

## 21<sup>st</sup> U.S.-CHINA JOINT COMMISSION ON COMMERCE AND TRADE

### Fact Sheet

December 15, 2010

U.S. Commerce Secretary Gary Locke and U.S. Trade Representative Ron Kirk, together with Chinese Vice Premier Wang Qishan, co-chaired the 21<sup>st</sup> Joint Commission on Commerce and Trade (JCCT) in Washington, D.C., on December 14-15, 2010. U.S. Secretary of Agriculture Tom Vilsack also participated. Other participants included U.S. Ambassador to China Jon Huntsman, U.S. Trade and Development Agency Director Leocadia Zak, and representatives from the Treasury and State Departments. Senior Chinese officials from 26 other ministries and agencies also attended.

Outlined below are outcomes of the topics discussed. *Industry facts and figures appear in italics.*

### **INTELLECTUAL PROPERTY RIGHTS**

#### Software Legalization

*Private sector experts estimate that a 50 percent decrease in the piracy rate in China would result in increased sales of approximately \$3.8-4 billion for legitimate software manufacturers.*

- In reporting on the enhancement of its government software legalization program, China announced that it is establishing software asset management systems for government agencies and is incorporating software into China's asset management system as property, in efforts to more effectively implement software legalization.
- China has allocated current and future budgets for purchasing, upgrading, and replacing agency software.
- China announced its intent to further promote the licensed use of software in enterprises, and announced the participation of 30 major Chinese state-owned enterprises in a government/enterprise partnership pilot project.
- The United States and China will further discuss, before the middle of January, the issue of verification of compliance with legalization requirements.

#### Internet Infringement Liability

- Building on prior JCCT discussions on how to combat online copyright infringement, China announced that its judiciary is conducting a study on drafting relevant Judicial Interpretations on this issue. During this process, China's judiciary will pursue the in-depth study of several issues including Internet Intermediary Liability. The United States and China have agreed to actively support this process in order to obtain the early completion of a Judicial Interpretation that will make clear that those who facilitate online infringement will be equally liable for such infringement.

#### Library IPR Protection

- China and the United States agreed to continue cooperation on strengthening library IPR protection and to continue exchanging views and sharing information with rights holders about library IPR protection efforts. Specifically, China's National Copyright Administration described its ongoing efforts to investigate complaints by academic journal

publishers about web-based enterprises' piracy of library academic journals, and agreed to take prompt action at the conclusion of its investigations.

#### Patents/Standards

- China and the United States agreed that patent issues related to standards raise complex issues that require standard setting organizations to take into account the appropriate balance among the interests of patentees, standard users and the public when developing and adopting their rules on patent issues. The two sides have agreed to have further discussion on patent issues related to standards, including in the JCCT IPR Working Group involving participants from all relevant Chinese and U.S. agencies.

#### Responsibility/Liability of Landlords

- In order to protect trademark rights in local markets, China agreed that it will take appropriate legal measures to clarify the responsibilities/liabilities of market managers, including landlords, operators, and managers and to strengthen supervision and inspection activities.

### **CHINA'S "INDIGENOUS INNOVATION" POLICIES**

#### IPR and Non-Discrimination

- China and the United States will not adopt or maintain measures that make the location of the development or ownership of intellectual property a direct or indirect condition for eligibility for government procurement preferences for products and services. China and the United States will continue to discuss whether this principle applies to other government measures.

#### Ministry of Industry and Information Technology Equipment Catalogue

- China will revise its major equipment catalogue in 2011 and publish a draft for public comment. The revised measure will not be used for import substitution or the provision of export subsidies, or otherwise to discriminate against foreign suppliers.

#### 3G/Future Technologies

*3G infrastructure investment in China is expected to reach \$10-12 billion by 2011, and future technologies infrastructure investment will likely reach a similar level.*

- China agreed that it will take an open and transparent approach with respect to operators' choices that does not provide preferential treatment based on the standard or technology used in 3G or successor networks and allows operators to choose freely among whatever existing or new technologies that may emerge to provide upgraded or advanced services. China also confirmed that regulation of spectrum would not be used as a basis to discriminate against any technology.

## **GOVERNMENT PROCUREMENT**

*The Chinese Government has indicated that it procures more than \$88 billion annually for its own use.*

### Accession to the WTO Government Procurement Agreement

- China agreed to submit a robust, second revised offer to the WTO Government Procurement Committee before the Committee's final meeting in 2011. Its content and specific timing will be based on relevant departments' consultations with individual sub-central entities and other entities regarding GPA coverage. (Under the GPA, "other entities" include state-owned enterprises.)

### Government Procurement Preferences

- The relevant Chinese departments are conducting further modifications to the *Implementing Regulations on the Government Procurement Law* and will seriously take into account opinions and suggestions from all sides, including from the United States. In government procurement, China will give equal treatment to all innovation products produced in China by foreign-invested enterprises and Chinese-invested enterprises alike. (The United States expressed concerns that under Article 9 of China's draft Regulations, product lists could be used to provide government procurement preferences to indigenous innovation products.)

### Government Procurement and Commercial Products

- China and the United States recognize the importance of defining domestic products in a flexible manner. The Chinese departments concerned are conducting further modifications and improvements to the draft regulations, taking into consideration U.S. comments on how to maximize procuring entities' efficiencies and cost savings. The two sides will continue consultations and exchanges of information on the definition of domestic products.

## **EMERGING TECHNOLOGIES**

### 3G/Future Technologies (see indigenous innovation section above)

#### Smart Grid

*China plans to invest \$10 billion annually from 2011 to 2020 to build a national smart grid and to invest an additional \$590 billion in constructing an electric power grid.*

- With regard to products and technologies related to smart grid, China agreed to ensure that processes for developing standards in China are open and transparent; to provide opportunities for 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; and to base its standards on relevant international standards, consistent with its obligations under the WTO TBT Agreement. China welcomed opportunities to collaborate with the U.S. National Institute of Standards and Technology in developing smart grid standards.
- China committed that all enterprises in China, including state-owned enterprises and state-invested enterprises, will make purchases and sales based solely on commercial considerations. China further committed that it will (a) leave these decisions to commercial considerations between the enterprises, and (b) will provide equal treatment to foreign, foreign-invested, and Chinese domestic enterprises.

### Wind Power Equipment

*China's renewable energy market is expected to reach \$100 billion by 2020. Wind energy is the fastest growing sector.*

- China confirmed that it will recognize the experience of foreign companies outside China for the purposes of meeting experience requirements to supply equipment for large scale wind power projects.
- China further confirmed that foreign companies may submit documentation based on existing installed wind power projects overseas in order to demonstrate technical requirements for eligibility to supply Chinese large-scale wind power projects.

### **EXPRESS DELIVERY**

*Express delivery is fundamental to international trade in many sectors including high-tech and knowledge-based industries; it allows companies of all sizes to compete effectively in the global market. Express delivery creates 1.3 million jobs directly, and supports 2.75 million jobs in total.*

#### Investigation and Shutdown of Fake EDS Websites

- China's State Postal Bureau (SPB) has initiated communications with, and will continue cooperation with, relevant Chinese government ministries and agencies to investigate and shut down fake express delivery services (EDS) websites established in China.

#### EDS Supervision

- The United States and China will strengthen their exchange of ideas in the area of EDS supervision. China's SPB has agreed on the importance of protecting data security and this is one such area that the two sides will continue to discuss.

### **AGRICULTURE**

#### Beef and Beef Products

- The United States and China agreed to resume talks on beef market access the week of January 3, 2011.

#### Avian Influenza

- China announced that it has lifted Avian Influenza-related bans on U.S. poultry products from Idaho and Kentucky. The United States asked China to take prompt action in accordance with science-based international standards on four remaining state-level bans. Both sides agreed to further technical talks to address issues concerning the remaining four states.

## **PHARMACEUTICALS**

*Since 1997, U.S. pharmaceutical exports to China have grown considerably from \$149 million to nearly 1 billion in 2009.*

### Regulatory Data Protection

- The Chinese side agrees to actively protect undisclosed pharmaceutical data required for marketing approval from unfair commercial use as well as to study the concrete measures for improving implementation thereof, so as to further encourage the innovation of new drugs. China and the United States agree to hold a seminar in 2011 in China to continue the discussion of this matter.

### Combat Counterfeit Drugs through International Collaboration

- The Chinese side agrees to further combat counterfeit and substandard drugs through international cooperation. The establishment of the SFDA Complaint Center is underway. China and the United States agree to work closely to cooperate and conduct information exchange concerning counterfeit drug activities. Both sides shall provide information about cases of counterfeit drugs through the regulatory channel.

## **STANDARDS AND TESTING**

- China confirms it is active in improving its testing and certification process for China's Compulsory Certification (CCC) mark; China is ready to hold technical exchange with the United States to streamline its system.

## **TELECOMMUNICATIONS GOODS**

*Trade of goods between the U.S. and China that could be included in a U.S.-China Mutual Recognition Agreement exceeded \$58 billion in 2009 alone.*

- China announced it is going to set up a "One-stop-Shopping" mechanism to establish one application for two certification processes for mobile devices. China agreed to initiate exchanges regarding bilateral APECTEL Mutual Recognition Agreement negotiations.

## **TRAVEL AND TOURISM**

*Since the initiation of travel under the Memorandum of Understanding in 2008, total passenger travel from China to the United States has increased by 23 percent, a total export value of \$5.5 billion (as of July 2010). China is our fastest growing market and by 2015 it is projected to become the 6<sup>th</sup> largest arrival market for the United States (up from 16<sup>th</sup> before the MOU in 2008).*

- China and the United States agreed to implement Phase 3 of the Memorandum of Understanding (MOU) opening the market for the sale of packaged leisure travel from China to the United States to three additional provinces in China. (The United States will continue to press China to broaden the scope of access to include additional provinces.)
- China and the United States successfully established online systems to ensure the timely exchange of lists of Chinese travel agencies and U.S. tour operators authorized to conduct business under the MOU.

## COOPERATIVE ACTIVITIES

### COMMERCIAL LAW

- To promote the understanding of commercial legal developments impacting U.S.-China trade, U.S. Department of Commerce General Counsel Cameron Kerry, Chinese Deputy International Trade Representative Chong Quan and Legislative Affairs Office of the State Council Vice-Minister An Jian successfully led the 2010 U.S./China Legal Exchange to Hangzhou (October 18), Wuhan (October 20), and Chengdu (October 22), focusing on the United States' export promotion activities and trade remedies laws and practices. The United States and China agreed to convene the 2011 Legal Exchange in the United States in cities and on topics to be determined by mutual agreement.

### ELECTRONIC SCRAP RECYCLING

*There is a potential for extensive opportunities for U.S. recyclers and producers of related equipment in the China market. According to Chinese sources, China produced an estimated 1.7 million tons of electronic scrap in 2006, a number that could grow to around 5.4 million tons by 2015.*

- The United States and China agree to continue cooperation in developing China's capacity to recycle discarded electronics and in implementing related regulations that facilitate trade in related equipment and services.

### INTELLECTUAL PROPERTY RIGHTS

- The United States and China will have regular exchanges between the Ministry of Public Security (MPS) Senior Liaison at the Chinese Embassy in Washington and the National Intellectual Property Rights Coordination Center (IPR Center) and will continue discussions about expanding cooperation between the IPR Center and MPS.
- The United States and China agreed to exchange information about handling bad faith trademark registrations through holding a seminar or forming a task force under the JCCT IPR Working Group. A seminar, co-hosted by Europe, Japan, China and the United States was held on September 20-21, 2010.
- The United States and China agreed to jointly hold a program with public and private participants to discuss the issue of intermediary legal liability on the Internet. A seminar, co-hosted by the National Copyright Administration of China, China's Ministry of Commerce, and the United States Patent and Trademark Office was held on April 21, 2010.

### PHARMACEUTICALS AND MEDICAL DEVICES

- The U.S. Consumer Health Products Association organized a workshop on Over-the-Counter Medicines at the April 2010 JCCT Pharmaceuticals and Medical Devices Subgroup meeting in Chengdu, China.
- The U.S. medical device industry presented risk-based approach to medical device classification based on Global Harmonization Task Force principles.

- China and the United States shall work together to implement an anti-counterfeit medicines program under the APEC Life Science Innovation Forum (LSIF), so as to enhance the level of safety and quality assurance of pharmaceuticals through the exchange of testing technology. Both sides agree to hold an APEC seminar in China in 2011 focused on improving the level of drug safety and quality assurance through exchanges of information on drug detection technologies.

## **TELECOMMUNICATIONS**

*Trade of goods between the United States and China that could be included in a U.S.-China Mutual Recognition Agreement exceeded \$58 billion in 2009 alone.*

- We held a Telecommunications Type Approval Workshop in May (May 14, Beijing). Our continued engagement in this area, and in particular on a U.S.-China Mutual Recognition Agreement for telecom equipment and conformity assessment, remains a priority.
- China and the United States agreed to hold in 2011 a Seminar on Promoting Green ICT in China & the United States. Topics may include the recycling of waste electronic products, as well as other ways to utilize information and communication technology to reduce energy costs or as an environmentally friendly solution.

## **WORK PLAN ON COOPERATIVE RESEARCH ON TRADE STATISTICS**

The United States and China each publish data that measure the bilateral merchandise trade flows between these two trading partners. Although both countries follow international statistical standards, differences in the merchandise trade data arise as a result of data and methodological differences. The goal of this work plan is to extend the statistics dialogue and research already conducted under auspices of the JCCT. Like the previous work, this effort is not to change the official statistics reported by either country, but to understand better the data and methodologies used in the collection and compilation of those official trade statistics.

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*Senior Chinese Officials from the Ministry of Commerce, General Administration of Quality Supervision, Inspection and Quarantine, State Council, Ministry of Foreign Affairs, National Development Reform Commission, Ministry of Science and Technology, Ministry of Industry and Information Technology, Ministry of Finance, Ministry of Environmental Protection, Ministry of Agriculture, General Administration of Press and Publication, State Intellectual Property Office, National Tourism Administration, State Post Bureau, State Food and Drug Administration, Ministry of Railway, Ministry of Culture, National Assets Commission, General Administration of Customs, General Administration of Industry and Commerce, General Administration of Broadcast and Television, General Administration of Press and Publication, Bureau of Forestry, Office of Legislation, State Energy Administration, State Civil Aviation Administration, and China Council for the Promotion of International Trade also attended.*