies to transfer technology as a condition for doing business in China’s very large market. An interlocking set of policies—including not only persistent caps on foreign equity ownership in particular industries, but, more importantly, procedures related to administrative licensing, joint ventures, standards, procurement, data localization, and competition and security reviews—results in foreign companies being coerced or induced to transfer technology as a precondition for market access, or being denied market access if they fail to do so. While a modest subset of these policies was addressed in the January 2020 Agreement (e.g., stating that technology transfers will not be required in relation to acquisitions, joint ventures, or other investment transactions; clarifying administrative licensing practices; agreeing to maintain the confidentiality of sensitive commercial information; explicitly opening standard-setting bodies to foreign participation), we urge the U.S. government to adopt a holistic approach that achieves specific and concurrent changes to additional laws, regulations, and standards—and implementation thereof supported by greater adherence to rule of law—across China’s policy landscape, not only with respect to ICT products and services, but also more broadly for other affected sectors, including life sciences.

III. Address Serious Challenges in the Regulation of the Digital Economy

Data localization, prescriptive security requirements, and preferences for domestic technologies in sectors lacking any reasonable connection to legitimate national security concerns constitute fundamental violations of the letter and spirit of China’s WTO accession agreement, and pose immediate and far-reaching challenges for American companies. These policies restrict the free flow of commercial data across borders and limit access to a burgeoning market for American digital products and services. We urge the U.S. government to leverage future negotiations to minimize localization policies and to ensure China applies national security requirements precisely and narrowly, so as not to discriminate against foreign companies and undermine competition. We also encourage the U.S. government to push for greater transparency and openness to international participation with respect to the ratings algorithms that form the technological basis of China’s emerging Corporate Social Credit System, which raises fundamental questions with respect to the evolution of China’s regulatory regime.

Our organizations recognize that achieving concrete, far-reaching progress in these priority areas will not be easy, which is why we are recommending the following two-step process to support verification of commitments and enforcement where differences may arise:

Step One – Securing Changes to Laws and Policies: As was the case with the January 2020 Agreement, securing further changes to Chinese normative guidance, laws, and regulations that comprise the regulatory structure that China uses to force technology transfer would be a significant and positive first step toward ensuring that core areas of non-compliance with WTO commitments are effectively addressed in the next round of negotiations. Commitments by China to meaningful reform in these areas will require clear benchmarks, timelines, and intensive monitoring to ensure lasting changes not only to China’s legal and regulatory architectures, but also impartial implementation of laws and regulations.

To support the U.S. government in its efforts to identify needed changes to normative guidance (e.g., documents such as the 14th Five-Year Plan, Made in China 2025, and other overarching industrial policy blueprints), laws, and regulations, we are pleased to include two annexes with this submission, as follows:

- Annex I: Priority Recommendations for Actions to Strengthen China’s Compliance with its WTO Commitments
- Annex II: Cross-Sectoral and Industry-Specific Member Company Issues

Step Two – Creating New Disciplines That Provide Recourse to Independent Arbitration and Can Be Multilateralized at the WTO: Our organizations urge the U.S. government to negotiate new disciplines with China that will bind and limit its ability—in practice—to apply laws, regulations, and policies in a manner that results in the discriminatory or otherwise unfair treatment of U.S. companies in China. In order to ensure full Chinese compliance with these new disciplines, providing access to independent arbitration empowered to activate robust enforcement mechanisms will be essential. In this respect, our organizations urge that any bilateral commitments reached in future negotiations covering subsidies, state-owned enterprises, and technology transfer should also be adopted multilaterally, including by the WTO.

We appreciate the U.S. government’s attention to these serious issues. China constitutes an important market for American products and services, and American business must continue to have access to that market. To do so, we ask both governments to redouble their efforts—through high-level dialogue and timely negotiations—to ensure a level playing field for competition between U.S. and Chinese companies within China and around the world. We are committed to working constructively with the U.S. government to ensure U.S.-China economic and commercial ties are mutually beneficial, as well as supporting American businesses and their workers so the bilateral economic relationship can move forward on more equal and sustainable footing. This is the best way to promote healthier and more stable U.S.-China relations and to restore faith in the ability of multilateral organizations—like the WTO—to address the very real challenges of unfair subsidies, digital mercantilism, and overly broad interpretations of national security that are undermining global trade in goods and services.



ANNEX I: PRIORITY RECOMMENDATIONS FOR ACTIONS TO STRENGTHEN CHINA'S COMPLIANCE WITH ITS WTO COMMITMENTS

1. Expand near-term market access for U.S. exporters and investors and ensure fair and equal opportunity to compete.

Background

China's market access and trade barriers continue to impede foreign investment in numerous key industries. According to WTO statistics, as of 2020, China's average MFN-applied tariff rate was 7.5%,¹³ more than twice the average rate of the United States (3.4%).

Solution

Reduce tariffs to align with WTO commitments and lift all restrictions on foreign ownership or management of Chinese enterprises (subject to a list of narrow and specific exceptions for sensitive sectors comparable in number to U.S. restrictions). Take additional steps to expand market access, including in, but not limited to, the following sectors:

- cloud computing services and data centers;
- basic and value-added telecommunications services;
- internet-related services;
- healthcare and medical devices;
- media and entertainment;
- express delivery services;
- electronic payment services;
- petrochemical refinement;
- agricultural biotechnology, crop breeding and seed production;
- energy and the environment; and
- legal services.

2. Curb overcapacity, eliminate subsidies, and remove other policies that promote unfair competition.

Background

¹³ See: https://www.wto.org/english/res_e/booksp_e/tariff_profiles21_e.pdf.

China provides massive subsidies—including for agriculture, aluminum/steel, and Made in China (MiC) 2025 industries—that distort domestic and global competition in favor of Chinese national/global champions.

Solution

Remove subsidies and market distortions through a State Council/Party proclamation and under strict timelines, including by:

- eliminating market-distorting non-commercial assistance or subsidies that artificially support industries (e.g., aluminum, steel, agriculture, export credits, and MiC 2025 industries);
- providing a meaningful liquidation or re-organization process for non-competitive firms in sectors with demonstrated overcapacity; and
- reducing policy prescriptions that result in excessive provincial/local investments in areas targeted for growth by national-level industrial policies.

3. Remove restrictions on digital trade, including eliminating “secure and controllable” and similarly-worded requirements and allowing the free flow of data.

Background

China’s laws/regulations restrict data flows, require data localization, block market access for cloud service providers, and allow for standards that either mandate tech transfer/IP disclosure or function as *de facto* requirements to buy only from domestically-invested companies.

Solution

Eliminate restrictions on data and ICT products and services by:

- excluding all commercial ICT products from “secure and controllable” requirements and ensuring that cybersecurity requirements are in keeping with international best practices for the protection of government systems (e.g., U.S. FISMA/FedRamp, European NIS Directive). Such exclusions should be clarified in writing;
- ensuring that “secure and controllable” requirements do not negatively impact the social credit ratings of ICT companies;
- ensuring that “secure and controllable” product and service requirements do not extend beyond narrowly defined national security considerations and public procurement, or into procurement by SOEs and in Critical Information Infrastructure (CII) sectors and industries;
- establishing a presumption that all categories of data can be transferred across borders without restriction subject to privacy protection requirements, unless subject to a very narrowly defined national security exemption;
- maintaining support of the Osaka Track, which promotes the concept of free data flows on the basis of trust, while at the same time in particular cases involving categories of information which may deserve restrictions on cross-border transfer (e.g., national security-related information);
- lifting requirements to use or locate computing facilities locally as a condition for conducting business in China;
- lifting discriminatory restrictions on access or use of data by foreign entities;

- according U.S. ICT companies and cloud service providers (CSPs) with full and non-discriminatory market access, including the ability to provide online services without the need to acquire a value-added telecoms service license or to enter into a joint venture;
- removing restrictions that prevent foreign providers from obtaining internet content provider (ICP), internet service provider (ISP), internet protocol virtual private network (IP-VPN), and internet data center (IDC) licenses;
- eliminating content review and approval schemes for foreign media and entertainment content that effectively limits opportunities for U.S. platforms; joining the APEC Cross-Border Privacy Rules system; and
- clarifying that cryptography products and services that meet international standards, have been proven secure, and are commonly used in other global markets are permitted to enter and be used in the China market.

4. Ensure fair and transparent implementation of the corporate social credit system.

Background

China's corporate social credit system (SCS) represents an ambitious effort to fundamentally reshape China's regulatory compliance landscape, and has the potential to help to level the playing field between foreign and domestic firms and limit market access of bad actors. However, the rollout of this initiative has been characterized by a lack of transparency and international participation in reviewing the algorithms and ratings procedures at the heart of the system. This has led to considerable uncertainty regarding ongoing regulatory compliance in the foreign business community.

Solution

Encourage Chinese authorities to improve SCS transparency and provide greater regulatory certainty for businesses by:

- publishing all SCS ratings, requirements, and algorithmic scoring mechanisms and providing an adequate period of time for public comment and transition that allows industry to assess critical gaps in compliance readiness;
- guaranteeing that ratings and requirements are not biased against foreign companies and that they do not use excessively broad interpretations of concepts such as "national security" or "public and social interests" to impose politicized or unfair demands that conflict with standard international practices and corporate values;
- ensuring access to fair and expeditious institutional channels for challenging poor SCS scores, remedying unfair rating practices, and restoring regular credit status; and
- adopting laws and regulations that ensure the full protection of sensitive corporate data, particularly data that is integrated and operationalized in the National Credit Information Sharing Platform and the National 'Internet+ Monitoring' System.

5. Protect the intellectual property of U.S. companies and ensure full and effective implementation of IP commitments undertaken as part of the January 2020 Agreement.

Background

China uses various means to force foreign companies to transfer their technology to Chinese partners, fails to adequately protect intellectual property and to provide effective enforcement against violations of intellectual property rights, and supports and conducts cyber-espionage to steal valuable proprietary

information from U.S. companies. While several of the commitments included in the January 2020 Agreement are designed to address these issues, it is vital that the United States continue to prioritize these issues and ensure that China addresses other longstanding concerns.

Solution

Encourage Chinese authorities to strengthen intellectual property laws, regulations, and enforcement by:

- fully implementing all new laws and regulations passed following the conclusion of the January 2020 Agreement, including those related to trade secrets, patents, copyrights, piracy and counterfeiting, trademarks, and judicial enforcement and penalties;
- providing effective protection against the unfair commercial use of test data;
- taking additional steps to accelerate the patent approval process;
- respecting the rights of foreign companies to defend their patent rights both within China and abroad without political interference; and
- eliminating unnecessarily burdensome legal provisions and other onerous requirements in the patent and trademark enforcement systems.



ANNEX II: CROSS-SECTORAL AND INDUSTRY-SPECIFIC MEMBER COMPANY ISSUES

CROSS-SECTORAL ISSUES

INDUSTRY-SPECIFIC ISSUES

CROSS-SECTORAL ISSUES

INDIGENOUS INNOVATION & INDUSTRIAL POLICY

1. Indigenous Innovation Policies and Product Lists

- Secure a commitment from China that it will repeal all remaining central- and local-level policies that provide preferences for domestic products or indigenous IP with a primary focus on Made in China 2025 sectors.
- Secure a commitment that China immediately make all plans and accompanying rules and regulations for its Strategic Emerging Industries (SEI) Initiative publicly available. Secure a commitment that SEI plans, rules, and regulations provide a level playing field for all companies, regardless of the nationality of their shareholders, and allow the market to select the most appropriate, sustainable technologies.
- Eliminate preferential tax policies for domestic companies producing high-value technologies (e.g., machine equipment, control systems, software) defined under the *Opinions on Promoting the Application of the First Series of Major Technological Equipment*, jointly issued by eight government ministries in April 2018. This includes policies for reduced corporate income tax rates, preferential tax policies and import duties.
- Request that China further modify the High- and New-Technology Enterprise (HNTE) program to:
 - eliminate the current HNTE requirement to own proprietary core technology in China and replace it with criteria that emphasize usage rights;

- expand the criteria of the licensing conditions to include non-exclusive licensee or usage rights; and
- reduce the amount of sensitive information that companies must release when they submit an application, limiting release to that which is truly necessary to evaluate a company's high- and new- technology activities, and provide more explicit assurances that this information will be adequately protected;
- permit group-level HNTE applications and introduce general corporate income tax group consolidation rules to facilitate business operations and efficient group structuring;
- remove the current limitation that HNTE incentives are offered only to “encouraged” industries. This is unduly restrictive given the manner in which new digital technologies, artificial intelligence (AI), and automation are driving an economy-wide transformation.

2. Public Procurement

- Finalize a clear, consistent, and inclusive definition of what constitutes a “domestic product” by issuing the *Administrative Measure for the Government Procurement of Domestic Products*. Ensure that any definition provides equal treatment to all legal entities in China providing goods and services regardless of ownership.

WTO Government Procurement Agreement (GPA)

- In October 2019, China submitted its seventh market access offer for accession to the GPA. The offer moved China much closer to opening its government procurement market to a degree that would nominally approach that of GPA parties; however, China can continue to bring this offer into greater alignment with GPA parties by:
 - withdrawing its proposed one-year transitional thresholds, its reservation to require domestic content requirements, offsets, or transfer of technology and its claim to transitional measures as a developing country given the advanced state of its economy;
 - including major SOEs that procure regularly for governmental purposes (i.e., not for commercial sale or resale purposes, or for use in the production or supply of goods or services for commercial sale or resale), including electrical utilities;
 - issuing a directive confirming that SOE purchases are non-government procurements based solely on commercial considerations, in line with China's commitments regarding the commercial independence of SOEs in the Working Party Report included in its Protocol on Accession to the WTO;
 - clearly including the following services industries:
 - all financial services, including insurance, banking, and e-payment services;

- express delivery services;
 - healthcare services;
 - all information and communications technology services;
 - media and entertainment services;
 - e-commerce services; and
 - accounting, auditing, and bookkeeping services and services related to management consulting;
- withdrawing its request to delay its implementation of the GPA after accession, as the GPA provides no authority for an acceding country to delay its entire implementation of the GPA after accession; and
 - securing 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 2021. Create opportunities for private sector participation in these discussions.

3. Standards

- We are deeply concerned about revisions to China's *Standardization Law* that came into effect in January 2018, which expand public disclosure requirements, establish a path for social organization standards to be transposed and adopted as national standards, provide support for indigenous innovation, and lack consistency with the WTO Technical Barriers to Trade (TBT). Secure a commitment for the following recommended changes to the *Standardization Law*:
 - **Indigenous Innovation:** Article 20 is highly problematic, and we strongly recommend it be deleted. The inclusion of a stated preference for indigenous innovation in social organization standards creates a trade barrier that would conflict with the WTO TBT 4.1, WTO TBT Annex 3, D, and TBT Annex 3, F. The WTO TBT requires all measures to be consistent with the Code of Good Practice. Article 20 conflicts with WTO TBT Annex 3, D which requires equal treatment of products originating from different countries and TBT Annex 3, F provisions for use of international standards.
 - **Public Disclosures:** The *Standardization Law* expands public disclosure requirements for enterprises. These requirements are unique to China and will likely add significant costs not only to enterprises but also to government agencies. We recommend the NPC remove enterprise standards from the *Standardization Law* and limit any mandatory public disclosure requirements only to mandatory standards. All other standards should be disclosed on a voluntary basis.
 - **Transposition:** Social organization standards can be beneficial for an industry's development because their adoption reflects market demand, and they can be

adopted rapidly to meet market needs. However, the adoption and conversion of social organization standards into national standards should be transparent, fair, and equitable. We are concerned that current implementation policies under the *Standardization Law* will establish a path for social organization standards to be transposed and adopted as national standards (recommended/mandatory) or recommended standards in a manner that is not transparent, fair, or equitable. In particular, the addition of Article 20 on support for indigenous innovation (see the bullet above) to the law creates a scenario where the WTO TBT requirements for a central government on the publication of a work program and sufficient public notice would be subverted. We recommend China commit to a verification system to ensure it adheres to WTO TBT notification requirements, and social organization and other standards are not transposed and adopted as national standards or recommended standards. In this respect, we recommend that China re-open the Standardization Law to public comment with a 60-day notification period and ensure its full compliance with WTO TBT requirements.

- **Equal Participation:** The *Foreign Investment Law* (FIL) and January 2020 Agreement provide for equal participation for foreign companies in China's standards-setting work. In practice, however, our members find that foreign companies continue to encounter considerable resistance when applying to join a standardization technical committee. Certain domestic enterprises on these technical committees are sensitive to participation by FIEs and work to hinder their participation. China should disseminate clear, binding implementing regulations and enforcement mechanisms that ensure equal participation by FIEs on standards-setting technical committees particularly those that are in support of the provisions included in the FIL and the January 2020 Agreement.
- Secure a commitment from China to (i) align Chinese standards—including national, industrial, and local standards—with international standards, and (ii) base Chinese standards and technical regulations on international standards wherever practical.
- Recommend that China ensure industry technical committees and other standards-setting bodies, such as the China Financial Standards Technical Committee (TC180), are open to participation by foreign companies as provided for in the FIL and January 2020 Agreement.
- Ensure that enforcement of the *Guiding Opinions on Foreign-Invested Enterprises' Participation in China's Standardization Work* allows foreign companies access to and voting rights in Chinese standards setting bodies, including mandatory and voluntary standards, 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 IP of a foreign company into a Chinese standard on non-market or royalty-free terms.

- 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 their adoption, along with opening all domestic standards development organizations to foreign voting participation.

Address China's tendency to adopt GB/T standards that are not formally compulsory, yet are treated as such in practice. If such GB/T standards are to be made mandatory, it is imperative that they be treated as new, mandatory standards and made to undergo rigorous project approval procedures, including an open and transparent process for drafting, public comment and technical review.

Review all TC260 standards for compliance with/duplication of existing international standards, and adopt international standards where they already exist.

- Open the China Standards 2035 research program to a wider range of opinions, experts, and institutions to ensure that the any future standardization systems in China are consistent with and meet the needs of existing practices in international trade and commerce.
- Officially broaden the recognition of international SDOs to include any organization that follows the WTO/TBT principles on international standards development. Adopt existing global technical standards in their complete form whenever available in order to ensure full harmonization and avoid creating domestic national standards or standards deviating from prevailing global standards.
- Allow foreign testing institutions to provide compulsory product testing and certification services for all product categories, and allow foreign institutions to become compulsory product certification institutions.

4. **Conformity Assessment and Certification Redundancy**

Encryption

- On January 1, 2020, China's new *Encryption Law* came into effect, significantly altering the regulatory landscape for foreign-made commercial encryption products. As currently worded, the law subjects "core" encryption and "ordinary" encryption products to heavy regulation by the State Cryptography Administration (SCA). Unlike these two categories, "commercial" encryption is not classified as a "state secret"; however, the term continues to lack a precise definition and is not treated uniformly throughout the law, which makes it impossible to assess what types of encryption technology may be categorized under this term. Similarly, the new law contains vague

language subjecting foreign-made commercial encryption that “may impact national security or the public interest” to new import licensing and export control requirements. While the law carves out an exemption for “products for consumption by the general population,” this term also remains undefined and creates the potential for certain products to be excluded from the definition. For all of the terms outlined above, we recommend that the *Encryption Law* be revised to provide greater definitional precision in order to reduce uncertainty for businesses deploying foreign-made commercial encryption products and ensure compliance with WTO/TBT principles.

- In March 2000, the State Encryption Management Commission issued a clarification, which excluded from the scope of the 1999 encryption regulation products which do not have encryption as their “core function.” U.S. industry has relied heavily on this commitment and on subsequent statements by the Chinese government that the “core function” commitment will remain in place. The new law should be revised to recognize this commitment and to ensure that any subordinate regulations will also do so.
- Secure a commitment that China will remove all requirements to use localized encryption, including in the China Banking and Insurance Regulatory Commission’s (CBIRC) *Insurance System Informatization Regulatory Requirements (Draft)*, to prevent the imposition of a disproportionate burden on foreign-invested insurers because Chinese algorithms may differ from those of their parent companies, thereby reducing their competitiveness. Furthermore, the import of encryption products should not be regulated and equal weight should be given to international algorithms.
- Ensure that China’s inspection and review regime under the *Cybersecurity Law* and MLPS 2.0 respects the right of foreign businesses to protect decryption keys and passwords, and to withhold access to these confidential assets from government regulators.

Information Technology/Electronics

- Ensure that China implements its 2006, 2009, and 2010 JCCT commitments to maintain a policy of technology neutrality towards 3G/4G/5G and other telecom standards by allowing operators and end users to adopt technology freely and based upon market principles.
- In light of China’s *Management Methods for the Restriction of the Use of Hazardous Substances in Electrical and Electronic Products*, seek clarification that the voluntary China Restriction of Hazardous Substances (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. Companies should be free to undergo voluntary certification by independent accredited bodies.

Testing and Certification

- Secure a commitment from China to not only prohibit the forced transfer of source code, but to also ensure that disclosing source code is not mandated in government-controlled testing labs, which would be in direct contravention of China's IPR commitments outlined in the January 2020 Agreement.
- Secure a commitment from China to engage the U.S. in negotiations on a mutual recognition agreement (MRA).
- 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.

5. Cybersecurity Initiatives

China Banking and Insurance Regulatory Commission (CBIRC) Informatization Regulations

- Secure a commitment that China will stay implementation of all regulations—including CBIRC's (previously CIRC) *System Informatization Regulatory Requirements* (draft) and the China Banking Regulatory Commission's (CBRC's) *Guidelines for the Promotion of the Use of Secure and Controllable Information Technology*—requiring “secure and controllable” products until these regulations are consistent with WTO agreements/rules (including but not limited to those in the TBT Agreement), are narrowly tailored, take into account international norms, are non-discriminatory, and do not impose nationality-based conditions or restrictions on the purchase, sale, or use of information communication technology (ICT) products by commercial enterprises unnecessarily—per commitments made at the presidential bilateral meeting in September 2015.
- Secure a commitment that China will remove data localization requirements from the CBIRC *Insurance System Informatization Regulatory Requirements (Draft)*. We are concerned about provisions in the revised draft CIRC regulations that would require data sourced within China be stored in a data center located in China. This requirement is unwarranted and costly. Moreover, CBIRC can and already does require that all insurance institutions licensed in China provide relevant information to enable CBIRC to perform its supervisory responsibilities.

- Secure a commitment that China will remove procurement preferences for products that are “secure and controllable” (Article 53) from the *CBIRC Insurance System Informatization Regulatory Requirements (Draft)*. It remains unclear what definition or standard applies to “secure and controllable.” At the 2015 Strategic and Economic Dialogue (S&ED), the Chinese “committed to ensure that ICT regulations will be non-discriminatory, will not impose nationality-based requirements, and will be developed in a transparent manner,” and re-affirmed this at the 2015 JCCT. We ask that this commitment be applicable to commercial insurance.
- Ensure that China remove all restrictions on cross-border data transfer (CBIRC *Insurance System Informatization Regulatory Requirements (Draft)* Article 58) and explicitly allow for copies of financial data to leave China’s shores for business and analytical purposes. Cross-border data transfer frameworks should be modeled, if even loosely, on the APEC Cross-Border Privacy Rules system.
- Secure a commitment that the CBIRC regulations will not require adoption of Chinese domestic cryptographic standards.
- Secure a commitment to remove provisions that set information system security requirements in accordance with the MLPS.

China Banking and Regulatory Commission’s Banking Regulations

- Secure a commitment from China that the CBIRC’s *Promotion Guidelines for Banking Applications of Secure and Controllable Information Technology (2014-2015)* will not be released or enforced at a later date. While we appreciate their suspension, we request clarity that the Regulations will not reemerge at a later date.
- Secure a commitment that regulators are not currently enforcing the *Promotion Guidelines for Banking Applications of Secure and Controllable Information Technology (2014-2015)* despite their suspension, and ensure that banks are once again allowed to buy U.S. ICT for critical infrastructure purposes.

Cybersecurity Law

- Secure a commitment that China’s *Cybersecurity Law* will not enforce source code disclosure requirements. The implementing rules and regulations for the *Cybersecurity Law* should not go beyond the scope of the law as stated within the original text. Ensure security requirements are technology-neutral and yield a measurably improved security outcome. We recommend that China:
 - provide a clear and narrow definition of “critical information infrastructure”;

- consult international best practices and certification procedures in global standards and certification;
- remove requirements for data localization. Data localization requirements should be applied only to operators of critical information infrastructure, and not to all “network operators.” The security assessment and other requirements for operators of critical information infrastructure should not be overly complicated;
- allow for FIE participation, on an equal basis, in the standards-setting process for cybersecurity. Technical Committee 260 (TC260) should implement a transparent standards development process that conforms to international standards and is open to participation on a global scale, market-driven, consensus-oriented, and technology-neutral. TC260 should not adopt standards that confer advantages to particular technologies based on national origin; and
- remove all preferential policies for “secure and trustworthy.”

Security Assessment Measures for Exporting Personal Information and Important Data

- Secure a commitment that the Measures, if implemented, will establish a presumption that all categories of data can be transferred across borders without restriction unless subject to a very narrowly defined national security exemption.
- Confirm that data privacy protection measures adhere to international standards and ensure that clear limits are imposed on the scope of authority and actual capabilities of regulatory officials to infringe upon data privacy and sensitive information.

Measures on Network Product and Service Security Review:

- Secure a commitment to remove security reviews covered in the Measures that do not belong in a national security context—such as “dominant market position”.
- Secure a commitment to increase the transparency and timeliness of security review processes and to ensure that these processes are not used to delay licenses or approvals for foreign services.

Critical Information Infrastructure Protection Regulations

- Secure a commitment from China that will limit the definition of critical information infrastructure (CII) to include only infrastructure belonging to the Communist Party of China, the Central Government, Sub-Central Governments, and the People’s Liberation Army, but NOT including other government-affiliated institutions like state-owned enterprises, healthcare facilities, and educational institutions. The institutions listed that should not be included in the CII definition are not exhaustive, but merely illustrative of institutions that are often associated with State control and thus have potential to be included in a CII definition. Any regulations governing the

operation of CII should adopt recognized voluntary global standards and internationally accepted risk management methods.

- Secure a commitment that China will not extend regulations for CII operators to all network operators, which would be consistent with the provisions of the *Cybersecurity Law*, which provides for different regulations for both sets of operators.

Testing/Standards

- Secure a commitment from China to make the following amendments to the Cybersecurity Classification Protection Scheme:
 - Secure a commitment that MLPS is applied only in the interest of genuine national security; as currently written, draft Article 2 has an overly broad application of all “networks,” except those for personal use;
 - Remove “secure and trustworthy” from Article 10 and ensure any procurement-related article not promote or lead to “buy local” policies, and edit Article 28 to ensure commercial procurers set procurement requirements;
 - Remove the requirement in Article 21 for organizations to have a “connection” to security organs;
 - Remove the requirement that all Level 3 networks use state-approved encryption; and
 - Curtail Article 50 to ensure MPS authorities do not disrupt normal business or put companies’ information at risk.
- 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 for SOEs and non-sensitive government procurement (e.g., the MLPS 2.0 regime and a requirement to use the ZUC algorithm for 4G LTE equipment).
- Secure a commitment that China adopt internationally accepted best practices and global standards, such as Common Criteria.
- Building off China’s 2013 JCCT commitment not to require applicants to divulge their 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. Such requirements run counter to the letter and spirit of the IPR commitments contained in the U.S.-China Phase I Agreement.

- Secure a commitment that China will not subject hardware and software procurement decisions to the MLPS for the financial services industries.
- 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; and
 - adopt globally accepted norms and best practices in the area of cybersecurity policy, and remove requirements for domestic IP at Level-3 and above for systems and mandatory product testing in government affiliated laboratories.

Cybersecurity Inspections and Vulnerability Testing

- Secure a commitment from China to recognize firm-led penetration testing (pen testing), adopt “mutual recognition” of cyber testing principles, and limit scanning requirements by third parties which impose additional security risk on company networks.
- Align proposed regulations (such as MIIT’s *Public Internet Cybersecurity Threat Monitoring and Mitigation Measures* or CAC’s *Cybersecurity Threat Information Publication Management Measures*) with well-established and broadly adopted best practices and industry standards, such as those articulated in ISO/IEC 29147 (2018). These practices and standards have been carefully developed by experts in the field of Coordinated Vulnerability Disclosure (CVD) and vulnerability handling.

6. State-Owned Enterprises and Subsidies

- Secure a commitment for China to provide a full accounting to the WTO of all subsidies granted under its subsidization programs, and agree to a schedule for corresponding reduction and elimination of subsidies in key sectors, with a focus on Made in China 2025 industries.
- Seek public clarification from China 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 its Five-Year Plans and Made in China 2025 initiatives at the provincial and local levels.
- Negotiate new agreements with China on SOE-related issues that can address export and investment challenges. Given that many of China’s SOEs appear not to operate solely as commercial entities, ensure that any future investment agreements with China addresses concerns over the non-commercial nature of SOEs.
- Current subsidies to SOEs distort competitive opportunities for both domestic and foreign companies. Consider replacing the current subsidy system with a tax credit regime based on current global norms. Moving to a tax credit regime will incentivize good companies to invest their own funds and receive credits later. A tax credit regime is also conducive to anti-corruption measures, enhances tax compliance, and allows greater control of businesses.

7. 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. Copyright

- Live Sports Event Broadcast and Non-Interactive Streaming: Provide clarification that live sport event broadcasts and non-interactive streaming are forms of creativity protected by the *Copyright Law* and can be protected without revision of the *Copyright Law* under Article 3(9) where copyright protection is provided to “other works as provided for in laws and administrative regulations.” In addition, confirm that all live television broadcasts are copyrightable works in China, which would provide the needed legal protection to prevent pirated Internet retransmissions of valuable live broadcasts.
- Combating Unauthorized Camcording: Urge the Chinese government to make it 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, which is responsible for over 90% of all piracy during the theatrical window.

- Combating Internet Piracy: Illegal downloading and streaming of foreign media content remains problematic in China. Secure a commitment to adopt adequate protections for digital media by:
 - Promulgating new rules that address the volume of internet piracy caused by video aggregation websites and mobile apps;
 - Enumerate the exclusive rights under copyright;
 - Criminalize violations of the Anti-Circumvention Provisions for Technological Protection Measures (TPMs) and Information Rights Management (IRM);
 - Criminalize internet offenses that may lack a demonstrable profit motive but that impact rights holders on a commercial scale. Revise the “500 copies” criminal threshold,
 - Eliminate legal distinctions between crimes of “entities” and “individuals”; and
 - Provide deterrent-level civil and criminal penalties for infringement,

2. Regulatory Data Protection (RDP)

- As part of its accession to the WTO, China committed to providing regulatory data protection (RDP). It later inserted into its drug law a legal provision for a six-year period of regulatory data protection (RDP) as a means to prevent the unfair commercial use of undisclosed clinical test and other data submitted to secure approval of products containing a new chemical ingredient. However, this legal provision has never been effectively implemented. After *Draft Policy Circular 55*, the National Medical Products Administration (NMPA)—formerly known as the China Food and Drug Administration—issued draft measures on the implementation of drug clinical trial data protection in April 2018 and sought public comment. Although a welcome step, these draft measures have also not been implemented. Further clarity has also been sought on the proposed location- and time-based conditions and limitations placed on the terms for innovative drug and biologics. It is now imperative that the proposed policy revisions are transparently and expeditiously implemented in a manner that provides for effective and non-discriminatory protection for U.S. biopharmaceutical companies and is consistent with international best practices and China’s renewed commitment to provide RDP, as affirmed in the chapeau to Section C of Chapter One of the January 2020 Agreement.
- In April 2018, the NMPA issued the *Draft Measures on the Implementation of Drug Clinical Trial Data Protection* for public comments. In particular, the proposed terms of 6 and 12 years for chemically synthesized drugs and biologics, respectively, would be truly world-leading, consistent with China’s broader aspirations to develop its biopharmaceutical industry and patient access to new medicines. The provision of 6 years of protection for pediatric applications and orphan drugs, which are seemingly

unrestricted by location or time of development, are also promising measures. However, the proposed location- and time-based conditions and limitations placed on the terms for innovative drugs and biologics are not consistent with China's international commitments, are impractical and discriminatory, and could well undermine the very goals that are driving these proposed reforms. In this respect, the Draft Measures would make it difficult – if not impossible – to obtain the benefits of RDP by forcing innovators into arbitrary choices concerning the location of development and timing of submissions. In some cases, the costs of these choices for the overall development program could exceed the benefits of RDP. Moreover, there remains significant uncertainty regarding the scope of the data protected and the criteria for protected categories, and we are very troubled by the broad post-approval data disclosure requirements.

- The final RDP implementing measures should apply to all future and pending marketing approval applications for new drugs (including innovative drugs, improved new drugs, and other originator drugs that do not fall within the scope of the aforementioned two types), encompassing both small molecules and biologics, and close the loophole that enables the generic drug manufacturer to circumvent RDP by referring to the originator's data or approval outside China. In addition, we also urge NMPA to create a transitional mechanism to allow companies with approved applications to apply for RDP after the effective date of the Draft Measures if their application and data would still qualify. This transitional mechanism would not affect any generic or follow-on applications that have already been approved. Those medicines would remain on the market. However, the grant of RDP for these transitional medicines would prospectively block any new generics seeking to rely on that data from being approved.

INVESTMENT

1. Negative List

- Pursuant to the announcement of the adoption of the negative list approach across China, secure a commitment from China to provide meaningful opening for foreign enterprises by significantly reducing and/or eliminating foreign ownership restrictions, including in:
 - (i) cloud computing services and data centers;
 - (ii) basic and value-added telecommunications;
 - (iii) internet-related services;
 - (iv) healthcare services;
 - (v) media and entertainment;
 - (vi) express delivery services;
 - (vii) electronic payment services;

- (viii) petrochemical refinement;
- (ix) energy and the environment; and
- (x) legal services.

2. Complaint Settlement Mechanism

- Encourage the government to ensure that FIEs who choose to seek redress of their complaints using the “complaint settlement mechanism”—as provided for by Article 25 of the FIL—are able to do so in an equal and impartial manner and without fear of retribution from government or quasi-government agencies.

3. National Security Reviews

- Any laws or measures governing national security reviews should provide precise, narrowly tailored definitions for the key considerations governing the national review of foreign investment process.
- Secure a commitment from China to remove “economic security” (or related political and economic references, such as “supply chain trustworthiness”) as a criterion when defining national security, which is inconsistent with OECD guidelines because such economic tests could become a vehicle for domestic industries seeking to block foreign competition.¹⁴
- Secure a commitment from China to clarify definitional terminology in connection with the types of transactions that will attract review that goes beyond traditional national security interests, as well as other terms in measures and laws that are excessively vague (e.g., “important agricultural products,” “important energy and resources,” “important infrastructure,” “important transportation services,” “key technologies”). Article 35 of the *Foreign Investment Law* states that the State shall establish a security review system for foreign investment, under which “a security review shall be conducted for any foreign investment affecting or having the possibility to affect national security.” Both the FIL and its Implementing Regulations, effective January 1, 2020, lack clarity and sufficient written detail regarding which departments are responsible for implementation, the process for application, and key definitional elements of what constitutes “national security.”

4. Special Economic Zones

¹⁴ For instance, 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

- Ensure that special economic zones (SEZs) in China, with their varied incentives for foreign investors, serve as a staging ground for the nationwide rollout of economic reforms, rather than being used to restrict market-oriented reforms to limited geographies. The number of SEZs was increased in 2018 from the original four municipalities to eleven entire provinces with varying industrial focuses and incentives, and the FIL emphasizes the continued use of China’s SEZs “as appropriate.” While we appreciate the importance of SEZs in China’s economic development, their use should be accompanied by a rollout of validated, market-oriented reforms nationwide.
- Encourage the government to ensure that the operations of foreign investors/FIEs who choose to invest in SEZs are not in practice confined to the SEZ and restricted on a nationwide basis.

REGULATORY TRANSPARENCY

- Ensure that foreign companies have the right, when resolving administrative disputes, to engage the regulatory office and third-party regulatory experts beyond the local enforcement department, as they will have a neutral position in interpreting the regulation.
- Ensure that commitments to meaningful reform include clear benchmarks, timelines and intensive monitoring to ensure lasting changes to China’s legal and regulatory architectures and impartial implementation of laws and regulations. As part of any such efforts, coordinated and consistent policy development, implementation, and enforcement between Chinese government ministries must be prioritized.
- Transparency should be improved by consistently releasing formal findings and case histories of anti-monopoly and other compliance-related investigations.
- The use of “window guidance” by government regulatory authorities should be eliminated and public directives should be released instead. Written explanations be provided whenever administrative agencies deny or provide conditional approvals for licenses and other applications.
- Secure a commitment from China to abandon its use of implicit, unpublished, or internal guidance to replace U.S. and foreign-made products/services with domestically-made equivalents. National security reviews and “secure and controllable” technology requirements should be narrowly applied and not used for economic protectionism or in support of industrial policy.
- Secure commitments from China that provide for equal access to regulatory proposals; require public availability of proposed regulations; provide an adequate public comment period (of no less than 30 days) on new regulations; and mandate the enforcement of regulations in a non-discriminatory manner. Encourage strengthened coordination among

different regulators as well as between central- and local-level regulators to reduce reporting requirements.

INDUSTRY-SPECIFIC ISSUES

ALUMINUM

- Secure further commitments from China to address issues regarding excess capacity that have been discussed in international fora, including the G20.

BANKING AND NONBANKING FINANCIAL SERVICES

1. ICT Systems and “Secure and Controllable”

- Secure a commitment that China will stay all regulations requiring “secure and controllable” products until these regulations are consistent with WTO agreements/rules (including but not limited to those in the TBT Agreement), are narrowly tailored, take into account international norms, are nondiscriminatory, and do not impose nationality-based conditions or restrictions, on the purchase, sale, or use of ICT products by commercial enterprises unnecessarily—per commitments made at the Presidential bilateral in September 2015.
- Secure a commitment that China will end use of prescriptive requirements that require foreign financial institutions to adopt domestic encryption algorithms.
- Secure a commitment that China will end or limit the use of prescriptive requirements that financial institutions using a cloud computing platform to obtain a certification from the State Administration for Market Regulation (as outlined in the *Fintech Product Certification Catalog (First Batch)* and the *Fintech Product Certification Rules* issued in October 2019).
- Encourage China to recognize the global operating models of many foreign financial institutions and to stay certain ICT requirements that pose a challenge for foreign financial institutions and their global operating models. They represent some of the most significant barriers to market entry in the financial sector. For instance:
 - CII operators are required to locate their Disaster Recovery Centers in mainland China (according to *Information security technology - Security Controls of Critical Information Infrastructure* (Draft) issued in May 2018). This presents new challenges and costs to U.S. businesses, as it is common practice for international businesses to use an offshore Disaster Recovery Center.
 - The same draft legislation requires CII operators to conduct a comprehensive background check (including providing information on citizenship, political views, religious beliefs, professional experience, education, criminal record,

personal credit, family status, and overseas relations) for staff in key management and security positions. As many foreign financial institutions IT operations are supported in offshore IT centers, obtaining such detailed personal information on offshore employees will be challenging and likely violate other countries' privacy policies.

2. Data Localization and Cross-Border Data Transfers

- Secure a commitment from the government to explicitly allow foreign companies and their subsidiaries to conduct intra-party cross-border data transfers and uphold the principles of free movement of data that China signed on to in the G20 Osaka Leaders Declaration.
- Encourage China to reconsider current requirements that cross-border transfers of both personal information and important data must undergo a security assessment and limit the scope to a narrowly-defined set of critical information infrastructure (CII), as stipulated in the CSL. It is common practice for foreign financial institutions to use a “hub” infrastructure system to benefit from economies of scale. If banking and financial information is deemed CII, under the Draft Guidelines (the *Draft Measures for the Security Assessment of Cross-Border Personal Information Transfers* (2019) and the *Draft Measures on the Security Assessment of the Export of Personal Information and Important Data* (2017)), the compliance costs for foreign financial institutions are likely to be extremely high.

3. Harmonization with International Best Practice

- Further align bond market practices to global standards including establishing a corporate trustee structure to further protect investors.
- Adopt industry best practices outlined in the Global Financial Market Association's (GFMA) Framework for the Regulatory Use of Penetration Testing in the Financial Services Industry. These include recognition of certified firm-led pen testing and adoption of mutual-recognition policies that recognize certified pen testing across jurisdictions.
- Encourage China to move towards a title transfer repo format as well as internationally-recognized GMRA documentation in the bond repo market.

4. Commercial Banking

- Consistent with the provisions of the January 2020 Agreement, ensure that US-based financial institutions are permitted to act as lead underwriters for corporate bonds. No applications from US-based financial institutions have been approved as of the time of writing.

- Encourage China to adopt a differentiated credit management regulation and larger line of credit to facilitate the development and operation of foreign banks.
- Recommend China to exempt Foreign Currency (FCY) intra-group funding from offshore parent banks and Non-Resident Account (NRA) deposits. Under the *Notice on Adjusting the Macro-Prudential Policy for Cross-Border Financing* implemented by PBOC and SAFE, FCY and NRA deposits absorbed by onshore financial institutions, the FCY deposits placed by overseas FIs, cross-border FCY interbank borrowing, and FCY borrowing from offshore-affiliated institutions will now be included in the calculation of the risk-weighted balance of cross-border financing. The effect of this Notice is that the risk-weighted balance of cross-border financing of the majority of foreign banks in China now exceeds stated limits and thus hinders liquidity management.

5. Asset Management

- Consistent with the removal of foreign equity caps for fund management as of April 1, 2020 provided for in the January 2020 Agreement, encourage China to remove any barriers which in practice disadvantage foreign asset management institutions such as the current seasoning requirements (two years) and recognize the offshore experience and track record of qualified applicants.
- Encourage China to clarify the scope of business services that can be provided by foreign-owned wealth management companies and institute a clear, convenient, and transparent application process.

6. Custody Services

- Consistent with international best practices, encourage China to recognize global custodians in the mainland China market by removing the requirement for foreign investors to contract directly with local sub-custodians.
- Encourage China to permit Approved Lending Agents to trade on China Connect, in order to improve liquidity and spur liberalization of China A-share markets.
- Encourage China to revise its Administrative Measures on the Private Investment Fund Service Business (Trial) that require fund administrators to provide Fund Accounting (FA) and Transfer Accounting (TA) services in China to be a member of the Asset Management Association of China (AMAC). Currently, no foreign-invested fund service provider has been approved to join AMAC, which would enable them to provide standalone FA and TA services.
- Encourage China to integrate RQFII and QFII with an integral QFI mechanism in practice and through implementing rules.

- Encourage China to adopt the international best practice of separating the trading and settlement of bonds for the proper protection of foreign assets.

7. Securities

- Encourage China to address the uncertainty around the capital repatriation process and timeline. Providing a clear, shorter timeline for the repatriation process would increase US and foreign investors' interest in deploying capital onshore by providing more confidence in their ability to repatriate funds when requested by investors' end clients.
- Encourage China to adopt close-out netting that allows two or more parties to offset the value of multiple payments due to be exchanged between the parties, and saves time and costs by reducing the number of transactions that must be conducted.
- Recommend China to apply close-out netting to all types of FIs, companies, and counterparty filing of bankruptcy in collaboration with foreign regulators to align with international practice.

8. Bonds and Derivatives

- Secure a commitment from China to clarify default arrangements for tri-party repo transactions and expand the range of institutions eligible to act as third parties to include major financial institutions in addition to depository and settlement agents for interbank bonds.
- Encourage China to open a greater number of commodities futures to foreign investment so that market participants can trade one or two key internationalized future products in each product category, in order to have full access to a basket of commodities.
- Encourage China to allow foreign companies to participate in the Hong Kong-Mainland China Bond Connect, enhancing China's connection to the global financial market.
- Encourage the Chinese government to adopt delivery versus payment (DVP) for A-Share securities settlements. At present, in the A-share market, securities are settled at time "T," and cash is settled at time "T+1." This lagged settlement process increases the settlement risks for both parties.

9. Credit Ratings Agencies

- Ensure China follows through on commitments to remove barriers to market entry and operation for foreign-invested credit ratings agencies.

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. Continue to strengthen physical and policy infrastructure to enable general aviation growth within China's national airspace system.
- Encourage China to adopt a national Air Traffic Flow Management (ATFM) framework that incorporates a System Wide Information Management (SWIM) system and collaborative decision making (CDM) procedures for air traffic control, airline, and airport exports to enable growth and efficiency through enhanced system management that also alleviates delays.
- Encourage China to continue to improve the national aviation weather forecasting system to increase hub airport operational efficiency and alleviate delays.
- Encourage the Chinese government to rebate the VAT assessed on freighter conversion services conducted on both domestic and foreign airliners by maintenance, repair and overhaul (MRO) companies.
- 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.
- Encourage China to continue to align certification processes with international standards.
- Encourage China to continue to work with ICAO, other international organizations and standards bodies to globally harmonize and align on global standards for unmaned aircraft systems/unmanned aerial mobility (UAS/UAM) regulatory frameworks and UAS Traffic Management capability development.
- Eliminate the 5% tariff on small and medium sized aircraft and aircraft parts from the U.S. \$60 billion list (List 3) announced on September 18 and effective September 24, 2018.

CLOUD SERVICES

1. Market Access

- **MIIT Draft Notices:** Secure a commitment to nullify two draft notices from MIIT – *Regulating Business Operation in Cloud Services Market* (2016) and *Cleaning up and Regulating*

the Internet Access Service Market (2017). These measures, together with existing licensing and foreign direct investment restrictions on U.S. cloud services providers operating in China under the *Classification Catalogue of Telecommunications Services* (2015) and the *Cybersecurity Law* (2016), would require U.S. cloud service providers (CSPs) to turn over essentially all ownership and operations to a Chinese company, forcing the transfer of incredibly valuable intellectual property and know-how to China.

- **Requirement to Partner with Chinese Companies:** Secure a commitment from China to eliminate entirely the requirement for foreign CSPs to partner with domestic companies in order to be granted market access. Secure a commitment to allow U.S. CSPs to sign contracts for the provision of cloud services in China and to use their trademarks and brands to market their cloud services.
- **ICP, ISP, and IDC Licenses:** Secure a commitment that China will issue any guidelines necessary to allow U.S. CSPs to obtain and hold all necessary licenses for the operation and provision of cloud services in China, including by addressing restrictions that prevent foreign companies from obtaining internet content provider (ICP), internet service provider (ISP), internet protocol virtual private network (IP-VPN), and internet data center (IDC) licenses, which they need in order to offer cloud computing and other internet-based services.
- **Software Binaries, Source Code, and Encryption Algorithms:** Secure a commitment to enable foreign companies to operate cloud businesses and infrastructure directly in China without being forced to license software binaries or source code to Chinese companies, and without being subject to mandatory regulatory reviews or registration of software binaries, source code, and encryption algorithms, including in the context of software updates. Ensure that China does not require companies to turn over encryption algorithms to regulatory authorities in order to receive cloud services licenses.
- **Cross-border Transfer of Information:** Secure a commitment from China to remove restrictions on the ability of cloud services to transmit outside of China customer data and non-customer data (e.g., software updates, service health logs, debug information, software configuration files) that are essential to the operation of cloud services.
- **Standards:** Urge China not to adopt unique indigenous technical standards for cloud computing that would create market access barriers for foreign firms operating in China.

2. Telecom Services

- **Telecom Law:** Secure a commitment from China to revise its *Telecom Law* to explicitly allow both foreign and domestic companies to provide cloud computing services in the Chinese market.

- **Standards:** Urge China not to adopt unique indigenous technical standards for cloud computing that would create market access barriers for foreign firms operating in China.
- **Telecom Services Catalogue:** Secure a commitment from China to remove cloud services from the Telecom Services Catalogue, which restricts foreign companies from participating in the Chinese market without partnering with domestic companies. In particular, requirements imposed by the Catalogue can subject foreign cloud service providers to a maze of regulatory hurdles, mandating they obtain a broad array of licenses and certifications.
- **VATS Licenses:** Secure a commitment from China to revise regulatory requirements for Value-Added Telecom Services (VATS) so that they do not prevent foreign cloud services companies from independently receiving licenses and operating without domestic partners in the Chinese market.

3. Software Audits

- **Software Licensing Audits:** Secure a commitment from China to allow foreign CSPs to conduct independent audits of domestic customers to ensure that all software being used is properly licensed.

ELECTRONIC PAYMENT SERVICES (EPS)

- When China joined the WTO in 2001, it committed to allowing non-Chinese EPS companies to compete and do business in its domestic market on equal terms with Chinese companies, including by processing renminbi-denominated transactions in China. While U.S. EPS suppliers have continued to process “cross-border” transactions in China for decades, which primarily involve purchases by individuals traveling to and from China and take place in a currency other than renminbi (“RMB”), as of September 2021 only one U.S. EPS supplier is authorized to process RMB-denominated transactions in China.
- Under the January 2020 Agreement, China committed, among other obligations, that it would accept, and make a determination on, any application for a Bank Card Clearing Institution (BCCI) license from a U.S. EPS supplier, within prescribed time limits and without regard for the applicant’s ownership structure. Following the signing of the agreement in January 2020, one U.S. EPS supplier has completed its licensing process while others have applications still under consideration. We welcome steps taken by China towards fulfillment of its commitments under the January 2020 Agreement and

the WTO Agreement, and encourage USTR to hold China accountable to these commitments until all U.S. EPS suppliers that have applied for a BCCI license are able to process RMB-denominated transactions, as contemplated under those agreements.

ENERGY/ENVIRONMENT

1. National Treatment

- Secure a commitment from China to provide equal treatment to foreign investors or FIE and not favor locally owned manufacturers through government/SOE procurement preferences, de jure and de facto localization requirements, and product standards.
- Request that China 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.
- Secure a commitment from China to remove requirements for applicants to have indigenous intellectual property when applying for relevant SEI incentives at local levels (in Shanghai, Jiangsu, Sichuan). Such requirements discriminate against FIEs, which do not have locally-owned intellectual property.
- Ensure full implementation of China's JCCT commitments regarding wind turbine market access and local content requirements.

2. Standards

- Urge China to increase engagement from FIEs 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.
- Secure from China a commitment for 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.

- Secure from a China a commitment to 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. Equity and Other Restrictions

- Secure commitments from China to:
 - 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; and
 - 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.

4. Oil and Gas

- Secure from the Chinese government a commitment to initiate comprehensive oil and gas legislation, to include the designation of a specific regulator for the oil and gas sector, and to accelerate market-oriented pricing reforms of domestic natural gas and petroleum products.
- Encourage China to pursue policy changes and advance legislative reforms necessary in the oil and gas sector to expand upstream acreage, increase permitting efficiency, and provide fiscal and taxation incentives to attract upstream international oil company investors.
- 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 such as the mandatory JV requirement.

- Implement a liberalized gas pricing scheme that reflects the true costs of gas supply, competitive supply chains, and provision of third-party access (TPA) to shale gas infrastructure.
- Ensure that offshore environmental protection regulations do not unnecessarily impede the normal environmental impact assessment (EIA) approval process or counterproductively affect legitimate business activities, and that the evaluation of oil spill accidents is conducted fairly and conclusively.
- Encourage China to eliminate the existing 25 percent tariff on US-origin LNG.

5. Heavy Duty Commercial Vehicles Emission Enforcement and Fuel Economy

- Encourage China to meet its commitment for nationwide availability of low-sulfur diesel fuel. 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.
- Make air pollution control policies and implementations more transparent and consistent to ensure the normal operations of the machinery manufacturing industry.
- Secure a commitment from China to engage bilaterally with the United States to share best practices on achieving measurable fuel economy gains from commercial vehicles.

6. Transportation of Dangerous Goods

- Secure the following commitment related to harmonization of dangerous goods regulations for ground transportation to ensure an uninterrupted supply chain for consumer products with equitable market access as experienced in other global venues.
 - China should reaffirm its commitment to harmonize its dangerous goods regulations with the UN Model Regulations by adopting full implementation of GB 28644.2-2012 & GB28644.1-2012 nationwide and in multiple transport modes including parcel post services. These regulations follow the UN Model regulations and allow for the transportation of low risk products known as Limited Quantity/Excepted Quantity for transportation by ground as it already does for air and vessel shipments.

EXPRESS DELIVERY SERVICES (EDS)

1. Air Cargo Services

Co-terminalization

- Express carriers seek the resumption of negotiations between the two countries for co-terminalization rights and slots to be made available. Express carriers are currently not able to exercise co-terminalization rights provided to US air cargo carriers under the US-China Aviation Agreement. Co-terminalization allows a US-originating flight to serve two or more points in China using the same aircraft, facilitating connection to another Chinese destination from existing gateways to better utilize aircraft and reduce network costs. It does not mean carrying traffic originating and destined within China.

Customs Transit through Hubs

- China should establish whole-of-government approaches for coordinating policies and supporting coherent laws to facilitate the movement of transit shipments through air cargo hubs, including Customs, Security and other border agencies. Efficient functioning of air hubs requires policies that facilitate the movement of aircraft and shipments between origin and destination via China. However, China lacks developed customs transit policies, and all transit regulated goods, including strategic goods and biological substances are treated as imports, requiring import permits and approvals from related regulators even if they are being transferred between aircraft in airport secured zones. One example is the transit of clinical trials and biological substances requiring the approval of health authorities. Further, goods that are bound for third destinations where they can be legally imported but prohibited for import into China are confiscated and express carriers are held liable.
- Institute preferential customs policies delivered in cross-border e-commerce (CBEC) zones in all ports uniformly across the country.
- Reduce non-tariff barriers to entry by the General Administration of Customs (GAC), such as unnecessary licensing procedures that make it very difficult to get certain imported products to market in China.
- Secure a commitment to streamline and facilitate measures for shipments under the Normal Channel, based on the World Customs Organization's Immediate Release guidelines.
- Secure a commitment that clearance of goods should be based on value, rather than based on the various channels, which discriminate between e-commerce and non-e-

commerce goods, which would simplify documentation and applicable taxes, enhance clearance times, and facilitate returns.

- Encourage China to establish an efficient, safe, and convenient cross-border e-commerce channel nationwide to process Class C goods that are exported from China and then need to be returned to China in the event they are marked undeliverable. Guangzhou was the first municipality to launch a mechanism to handle e-commerce exports that are returned to China in January 2020.
- Call on China to eliminate user fees charged by all agencies at each port.
- Remove or improve the stated time limits for preliminary adjudication.
- Secure a commitment from China to establish a U.S.-China government-industry customs dialogue to address customs bottlenecks in the supply chain, which, among other things, hamper the growth of U.S. exports to China. Customs and industry share a common goal of safe, efficient clearance, and an open dialogue could help both parties move toward that goal. Many issues could be addressed through the dialogue, but top priorities for U.S. industry would be the issues noted below.
- Secure a commitment to work with the GAC to build on recent progress that has been made to simplify bonded transfer procedures so that goods to and from locations that are not international gateways can flow smoothly through China's gateway airports into international trade networks. This will help China achieve its goals of developing second-tier cities and expanding foreign trade and help EDS providers with hubs in China operate those hubs more efficiently. Current customs procedures create perverse incentives to operate hubs outside of China, which damage the interests of firms and local governments who have invested in hubs in China.
- 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.
- Secure a commitment to remove 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.
- Encourage China to establish a 24-7 customs handling system similar to that in other advanced trading economies. Customs and other border crossing agencies, such as SAMR, should commit to building and maintaining IT systems that are available for trade 24-7 with a high degree of reliability. When systems go down, agencies should be encouraged to communicate clearly with traders the reason for the outage, to provide back-up solutions, and to make allowances for delays due to system failures.

- Secure a commitment from China that any change in tariff codes will follow the World Customs Organization rules and standards and to release draft annual Harmonized System changes at least three months before the legal effective date to allow sufficient time for companies to implement.
- Secure a commitment from China to establish a mechanism for resolving Harmonized System classification disputes in a reasonable manner consistent with its regulations as well as with any multilateral commitments entered into by China such as those made under Free Trade Agreements signed by China.
- Secure a commitment from China to eliminate ancillary charges levied by local customs or port/airport operators or concessionaires for services such as connection to the customs network, customs forms and access to customs facilities. Whenever possible, such as when filing declarations through the on-line customs system, firms should be able to choose to provide such services for themselves or from a number of qualified vendors. Where sole-source charges are necessary, they should be levied strictly on a cost-recovery basis.
- Secure a commitment that China will clearly define the parameters for export and import controls criteria so that the application of compliance requirements is consistent.
- Increase transparency and consistency of customs enforcement across all ports to minimize instances where certain products is granted clearance for import/export at one port but then that same product is rejected import/export clearance at another port.

2. Market Access

- China should open up the domestic letter and document sector to foreign express delivery providers, explicitly stating in regulation that foreign carriers with valid domestic express licenses are eligible to deliver documents between points in China.
- China's WTO GATS schedule indicates that it does not have any limitations specified under courier services (CPC 75121), except for those specifically reserved to Chinese postal authorities by law at the time of accession. The Courier Services classified under CPC 75121 include "services consisting of pick-up, transport and delivery services, whether for domestic or foreign destinations, of letters, parcels and packages, rendered by courier and using one or more modes of transport, other than by the national postal administration."

- Secure a commitment from China to remove this sector from its investment restrictions negative list.
- Express delivery service suppliers previously held licenses (last issued in 2015) listing all provinces in which they are eligible to operate. On April 1, 2019, the State Post Bureau (SPB) issued a “Notice on Strengthening the Express Delivery Business Territory of Permit Approval,” charging responsibility and oversight to the city level. SPB also issued internal guidance to local post bureaus clarifying that licensees cannot operate beyond the licensed scope of licensors. In early 2020, express delivery licenses offering provincial coverage in SPB’s system were changed to reflect only the license to operate in specific cities within the province. Apart from the April 2019 Notice, all of these changes were made without the provision of any notice and comment period, and do not appear within any published law. We call for SPB to honor its WTO market access commitments for international and domestic express delivery services, and seek additional standstill guarantees to prevent the further erosion of market access.
- Secure a commitment that any licensing or permitting regulated at the national level remain at the national level, such that international express delivery service providers do not face inconsistent and burdensome investment requirements and procedures under a province-by-province or city-by-city licensing or permitting regime.
- Include disciplines on domestic regulations that mirror the provisions in GATS Article VI:4 in order to ensure that investment measures related to qualification requirements, technical standards and licensing requirements do not constitute “unnecessary barriers to trade in services.”

3. Logistics

- Secure a commitment that any licensing or permitting regulated at the national level remains at the national level, such that international express delivery service providers do not face inconsistent and burdensome investment requirements and procedures under a province-by-province or city-by-city licensing or permitting regime.
- Encourage China to study and recognize various business models commonly used by the international express delivery industry and to implement regulatory management practices that are differentiated from the attributes of the domestic delivery sector.
- Secure a commitment from SPB that all proposed regulations must be published for comment, that interested parties must be provided with at least thirty (30) days within which to provide comments, and that SPB must respond in detail regarding whether the recommendations are being adopted and, if not, the reasons they are being rejected.

- Secure a commitment that China's 2011 Express Service National Standards and subsequent express standards that are recommended industrial standards according to China's *Standards Law* will not be cited in any postal regulation with compulsory enforcement.
- Secure a commitment to enable 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 simplify SPB's current permitting processes and re-evaluate its security measures, in line with China's central government's call for comprehensive governance reforms. Ensure such measures conform with a balanced, risk-based, strategic approach relative to the need for fast and efficient trade.
- Secure a commitment that security measures and requests for information and access to company IT and other systems be, not only balanced, risk-based and strategic, but also implemented uniformly. Provincial and local agencies are increasingly requiring companies to provide information and access that is inconsistent, overly burdensome and that raises business confidentiality concerns. Clarify the responsibilities of the various regulatory bodies to standardize supervision nationwide.
- Secure a commitment to formulate unified technical standards including with respect to security inspection equipment that are jointly recognized by all relevant ministries and government bodies.

Secure a further commitment that any requests for new data reporting will be posted for public comment in advance of implementation and that firms will be given sufficient time (at least six months) to prepare for implementation. SPB currently collects substantial data from firms on shipments, facilities, vehicles and staff. Secure a commitment that other agencies; including local agencies, seeking the same data will obtain that data through the existing SPB reporting systems.

- Ensure coordinated and consistent security measures between the SPB and Ministry of Public Security at all levels, national, provincial and local.

4. Aviation

- Urge China to live up to its commitments under the U.S.-China air transport agreement and remove CAAC restrictions on change-of-gauge operations and co-terminalized flights between Beijing, Guangzhou, Shenzhen and Shanghai.
- Urge China to provide transparency and improved certainty for slot coordinators and carriers by committing to reform its 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.

- Encourage China to 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 improving air traffic control capacity, capabilities and flexibility to meet ever increasing demand in China's airspace.

INSURANCE, PENSIONS, AND ASSET MANAGEMENT

1. Online Insurance Distribution

- Further open the Internet insurance channel by allowing more types of products to be sold online nationwide, including critical illness products, based on the draft regulation on Internet insurance issued by China Insurance Regulatory Commission (CIRC) in December 2014. These regulations allowed certain products to be sold online without geographic restrictions under certain conditions. Lifting the branching restriction will tap the enormous potential of online insurance sales, provide more options for consumers and contribute to China's ambitious goals of reforming the financial sector and enhancing financial inclusion.

2. Foreign Currency Denominated Products

- Encourage CBIRC and Central SAFE to approve the sale of long-term foreign currency denominated life insurance products (FCDP). Currently FCDP's longer than one year are not permitted to be sold on the market. FCDP are already available in other markets in Asia (e.g., Japan). Access to FCDP would provide Chinese consumers with improved diversification to manage risk, particularly in the face of volatile equity markets, and offer Chinese consumers with foreign currency savings in China an alternative to low-interest bank deposits. FCDP would help to support China's drive towards financial internationalization and enhancing innovation in the financial services sector.

3. Secure and Controllable

- Secure a commitment that China will stay all regulations—including the China Banking and Insurance Regulatory Commission (CBIRC) *Insurance System Informatization Regulatory Requirements* (draft)—requiring “secure and controllable” products until these regulations are consistent with WTO agreements/rules (including but not limited to those in the TBT Agreement), are narrowly tailored, take into account international norms, are nondiscriminatory, and do not impose nationality-based conditions or

restrictions, on the purchase, sale, or use of ICT products by commercial enterprises unnecessarily—per commitments made at the presidential bilateral in September 2015.

4. Branches, Subsidiaries

- Secure national treatment for foreign insurers in branch licensing and request that CBIRC 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 are concerned that they may still suffer stricter and lengthier approval procedures in comparison to domestic entities and the *de facto* refusal to accept concurrent branch applications. The ability to geographically expand and diversify risk portfolios is a basic, fundamentally important insurance principle which allows 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 BIRC office under the same procedures as domestically owned insurers and not through the International Department of the central CBIRC.
- Ensure that CBIRC adopts 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 CBIRC's I/T requirements and rules regarding claims, finance and compliance personnel for new branches.

5. Liability Insurance

- Request CBIRC to help advance an understanding of the 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.

6. Enterprise Annuities (EA) and Pension Insurance

- Establish a transparent and public procedure for formulating CBIRC 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, CBRC, and 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.
- Ensure that there is no discrimination against U.S.-domiciled EA-related companies relative to those domiciled in other foreign countries.
- Increase competition in the pension and health insurance industry by approving licenses for more foreign-invested applicants and ensuring equal treatment for foreign-invested and domestically invested insurance providers.

7. Insurance Brokerage

- Allow international and regional brokers to service Chinese small- and medium-sized 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.
- Encourage China to issue detailed implementing measures that describe how licenses for foreign-invested brokerages will be released and how foreign-invested brokerages will be able to collect.

8. 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.

9. 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 handicap foreign-invested insurers whose management remuneration structure is inherently different because foreign insurers operate globally and generally from their home offices.

10. Reinsurance

- Secure a commitment that CBIRC's enforcement of its China Risk-Oriented Solvency System (C-ROSS) is principles-based, aligns with the Insurance Core Principles of the International Association of Insurance Supervisors, and that enforcement is not based on a "one size fits all" approach.

MEDIA/ENTERTAINMENT/ACADEMIC JOURNALS

1. Filmed Entertainment

- Complete the U.S.-China Film Agreement "MOU" review, consistent with shared commitments that an updated MOU will enhance opportunities and access for foreign revenue sharing films, including by increasing their revenue share in line with international norms, increasing the number of revenue sharing movies allowed into China, promoting and approving additional companies to engage in distribution, eliminating black-out periods for foreign films, allowing film producers to determine release dates, and formally allow film producers to engage in marketing.
- 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.
- Remove restrictions during peak periods for imported films and allow U.S. film producers flexibility to decide release dates.
- 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. Specifically, eliminate the two-window and entire series requirements for approval of OTT content and replace it with a rolling approval process, subject to the same levels of transparency and timeliness as domestic content.

- 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.
- Ensure compliance with the *Foreign Investment Law* such that any unpublished regulations that impact the foreign media are deemed to lack a legal basis and are not implemented.

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 registered, 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 of 1 year for licensed platforms to self-censor 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 problems have been 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 Ministry of Culture (MOC) regarding the abolishment of the requirement for exclusive licensee.

- Push for the early adoption of the Copyright Amendment, 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 regulations, supervision and control over collecting societies so that right owners can be adequately and properly compensated for the use of their works.

3. Cable Television

- Secure commitment from China to revise the catalogue for foreign investment to allow FIEs 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.

4. Academic Journals

- Fully implement the 2009 *Notice on Strengthening Library Protection of Copyright* commitments by the National Copyright Administration (NCAC), MOC, Ministry of Education (MOE) and National "Anti-pornography" Office to strengthen copyright protection in libraries in all provinces, autonomous regions and municipalities through:
 - adoption of model inspection guidelines;
 - regular inspections;
 - development and adoption of individual library copyright protection plans;
 - regular progress reports from provincial authorities about enforcement of the library directive; and
 - a library roundtable on copyright in the educational and research setting.
- Investigate and pursue swift enforcement against new unauthorized online journal access providers, including copycat sites and document sharing sites.
- Reconvene interagency meetings with the NCAC, MOE, MOC, and libraries, as a follow up on the 2009 library directive that 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

- Encourage China to shift towards a more timely, transparent, and predictable reimbursement system in which manufacturers may apply for reimbursement at any time, drug clinical assessment is completed within a pre-defined period following the application (e.g., within 90 days), and negotiations between manufacturers and the responsible government agency take place periodically (e.g., semi-annually).
- Lower the tax rate for private hospitals. Healthcare institutions are restricted to joint-venture requirements per the 2019 version of the *Guiding Catalogue on Foreign Investment*, and therefore they do not enjoy a reduced corporate rate of 15% as many other encouraged industries do. Private healthcare enterprises continue to pay the standard maximum rate of 25%. Moreover, due to the inability of foreign-invested healthcare providers to consolidate accounts of their facilities (including those in the same city), this could lead to an exponentially higher effective tax rate for the company as a whole.
- 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 *Guiding Catalog on Foreign Investment*.
- Remove the equity caps on foreign ownership of private healthcare enterprises.
- 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.
- Extend social medical insurance to cover visits to private hospitals and allow patients to be reimbursed up to the maximum allowable amount in public hospitals. Further allow patients to pay the remaining balance out-of-pocket or with separate commercial health insurance to increase access to medication.

- Ensure greater equality in treatment for private and public healthcare service providers and allow private hospitals to become part of the government’s national public health emergency planning and response sector.
- Streamline and harmonize competitive, market-oriented bidding practices for medical devices and pharmaceuticals at the provincial level.
- Eliminate price caps and negotiations, reward value, consult industry in policy development and make meaningful revisions based on that input.
- Set up tiered product quality categories in the pharmaceutical tendering process that are based on scientific criteria and internationally accepted standards, including a category for originators/reference drugs with the highest price premium.

2. Medical Devices

Pricing and Payment Policies

- Urge China to evaluate medical devices based on quality aspects, lifecycle costs, and overall value to the patient instead of just the lowest price when conducting volume-based procurement.
- Secure a commitment from China to follow global best practices when conducting volume-based tenders. Such practices would include 3-4 weeks’ advance notice of the tender and tender rules that are unambiguous and unchanging.
- Have China recognize that “price linkage”—where agreed-to prices under a volume-based tender are linked to those in other provinces, arbitrarily pushing prices progressively downward—is not based on market forces and is akin to breaking a contract.
- Secure a commitment that implementation of prospective payment systems will only be done when based on sound and reliable data, and that the methodologies of these payment systems should be made as transparent as they are in other developed markets.
- Secure a commitment from the State Council to issue an order or opinion that instructs the National Health Commission, National Medical Security Administration, and local HCs and MSAs to follow these commitments and prepare the implementing regulations for the above-mentioned tendering rules.

- Secure a commitment that all provinces and localities nationwide will adopt periodic windows to review, accept, and add medical services to the *National Medical Service Price Item Specification* to allow patients to access the latest devices in a cost-effective manner.

Regulatory Issues

- Secure a commitment where China no longer requires U.S. companies to duplicate clinical trials within China that have already been carried out in the U.S. or other jurisdictions.
- Secure a commitment from China to get rid of its discriminatory country-of-origin requirement, which mandates that U.S. firms obtain regulatory approval from either the country where the product is manufactured or the country of legal domain before even working its way through China's regulatory process.
- Secure a commitment from the Chinese government to provide NMPA with necessary resources to achieve comparable device review and approval times with the U.S. FDA within the next five years.
- Secure a commitment for NMPA to publicly disclose statistics on device reviews and approvals on a quarterly basis (i.e., show significant progress over the next year in the number of imported Class II and III device approvals that rely on foreign clinical data).
- Secure a commitment to use international standards with no local deviation, and eliminate mandatory medical device and diagnostic standards. The commitment should result in significant reduction of the number of mandatory standards required by NMPA for market approval. The commitment should also instruct the China Medical Device Standardization Administration (CMDSA) to adopt international standards with no local deviation.
- Remove barriers that, in practice, disadvantage foreign-invested makers of in-vitro reagents, including by shortening the time required to change an in vitro diagnostic reagent registration.
- Ensure application of science-based evaluations to assess the product safety and effectiveness of medical consumable supplies.

Domestic Subsidies

- Secure a commitment to end all subsidies and local content requirements under Made in China 2025 for domestic medical device and diagnostic firms via a State Council notice.

3. Pharmaceuticals and Vaccines

- Issue guidance to support MAH implementation for all product types (chemical, biological, and vaccine), and ensure that the regulations apply equally to the MAH holder regardless of whether they are based in China or overseas.
- The definition of a "new drug" and any corresponding classification schemes for drug registration should be revised as a "chemical or biological drug which has not been previously marketed in China."
- Domestic pharmacopoeia should be aligned with the International Pharmacopoeia to the maximum extent possible, and any domestic standards should be established transparently with supporting data.
- Encourage China to promulgate implementing measures as required under the *Vaccine Administration Law* as soon as possible. In particular, these regulations should include (1) the scope, standard, and procedures for compensation provided to patients who undergo an abnormal reaction to a vaccine; (2) specific measures to encourage commercial insurers to offer such coverage, and (3) measures to establish a dynamic adjustment mechanism for selection of vaccines included in the National Immunization Program. Vaccine procurement for the National Immunization Program should be based on scientific principles and the quality of the vaccines themselves rather than the domicile of the manufacturer.
- Encourage China to revise its regulations on human genetic resources to ensure a more standardized, clearer, and consistent process that does not distinguish between China-based testing centers and foreign centers. In its current form, China's human genetic resource regulation restricts the collection, use, analysis, and transfer of genetic/biologic samples and data by foreign entities unless it is in the context of an approved collaboration with Chinese parties, such as medical institutions.

RETAIL AND DIRECT SALES

1. Retail and E-Commerce

- Secure from China a commitment to 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 regarding minimum registered capital requirements.

- Secure a commitment from China to 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 for WFOE retailers. Introduce mandatory regulations that prevent local governments from forcing retailers to set up new legal entities in their jurisdictions. Reform the current statistical methodologies relevant to local government key performance indicators to avoid incentivizing local governments to require the establishment of more WFOEs.
- Revise the *Product Quality Law* to more clearly define and distinguish legal liabilities for operators and producers.
- Secure a commitment from SAIC to publish clear guidance to all local AICs clarifying that channel fees should not be regarded as commercial bribery under Chinese law, thus ensuring national law will be implemented consistently nationwide.
- Secure a commitment from China to 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

- Secure commitments from China to review and revise the *Direct Sales Regulations*, the *Regulations to Prohibit Multi-level Marketing*, and their associated administrative directives, to bring them in line with China’s WTO commitments, standard international practices, and business reality in the China market.
- Secure a commitment from China to enhance market access and increase transparency by simplifying and increasing the speed of the license approval process according to the 90 day process in the direct selling regulations, and duly informing companies regarding their approval progress.

- Secure a commitment from China to simplify the approval process by requiring only provincial-level approval of service center establishment plans; eliminate multi-level government approvals and sales initiation approvals.
- Urge China to 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.

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 to not influencing, either formally or informally, the software purchasing decisions of SOEs in any way and to eliminating 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 software legalization, China should develop a legalization program that encompasses all SOEs under the authority of CBIRC or directly supervised by the State-owned Assets Supervision and Administration Commission (SASAC)—including central, provincial and municipal-level SOEs—and that requires SOEs to utilize software asset management (SAM) best practices and third-party audits and certify annually that all 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 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. 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 *Telecom Catalogue* IT services offered by software companies that should not be considered telecom services, (e.g., cloud computing, content delivery, information security services, call centers).
- **MLPS:** Remove the restrictive provisions of 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 to rescind 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, through unwritten and discriminatory incentives or otherwise.
- **Standards-Setting Process:** 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 TBT Agreement.

TAX

- **China “1000 Enterprises” Tax Initiative:** Secure a commitment from the Chinese Government to ensure the confidentiality of data collected as part of the *China 1000 Enterprises Initiative*, as well as to ensure that information gathered is relevant and data formats are compatible with existing company systems. Secure a commitment that any data provided by companies remains secure and not be made available or leaked outside of SAT, or used for purposes other than the ones stated. In this regard, “data security” encompasses the following aspects: the process of the data collection, the transfer of the data, and the subsequent storage of data.
- 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, services, or exports of manufactured goods.
- Obtain a commitment to provide more preferential individual income tax treatment to foreign professionals working in China, including expanding the scope of exempt benefits-in-kind, providing more favorable treatment of equity compensation, and eliminating the tax gross-up calculations where the 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. MNCs in their efforts to have top executive talent work on their investments in China. Currently, U.S. executives seconded to a 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 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 salary cost reimbursements to their U.S. payroll entity.

- Permit foreign-invested companies to receive the same exemptions from import duties and import VAT provided to domestic companies when importing major technological equipment (e.g., energy equipment, oil and petrochemical equipment).

TELECOMMUNICATION SERVICES

1. Value-Added Telecom Services Licenses (VATS)

- Remove restrictions on investment (e.g., equity caps) for VATS and remove licensing requirements for VATS that prevent or inhibit foreign companies from independently obtaining requisite licenses.
- Amend the *Cybersecurity Law* and all requisite implementing regulations that inhibit cross-border data flows for data not reasonably connected to national security. China's increased controls over the Internet are creating barriers to the cross-border flow of data and the ability of companies to operate in China. In a globalized economy, companies across all sectors rely on the Internet to transmit and receive data to operate and serve their customers. A spate of recent regulatory rules in China are clamping down on Internet flows, making it difficult and unpredictable for companies that operate in the Chinese market.
- Secure a commitment from China to remove remaining caps on FDI in this sector, as well as to remove JV 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 companies in the VATs area.
- Secure a commitment to eliminate services offered by software companies that should not be considered telecom services (e.g., cloud computing, content delivery, information security services, call centers) from coverage under the *Catalogue for IT Services*.

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.
- 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.

3. **JV 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 JV 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.