Business Roundtable
More Than Leaders. Leadership.

Recommendations for Chinese Reforms to Address Trade and Investment Barriers (July 2018)

China offers a large and growing market for U.S. businesses. However, the Chinese government engages in harmful trade and investment practices that prevent U.S. companies from competing on a level playing field against Chinese domestic competitors.

Business Roundtable strongly supports the following reforms for liberalizing the Chinese market and ensuring fair treatment of foreign companies in China. These reforms present new trade rules, enhancing World Trade Organization rules, focused on: increased market access; non-discriminatory treatment in the application of Chinese laws, regulations, and policies; protections against intellectual property theft and technology transfer; curbing of competition-distorting subsidies; and liberalized trade in the digital economy.

When U.S. companies can access global markets and compete fairly, the United States wins. The Administration should use the priorities outlined in this document to guide their objectives for trade negotiations with China. Progress against these objectives, rather than a temporary reduction in the trade deficit, should be the measure of success. Moreover, we should work with our allies to seek sustained progress, since it will take a large group of trading partners to drive this level of change. Finally, we should pursue these objectives through negotiations and consider trade and investment sanctions as a last resort if negotiations fail to address our concerns.

I. Expand near-term market access for U.S. exporters and investors, ensure fair and equal opportunity to compete and strengthen intellectual property protection.

A. Expand Access to Chinese Market for U.S. Companies

<u>Background</u>
China's investment regime – one of the G-20's most restrictive – limits foreign investment in key industries. China's average tariff level (9.9 percent) is nearly three times higher than the United States (3.5 percent).

<u>Solution</u>

1. Lift all restrictions on foreign ownership of Chinese enterprises subject to a list of narrow and specific exceptions for sensitive sectors comparable in scope to U.S. restrictions, and permit 100 percent foreign ownership in the following sectors, among others:

a) agricultural biotechnology
b) cloud computing and telecommunications services
c) financial services
d) internet-related services
e) legal services
f) new-energy and combustion vehicle manufacturing
g) oil and natural gas development, trading, and marketing

2. Substantially reduce tariff rates and other import barriers in priority sectors for U.S. exporters. Eliminate restrictions (i.e., quotas) on the number of companies that can receive licenses and regulatory approvals necessary to operate in the Chinese market.

B. Ensure Fair and Reciprocal Treatment for U.S. Companies

Background

China's licensing and approval regimes may forestall or deny market access, even in nominally open sectors. Behind-the-border policies and practices, such as in antitrust, standard-setting and taxation, limit U.S. companies' ability to compete in the market.

Solution

1. Provide foreign investors treatment no less favorable than the best treatment offered to any domestic Chinese company, whether private, state-owned or state controlled;

2. Eliminate Chinese laws and regulations, enforcement activities, approval processes, and other policies or requirements (including with respect to standard-setting, licensing, localization, procurement, and tax) that treat foreign entities less favorably than domestic firms, including by:

    a) allowing U.S. companies to independently obtain licenses without a Chinese partner (e.g., telecommunications licenses, export licenses, cloud service and electronic payment licenses);
    b) ensuring consistency and transparency of laws and regulations across agencies and localities;
    c) ensuring Chinese marketing approval processes, technical regulations and product standards are transparent, science-based and synchronized with other trading partners consistent with international standards;
    d) eliminating requirements for domestic content, licensing, transfer of technology, localized production or use of domestic content;

e) ensuring antitrust and trade (e.g., anti-dumping) enforcement actions are non-discriminatory and not unfairly directed at foreign entities;
f) ensuring Chinese enforcement actions relating to environmental, health, and safety standards are transparent and non-discriminatory; and
g) eliminating restrictions on capital transfers.

C. Protect U.S. Intellectual Property against Theft, Forced Transfer and Infringement

Background

China uses various means to coerce foreign companies to transfer their technology to Chinese partners, fails to provide effective enforcement against violations of intellectual property rights, and supports and conducts cyber intrusion to obtain valuable proprietary information from U.S. companies.

Solution

Strengthen intellectual property protection by:

1. prohibiting theft of proprietary information, including theft of trade secrets or other proprietary information of U. S. companies;
2. eliminating technology transfer requirements and regulatory preferences for indigenous innovation;
3. providing effective protection against harmful commercial use of undisclosed test data, providing effective enforcement against infringement of patents, accelerating the patent approval process;
4. providing effective enforcement against counterfeit goods and against bad faith trademark filings;
5. providing effective rules and enforcement against online piracy of music, movies, television, books, journals, software, and games, and eliminating quotas on foreign video content available on online platforms; and
6. ceasing support for and ensuring effective prosecution of cyber intrusion targeting foreign companies.

II. Curb overcapacity, eliminate subsidies, and remove other policies that undermine fair competition.

Background

China provides subsidies – including for aluminum, steel, agriculture as well as Made in China 2025 (MiC 2025) industries – that distort domestic and global competition in favor of Chinese national/global champions and misclassifies and transships products to avoid relevant trade duties.

Solution

- ***A.*** Eliminate market-distorting non-commercial assistance or other subsidies that artificially support industries (e.g. aluminum, steel, agriculture, MiC 2025 industries);

- ***B.*** Eliminate domestic support that promotes domestic overproduction and global overcapacity; and

- ***C.*** Eliminate product misclassification and transshipment through third-party countries to avoid relevant trade duties.

III. Remove restrictions on digital trade, including allowing the free flow of data and eliminating "secure and controllable" requirements.

Background
China's laws/regulations restrict data flows, require data localization, and allow for standards that either mandate technology transfer/IP disclosure or function as *de facto* requirements to buy only from Chinese companies.

Solution

- ***A.*** Eliminate commercial restrictions on data and ICT products and services by:
  1. establishing a presumption that all categories of data can be transferred across borders without restriction unless subject to a very narrowly defined national security exemption;
  2. excluding all commercial ICT products from "secure and controllable" and all attendant requirements (e.g. Multi-Level Protection Scheme, cybersecurity inspections); and
  3. lifting requirements to use or locate computing facilities locally as a condition for conducting business in China.