

Covington & Burling LLP

Measures and Practices Restraining Foreign Investment in China

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Contact:

Timothy P. Stratford

Managing Partner

Covington & Burling LLP Beijing Representative Office

tstratford@cov.com

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Executive Summary

Purpose, Scope, and Methodology

This Report seeks to identify and describe the full range of Chinese legal measures and administrative practices that restrain foreign investment in China. By “restrain” foreign investment we mean that they can result in more favorable treatment for at least one domestic investor or investment than is available generally for foreign investors or investments. Our purpose is to help trade negotiators, trade associations, and individual companies prioritize issues to be addressed in multiple negotiations currently underway with China to conclude bilateral investment treaties (BITs) and other trade agreements. Our conclusions are based on a comprehensive review of China’s published laws and regulations that affect or may affect foreign investment in China, and on extensive research and discussions with the European Union Chamber of Commerce in China (EUCCC) and the American Chamber of Commerce in China (AmCham China) regarding administrative practices that may be applied to similar effect.

Since hundreds of thousands of potentially relevant *measures* have been issued at the central and local government levels, we focused our efforts on identifying and describing restraints falling within the following three bodies of publicly available measures:

- a. All *horizontal* measures, promulgated by central government agencies, that affect investors regardless of industry;
- b. All *sectoral* measures, promulgated by central government agencies, that apply to any of the ten industry sectors selected for special focus in this study;¹ and
- c. All horizontal measures, and sectoral measures for the 10 selected industries, promulgated by five representative *provincial-level* governments.²

To identify restraining measures, we used 53 search terms to search databases of measures issued by the relevant central and provincial-level government agencies. We developed our list of search terms by taking into account the trifurcated nature of the Chinese economy – which sometimes provides

¹ These ten sectors include: 1) automobile manufacturing; 2) chemical manufacturing; 3) construction and infrastructure (including water supply and sewage treatment); 4) distribution; 5) energy; 6) financial services (including banking, securities and insurance); 7) healthcare (including pharmaceutical, medical device and cosmetics manufacturing; and healthcare services); 8) mining; 9) professional services (including legal, accounting, consulting and architecture); and 10) telecommunications.

² These five provincial-level governments include: 1) Beijing; 2) Chongqing; 3) Guangdong; 4) Shanghai; and 5) Tianjin. Measures promulgated by geographical subdivisions of these governments down to the district and county levels have also been covered by this study to the extent that they are included in the available databases.

differentiated treatment for foreign-owned, state-owned, and domestic privately-owned entities – and by selecting terms that would help us identify the following three *categories* of restraints:

Category 1: Restraints that favor *domestic* investors or investments over foreign investors or investments;

Category 2: Restraints that favor *state-owned* investors or investments over privately-owned (including foreign-owned) investors or investments; and

Category 3: Restraints that *possibly* favor domestic investors or investments over foreign investors or investments, depending on whether foreign-invested enterprises (FIEs) established in China would be regarded as “Chinese” entities and therefore deemed eligible to receive, on an equal basis, benefits made available to such entities.

Of the 80 central government agencies that can promulgate laws, regulations, and other measures, we identified 27 as the likely sources of any measures affecting foreign investment horizontally, and 12 more that had to be added to the list to ensure identification of all measures affecting the ten selected industry sectors. Altogether, these 39 government agencies had promulgated 137,328 measures that were currently in effect as of the dates of the data base searches.³ The searches generated search term “hits” in 17,763 measures, and through a provision-by-provision review of these hits we identified 141 measures containing horizontal restraints, and 220 measures containing sectoral restraints for the ten sectors.

Similarly, the five provincial-level governments had promulgated 125,910 measures that were currently in effect, and the searches generated “hits” in 11,979 measures. The provision-by-provision review identified 351 measures containing horizontal restraints, and 129 measures containing sectoral restraints for the ten sectors.

After identifying the restraints included in these measures, we categorized, counted, and analyzed them, as described in more detail below.

Administrative *practices* restraining foreign investment were identified through a review of key reports issued by EUCCC, AmCham China, the U.S. Chamber of Commerce, the US-China Business Council, and the Office of the United States Trade Representative. In addition, sessions were convened with leaders of EUCCC and AmCham China to solicit their input on government practices impacting their member companies.

³ *I.e.*, between January and May 2014.

Chinese Measures Restraining Foreign Investment

Types of Restraints

The restraints identified through the provision-by-provision review can be classified into three broad groups, based on the stage in the regulatory process when the differentiated treatment occurs:

- 1) *Pre-establishment restraints* that impede market access for foreign investment;
- 2) *Post-establishment restraints* that treat foreign-invested entities less favorably; and
- 3) *Broad policy statements* that *potentially* result in less favorable treatment for foreign investors and investments during both the pre-establishment and post-establishing stages.

During our review we identified (i) four *types* of pre-establishment restraints – discriminatory local partner/equity requirements, market entry restrictions, approval process restraints, and technology transfer-related measures, and (ii) three *types* of post-establishment restraints – differentiated treatment through targeted enforcement, government financial support, and government procurement. In addition, we determined that the *broad policy statements* identified also constitute an important group of restraints, even though they do not mandate specific discriminatory treatment in and of themselves, because they often lead central government agencies or local governments to promulgate discriminatory measures or to exercise their administrative discretion in ways that disadvantage foreign investors and investments.

Underlying Purposes of Restraining Measures

Central-level restraints, and particularly the policy guidance measures, often explicitly set forth a wide range of underlying purposes including, *e.g.*, promoting domestic (Chinese) champion companies that can compete in both domestic and international markets, nurturing or protecting strategic industries, assisting domestic industries in moving up the global value chain, promoting exports, and fostering indigenous innovation. Provincial-level governments, in addition to embracing the abovementioned purposes, often use policy tools to promote local industries and companies in order to enhance their own tax revenue, employment levels, and social stability. However, an overwhelmingly large proportion of restraining measures are particularly focused on achieving two of these goals: (1) promoting indigenous innovation, and (2) promoting domestic champions (both at the national and provincial levels).

To promote indigenous innovation, central and local government measures stipulate domestic innovation requirements in government procurement tenders, mandate favorable treatment for products produced by domestic companies with indigenous intellectual property, and establish government-backed R&D plans offering funding only to domestic companies running certain research projects. Often, central government horizontal measures articulate the policy goal of promoting indigenous innovation through development plans, which are then implemented through more concrete measures issued separately by agencies regulating specific sectors or by provincial and other local

governments. Domestic champions are promoted utilizing similar policy tools, such as providing special funding to key enterprises and favoring them in procurement and standardization processes.

Frequency and Distribution of Restraining Measures

As detailed in Table A below on central government restraints, this study identified 141 restraining measures (issued by 19 central government agencies) that included 167 horizontal restraints, and 220 restraining measures (issued by 29 central government agencies) that included 267 restraints for the ten selected sectors:

Table A - Central Government Restraints: Horizontal and Sectoral for the 10 Selected Industries

Sector	Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
		Local Partner/ Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
HORIZONTAL	1	2	10	57	0	6	12	5	19	111
	2	0	13	0	0	0	2	0	4	19
	3	0	1	0	1	0	10	3	22	37
Total		2	24	57	1	6	24	8	45	167
1	Automobile Manufacturing	1	1						2	4
		2								
		3					1			
2	Chemical Manufacturing	1		1				1		3
		2	1							
		3								
3	Construction & Infrastructure	1	3	6		1	6	3	4	24
		2								
		3						1		
4	Distribution	1	2	6	9		6		3	33
		2	1						2	
		3					1		3	
5	Energy	1	1				2		3	13
		2	1	1						
		3					2		3	
6	Financial Services	1	18	12	49	3	2		4	104
		2	1	1						
		3			1		9		4	
7	Healthcare	1	2	2	4		4		2	18
		2								
		3							4	
8	Mining	1	2	3	9	1	1		1	24
		2	1						1	
		3					2		3	

9	Professional Services	1	4	7	7		1		2		21
		2									
		3									
10	Telecommunications	1	1	1	2			3	1	3	23
		2	1	7							
		3						1		3	
	10 Sectors	Total	35	44	88	1	6	40	8	45	267

As detailed in Table B below, this study identified 515 horizontal restraints, and 152 restraints for the ten selected sectors, promulgated by the five provincial-level governments:

Table B - Provincial-Level Government Restraints: Horizontal (H) and Sectoral (S) for the 10 Selected Industries

Local Government		Scope	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
			Local Partner/ Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
1	Beijing	H	1	2	25	0	30	33	13	57	209
		S	2	3	18	0	14	3	3	5	
2	Chongqing	H	0	0	3	0	0	18	11	20	74
		S	2	2	5	0	1	3	7	2	
3	Guangdong	H	0	4	7	2	1	37	17	64	173
		S	0	6	9	0	0	3	6	17	
4	Shanghai	H	0	0	3	0	1	53	16	83	190
		S	0	1	0	1	0	7	7	18	
5	Tianjin	H	0	0	0	0	0	5	1	8	21
		S	1	3	0	0	0	1	1	1	
	Total	H	1	6	38	2	32	146	58	232	515
		S	5	15	32	1	15	17	24	43	152

Chinese Administrative *Practices* Restraining Foreign Investment

We define “administrative practices” broadly to include the practices of agencies and officials in all branches and at all levels of government, including those engaged in legislative and judicial as well as executive functions. By “administrative restraints” we mean those administrative practices sometimes used to restrain, condition or otherwise frame foreign investment, including especially those practices that are not explicitly authorized or compelled by published rules.

Administrative practices are seen by many foreign companies as matching or even trumping published rules as a source of investment restraints, and as described in detail in Section 3 of this Report, numerous examples have been provided by foreign businesses to demonstrate the many ways that this can occur.

Motivations and Systemic Conditions Impacting Administrative Practices

A US Chamber of Commerce report identified three characteristics of China’s administrative approval processes that create market access and national treatment concerns for foreign companies:

- 1) Industrial Policies explicitly designed to support the development of domestic industries and the creation of domestic champions;
- 2) Relatively opaque inbound FDI approval processes led by officials explicitly mandated to help China achieve its industrial policy goals; and
- 3) Lack of effective recourse, in many cases, if aspiring foreign investors believe that the approval authorities have not complied with WTO commitments or China’s own regulations, given difficulties with producing evidence and fears of retaliation if complaints are lodged against approval authorities.⁴

All foreign investment projects must gain the approval of one or more Chinese government agencies, and each of these agencies is tasked – by vaguely worded regulations – not only with regulating foreign investment falling within its jurisdiction, but also with implementing relevant industrial policies and promoting domestic industries. Moreover, reliance on administrative practices to promote such goals has become increasingly important, as China’s growing immersion in international trading regimes has limited the government’s ability to *formally* codify foreign investment restraints.

Types of Administrative Practices that Restrain Foreign Investment

Administrative restraints can be grouped into the following four categories:

⁴ U.S. Chamber of Commerce, *China’s Approval Process for Inbound Foreign Direct Investment: Impact on Market Access, National Treatment, and Transparency* (2013), prepared by Covington and Burling LLP.

- 1) Rule-making
- 2) Administrative approvals
- 3) Standards setting
- 4) Judicial processes and enforcement

Foreign investors have reported the following restraining practices related to PRC rule-making processes:

Rule-Making: Type of Restraining Administrative Practice
1. Public consultation process is not utilized for all proposed laws or regulations. When used, the 30-day comment period is shorter than international practice.
2. Administrative authorities or judicial organs may rely on regulatory guidance or judicial interpretations that are not made available to the public.
3. Laws and regulations are sometimes applied retroactively, creating uncertainties regarding state of law.
4. The lack of licensing rules and procedures for foreign companies create a de-facto bar for market entry.

The following restraining practices related to administrative approvals have been reported:

Administrative Approvals: Type of Restraining Administrative Practice
1. Regulatory ambiguity allows regulators to interpret laws in ways that advantage local companies or impose special conditions on foreign companies.
2. Frequent administrative delays in meeting legally required deadlines for decision hold off project progress.
3. Oral instructions received by administrative authorities may go beyond what is required in law (e.g., conditioning investment approval on formation of a joint venture and/or promise to transfer to certain technology to a local partner).
4. Sharing of sensitive company information with competitors is required.
5. The Anti-monopoly Law (AML) is used in merger reviews in ways that suggest national industrial policy goals take priority over market concerns.
6. Subsidies available for domestic firms may not be available in practice for FIEs.

Many of the participation and transparency issues identified in the rule-making stage also arise in connection with China's standards setting processes:

Standard Setting: Type of Restraining Administrative Practice
1. Standards committee may limit or preclude foreign participation in standards setting process.
2. Standards favor domestic technology.
3. Standards setting process used to require foreign technology transfer.

Foreign investors commonly report the following administrative restraints related to China's judicial processes and enforcement:

Judicial Processes and Enforcement: Type of Restraining Administrative Practice
1. There is a lack of effective judicial recourse when administrators abuse discretion or fail to follow rules or international commitments.
2. There is local discretion in deciding whether to enforce PRC laws.
3. Laws against foreign companies are more strictly enforced, or foreign companies are targeted in national campaigns.
4. Laws are applied in an overbroad manner, creating market access barriers.
5. Foreign attorneys have limited access to legal hearings and other proceedings.
6. Legal measures or court decisions are not always made public.
7. There is a lack of judicial independence.
8. Entities encounter difficulties in enforcing arbitral awards.

Conclusion

China's restraining measures and practices are both underpinned by the same fundamental goals, which include, in particular, promoting domestic champion companies, and fostering indigenous innovation. These goals are often interpreted in terms that lead to discriminatory treatment of foreign investors and investments in China.

Under these circumstances, foreign countries face two fundamental questions when negotiating trade agreements with China:

- I. How can the Chinese government be persuaded to accept effective foreign investment liberalization disciplines if such disciplines in many cases run counter to China's fundamental economic policies and system of governance?
- II. How should such disciplines be crafted to ensure their effectiveness in practice?

With these questions in mind, we hope that the findings in this Report will prove useful to trade negotiators, trade associations, and individual companies in carrying-out the following four tasks: (1) identifying negotiation priorities; (2) testing the comprehensiveness and efficacy of proposed BIT texts; (3) tracking ongoing regulatory developments in China; and (4) probing specific policy issues in further detail. As China considers how far it is willing to go in liberalizing and reforming its foreign investment regime and underlying governance practices, foreign governments, industry associations, and individual companies will have the greatest positive impact when they respectfully present well-founded arguments showing the problems associated with existing measures and practices and the benefits China would derive from adopting and implementing well-crafted reforms. We sincerely hope this Report contributes to more rigorous and well-informed efforts to help China move in this direction.

Section 1. Purpose, Scope, and Methodology

1.1 Purpose and Scope

This Report seeks to provide an overall picture of the environment for foreign investment in China, by identifying and describing the full range of Chinese legal measures and administrative practices that restrain foreign investment. By “restrain” foreign investment we mean that they can result in more favorable treatment for at least one *domestic* investor or investment than is available generally for *foreign* investors or investments. Our purpose is to help trade negotiators, trade associations, and individual companies prioritize issues to be addressed in multiple negotiations currently underway with China to conclude bilateral investment treaties (BITs) and other trade agreements. Our conclusions are based on a comprehensive review of China’s *published laws and regulations* that affect or may affect foreign investment in China, and on extensive research and discussions with the European Union Chamber of Commerce in China (EUCCC) and the American Chamber of Commerce in China (AmCham) regarding *administrative practices* that may be applied to similar effect.

Since hundreds of thousands of potentially relevant *measures*⁵ have been issued at the central and local government levels, we have focused our efforts on identifying and describing restraints included in the following three bodies of publicly available measures:

- a. All *horizontal* measures promulgated by central government agencies that affect investors regardless of industry;
- b. All *sectoral* measures promulgated by central government agencies that apply to any of the following ten industry sectors (selected in consultation with DG Trade):
 - 1) Automobile manufacturing
 - 2) Chemical manufacturing
 - 3) Construction and infrastructure (including water supply and sewage treatment)
 - 4) Distribution
 - 5) Energy

⁵ For the purposes of this Report, we define the terms “measure,” “provision,” and “restraint” as follows: A *measure* is a law, regulation, or policy document that has been issued by a governmental authority of any level; a *provision* is an article or clause within a measure; and a *restraint* is any provision, or cluster of related provisions, within a given measure, that spells out a specific rule, stipulation or condition resulting in more favorable treatment for at least one domestic investor or investment than is available generally for foreign investors or investments. A “restraining measure” is any measure that contains at least one restraint. In our database, multiple types of restraints may be found within a single measure. However, if a single type of restraint is found multiple times in any given measure, it is counted only once.

- 6) Financial services (including banking, securities, and insurance)
 - 7) Healthcare (including pharmaceutical, medical device, and cosmetics manufacturing; and healthcare services)
 - 8) Mining
 - 9) Professional services (including legal, accounting, consulting, and architecture)
 - 10) Telecommunications
- c. All horizontal measures, and sectoral measures for the 10 selected industries, promulgated by the following five *provincial-level* governments and their geographical subdivisions down to the district (区) and county (县) levels (to the extent such measures are included in the available databases):⁶
- 1) Beijing
 - 2) Chongqing
 - 3) Guangdong
 - 4) Shanghai
 - 5) Tianjin

The ground covered in this report is not entirely unexplored, but it has never been explored so comprehensively and systematically. China's increasing prominence and importance to the global economy has prompted scholars and practitioners from business, government, and academia to produce numerous insightful studies on foreign investment in China.⁷ But while these studies provide a helpful basis for understanding China's overall approach to regulating foreign investment – and are especially helpful in describing how Chinese measures are applied in practice, little attention has been paid to *local* government measures, and no study has attempted to catalogue the full range of restraining measures and practices.⁸ We hope that by building on the past work of others, our efforts here can contribute to a fuller understanding of the often opaque and ambiguous operating environment faced by foreign businesses in China.

⁶ For the purposes of this Report, references to measures, restraints or practices of “provincial-level” or “province-level” governments shall include any measures, restraints and practices of the geographical *subdivisions* of such governments to the extent that they are represented in the databases described in note 10 or referenced in the studies used to prepare this Report.

⁷ See Annex 1 for a list of the main studies referenced during the preparation of this Report.

⁸ For instance, many reports mention the equity restrictions found in broadly-applicable central-government laws and regulations such as the *Catalogue for Guiding Foreign Investment* and the *Joint Venture Law*. While these citations are often used to support the general proposition that Chinese law restrains foreign investment, they are not presented as part of a comprehensive identification of restraining measures. One may also find occasional references to specific restraining measures at the sectoral level. However, such references are usually made to highlight particular issues, often with the intent of lobbying for revisions, rather than as part of a complete listing of all known restraining measures in a given industry.

1.2 Identifying Relevant Measures

To identify the restraining measures described above, we conducted a comprehensive review of PRC laws and other measures affecting foreign investment by:

1. identifying central government agencies⁹ that promulgate measures affecting foreign investment horizontally and sectorally (for the ten selected industry sectors);
2. using a broad range of search terms to search comprehensive databases¹⁰ of Chinese laws and regulations promulgated by these central government agencies in order to identify potential restraining measures and the relevant provisions within them;
3. reviewing the identified provisions within these measures to determine if they impose restraints on foreign investment;
4. repeating the steps above for the five provincial-level governments; and
5. categorizing and analyzing the restraints identified through the above-mentioned reviews.

These tasks are described in further detail below.

1.2.1 Identifying Central Government Agencies

We identified 80 central government agencies that can promulgate laws, regulations, and other measures. Of these 80, we identified 27 as the likely sources of any measures affecting foreign investment horizontally. In addition to those 27 central government agencies, 12 more had to be added to the list to ensure identification of all measures affecting the ten selected industry sectors. These central government agencies, the number of measures issued by each that are currently in effect, and the results of our database search and provision-by-provision review are displayed in Table 1. A list of the remaining 41 central government agencies, whose measures we deemed to lie outside the scope of this Report, is provided in Annex 2.

⁹ “Agencies” is defined broadly to include legislative and judicial bodies as well as executive agencies within the government.

¹⁰ The principal database we relied on in preparing this Report is Peking University’s Chinalawinfo.com (en.pkulaw.com), used together with its Chinese sister site (www.pkulaw.com). Chinalawinfo hosts the most complete collection of Chinese legal texts available on the internet. Our results were supplemented by references to Westlaw’s Chinese legal database (www.westlawchina.com) to locate English translations and to confirm that an older measure remained in effect.

Table 1 - Measures Promulgated by Relevant Central Government Agencies

	Central Government Agencies	Horizontal ("H")	Sectoral ("S")	Total Effective Measures	Measures with Search Hits	Measures with Horizontal Restrictions	Measures with Sectoral Restrictions (10 Sectors)	Measures with Sectoral Restrictions (Other Sectors)	As of Date
1	The National People's Congress ("NPC")	H	S	476	113	1	0	0	22-Jan-2014
2	The Standing Committee of the NPC	H	S	1,245	129	6	4	0	22-Jan-2014
3	The Supreme People's Court ("SPC")	H	S	3,934	288	0	0	0	18-Feb-2014
4	The State Council ("SC")	H	S	3,694	817	14	15	12	22-Jan-2014
5	General Office of the State Council	H	S	2,662	520	2	12	4	30-May-2014
6	Legislative Affairs Office of the State Council ("SCLAO")	H	S	30	9	0	0	0	18-Feb-2014
7	National Development and Reform Commission ("NDRC") ¹	H	S	5,033	926	11	13	18	29-May-2014
8	Ministry of Industry and Information Technology ("MIIT") ²	H	S	3,298	2,427	8	9	13	19-Dec-2013
9	Ministry of Finance("MOF")	H	S	10,619	1,257	11	3	1	28-Dec-2013
10	Ministry of Commerce ("MOFCOM") ³	H	S	7,340	2,098	40	32	30	9-Jan-2014
11	General Administration of Customs ("GAC")	H	S	2,715	379	0	0	0	22-Jan-2014

	Central Government Agencies	Horizontal ("H")	Sectoral ("S")	Total Effective Measures	Measures with Search Hits	Measures with Horizontal Restrictions	Measures with Sectoral Restrictions (10 Sectors)	Measures with Sectoral Restrictions (Other Sectors)	As of Date
12	State Administration of Taxation ("SAT")	H	S	6,470	1,031	5	0	0	23-Jan-2014
13	State Administration for Industry and Commerce ("SAIC")	H	S	2,957	656	7	1	4	24-Jan-2014
14	State Administration of Foreign Exchange ("SAFE")	H	S	821	381	0	2	0	24-Jan-2014
15	People's Bank of China ("PBOC")	H	S	4,153	716	8	23	1	18-Feb-2014
16	Ministry of Land and Resources ("MLR") ⁴	H	S	2,781	225	1	5	7	18-Feb-2014
17	Ministry of Environmental Protection ("MEP") ⁵	H	S	3,607	140	2	1	1	18-Feb-2014
18	Ministry of Housing and Urban-Rural Development ("MOHURD") ⁶	H	S	6,909	352	0	4	0	18-Feb-2014
19	General Administration of Quality Supervision, Inspection and Quarantine ("GAQSIQ")	H	S	5,606	231	5	1	6	18-Feb-2014
20	State-owned Assets Supervision and Administration Commission of the State Council ("SASAC")	H	S	898	322	5	0	0	18-Feb-2014
21	Ministry of Transport ("MOT")	H	S	1,648	98	0	1	5	18-Feb-2014
22	Ministry of Public Security ("MPS")	H	S	2,585	99	0	2	0	18-Feb-2014
23	Ministry of Civil Affairs ("MCA")	H	S	2,867	105	0	1	2	18-Feb-2014

	Central Government Agencies	Horizontal ("H")	Sectoral ("S")	Total Effective Measures	Measures with Search Hits	Measures with Horizontal Restrictions	Measures with Sectoral Restrictions (10 Sectors)	Measures with Sectoral Restrictions (Other Sectors)	As of Date
24	Ministry of Science and Technology ("MOST")	H	S	1,296	518	13	1	7	18-Feb-2014
25	Ministry of Human Resources and Social Security ("MOHRSS")	H	S	996	137	0	0	0	18-Feb-2014
26	Ministry of Foreign Affairs ("MOFA")	H	S	296	36	1	0	0	4-Apr-2014
27	State Intellectual Property Office ("SIPO")	H	S	511	135	1	1	0	4-Apr-2014
28	State Council Information Office ("SCIO")		S	23	5	0	0	1	18-Feb-2014
29	China Banking Regulatory Commission ("CBRC")		S	6,281	1,926	0	25	0	14-Mar-2014
30	China Securities Regulatory Commission ("CSRC")		S	14,905	534	0	15	0	14-Mar-2014
31	China Insurance Regulatory Commission ("CIRC")		S	11,192	489	0	6	0	14-Mar-2014
32	Ministry of Water Resources ("MWR")		S	1,187	53	0	5	0	4-Apr-2014
33	National Energy Administration ("NEA") ⁷		S	220	35	0	9	1	4-Apr-2014
34	National Health and Family Planning Commission ("NHFPC") ⁸		S	5,655	166	0	10	0	4-Apr-2014
35	China Food and Drug Administration ("CFDA") ⁹		S	2,539	40	0	2	0	4-Apr-2014
36	State Administration of Traditional Chinese Medicine ("SATCM")		S	1,036	38	0	0	0	4-Apr-2014

	Central Government Agencies	Horizontal ("H")	Sectoral ("S")	Total Effective Measures	Measures with Search Hits	Measures with Horizontal Restrictions	Measures with Sectoral Restrictions (10 Sectors)	Measures with Sectoral Restrictions (Other Sectors)	As of Date
37	Ministry of Justice ("MOJ")		S	2,028	52	0	3	0	4-Apr-2014
38	Ministry of Culture ("MOC")		S	5,185	141	0	1	18	4-Apr-2014
39	State Administration of Press, Publication, Radio, Film and Television ("SAPPRFT") ¹⁰		S	1,630	139	0	13	32	4-Apr-2014
Total				137,328	17,763	141	220	163	

Notes:	
1	"NDRC" includes the former State Development Planning Commission and the former State Planning Commission.
2	"MIIT" includes the former Ministry of Information Industry.
3	"MOFCOM" includes the former Ministry of Foreign Trade and Economic Co-operation (MOFTEC), the former State Economic and Trade Commission, and the General Office of MOFCOM.
4	"MLR" includes the former Ministry of Geology and Mineral Resources, and State Bureau of Surveying and Mapping.
5	"MEP" includes the former State Environmental Protection Administration.
6	"MOHURD" includes the former Ministry of Construction.
7	"NEA" includes the former State Electricity Regulatory Commission.
8	"NHFPC" includes the former Ministry of Health.
9	"CFDA" includes the former State Food and Drug Administration.
10	"SAPPRFT" includes the former General Administration of Press and Publication (National Copyright Administration) (GAPP) and the former State Administration of Radio, Film and Television (SARFT).
11	If several agencies have jointly issued a regulation, then we only record that regulation as the promulgation of one agency to avoid double-counting. For example, under "Measures with Horizontal Restraining Provisions", it appears that GAC has not issued any measures. However, GAC actually jointly issued two regulations with MOFCOM, SAIC and other agencies. To avoid double-counting, we have counted these measures under MOFCOM and SAIC, respectively.

1.2.2 Searching Databases

The most critical aspect of the scanning process was the selection of search terms, since an incomplete set of terms would result in an incomplete body of restraining measures. To develop our list of search terms we considered the kinds of provisions we were looking for, *i.e.*, provisions that result in domestic investors or investments receiving more favorable treatment than is available for foreign investors or investments.¹¹ Given the trifurcated nature of the Chinese economy, which sometimes provides differentiated treatment for foreign-owned, state-owned, and domestic privately-owned entities, we expected our search to identify three categories of restraints:

Category 1: Restraints that favor *domestic* investors or investments over foreign investors or investments;

Category 2: Restraints that favor *state-owned* investors or investments over privately-owned (including foreign-owned) investors or investments; and

Category 3: Restraints that *possibly* favor domestic investors or investments over foreign investors or investments, depending on whether foreign-invested enterprises (FIEs) established in China would be regarded as “Chinese” entities and therefore deemed eligible to receive, on an equal basis, benefits made available to such entities.

An example of a Category 1 restraint would be a provision limiting foreign investors to 49% ownership of a domestic enterprise in a particular sector. Such restraints were identified using the following 14 search terms:

	Key Search Terms (CH)	Key Search Terms (EN)
1	外商	Foreign-invested
2	外资	Foreign investment
3	外国企业	Foreign company
4	外国投资者	Foreign investor
5	外国法人	Foreign legal person
6	境外申请人	Overseas applicant
7	外国申请人	Foreign applicant
8	境外法人	Overseas legal person
9	跨国公司	Multinational company
10	外国公司	Foreign company
11	中外合资经营	Sino-foreign equity joint venture
12	中外合作经营	Sino-foreign cooperative joint venture

¹¹ We did not focus on identifying Chinese measures that favor investors or investments of one foreign country over investors or investments of another foreign country, as this does not appear to be a significant issue in China.

13	独资	Wholly-foreign owned investment
14	三资企业	Three types of enterprises with foreign investment

An example of a Category 2 restraint would be a provision that limits an operating license to only companies that have a certain percentage of state-owned equity. Such restraints were identified using the following 22 search terms:

	Key Search Terms (CH)	Key Search Terms (EN)
15	国有绝对控股	Absolute state-owned equity control
16	国有相对控股	Relative state-owned equity control
17	支柱产业	Pillar industries
18	国有控股	State-owned controlling equity
19	国有垄断	State-owned monopoly
20	国营贸易	State trading
21	国有法人	State-owned legal person
22	资源性垄断	Monopoly of natural resources
23	自然垄断	Natural monopoly
24	垄断行业	Monopolistic industries
25	国有资本 + 支配地位	State-owned capital + controlling position
26	国有资本 + 垄断地位	State-owned capital + monopolistic position
27	国有资本 + 优势地位	State-owned capital + advantageous position
28	国有资产 + 支配地位	State-owned asset + controlling position
29	国有资产 + 垄断地位	State-owned asset + monopolistic position
30	国有资产 + 优势地位	State-owned asset + advantageous position
31	国有企业 + 支配地位	State-owned enterprises+ controlling position
32	国有企业 + 垄断地位	State-owned enterprises + monopolistic position
33	国有企业 + 优势地位	State-owned enterprises + advantageous position
34	国产 + 优先	Domestic production + preference
35	国有企业 + 优先	State-owned enterprises + preferential treatment

Finally, we envisioned two scenarios falling into Category 3. The first occurs when the government issues policy guidance that “encourages” domestic development in a given sector. Because this

encouragement is framed as guidance and not in terms of concrete measures, it can be difficult to determine how the policy guidance document affects government decision-making and whether the provision actually serves to restrain foreign investment. A large number of China's indigenous innovation policies and policies to promote domestic champions are drafted in this manner. The second scenario occurs when measures open certain sectors to "private investment" but fail to specify whether "private" refers only to domestic private investors or to both domestic and foreign investors.

Overall, Category 3 restraints were identified using the following 17 search terms:

	Key Search Terms (CH)	Key Search Terms (EN)
36	民间资本	Private capital
37	民间投资	Private investment
38	民营企业	Private enterprises
39	私营企业	Private enterprises
40	自主创新	Indigenous innovation
41	自主品牌	Indigenous brand
42	民族品牌	National brand
43	民族企业	National enterprises
44	自主知识产权	Indigenous intellectual property
45	战略性新兴产业	Strategic emerging industries
46	战略支柱产业	Strategic pillar industries
47	原始创新	Original innovation
48	二次创新	Secondary innovation
49	再创新	Re-innovation
50	集成创新	Integrated innovation
51	工艺创新	Process innovations
52	技术 + 进口 + 消化吸收	Digestion and absorption of imported technology
53	老字号	Time-honored brand

To develop these 53 search terms, we reviewed all 3,298 measures issued by the Ministry of Industry and Information Technology (MIIT) to identify key terms likely to be associated with foreign investment restraints. MIIT was chosen as our sample agency because it has jurisdiction over a number of industries with significant foreign investment. The resulting list was continuously refined and updated through the course of our research as other potentially applicable search terms were identified. While these search terms were selected to help us identify restraints falling into the three different categories, the final classification of each identified restraint into its appropriate category was made through the provision-by-provision review discussed in the next section.

1.2.3 Provision-by-Provision Review of Search Hits for Central Government-Level Restraining Measures

As shown in Table 1 above, our search for central government level horizontal and sectoral restraints (for the ten selected sectors) using the 53 search terms produced hits for 17,763 measures. Identified provisions within each of these measures were then reviewed (and grouped into clusters of related provisions if treatment of the same basic issue spanned more than one provision) to determine whether the provision (or cluster of related provisions) allowed domestic investors or investments to receive more favorable treatment than that available for foreign investors or investments. The results of that review and the total number of identified restraining measures (*i.e.*, measures containing one or more provisions or clusters of related provisions restraining investment) are displayed in Table 1.¹²

1.2.4 Identifying Provincial Government-Level Restraining Measures

The above-mentioned steps were then repeated for the five selected provincial-level governments. As shown in Table 2 below, the search process at the provincial level produced hits for provisions in 11,979 measures. The provision-by-provision review of these hits identified 480 restraining measures, including 351 measures containing horizontal restraints and 129 measures containing sectoral restraints for the 10 selected industry sectors.

Table 2 - Measures Promulgated by Relevant Provincial-Level Government Agencies

	Provincial Government Agencies	Total Effective Measures	Measures with Search Hits	Measures with Horizontal Restraints	Measures with Sectoral Restraints (10 Sectors)	As of Date
1	Beijing	30,650	2,555	109	45	12-May-2014
2	Shanghai	40,442	4,075	32	20	14-May-2014
3	Guangdong	21,814	2,339	86	35	8-May-2014
4	Chongqing	20,267	1,688	114	22	5-May-2014
5	Tianjin	12,737	1,322	10	7	5-May-2014
Total		125,910	11,979	351	129	

1.2.5 Categorizing and Analyzing the Identified Restraints

The final step of our process included categorizing, counting, and analyzing the individual restraints identified in the restraining measures. The results of that effort are described in detail in Section 2 of this Report.

¹² Note that our review may have identified both horizontal and sectoral restraints in a single measure.

1.3 Identifying Relevant *Practices*

In order to identify the administrative *practices* described in Section 3 of this Report, we reviewed and catalogued all instances of restraining practices reported in the following five publications:

- *European Business in China Position Paper 2013/2014* (European Chamber of Commerce)
- *2014 American Business in China White Paper* (American Chamber of Commerce - China)
- *China's Approval Process for Inbound Foreign Investment* (U.S. Chamber of Commerce/Covington & Burling LLP)
- *2013 USCBC China Business Environment Survey Results* (US-China Business Council)
- *2013 Report to Congress on WTO Compliance* (Office of United States Trade Representative)

Additionally, we held two sessions with leaders of EUCCC and AmCham China to solicit their input on government practices impacting the businesses of their member companies in China. These results are discussed in Section 3 below.

Section 2. Chinese *Measures* Restraining Foreign Investment

2.1 Overview of Three Groups of Restraints

Section 1.1 described three *categories* of restraints based on the type of ownership that forms the basis for the differentiated treatment. In this section, we classify restraints from these three categories into three broad *groups*, based on the stage in the regulatory process when the differentiated treatment occurs:

- 1) *Pre-establishment restraints* that impede market access for foreign investment;
- 2) *Post-establishment restraints* that treat foreign-invested entities less favorably; and
- 3) *Broad policy statements* that *potentially* result in less favorable treatment for foreign investors and investments during both the pre-establishment and post-establishing stages.

Our provision-by-provision analysis of the restraining measures in our database led us to identify (i) four *types* of pre-establishment restraints – discriminatory local partner/equity requirements, market entry restrictions, approval process restraints, and technology transfer-related measures, and (ii) three *types* of post-establishment restraints – differentiated treatment through targeted enforcement, government financial support, and government procurement. In addition, we determined that the *broad policy statements* identified also constitute an important group of restraints, even though they do not mandate specific discriminatory treatment in and of themselves, because they often lead central government agencies or local governments to promulgate discriminatory measures or to exercise their administrative discretion in ways that disadvantage foreign investors and investments.

The remainder of Section 2.1 describes and provides illustrative examples of the different types of pre-establishment, post-establishment, and broad policy restraints we identified. Section 2.2 examines some of the government’s key policy goals underlying these restraints. And Section 2.3 provides preliminary quantitative observations regarding the extent to which the various types of horizontal and sectoral restraints have been promulgated by central and provincial-level government agencies.

2.1.1 Four Types of Pre-Establishment Restraints

1) Local partner/equity requirements

Foreign investment in many industries is limited to joint ventures. Depending on the industry sector and specific scope of business, legal measures mandate various levels of local equity in such joint ventures, with some requiring majority ownership by Chinese investors for establishment. Other measures requiring the ongoing maintenance of such majority Chinese ownership. For example, a measure issued

by the CSRC and MOFTEC requires that the listing of foreign-invested companies not dilute the local partner/equity requirements applicable to those companies:¹³

For those foreign-invested stock companies, which, according to relevant provisions, must be controlled (including being indirectly controlled) by the Chinese parties or for which there are special provisions regarding the percentage of shares that must be held by the Chinese partners, the Chinese partners shall continue to keep their controlling positions or continue to hold the requisite percentage of shares after the foreign-invested stock company is listed on the stock market.

Typical examples of sectoral restraints that cap equity for foreign investment can be found in the automobile and telecommunication sectors, where companies engaged in particular manufacturing activities or services cannot be majority foreign-owned:¹⁴

- In a foreign-invested enterprise engaging in the manufacture of complete automobiles, the proportion of foreign capital shall not exceed 50%; when involving the manufacture of special-purpose vehicles (excluding ordinary semi-trailers, dumpers, tanker vehicles, van vehicles, and stake vehicles), the proportion of foreign capital shall not exceed 50%.
- In a foreign-invested telecom enterprise operating basic telecom services (excluding wireless paging services), the foreign investors' total capital contribution shall not exceed 49%.
- In a foreign-invested telecom enterprise operating value-added telecom services (as well as wireless paging services, classified as a type of basic telecom services), the foreign investors' total capital contribution shall not exceed 50%.

From time to time, local governments promulgate measures that repeat local partner/equity restraints found in central government-level measures. An example can be found in this Chongqing measure that regulates the processed oil market:¹⁵

Where a foreign investor engaged in the retailing of refined oil within the territory of China has 30 or more fueling stations (including those established with its own investment, those where it holds shares, and those it has rented), or where a foreign investor distributes different varieties

¹³ *Opinions Regarding Foreign Investment in Listed Companies*, Art. II (MOFTEC, et. al., No. 538, 2001). [Category 1]. See Annex 3, Item 1 for full text.

¹⁴ *Catalogue of Priority Industries for Foreign Investment in Central and Western China (2013 Revision)*, Section 2 (22) (NDRC and MOFCOM, No. 1, 2013). [Category 1]. And also *Provisions on the Administration of Foreign-funded Telecommunications Enterprises (2008 Revision)*, Art. 6 (State Council, No. 534, 2008). [Category 1]. See Annex 3, Items 2 and 3 for full text.

¹⁵ *Measures of Chongqing Municipality for Administration of Processed Oil Market*, Art. 16 (Chongqing Commerce Commission, No. 17, 2007). [Category 1]. [Distribution Sector]. See Annex 3, Item 4 for full text.

and brands of refined oil from more than one supplier, the foreign investor may not hold a controlling share.

2) Market entry restrictions

In addition to equity caps and outright prohibitions, the entry of foreign investment in the sectors we examined can also be restrained in other ways. Some examples:

- a. *Licensing limitations* are established affecting the ability of FIEs to operate in China. For example, FIEs are prohibited from receiving licenses to engage in certain telecommunications activities. In other sectors, they are sometimes subject to stricter licensing requirements than are applicable to their domestic competitors.
- b. *Minimum investment levels* are set for certain industries, and the expansion of FIEs is especially regulated.
- c. *Limitations on the hiring of foreign personnel* are imposed.
- d. *FIEs are prohibited from listing on the Shanghai or Shenzhen stock exchanges*, thus limiting their access to local public financing.

The following excerpts from central level horizontal measures are examples of market entry restraints in the financial services and professional services sectors, respectively:

- “Employers may not employ foreigners for art performances of a commercial nature [except under specially prescribed circumstances].”¹⁶
- “To carry out securities investment business in China, an RMB Qualified Foreign Institutional Investors [RQFII] shall authorize a domestic commercial bank qualified as a Qualified Foreign Institutional Investors [QFII] custodian to be responsible for its asset custody business, and shall authorize a domestic securities company to purchase or sell securities on its behalf.”¹⁷

In specific sectors, such as importation of crude oil or oil products, the Chinese government prohibits FIEs as well as domestic non-state-owned companies from entering into the market:

¹⁶ *Regulations on the Management of Employment of Foreigners In China*, Art. 6 (Ministry of Foreign Affairs, Ministry of Public Bureau and MOFTEC, No. 29, 1996). [Category 1]. See Annex 3, Item 5 for full text.

¹⁷ *Measures for the Pilot Program of Securities Investment in China by RMB Qualified Foreign Institutional Investors*, Art. 4 (PBOC, SAFE and CSRC, No. 90, 2013). [Category 1]. See Annex 3, Item 6 for full text.

The State places the import of crude oil, oil products, and fertilizers under the control of State-operated trading enterprises.¹⁸

Local governments often repeat the central restraints and impose near identical market entry restraints on FIEs and non-state-owned companies in their regions:

Grain enterprises that operate and manage State and local grain reserves and that provide army rations shall, in principle, be wholly state-owned or state-controlled enterprises.¹⁹

3) Approval process

Another frequently observed type of restraint is the imposition on foreign investors and investments of additional or more burdensome approval requirements not applicable to domestic investors and investments. The *Catalogue of Industries for Guiding Foreign Investment* (“Foreign Investment Catalogue”)²⁰ requires investment approval for foreign investment in *all* manufacturing sectors, whereas the *Catalogue of Investment Projects Ratified by the Government* (“Domestic Catalogue”)²¹ allows for a record filing for domestic investment in most industries.²² In many cases where approval is required for both domestic and foreign investors, the approval process for foreign investment is more onerous and burdensome, and, as is discussed more fully in Section 3 below, the investment approval process is not effectively carried out in accordance with transparent and clear rules. Measures imposing discriminatory approval requirements constitute the largest set of measures restraining foreign investment.

In some cases, the rationale for the horizontal additional review requirement is safeguarding national security, as expressed in China’s *Anti-Monopoly Law*.²³

Where a foreign investor participates in the concentration of undertakings by merging or acquiring a domestic enterprise or by any other means, and such activity could have an impact on national security, then the matter shall be subject to national security review as is required by the relevant State regulations.

¹⁸ *Interim Measures for the Administration of the Import of Crude Oil, Oil Products, and Fertilizers through State Trading Enterprises*, Art. 2 (MOFTEC, No. 27, 2002). [Category 2]. See Annex 3, Item 7 for full text.

¹⁹ *Opinions of Chongqing Municipality on Deepening Reform of the Food Circulation System*, Art. 2 (2) (People’s Government of Chongqing, No. 94, 2004). [Category 2]. [Distribution]. See Annex 3, Item 8 for full text.

²⁰ *Catalogue of Industries for Guiding Foreign Investment (2011 Revision)* (National Development and Reform Commission and Ministry of Commerce, No. 12, 2011).

²¹ *Decision of the State Council on Investment System Reform* (State Council, No. 20, 2004).

²² U.S. Chamber of Commerce, *China’s Approval Process for Inbound Foreign Direct Investment: Impact on Market Access, National Treatment, and Transparency* (2013), p. 48.

²³ *Anti-Monopoly Law*, Art. 31 (Standing Committee of NPC, Order No. 68, 2007). [Category 1]. See Annex 3, Item 9 for full text.

Additional approval requirements are also imposed on foreign investors in other circumstances, such as during the transfer of state-owned properties to foreign investors – in which case the transfer must be made through a property right exchange market and the investor must obtain additional approval from the relevant government agency.²⁴

Other sectors also play host to additional approval requirements for foreign investment. These additional requirements may involve the required filing of separate applications for engaging in particular activities or the required submission of additional documents to demonstrate that the FIE fulfills additional criteria.

The following example illustrates additional approval procedures that FIEs are required to complete in order to operate in the publication distribution sector:²⁵

The conditions to be met for setting up a foreign-invested enterprise that engages in the distribution, wholesale, retail, and chain operation of publications, as well as the relevant approval procedures that the agency regulating press and publication shall follow, are included in Article 6 to Article 15 of this measure. After the applicant has obtained the approval document from the agency regulating press and publication, it must then also file an application to the competent Department of Commerce and go through the review and approval process for foreign investment in accordance with relevant laws and regulations. Within 90 days after this approval is granted, the applicant should collect the License for Publication Business from agency regulating press and publication.

Another example involves the establishment of joint venture medical institutions. Foreign investors in this sector must meet additional criteria, including requirements that total investment not be less than RMB 20 million and that the “proportion of shares or interest of the Chinese party in the Sino-foreign equity joint or cooperative joint medical institution shall not be lower than 30%.”²⁶

4) Technology transfer

The last type of pre-establishment restraint involves the requirement that foreign investors transfer advanced technologies to Chinese entities as a condition of entering the Chinese market. For example, to set up foreign-invested seed companies, foreign investors must fulfill a number of special criteria,

²⁴ *Notice on the Transfer of State-owned Property Rights in Companies*, Art. II (i) (iii) (SASAC, No. 306, 2006). [Category 1]. See Annex 3, Item 10 for full text.

²⁵ *Provisions on the Administration of the Publications Market (2011)*, Art. 16 (MOFCOM and GAPP, No. 52, 2011). [Category 1]. See Annex 3, Item 11 for full text.

²⁶ *Interim Measures for the Administration of Sino-foreign Equity Joint and Cooperative Joint Medical Institutions*, Art. 8 (MOFTEC and MOH, No. 11, 2000). See Annex 3, Item 12 for full text.

including the requirement that it “can transfer good quality seeds, advanced technologies, and equipment from outside of China.”²⁷

2.1.2 Three Types of Post-Establishment Restraints

1) Targeted enforcement

Targeted enforcement of Chinese laws and regulations against FIEs is a common complaint of foreign investors in China. While targeted enforcement, when it occurs, is usually the result of discriminatory administrative practice (see Section 3 of this Report for more discussion on this topic), it is also sometimes explicitly mandated in restraining measures issued by central and local government authorities.

Explicit mandates for such targeted enforcement are rare. One of just twelve such measures promulgated by central government authorities was a March 2008 *Notice on Carrying Out 2008 National Tax Investigation* (Ministry of Finance and State Administration of Taxation).²⁸ This Category 1 restraint requires local branches of the State Administration of Taxation to “conduct tax investigations on no less than 300 foreign invested enterprises,” with all FIEs to be investigated if the total number of FIEs falls short of that number in their respective regions.

Local measures calling for targeted enforcement are also quite rare, though notably, over 90% of the local targeted enforcement restraints we identified were issued by Beijing government agencies. Among them was a 2004 Notice from the People’s Government of Beijing defining “key tax sources” amongst FIEs in Beijing and mandating the establishment of specific accounts and monitoring mechanisms specifically for those FIEs.²⁹

2) Government financial support (excluding government procurement)

A large number of programs have been established at various levels of government that provide financial support to companies but may exclude FIEs, either explicitly or -- for Category 3 restraints -- by administrative practice or further measures. Financial support appears throughout the corpus of laws, regulations, and policies in a variety of forms including grants, loans, subsidies, and even the provision of land at lower than market prices. Government procurement is another frequently observed tool for channeling government funding to domestic enterprises, but we consider it as its own type of restraint that merits separate identification and analysis, due to the distinctive nature of the procurement

²⁷ *Examination, Approval and Registration of Foreign-invested Seeds Companies*, Art. 4 (2) (MOA, NDRC et. al., No. 9, 1997). See Annex 3, Item 13 for full text.

²⁸ *Notice on Carrying Out 2008 National Tax Investigation*, Art. 2 (1) (2) (MOF and State Administration of Taxation, No. 32, 2008). [Category 1]. See Annex 3, Item 14 for full text.

²⁹ *Notice on Issues Related to Strengthening the Tax Source Management Work on Foreign-related Enterprise Income Tax*, Art. 1 (People’s Government of Beijing, No. 471, 2004). [Category 1]. See Annex 3, Item 15 for full text.

process and in light of ongoing discussions about China possibly becoming a party to the WTO Government Procurement Agreement.

Financial support is often used to carry out goals such as promoting indigenous innovation and fostering domestic champions. For example, state-owned banks, under policy direction from the government, frequently offer financial support only to companies with IPR developed through indigenous innovation.

At the central level, this type of restraint is frequently seen in development plans. The *Notice of the State Council on Printing and Issuing the “Twelfth Five-Year” Development Plans for the National Strategic Emerging Industries*,³⁰ issued in July 2012, demonstrates how the State Council can set the tone for using government financial support mechanisms to serve the cause of bolstering domestic industry:

To increase the support by fiscal and tax policies. We shall, on the basis of integrating current policy resources and making full use of existing capital channels, ...set up special funds for the development of strategic emerging industries, and focus on supporting R&D for major key technologies, major industrial innovation development projects, industrialization of major innovative achievements, major application demonstration projects, and innovation capacity building, etc.

The country’s top monetary and financial regulatory authorities are also active in issuing this type of restraining measure. For example, a December 2009 Guiding Opinion from the People’s Bank of China, CBRC, CSRC, and CIRC, aims to boost domestic industry and innovation by encouraging financial institutions to both innovate in their own financial products as well as support innovative, technology-absorbing enterprises in key industries.³¹

Financial support is not limited to the central government level. We found over 160 examples of provisions calling for government financial support for domestic industry in the measures issued by the five provincial-level governments we studied. The majority of such measures were horizontal in nature, but there were a number of sectoral examples as well. Among others, the Shanghai government issued a Category 1 measure in December 2009 to use special funds to promote indigenous IPR in the new-energy automobile industry.³²

³⁰ *Notice of the State Council on Printing and Issuing the “Twelfth Five-Year” Development Plans for the National Strategic Emerging Industries*, Art. 5 (1) (State Council, No. 28, 2012). [Category 1]. See Annex 3, Item 16 for full text.

³¹ *Guiding Opinions on Further Supporting the Restructuring and Revitalization of Key Industries and Curbing Overcapacity in Some Industries through Financial Service*, Art. 2 (10) (PBOC, CBRC, CSRC and CIRC, No. 386, 2009). [Category 3]. See Annex 3, Item 17 for full text.

³² *Notice on Promoting the Development of the Shanghai New Energy Automobile Industry Formulated by the Municipal Development and Reform Commission and the Municipal Economic Information Commission*, Art. 8 (The

3) Government procurement

Public procurement is frequently used as a tool at all levels of government to support domestic industries or indigenous innovation programs. Government procurement-related measures that have been designed with these purposes in mind may include, among other provisions, domestic content requirements for major government-funded projects, and mandatory preferential treatment for domestic producers that hold indigenous IP rights.

Such government procurement-related restraints are found both horizontally and sectorally in central government measures. One February 2006 central government measure issued by the State Council, the *Notice on Implementing Several Supporting Policies for the Outline of the National Medium- and Long-Term Program for Science and Technology Development (2006-2020)*,³³ requires government agencies at all levels to first consider purchasing products listed in a “Catalogue of Indigenous Innovation Products for Government Procurement” and requires finance departments to prioritize budget allocations for indigenous innovation projects during their approval processes. The same provision also sets forth a clear mandate for domestic sourcing in major government-funded construction and equipment procurement projects:

For major national construction projects and other major equipment and products procurement projects involving fiscal funds, the relevant authorities shall list a commitment to procuring indigenous innovation projects as one of the conditions in their projects application and clearly indicate the specific requirements for procuring indigenous innovation projects. For key projects with government investment from the state or local level, the ratio of procuring domestic equipment shall be no less than the 60% of the total value. The finance department shall not release the funds if the requirements of procuring indigenous innovation projects are not satisfied.

A number of such central government measures have also been identified targeting specific sectors, including chemical manufacturing, construction & infrastructure, professional services, and telecommunications. A Category 1 example we identified in the chemical manufacturing sector was the *Urgent Notice Regarding the Orderly and Healthy Development of the Oil Refining and Ethylene Industry*, issued by the NRDC and MOFCOM in December 2005:³⁴

Large petrochemical installations have been listed as a focus area of the State's revitalization of the equipment manufacturing industry. We must actively adopt technologies and domestic

General Office of Shanghai Municipal People's Government, No. 55, 2009). [Category 1]. [Automobile]. See Annex 3, Item 18 for full text.

³³ *The Notice on Implementing Several Supporting Policies for the Outline of the National Medium- and Long-Term Program for Science and Technology Development (2006-2020)*, Art. 22 (State Council, No. 6, 2006). [Category 1]. See Annex 3, Item 19 for full text.

³⁴ *Urgent Notice Regarding the Orderly and Healthy Development of the Oil Refining and Ethylene Industry*, Art. 4 (NRDC and MOFCOM, No. 2617, 2005). [Category 1]. See Annex 3, Item 20 for full text.

equipment that are developed indigenously or that are re-innovated after being imported, digested, and absorbed, strengthening the capability of indigenous innovation and system integration.

Government procurement-related restraining measures are not limited to the central government level. We identified a significant number of such measures issued by local governments, with a particularly large number seen emanating from Guangdong province. A typical example of a local level procurement restraint is Article 23 of the June 2011 *Regulations of Tianjin Municipality on Patent Promotion Protection*, which states that for “government procurement and other procurement where financial funds are used, products with indigenous patents shall be considered first. When indigenous innovation products with patent rights enter the market...the government shall begin to procure or order these products.”³⁵ Our data shows that approximately 75% of the local-level government procurement-related restraints are of the horizontal variety rather than sector-specific.

2.1.3 Policy Guidance *Potentially* Restraining Foreign Investment

In addition to pre-establishment and post-establishment restraints, we also identified a large number of restraining measures that may not, themselves, establish concrete programs favoring domestic companies, but may lead central agencies, local governments, or state-owned banks to provide favorable treatment or financial support through promulgation of specific measures or as a matter of administrative practice. The development plans (including “five-year” plans) for particular sectors or provinces are typical examples of this type of restraining measure. For example, SIPO, the NDRC, and a number of other agencies issued the *Notice on the Distribution of the 12th Five Year Plan for National Intellectual Property Development*, which stated broadly that China “needs to develop, as soon as possible, a few research institutions that are influential internationally and a bulk of key enterprises with indigenous IPR, international brand recognition, and international competitiveness.”³⁶

A horizontal central government measure entitled *Guiding Opinions on Promoting the Development of Strategic Emerging Industries in International Markets* shows how broad policy guidance measures are used to direct China’s approach to “economic globalization” and “international cooperation” to support domestic strategic emerging industries:³⁷

The promotion of the international development of strategic emerging industries requires us to understand recent developments in economic globalization, gradually deepen international cooperation, actively explore new models of cooperation, and participate in international

³⁵ *Regulations of Tianjin Municipality on Patent Promotion & Protection*, Art. 23 (Standing Committee of Tianjin People’s Congress, No. 26, 2011). [Category 1]. See Annex 3, Item 21 for full text.

³⁶ *Notice on the Distribution of the 12th Five Year Plan for National Intellectual Property Development*, Art. 2 (2) (SIPO, NDRC et. al., 2011). [Category 1]. See Annex 3, Item 22 for full text.

³⁷ *Guiding Opinions on Promoting the Development of Strategic Emerging Industries in International Markets*, Art. 1 (MOST, MOFCOM et. al., No. 310, 2011). [Category 3]. See Annex 3, Item 23 for full text.

cooperation at a higher level so as to enhance the capability of independent development and the core competitiveness of strategic emerging industries.

Local governments also issue policy guidelines or opinions to promote local industries, although it is unclear whether “local industries” include FIEs established in the region. For example, the following *Opinion on Further Supporting the Development of Small and Micro-Enterprises and Helping Private Enterprises to Become Bigger and Stronger*, promulgated by the Guangdong government in Dec 2013, contains Category 3 restraints (those that possibly favor domestic investment over foreign investment):³⁸

16. Support key private-owned enterprises in taking the lead to apply for special funds relating to provincial strategic emerging industries, commercialization of important national and provincial research and development achievements....
17. Prioritize land support for investment projects of key private enterprises....
18. Encourage banks and other financial institutions to increase credit aid to key private enterprises....
19. Encourage local authorities to set up supportive funds relating to listing stocks on a stock exchange.

2.2 Underlying Purposes of Restraining Measures

The Chinese government utilizes restraining measures to carry out a wide range of policy goals. Central-level restraints, and particularly the policy guidance measures, often explicitly set forth underlying purposes including, e.g., promoting domestic (Chinese) champion companies that can compete in both domestic and international markets, nurturing or protecting strategic industries, assisting domestic industries in moving up the global value chain, promoting exports, and fostering indigenous innovation. Provincial-level governments, in addition to embracing the abovementioned purposes, often use policy tools to promote local industries and companies in order to enhance their own tax revenue, employment levels, and social stability.

Among the purposes mentioned above, at all levels of government, an overwhelmingly large proportion of restraining measures are particularly designed to: (1) promote indigenous innovation, and (2) promote domestic champions (both at the national and provincial levels). These two goals have found their way into almost all industrial policy initiatives that the Chinese government has announced in recent years. This subsection provides examples of restraints on foreign investment designed to promote these two policy priorities.

³⁸ *Opinion on Further Supporting the Development of Small and Micro-Enterprises and Helping Private Enterprises to Become Bigger and Stronger*, Art. 2 (16) (17) (18) (19) (People's Government of Guangdong Province, No. 115, 2013). [Category 1]. See Annex 3, Item 24 for full text.

2.2.1 Promoting Indigenous Innovation³⁹

The Chinese government in recent years has put great effort into promoting indigenous innovation and technological development. To this end, central and local government measures stipulate domestic innovation requirements in government procurement tenders, mandate favorable treatment for products produced by domestic companies with indigenous intellectual property, and establish government-backed R&D plans offering funding only to domestic companies running certain research projects. Often, central government horizontal measures articulate the policy goal of promoting indigenous innovation through development plans, which are then implemented through more concrete measures issued separately by agencies regulating specific sectors or by provincial and other local governments.

In its *State Policies on Industrial Technology* (May 2009), MIIT in conjunction with other agencies spells out, as a horizontal restraint, the need to “[m]ake more efforts in digesting, absorbing, and re-innovating imported technologies, emphasize the research of core and key technologies that can be used broadly for industrial development, do our best to realize the domestic production of key technological equipment, meet national economic development needs and engineering construction needs,” etc. Viewing this horizontal measure in its overall context, we have listed it as a Category 1 restraint in our database.⁴⁰

Sectoral measures promoting indigenous innovation at the central level appear in a number of different forms. One typical way is through the inclusion of several paragraphs on indigenous innovation in the development plan for a specific industry, as in the National Energy Administration’s January 2014 *Notice on Issuing the Guiding Opinion for Energy Work in the Year 2014*.⁴¹ An excerpt from that Category 3 restraint reads as follows:

We shall adhere to indigenous innovation, and encourage the introduction, digestion, absorption, and re-innovation [of technology], taking major energy projects as the carrier, government as the leader and enterprises as the subject to establish a mechanism for indigenous innovation systems which combines the force of the government, enterprises, schools, research institutions and users, and shall promote localization of energy equipment, and the “upgrading” of scientific and technological energy equipment. We shall speed up the

³⁹ “Indigenous innovation” in this Report refers to enhancing original innovation, integrated innovation, and re-innovation based on assimilation and absorption of imported technology, in order improve China’s national innovation capability. This term first appeared in *The National Medium- and Long-Term Program for Science and Technology Development (2006-2020)*, issued by the State Council on December 26, 2005, which states that the guiding principles for China’s science and technology undertakings over the next 15 years are: “indigenous innovation, leapfrogging in priority fields, enabling development, and leading the future”.

⁴⁰ *State Policies on Industrial Technology*, Art. 2 (MIIT et. al., No. 232, 2009). [Category 1]. See Annex 3, Item 25 for full text.

⁴¹ *Notice on Issuing the Guiding Opinion for Energy Work in the Year 2014*, Art. III (vi) (2) (National Energy Administration, No. 38, 2014). [Category 3]. See Annex 3, Item 26 for full text.

building of an indigenous innovation technology platform by energy enterprises and energy equipment manufacturing enterprises, promote localization of energy equipment, enhance the level of independence of energy equipment, form an internationally competitive energy equipment industrial system, and actively support energy equipment enterprises to “go [abroad].”

Other forms include more specific measures that, for example, support products with indigenous innovation in government procurement processes or grant government funding:

- In February 2013, the China Food and Drug Administration (CFDA) announced reforms to the drug review and approval process through an opinion that, among other things, stated that the authorities would “accelerate the examination and assessment process in relation to the registration of indigenous medicine and indigenous IPR” that are effective against “major diseases, rare diseases, and elderly and children diseases, and have been included in major special projects of National Science and Technology Plan.”⁴²
- Another central government measure intended to promote the localization of rail traffic equipment called for the provision of subsidies for “indigenously-developed” urban rail equipment projects that facilitate the “digestion and absorption of imported technology.”⁴³

A large number of local measures, particularly from Shanghai, Guangdong, and Beijing, also contain restraints aimed at promoting indigenous innovation, more than 80% of which were horizontal measures. Examples we identified include:

- A provision in a July 2009 Notice from the Beijing Municipal Commission of Economy and Information Technology regarding the application process for government investment projects notes that preferences should be given to indigenous innovation in projects. It goes on to state that if foreign-branded projects are sought, “strict justifications and special explanations” are required;⁴⁴

⁴² *Opinions on Deepening Drug Review and Approval Reform and Further Encouraging Drug Innovation*, Art. 1 (1) (CFDA, No. 37, 2013). [Category 1]. See Annex 3, Item 27 for full text.

⁴³ *Notice of General Office of the State Council on Forwarding the Opinions of National Planning Commission on Implementation of Localization of Urban Rail Traffic Equipment*, Art. 6 (General Office of the State Council, No. 20, 1999). [Category 1]. See Annex 3, Item 28 for full text.

⁴⁴ *Notice on Ensuring Application Process for 2010 Government Investment Projects*, Art. 3 (2) (Beijing Municipal Commission of Economy and Informatization, Beijing Municipal Bureau of Finance, Beijing Municipal Development and Reform Commission, No. 18, 2009). [Category 1] [Horizontal]. See Annex 3, Item 29 for full text.

- A December 2009 Notice from the People's Government of Shanghai provides new energy enterprises owning indigenous IPR with financial support for R&D from a special fund.⁴⁵

2.2.2 Promoting Domestic Champions

Another well-known approach used by the Chinese government to boost domestic industry (consequently disadvantaging foreign players) is to promote the growth of key Chinese enterprises both domestically and abroad. This goal is pursued using a number of the tools described in Sections 2.1.2 and 2.1.3 of this Report, such as providing special funding to key Chinese enterprises or favoring them in the government procurement process. Aside from the distribution industry, most, but not all, of the central government restraints in which this goal is evident are horizontal measures.

One can get a sense of the language typically used to promote domestic champions by reading an excerpt from the March 2008 *Notice on Issuing the Opinions on Protecting and Promoting the Development of Time-honored Famous Brands*, issued as a horizontal measure at the central level by MOFCOM together with other agencies.⁴⁶ The measure requires relevant government agencies:

4. To establish a promotion system and give an impetus to time-honored famous brands to enhance their competitive capabilities in the market.

....

(4) To support the innovation and development of time-honored famous brands by using fiscal funds. All qualified companies may, under relevant provisions, apply for policy support such as the pertinent brand development funds, the funds exclusive for promoting the development of small and midsize enterprises and funds for small and midsize enterprises to explore the international market.

(5) To support the time-honored famous brands to explore markets. In the government procurement and the procurement of foreign aid materials, a priority should, under the same conditions, be given to time-honored famous brand products. In the allocation of import and export quotas and the licensing of franchise businesses, time-honored famous brand products and enterprises should be given a priority within the licensing scope as provided for by laws and regulations.

Another tool sometimes used to promote national brands is the standard setting process. A large number of restraints on foreign entities in the standard setting processes occur through administrative practices, as detailed in Section 3 of this Report. However, this method of providing preferential

⁴⁵ *Notice on Promoting the Development of Shanghai New Energy Industry*, Art. 3 (3) (People's Government of Shanghai, No. 54, 2009). [Category 1]. [Energy]]. See Annex 3, Item 30 for full text.

⁴⁶ *Notice on Issuing the Opinions on Protecting and Promoting the Development of Time-honored Famous Brands*, Art. 4 (4) (5) (MOFCOM et. al., No. 104, 2008) (Mar 2008) [Category 1]. See Annex 3, Item 31 for full text.

treatment to domestic enterprises with indigenous IPR through the standardization processes is also provided for in restraining measures, as can be seen in the following excerpt from the September 2008 *Notice on the Distribution of the Catalogue of Key Technologies and Vital Products in the State's Information Industry with Indigenous Intellectual Property Rights* issued by MIIT (which regulates the telecommunications sector)⁴⁷:

Enterprises that have developed the technologies and products in the Catalogue shall be supported in terms of patent application, standards setting, and international trade and cooperation, etc., so as to form a batch of preponderant enterprises with indigenous intellectual property rights, well-known brands and relatively strong international competitiveness.

This language suggests that in establishing national standards, support of domestic technologies will be a more important consideration than harmonization with commonly accepted international standards.

Promotion of domestic champions also occurs through measures issued by provincial-level governments, utilizing similar policy tools such as providing special funding to key enterprises and favoring them in procurement and standardization processes. An excerpt from a Guangdong province measure contains language illustrative of such restraints:⁴⁸

We shall focus on areas of strategic emerging industries such as areas of high-end new electronic information, electric automobiles, LED lighting, high-end equipment manufacturing, energy saving and environmental protection, new energy, and new materials, etc., as well as on manufacturing industry areas....through the research and development of the plans and roadmaps for standardization, and promote the establishment of advanced standards with indigenous intellectual property rights.

2.3 Frequency and Distribution of Restraining Measures

In this section, we present initial observations regarding the frequency and distribution of restraining measures across different levels of government, sectors, categories, and types.

Of course, restraints vary greatly from one to another in terms of their actual impact upon foreign investors. However, the numbers generated by this study reveal the frequency at which policymakers at different agencies and levels of government have resorted to particular types of foreign investment restraints to carry out their policy goals. These details help to paint a textured picture of the terrain in which foreign investors operate.

⁴⁷ *Notice on the Distribution of the Catalogue of Key Technologies and Vital Products in the State's Information Industry with Indigenous Intellectual Property Rights*, Section 2 (MIIT, 2006). [Category 1]. See Annex 3, Item 32 for full text.

⁴⁸ E.g., *Notice on the Distribution of the Action Plan of Guangdong Province for the Year 2014-2015 on Building A Powerful Province with Quality*, Art. 1 (1) (6) (People's Government of Guangdong Province, No. 191, 2014). [Category 1]. See Annex 3, Item 33 for full text.

2.3.1 Observations Regarding Central Government-Level Horizontal Restraints

This study identified 167 horizontal restraints included within 141 measures issued by 19 central government agencies.⁴⁹ These results, divided into three categories (according to the three types of ownership that form the basis for differentiated treatment), and classified into the eight types of restraints introduced in Section 2.1, are summarized in Table 3 below:⁵⁰

⁴⁹ See also Table A included in the Executive Summary.

⁵⁰ As one measure could sometimes include two or more types of restraints, the total number of restraints is slightly larger than the number of measures identified.

Table 3 - Central Government Horizontal Restraints

Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
	Local Partner/Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
1	2	10	57	0	6	12	5	19	111
2	0	13	0	0	0	2	0	4	19
3	0	1	0	1	0	10	3	22	37
Total	2	24	57	1	6	24	8	45	167

From this data, we make a number of observations regarding horizontal restraints at the central government level:

- Two-thirds of the restraints we identified fall into Category 1, the category in which foreign investment is clearly disadvantaged relative to *domestic* investment.
- More than six in ten of the Category 1 restraints serve as market access restraints on FIEs during the pre-establishment stage. Specifically, the vast majority of these restraints (and over one-third of all restraints at this level) apply to the approval process. Thus, from the standpoint of written laws and regulations, the approval process poses the greatest hurdle facing foreign investors.
- Technology transfer requirements are rare amongst horizontal restraining measures issued at the central government level.
- Fewer than 20 of these 167 restraints fall into Category 2 (favoring state-owned investment over privately-owned investment). Most of these Category 2 restraints are market entry restraints (e.g., measures involving licensing limitations, requiring minimum investment levels, setting limitations on the hiring of foreign personnel and prohibiting the listing of entities on the Shanghai and Shenzhen stock exchanges).
- As might be expected, most of the restraints that we categorized as *possibly* favoring domestic investors or investments over foreign ones (Category 3 measures) are found in measures providing broad policy guidance. Though relatively vague on their face, such Category 3 restraints can interact with other restraints (particularly post-establishment restraints) to create an unfavorable and uncertain operating environment for FIEs.

Table 4 breaks down the central government horizontal restraints presented in Table 3 on an agency-by-agency basis:

Table 4 - Agency-Based Breakdown of Central Government Horizontal Restraints

Agency		Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
			Local Partner/Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
1	GAQSIQ	1						2		5	7
		2									
		3									
2	MEP	1			1						2
		2									
		3						1			
3	MOFCOM	1		4	18		2	2	2	2	46
		2		10				1			
		3						2		3	
4	MOF	1	1	1	6		1				13
		2									
		3				1		3			
5	MOFA	1		1	1						2
		2									
		3									
6	MIIT	1						1		6	9
		2									
		3								2	
7	MLR	1									1
		2						1			
		3									
8	MOST	1			1			1		2	16

Agency	Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
		Local Partner/Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
		2								
		3	1				1	2	8	
9	NDRC	1	1	4			3		3	14
		2	2							
		3								
10	NPC	1		1					1	2
		2								
		3								
11	Standing Committee of NPC	1		3				1		8
		2	1							
		3					2	1		
12	PBOC	1	1	8						9
		2								
		3								
13	SASAC	1		1						5
		2							4	
		3								
14	SAIC	1		7						7
		2								
		3								
15	SAT	1		2		3	1			6
		2								
		3								
16	SC	1	2	4			1	2		17
		2								

Agency		Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
			Local Partner/Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
		3						1		7	
17	General Office of SC	1									2
		2									
		3									
									2		
18	SIPO	1						1			1
		2									
		3									
	Total		2	24	57	1	6	24	8	45	167

This data helps illuminate the following features of the central government regulatory landscape:

- More than a quarter of the horizontal restraints at this level were issued by MOFCOM, the most of any central government agency. More than two-thirds of restraints coming from MOFCOM-issued measures apply to the pre-establishment stage, and more than one-third apply to the approval process alone. These observations are not surprising, as all foreign investment in China is subject to approval by MOFCOM or a local department of commerce.
- Interestingly, MOFCOM is the central government agency that issued most of the Category 2 restraints (preferential treatment for state-owned investment), almost all of them serving as market entry hurdles.
- The State Council, together with its General Office, was the second largest issuer of horizontal restraints amongst the central government agencies. Almost half of these restraints were broad policy guidance measures that *potentially* restrain foreign investment.
- Most Ministry of Finance-issued restraints apply to the pre-establishment stage, with the majority of them applying to the approval process.
- Eight out of the nine restraints issued by the People's Bank of China apply to the approval process as well.
- A significant number of restraints found in measures issued by MOST and the NRDC apply to the post-establishment stage (though NDRC has also issued a significant number applying at the pre-establishment stage). This is understandable, as they have responsibilities that cover both domestic industrial development and foreign investment.

2.3.2 Observations Regarding Central Government-Level Sectoral Restraints

Our search identified 267 central government-level restraints that specifically affect foreign investment in the ten selected industry sectors. These restraints are included within 220 separate measures issued by 29 central government agencies. A summary of these results, categorized into the eight types of restraints, are shown in Table 5 below:

Table 5 - Central Government Sectoral Restraints (for 10 Selected Industries)

Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
	Local Partner/Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
1	31	34	87		6	24	7	22	211
2	4	10	1					3	18
3				1		16	1	20	38
Total	35	44	88	1	6	40	8	45	267

From this table, we can observe the following regarding sectoral restraining measures issued by central government agencies:

- As with horizontal restraints, the central government-level Category 2 restraints (preferential treatment for state-owned investment) occur relatively infrequently in measures targeting specific sectors. The majority of Category 2 restraints identified in this table are market entry hurdles.
- Once again, a majority of these restraints apply at the pre-establishment stage, with nearly one-third of the total number related to the approval process.
- There are also a large number of local partner/equity restraints targeted at these specific sectors.
- We also see a large number of restraints applying to enterprises post-establishment, particularly in the form of provisions calling for government financial assistance (approximately 15% of all sectoral restraints at the central government level).
- Over 15% of central-level sectoral restraints come in the form of policy guidance that potentially have a restraining effect on foreign investment.

Table 6 further breaks these figures down by sector:

Table 6 - Sector-Based Breakdown of Central Government Sectoral Restraints (for 10 Selected Industries)

Sector		Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
			Local Partner/ Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
1	Automobile Manufacturing	1	1							2	4
		2									
		3						1			
2	Chemical Manufacturing	1			1				1		3
		2		1							
		3									
3	Construction & Infrastructure	1		3	6		1	6	3	4	24
		2									
		3							1		
4	Distribution	1	2	6	9			6		3	33
		2	1							2	
		3						1		3	
5	Energy	1	1					2		3	13
		2	1		1						
		3						2		3	
6	Financial Services	1	18	12	49		3	2		4	104
		2	1	1							
		3				1		9		4	
7	Healthcare	1	2	2	4			4		2	18
		2									
		3								4	
8	Mining	1	2	3	9		1	1		1	24
		2		1						1	
		3						2		3	
9	Professional Services	1	4	7	7		1		2		21
		2									

Sector		Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
			Local Partner/ Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
		3									
10	Telecommunications	1	1	1	2			3	1	3	23
		2	1	7							
		3					1		3		
	Total		35	44	88	1	6	40	8	45	267

From this sector-by-sector breakdown at the central government level (amongst the ten sectors selected for study in this Report), we note the following:

- 10 of the 18 (over 40%) Category 2 central-level sectoral restraints were issued in the telecommunications space, with seven of them occurring as restraints on market entry. This is consistent with our knowledge that the telecommunications industry is one of the most difficult industries for private actors (including FIEs) to enter.
- The two manufacturing sectors (automobiles and chemicals) are subject to far fewer restraints than the service sectors examined in this Report.
- Agencies regulating the financial services sector are by far the most prolific issuers of restraining measures at the central level. 104 out of the total 267 sectoral central-level restraints were issued in that sector. Over three-quarters of these financial services restraints are Category 1 measures applying during the pre-establishment stage.

2.3.3 Observations Regarding Provincial Government-Level Horizontal Restraints

Our search identified 515 horizontal restraints promulgated by the five selected provincial-level governments. The results, further categorized into the eight types of restraints, are shown in Table 7 below:

Table 7 - Provincial-Level Government Horizontal Restraints (for 5 Selected Provincial-Level Governments)

Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
	Local Partner/Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
1	1	4	37	2	32	113	53	168	410
2	0	2	1	0	0	6	1	8	18
3	0	0	0	0	0	27	4	56	87
Total	1	6	38	2	32	146	58	232	515

This data, when compared and contrasted with the corresponding central government data, leads to the following observations:

- While central government-level restraints tend to be concentrated in the pre-establishment type categories, fewer than 10% of the restraints found in horizontal measures issued by provincial-level governments apply to the pre-establishment stage. Approximately 45% apply to enterprises post-establishment, and a similar percentage are policy guidance measures that could potentially restrain foreign investment.
- Amongst the pre-establishment restraints, the approval process is, as at the central government level, the key mechanism for restraining foreign investment.
- More than 60% of the horizontal post-establishment restraints at the provincial government level concern government financial support. A significant number also involve the use of government procurement as a means for benefiting domestic industry. 32 provincial-level measures also seek to restrain foreign investment through targeted enforcement of foreign investors and investments (see discussion of the next two tables for further details).
- Most Category 3 restraints are policy guidance restraints, unsurprising as policy guidance measures tend to be more generally worded and therefore less clear in terms of their applicability. A significant number of Category 3 measures also involve government financial support. This category of restraint can be quite important in creating a challenging, uncertain operating environment for foreign investment.

Table 8 below provides a province-by-province breakdown of this data:

Table 8 - Province-Based Breakdown of Provincial-Level Government Horizontal Restraints (for 5 Selected Provincial-Level Governments)

Province		Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
			Local Partner/Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
1	Beijing	1	1	2	24		30	29	11	45	142
		2			1					3	4
		3						4	2	9	15
		Subtotal	1	2	25	0	30	33	13	57	161
2	Chongqing	1			3			18	11	19	51
		2									0
		3								1	1
		Subtotal	0	0	3	0	0	18	11	20	52
3	Guangdong	1		2	7	2	1	33	16	57	118
		2		2				3	1	1	7
		3						1		6	7
		Subtotal	0	4	7	2	1	37	17	64	132
4	Shanghai	1			3		1	30	14	42	90
		2						2		4	6
		3						21	2	37	60
		Subtotal	0	0	3	0	1	53	16	83	156
5	Tianjin	1						3	1	5	9
		2						1			1
		3						1		3	4
		Subtotal	0	0	0	0	0	5	1	8	14
Total			1	6	38	2	32	146	58	232	515

This province-by-province breakdown of the data for provincial government-issued horizontal restraining measures highlights some key observations:

- Beijing, Shanghai, and Guangdong lead the five selected provinces in the number of restraining measures issued by their governments.
- Beijing is unique amongst the five provinces in that it is by far the most active in issuing legal measures restraining foreign investment through the approval process.
- At the provincial level, restraining measures involving targeted enforcement discriminating against foreign investment are almost exclusively found in Beijing (30 of 32 measures).
- Shanghai issues the largest number of policy guidance restraints, though Guangdong and Beijing also issue a significant number.
- Of the 515 horizontal restraints issued through provincial government-level measures, only 14 were issued by the Tianjin government.
- Guangdong province issued the most Category 2 measures, providing preferential treatment for state-owned investors and investment vis-à-vis their private counterparts (including FIEs). Still, the 7 Category 2 horizontal restraints issued by Guangdong province make up only a small fraction of the total 132 horizontal restraints issued by that province.

2.3.4 Observations Regarding Provincial Government-Level Sectoral Restraints

Provincial government-level sectoral measures from our five selected provincial-level governments represent a relatively small number of restraints (152 in total), potentially because provincial governments in most cases only implement sectoral measures first promulgated by central government agencies. Table 9 below displays data summarizing and categorizing the provincial-level sectoral restraints identified in our analysis divided by sector, while Table 10 displays the same data broken down by province-level government:

Table 9 - Sector-Based Breakdown of Provincial-Level Government Sectoral Restraints (for 10 Selected Industries by 5 Selected Provincial-Level Governments)

Sector	Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
		Local Partner/Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
1	Automobile Manufacturing	1					2	9	7	18
		2								0
		3							1	1
		Subtotal	0	0	0	0	2	9	8	19
2	Chemical Manufacturing	1							1	1
		2								0
		3							1	1
		Subtotal	0	0	0	0	0	0	2	2
3	Construction & Infrastructure	1	1	1	9	7	1	2	3	24
		2								0
		3				1	1		3	5
		Subtotal	1	1	9	8	2	2	6	29
4	Distribution	1	2	2	10	2				16
		2		2						2
		3				1	1			2
		Subtotal	2	4	10	3	1	0	0	20
5	Energy	1		1			2		6	9
		2		1						1
		3					2	1	3	6
		Subtotal	0	1	1	0	4	1	9	16
6	Financial Services	1		4		1				9
		2								0
		3								0
		Subtotal	0	4	4	1	0	0	0	9
7	Healthcare	1		1	2	1	4	7	12	27
		2		1						1

Sector		Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
			Local Partner/Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
		3						1		2	3
		Subtotal	0	2	2	1	0	5	7	14	31
8	Mining	1									0
		2									0
		3								1	1
		Subtotal	0	0	0	0	0	0	0	1	1
9	Professional Services	1	1	1	6		1				9
		2									0
		3					1	1			2
		Subtotal	1	1	6	0	2	1	0	0	11
10	Telecommunications	1	1	2			1	2	5	2	13
		2									0
		3								1	1
		Subtotal	1	2	0	0	1	2	5	3	14
Total			5	15	32	1	15	17	24	43	152

Table 10 - Province-Based Breakdown of Provincial-Level Government Sectoral Restraints (for 10 Selected Industries by 5 Selected Provincial-Level Governments)

Province		Category	Group 1 Pre-establishment: market access restraints				Group 2 Post-establishment: differentiated treatment			Group 3 Policy Guidance Potentially Restraining Foreign Investment	Total
			Local Partner/Equity	Market Entry	Approval Process	Technology Transfer	Targeted Enforcement	Government Financial Support	Government Procurement		
1	Beijing	1	2	3	18		11	2	3	5	44
		2									0
		3					3	1			4
		Subtotal	2	3	18	0	14	3	3	5	48
2	Chongqing	1	2	1	5		1	2	7	2	20
		2		1							1
		3						1			1
		Subtotal	2	2	5	0	1	3	7	2	22
3	Guangdong	1		4	9			3	6	14	36
		2		2							2
		3								3	3
		Subtotal	0	6	9	0	0	3	6	17	41
4	Shanghai	1				1		4	6	9	20
		2		1							1
		3						3	1	9	13
		Subtotal	0	1	0	1	0	7	7	18	34
5	Tianjin	1	1	3					1	1	6
		2									0
		3						1			1
		Subtotal	1	3	0	0	0	1	1	1	7
Total			5	15	32	1	15	17	24	43	152

We note the following regarding provincial-level sectoral restraints:

- The sectors with the greatest number of provincial-level restraints were healthcare and construction & infrastructure, which suggests that the development of these sectors and domestic companies within them is of particular importance to governments below the central government level.
- Nearly one-fifth of the total restraints are related to the approval process. More than a quarter of the restraints are in the form of policy guidance measures.
- The chemical manufacturing and mining sectors drew the fewest legal restraints from provincial-level authorities – altogether just three restraints – all of which were policy guidance restraints that may or may not directly translate into actual restraints on foreign investment.
- In the healthcare sector, we see several pre-establishment restraints, but more post-establishment restraints (particularly related to government financial support and government procurement). Measures targeting the healthcare sector also included a relatively large number of policy guidance restraints.
- The construction and infrastructure sector restraints include a relatively large number involving enforcement targeting foreign investment – something that rarely appears in other sectors. A closer look at the data provided in Annex 6 shows that seven of the eight targeted enforcement restraints identified here were issued by Beijing government authorities. That coincides with our finding that Beijing is unique amongst the provincial-level governments with regard to the frequency with which it issues targeted enforcement restraints. In fact, our data indicate that 14 of the 15 sectoral targeted enforcement measures at the provincial level were issued by Beijing. Combined with the 30 of 32 horizontal targeted enforcement restraints we noted above, we can see that Beijing issues more than 90% of all targeted enforcement restraints amongst the five province-level governments we examined.
- Although it is not the sector drawing the most restraints from provincial-level government agencies, we see restraints on the professional services sector concentrated on the approval process (six in all). Upon review of the background data provided in Annex 6, we find that five of these six approval process restraints along with nine of the total eleven provincial-level restraints on that sector come from Beijing. Thus, Beijing is the most active of the provincial-level governments we studied in discriminating against foreign investment in the professional services sector.
- These observations add texture to our general finding that Beijing is the leader amongst the provincial-level governments we studied in imposing restraints on foreign investment. It is closely followed by Guangdong and then Shanghai.
- Tianjin issued the fewest sectoral restraints of all the provincial-level governments.

Section 3: Chinese Administrative Practices Restraining Foreign Investment

3.1 Scope of Administrative Practices

This section provides an overview of Chinese administrative practices that restrain foreign investors and investments in China. We define “administrative practices” broadly to include the practices of agencies and officials in all branches and at all levels of government, including those engaged in legislative and judicial as well as executive functions. By “administrative restraints” we mean those administrative practices sometimes used to restrain, condition or otherwise frame foreign investment, including especially those practices that are not explicitly authorized or compelled by published rules. In some cases, these practices may actually conflict with the written law, such as where an administrative body fails to issue a decision within a required time frame or bars a foreign investor from participating in a sector explicitly open to foreign investment.

Because administrative practices exist outside the legislative “black and white,” they are not captured by the search criteria developed in Section 2. Nevertheless, administrative practices are seen by many foreign companies as matching or even trumping published rules as a source of investment restraints, and numerous examples have been provided by foreign businesses to demonstrate the many ways that this can occur. These examples, and the motivations and systemic conditions that foster them, are discussed in further detail below.

3.2 Motivations and Systemic Conditions Impacting Administrative Practices

A US Chamber of Commerce report on China’s approval process for inbound foreign direct investment (US Chamber Report)⁵¹ identified three characteristics of China’s administrative approval processes that create market access and national treatment concerns for foreign companies:

- 1) Industrial Policies explicitly designed to support the development of domestic industries and the creation of domestic champions;
- 2) Relatively opaque inbound FDI approval processes led by officials explicitly mandated to help China achieve its industrial policy goals; and

⁵¹ U.S. Chamber of Commerce, *China’s Approval Process for Inbound Foreign Direct Investment: Impact on Market Access, National Treatment, and Transparency* (2013), prepared by Covington and Burling LLP.

- 3) Lack of effective recourse, in many cases, if aspiring foreign investors believe that the approval authorities have not complied with WTO commitments or China's own regulations, given difficulties with producing evidence and fears of retaliation if complaints are lodged against approval authorities.⁵²

The industrial policies, described in (1), are reflected in many of the legal measures identified in Section 2 of this Report. The opacity of the approval processes and the mandates for approval authorities to support domestic industries, described in (2), are exemplified by the following broad project approval criteria – by which NDRC officials are required to evaluate foreign investment applications:

- Conforms to the relevant central-level laws and regulations as well as the provisions of the Foreign Investment Catalogue and the *Catalogue of Priority Industries for Foreign Investment in Central and Western China*;
- Meets the requirements of deployment plans, industrial policies, and industry entry standards;
- Rationally develops and effectively utilizes resources;
- Does not affect national security or ecological security;
- Does not have any material adverse impact on public interest;
- Conforms to the relevant provisions of the State on capital account management and external debt management.⁵³

As discussed in considerable detail in the US Chamber Report, *all* foreign investment projects⁵⁴ must gain the approval of one or more Chinese government agencies, and each of these agencies is tasked – by vaguely worded regulations – not only with regulating foreign investment falling within its jurisdiction, but also with implementing relevant industrial policies and promoting domestic industries.

⁵² *Id.*

⁵³ *Interim Administrative Measures for the Verification and Approval of Foreign Investment Projects*, Art. 16 (National Development and Reform Commission, Order No. 12, 2014, effective June 14, 2014). The new verification measures replace a 2004 regulation that required the project to conform with the following conditions: (1) Conforms to the relevant central-level laws and regulations as well as the provisions of the Foreign Investment Catalogue and the Catalogue of Priority Industries for Foreign Investment in Central and Western China, (2) Meets the requirements of mid- and long-term planning for national economic and social development, industry planning, and industry structure readjustment policies, (3) Conforms to the public interest and relevant central-level provisions on anti-monopoly, (4) Meets the requirements of land utilization planning, overall urban planning, and environmental protection policies, (5) Meets the central-level requirements for technology and process standards, (6) Conforms to the relevant central-level provisions on capital project management and foreign debt management. *Interim Administrative Measures for the Verification and Approval of Foreign Investment Projects*, Art. 12 (National Development and Reform Commission, Order No. 22, 2004).

⁵⁴ The one, recent exception is for projects located within the Shanghai Free Trade Zone, and this exception does not apply for projects in industries included on the very extensive Shanghai Free Trade Zone negative list.

The challenge for foreign investors facing administrative reviews by such approval authorities is compounded by the lack of effective domestic recourse, (3) above, when such authorities treat them in ways that arguably breach international obligations or place them at a competitive disadvantage *vis-à-vis* domestic companies. While Chinese law ostensibly permits domestic and foreign parties to apply for administrative reconsideration and judicial review, in practice virtually no foreign company has ever been willing to exercise such rights. The US Chamber Report identifies the following considerations that discourage aspiring and existing investors from attempting such appeals:

- Very broadly defined grounds for denying investment applications and lack of an explicit affirmative duty for approval authorities to approve applications submitted to them if the applications meet clearly specific criteria;
- Difficulty in providing solid evidence of inappropriate conduct, since approval authorities generally rely on oral communications to convey specific conditions of approval, and such communications are often relayed indirectly through a Chinese joint venture partner.
- The fact that decisions of approval authorities and the People's Courts are all subject to Party supervision and are expected to align with the same underlying policies of the Party; and
- The reality that potential investors are extremely reluctant to challenge the decisions of approval authorities, who have considerable power to affect companies' future business prospects in China.⁵⁵

The three characteristics of the Chinese administrative system identified above – commitment to industrial policies, opaque operation under broad and ambiguous rules, and absence of recourse if regulated parties feel that administrative discretion has been abused – work to mutually reinforce each other and support the shaping of inbound foreign investment to conform with China's own national industrial goals.

Reliance on administrative practices to promote such goals has become increasingly important, as China's growing immersion in international trading regimes has limited the government's ability to *formally* codify foreign investment restraints. As noted by one industry expert:

Perhaps the biggest lesson learned from the kerfuffle over Indigenous Innovation-forced technology transfer policies⁵⁶ was to no longer spell out the most controversial requirements in

⁵⁵ *Id.*, at 62.

⁵⁶ Between 2006 and 2010, China promulgated several measures conditioning government procurement of "indigenous innovation products" on whether the product involved Chinese IP and trademarks owned by a registered Chinese company. These policies were to some extent rescinded in 2011 following significant pushback from foreign businesses and governments, although reports of local level implementation continue to this day.

black and white. Verbal instructions and requests to “volunteer” one’s technology are today’s rules of the road.⁵⁷

Below, we categorize and provide specific examples of administrative practices that restrain foreign investment, as reported by the foreign business community in China.

3.3 Administrative Practices that Restrain Foreign Investment

Our discussion below of specific administrative practices groups them into the following four categories:

- 1) Rule-making
- 2) Administrative approvals
- 3) Standards setting
- 4) Judicial processes and enforcement

3.3.1 Rule-Making

Foreign investors reported the following restraining practices related to PRC rule-making processes:

Type of Administrative Practice	Cited Examples ⁵⁸
1. Public consultation process is not utilized for all proposed laws or regulations. When used, the 30-day comment period is shorter than international practice.	2
2. Administrative authorities or judicial organs may rely on regulatory guidance or judicial interpretations that are not made available to the public.	1
3. Laws and regulations are sometimes applied retroactively, creating uncertainties regarding state of law.	1
4. The lack of licensing rules and procedures for foreign companies create a de-facto bar for market entry.	3

Upon accession to the WTO, China committed to provide a reasonable period for public comment on draft measures (except in certain enumerated instances) and to timely publish all promulgated measures relating to trade in goods and services. While China has done a reasonable job publishing promulgated measures, foreign companies continue to report that many draft measures are not

⁵⁷ James McGregor, *No Ancient Wisdom, No Followers: The Challenges of Chinese Authoritarian Capitalism*, pg. 38 (2012).

⁵⁸ Because the reports we surveyed are based on anecdotal evidence and not specific measures, and many companies are hesitant to report problems or may not be involved in the data collection process, it is difficult to “quantify” the impact of various administrative practices. Nevertheless, we view selection of a particular administrative practice for publication as supporting the view that such a practice is significant and/or widespread.

released for public comment. Even when public comment is solicited, China's typical 30-day period for public comment falls short of international norms.

These reports have been confirmed in a recent study by the US-China Business Council (USCBC), which found that only forty-percent of laws published by the National People's Congress (NPC) over an eight-month span were published on the NPC website for comment. Other ministries scored much lower: the State Council posted fewer than 15% of its administrative regulations and department rules on the official State Council Legislative Affairs Office (SCLAO) website for public comment, while government agencies under the State Council (e.g., MOFCOM, NDRC, Ministry of Finance, etc.) posted fewer than 10% of their regulations on the SCLAO website, and only 17% on their own websites.⁵⁹

Foreign companies also report existing gaps in China's legal framework that may be used to restrict their operations in China. For instance, foreign companies still report the apparent existence of unofficial state guidance or instructions restraining foreign investment. A telling example is the apparent prohibition on foreign investment into the basic telecommunications sector despite Chinese laws permitting a foreign investor to make such investments in the form of a joint venture. In other cases, the *lack* of a given law may have a restraining effect, such as where the People's Bank of China issued a regulation offering Payment Business Licenses to domestic companies while stating that licensing requirements for foreign investors would be separately promulgated. To date, such separate requirements have not been promulgated, preventing foreign payment services companies from participating in that sector.

3.3.2 Administrative Approvals

By far the most common type of reported administrative restraints were those involving administrative approvals, *e.g.*, examples where industry regulators used the wide scope of discretion afforded them to interpret vague or ambiguous legal provisions in a manner favorable to the state, or to impose extra-legal deal-specific conditions on proposed investments by foreign parties.

Within the realm of administrative approvals, foreign investors have reported the following practices that have a restraining effect on their businesses:

Type of Administrative Practice	Cited Examples
1. Regulatory ambiguity allows regulators to interpret laws in ways that advantage local companies or impose special conditions on foreign companies.	22
2. Frequent administrative delays in meeting legally required deadlines for decision hold off project progress.	1
3. Oral instructions received by administrative authorities may go beyond what is required in law (e.g., conditioning investment approval on formation of a joint venture and/or promise to transfer to certain technology to a local partner).	8

⁵⁹ US-China Business Council, *USCBC 2013 China Business Environment Survey Results*, pg. 19 (2013).

4. Sharing of sensitive company information with competitors is required.	1
5. The Anti-monopoly Law (AML) is used in merger reviews in ways that suggest national industrial policy goals take priority over market concerns.	5
6. Subsidies available for domestic firms may not be available in practice for FIEs.	1

These administrative approval challenges have long been a concern of foreign businesses in China, and this concern is growing. In the European Chamber's 2014 Business in China Confidence Survey, 50% of the respondents selected "discretionary enforcement of regulators" as one of the four main challenges facing foreign businesses in China – a 6% rise since 2012. "Ambiguous rules and regulations," a new category, received a 52% score.⁶⁰

As noted in the US Chamber Report:

The relatively opaque nature of the inbound FDI approval processes enables China's investment approval authorities to favor domestic competitors over foreign investors, should they so desire, without leaving a paper trail of discriminatory written regulations that could clearly offend WTO obligations.

Foreign investors have reported this favoritism occurring in two ways: (i) through the application of vaguely worded or unpublished rules or requirements in ways that discriminate against foreign investors; and (ii) through the imposition of deal-specific conditions that go beyond any written legal requirements. In the first case, the intent seems to be to exclude or impede foreign participation in a given sector without making this goal explicit in writing. In the second case, the apparent intent is often to favor local joint venture partners in their negotiations with the foreign investor, or to support the interests of local competitors.⁶¹

3.3.3 Standards Setting

Many of the participation and transparency issues identified in the rule-making stage also arise in connection with China's standards setting processes:

Type of Administrative Practice	Cited Examples
1. Standards committee may limit or preclude foreign participation in standards setting process.	3
2. Standards favor domestic technology.	4

⁶⁰ In the 2014 survey, the top concerns of foreign business in China are "Chinese economic slowdown" (61%), "rising labor costs" (56%), "attracting and retaining talent" (55%), "market access barriers" (52%) and "ambiguous rules and regulations" (52%)." (Note that a 52% score does not mean that only 52% of foreign companies view "ambiguous rules and regulations" as an issue; rather, it means that 52% of respondents selected this issue as one of their *top four* concerns for doing business in China.)

⁶¹ *Id.*, at 55.

3. Standards setting process used to require foreign technology transfer.	1
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Despite China's WTO commitment to provide a more transparent standards-setting process, foreign companies frequently report being excluded from or receiving unequal treatment in national standards-making bodies. For example, the European Chamber of Commerce has reported that "[m]any technical committees of the China Communications Standards Association claim that WFOEs legally registered in China cannot be a full member, can only be an observer, and in a worst case scenario are not accepted as any type of member."⁶²

This lack of participation is a particular concern given reports of China's insistence on developing its own indigenous standards, an approach whose ongoing implementation creates significant competitive challenges for foreign investors and FIEs in China:

In addition, many Chinese standards committees continue to create unique Chinese standards where internationally accepted technical standards already exist. These Chinese standards, which are often fragmentary adoptions and extractions from the existing international standards, are duplicative, create trade barriers restricting market entry or foreign technology imports, and hinder the export of Chinese technology to the global market.⁶³

IP protection issues exist as well, with some companies reporting government pressure to license their technologies on unfavorable terms in order to participate in standards bodies.

3.3.4 Judicial Processes and Enforcement

In addition to the problems with administrative appeals described in section 3.2, foreign investors commonly report the following administrative restraints related to China's judicial processes and enforcement:

Type of Administrative Practice	Cited Examples
1. There is a lack of effective judicial recourse when administrators abuse discretion or fail to follow rules or international commitments.	2
2. There is local discretion in deciding whether to enforce PRC laws.	3
3. Laws against foreign companies are more strictly enforced, or foreign companies are targeted in national campaigns.	8
4. Laws are applied in an overbroad manner, creating market access barriers.	1
5. Foreign attorneys have limited access to legal hearings and other proceedings.	3
6. Legal measures or court decisions are not always made public.	6
7. There is a lack of judicial independence.	1

⁶² The European Union Chamber of Commerce in China, *European Business in China Position Paper 2013/2014*, p. 283 (2014).

⁶³ AmCham China, *2014 American Business in China White Paper*, p. 112 (2014).

8. Entities encounter difficulties in enforcing arbitral awards.	1
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One of the more common reports with regard to China's judicial processes is the issue of transparency. While foreign companies are quick to praise China for its advances in publishing legal measures and court decisions, they note that such efforts are still incomplete, and that a number of IPR enforcement decisions, court judgments, and legal measures have still not been made public.

A more concerning issue is the perceived targeting of foreign companies, as frequently cited in industry surveys:

- "Fundamentally, there continues to be a significant difference in how foreign companies are treated, both formally and informally, versus their domestic counterparts."⁶⁴
- "Over half of European companies (55%) perceive foreign-invested enterprises to receive unfavorable treatment compared to domestic enterprises, whereas only 11% perceive the opposite to be true."⁶⁵
- "While foreign companies are not the only ones targeted by these campaigns, 40 percent of our members perceive that foreign companies are singled out by these campaigns, and such perception fuels the view that foreign investment is becoming less welcome in China."⁶⁶

⁶⁴ US-China Business Council, *USCBC 2013 China Business Environment Survey Results*, pg. 5 (2013).

⁶⁵ The European Union Chamber of Commerce in China, *European Business in China Business Confidence Survey 2014*, p. 5 (2014).

⁶⁶ AmCham China, *2014 American Business in China White Paper*, pg. 2 (2014).

Conclusions

This Report identified three *categories* of restraints on foreign investment included in legal measures in China, *i.e.*: Category 1 restraints that favor *domestic* investors or investments over foreign investors or investments; Category 2 restraints that favor *state-owned* investors or investments over privately-owned (including foreign-owned) investors or investments; and Category 3 restraints that *possibly* favor domestic investors or investments over foreign investors or investments, depending on whether FIEs in China are regarded as “Chinese” entities. We also identified three broad *groups* of restraints, based on the stage in the regulatory process when the restraint is imposed: (1) *pre-establishment restraints* that impede market access for foreign investment; (2) *post-establishment restraints* that treat foreign-invested entities less favorably than domestic entities; and (3) *broad policy statements* that *potentially* result in less favorable treatment for foreign investors and investments during both the pre-establishment and post-establishing stages. Within these groups, we identified four types of pre-establishment restraints and three types of post-establishment restraints.

In addition, we identified 21 administrative practices that are sometimes used to restrain foreign investment, including four related to rule-making, six related to administrative approvals, three applicable to standards setting, and eight related to judicial processes and enforcement. As noted in Section 3, foreign investors in China generally believe that these administrative practices match or even trump published rules as a source of investment restraints, because of three characteristics of China’s administrative system:

- 1) Reliance on industrial policies explicitly designed to support the development of domestic industries and the creation of domestic champions;
- 2) The pivotal role of relatively opaque inbound FDI approval processes led by officials explicitly mandated to help China achieve its industrial policy goals; and
- 3) The lack of effective recourse if aspiring foreign investors believe that the approval authorities have not complied with WTO commitments or China’s own regulations.

China’s restraining measures and restraining practices are both underpinned by the same fundamental goals of the Chinese government, which include, in particular, promoting domestic champion companies, and fostering indigenous innovation. These goals are often interpreted in terms that lead to discriminatory treatment of foreign investors and investments in China.

Under these circumstances, foreign countries face two fundamental questions when negotiating trade agreements with China:

- I. How can the Chinese government be persuaded to accept effective foreign investment liberalization disciplines if such disciplines in many cases run counter to China’s fundamental economic policies and system of governance?

II. How should such disciplines be crafted to ensure their effectiveness in practice?

With these two questions in mind, we hope that the findings in this Report, including the categorizations and summary statistics, will prove useful in the following four ways:

1. Identifying Priorities

In preparing this Report, we have identified the horizontal and vertical restraining measures and practices that impact foreign investors in China, but the restraints have not yet been prioritized for coverage in trade negotiations. The results of this Report can be used by industry associations and individual companies as a basis for assessing sector-specific priorities and providing specific input to trade negotiators.

2. Testing the Comprehensiveness and Efficacy of Proposed Text

For any particular issue or sector, proposed BIT text can be evaluated for comprehensiveness and efficacy by referencing the relevant restraining measures and practices identified in this Report.

3. Tracking Ongoing Developments

New reforms or practices reported by the Chinese government or by foreign companies in China can be benchmarked and catalogued based on the findings of this Report.

4. Probing Specific Policy Issues

This Report also sets the stage for more detailed analyses of pertinent questions that may arise in the course of ongoing trade discussions with China. For example:

- *State-owned Enterprises* -- This Report's specific identification of Category 2 restraints highlighting favorable treatment given to SOEs lays the groundwork for more in-depth assessments of Chinese policies regarding SOEs.
- *Financial Support* -- Financial support is by far the most prevalent post-establishment restraint identified by this Report. The findings of this Report could facilitate a detailed analysis of the terms and conditions of China's financial support programs and of proposed BIT text that would support WTO-consistent approaches to funding and ensure a level playing field for FIEs in China.
- *Government Procurement* -- Government procurement is also an important post-establishment restraint identified in the Report. The findings of this Report could facilitate an analysis of the interplay between possible BIT provisions related to government procurement and ongoing discussions about China becoming a party to the WTO Government Procurement Agreement.
- *FIEs as Domestic Enterprises* -- Many post-establishment issues hinge on whether an FIE is treated as a domestic enterprise on the same terms as Chinese-owned enterprises. The Report's identification of Category 3 restraints lays the foundation for a further study of this issue.

As China considers how far it is willing to go in liberalizing and reforming its foreign investment regime and underlying governance practices, foreign governments, industry associations, and individual companies will have the greatest positive impact when they respectfully present well-founded arguments showing the problems associated with existing measures and practices and the benefits China would derive from adopting and implementing well-crafted reforms. We sincerely hope this Report contributes to more rigorous and well-informed efforts to help China move in this direction.

Annex 1

List of Studies Used in Preparation of Report

#	Title	Author
1	2014 Business in China White Paper	AmCham China
2	European Business in China Position Paper 2013/2014	The European Union Chamber of Commerce in China
3	European Business in China Business Confidence Survey 2014	The European Union Chamber of Commerce in China
4	Investment in the People's Republic of China	KPMG
5	China Investment Policy: An Update	OECD Working Papers on International Investment
6	China's Approval Process for Inbound Foreign Direct Investment: Impact on Market Access, National Treatment and Transparency	U.S. Chamber of Commerce / Covington & Burling LLP
7	2013 USCBC China Business Environment Survey Results	U.S.-China Business Council
8	Various US-China Business Council Position Papers	U.S.-China Business Council
9	2012 Annual Report to Congress	U.S.-China Security and Economic Review Commission
10	2013 Annual Report to Congress	U.S.-China Security and Economic Review Commission
11	An Analysis of State Owned Enterprises and State Capitalism in China	U.S.-China Security and Economic Review Commission / Capital Trade Inc.
12	2013 Investment Climate Statement -- China	U.S. Department of State
13	2013 Report to Congress on WTO Compliance	United States Trade Representative

Annex 2

List of Central Government Agencies Not Included in Study

#	Other Central Government Agencies (EN)	Other Central Government Agencies (CH)
1	Ministry of Agriculture	农业部
2	National Administration for the Protection of State Secrets	国家保密局
3	National Tourism Administration	国家旅游局
4	State Administration for Religious Affairs	国家宗教事务局
5	State Administration of Cultural Heritage	国家文物局
6	State Oceanic Administration	国家海洋局
7	Civil Aviation Administration of China	中国民用航空局
8	State Post Bureau	国家邮政局
9	General Administration of Sport	国家体育总局
10	State Administration of Grain	国家粮食局
11	State Cryptography Administration	国家密码管理局
12	Ministry of Education	中华人民共和国教育部
13	Ministry of State Security	中华人民共和国国家安全部
14	National Bureau of Statistics	国家统计局
15	State Administration of Foreign Experts Affairs	国家外国专家局
16	Government Offices Administration of the State Council	国家机关事务管理局
17	Ministry of National Defense	中华人民共和国国防部
18	National Bureau of Corruption Prevention	国家预防腐败局
19	Overseas Chinese Affairs Office of the State Council	国务院侨务办公室
20	Hong Kong and Macao Affairs Office of the State Council	国务院港澳事务办公室
21	Xinhua News Agency	新华通讯社
22	China Earthquake Administration	中国地震局
23	China Meteorological Administration	中国气象局
24	National Council for Social Security Fund	全国社会保障基金理事会
25	National Natural Science Foundation	国家自然科学基金委员会
26	Taiwan Affairs Office of the State Council	国务院台湾事务办公室
27	State Archives Administration	国家档案局
28	State Bureau for Letters and Calls (Brief intro)	国家信访局
29	State Administration of Science, Technology and Industry for National Defense	国家国防科技工业局

#	Other Central Government Agencies (EN)	Other Central Government Agencies (CH)
30	State Tobacco Monopoly Administration	国家烟草专卖局
31	State Bureau of Civil Servants	国家公务员局
32	State Administration of Coal Mine Safety	国家煤矿安全监察局
33	China Atomic Energy Authority	国家原子能机构
34	State Language Commission	国家语言文字工作委员会
35	National Nuclear Safety Administration	国家核安全局
36	State Ethnic Affairs Commission	中华人民共和国国家民族事务委员会
37	National Audit Office	中华人民共和国审计署
38	State Administration of Work Safety	国家安全生产监督管理总局
39	State Forestry Administration	国家林业局
40	Ministry of Supervision	中华人民共和国监察部
41	The Supreme People's Procuratorate	最高人民检察院

Annex 3				
List of Cited Examples and Corresponding Contextual Excerpts				
	Title of Measure (English)	Title of Measure (Chinese)	Relevant Provisions (Marked in Bondface)	Relevant Provisions (Original Text in Chinese)
1	<i>Opinions Regarding Foreign Investment in Listed Companies</i> (CSRC, MOFTEC) (Aug 2001) [Category 1]	对外贸易经济合作部、中国证券监督管理委员会关于印发《关于上市公司涉及外商投资有关问题的若干意见》的通知	<p>II. Issuance of Stocks by Foreign-invested Stock Companies</p> <p>1.The issuance of stocks within the territory of PRC by foreign-invested stock companies (A shares and B shares) shall be in conformity with the industrial policies regarding foreign investment and the requests for the issuance of stocks by listed companies;</p> <p>2. A foreign-funded stock company that is listed and publicly issues stocks for the first time shall meet the relevant provisions of the Company Law, other regulations and rules of the China Securities Regulatory Commission, in addition, it shall satisfy the following requirements:</p> <p>(1) having passed the joint annual inspections of foreign-invested enterprises for the recent three years;</p> <p>(2) the scope of business is in conformity with the requests as mentioned in theInterim Provisions on Guiding the Orientation of Foreign Investment and the Catalogue of Industries for Guiding Foreign Investment;</p> <p>(3) the proportion of shares held by foreign investors shall not be less than 10% in the total shares after the initial public offer;</p> <p>(4) for those foreign-invested stock companies, which, according to relevant provisions, shall be controlled (including being indirectly controlled) by the Chinese parties or for which there are special provisions regarding the percentage of shares that must be held by the Chinese partners, the Chinese partners shall continue to keep their controlling positions or continue to hold the percentage of shares after the foreign-invested stock company is listed on the stock market;</p> <p>(5) shall meet other requests as provided in other regulations and rules regarding the initial public offer.</p>	<p>二、关于外商投资股份有限公司上市发行股票。</p> <p>(一) 外商投资股份有限公司在境内发行股票（A 股与 B 股）必须符合外商投资产业政策及上市发行股票的要求；</p> <p>(二) 首次公开发行股票并上市的外商投资股份有限公司，除符合《公司法》等法律、法规及中国证监会的有关规定外，还应符合下列条件：</p> <p>1、申请上市前三年均已通过外商投资企业联合年检；</p> <p>2、经营范围符合《指导外商投资方向暂行规定》与《外商投资产业指导目录》的要求；</p> <p>3、上市发行股票后，其外资股占总股本的比例不低于 1 0 %；</p> <p>4、按规定需由中方控股（包括相对控股）或对中方持股比例有特殊规定的外商投资股份有限公司，上市后应按有关规定的要求继续保持中方控股地位或持股比例；</p> <p>5、符合发行上市股票有关法规要求的其他条件。</p>
2	<i>Catalogue of Priority Industries for Foreign Investment in Central and Western China (2013 Revision)</i> (NDRC, MOFCOM) (Jun 2013) [Category 1]	中西部地区外商投资优势产业目录(2013年修订)	<p>Inner Mongolia Autonomous Region</p> <p>1. Production and processing of green agricultural and livestock products (milk, meat, wool, fur, potato and vegetable) (excluding those belonging to the category of restricted products and the category of prohibited products of the Catalogue of Industries for Guiding Foreign Investment)</p> <p>22. Manufacture of complete automobiles (the proportion of foreign capital shall not exceed 50%), and manufacture of special-purpose vehicles (excluding ordinary semi-trailers, dumpers, tanker vehicles, van vehicles and stake vehicles) (the proportion of foreign capital shall not exceed 50%)</p>	<p>内蒙古自治区</p> <p>1.绿色农畜产品（乳、肉、绒、皮毛、马铃薯、蔬菜）生产及加工（列入《外商投资产业指导目录》限制类、禁止类的除外）</p> <p>22.汽车整车制造（外资比例不高于50%），专用汽车（不包括普通半挂车、自卸车、罐式车、厢式车和仓栅式汽车）制造（外资比例不高于50%）</p>
3	<i>Provisions on the Administration of Foreign-funded Telecommunications Enterprises (2008 Revision)</i> (State Council) (Sep 2008) [Category 1]	外商投资电信企业管理规定(2008修订)	<p>Article 6 In a foreign-invested telecom enterprise operating basic telecom services (excluding the wireless paging service), the foreign investors' total capital contribution shall not exceed 49%. In a foreign-invested telecom enterprise operating value-added telecom services (including the wireless paging service of basic telecom services), the foreign investors' total capital contribution shall not exceed 50%.</p> <p>The proportional ratio of the capital contribution respectively made by the Chinese investors and foreign investors of a foreign-invested telecom enterprise at different phases shall be determined pursuant to the relevant provisions of the State Council's department in charge of industry and information technology.</p> <p>Article 7 Operation of telecom services by a foreign-invested telecom enterprise shall not only conform to the conditions set forth in Articles 4, 5, and 6 of these Provisions, but also conform to the conditions set forth in the Telecom Regulations to be met in order to operate basic or value-added telecom services.</p>	<p>第六条 经营基础电信业务(无线寻呼业务除外)的外商投资电信企业的外方投资者在企业中的出资比例,最终不得超过49%。经营增值电信业务(包括基础电信业务中的无线寻呼业务)的外商投资电信企业的外方投资者在企业中的出资比例,最终不得超过50%。</p> <p>外商投资电信企业的中方投资者和外方投资者在不同时期的出资比例,由国务院工业和信息化部主管部门按照有关规定确定。</p> <p>第七条 外商投资电信企业经营电信业务，除应当符合本规定第四条、第五条、第六条规定的条件外，还应当符合电信条例规定的经营基础电信业务或者经营增值电信业务应当具备的条件。</p>

4	<i>Measures of Chongqing Municipality for Administration of Processed Oil Market</i> (Chongqing Commerce Commission) (May 2007) [Category 1] [Distribution Sector]	重庆市成品油市场管理实施办法	<p>Article 16 Where a foreign investor engaged in the retailing of refined oil within the territory of China has 30 or more fueling stations (including those established with its investment, those in which it has a holding share and those it has rented), or where a foreign investor distributes different varieties and brands of refined oil from more than one supplier, the foreign investor may not hold a controlling share.</p>	<p>第十六条 设立外商投资成品油经营企业，应当遵守本实施办法及国家有关政策、外商投资法律、法规、规章的规定。</p> <p>同一外国投资者在中国境内从事成品油零售经营超过30座及以上加油站的（含投资建设加油站、控股和租赁站），销售来自多个供应商的不同种类和品牌的成品油的，不允许外方控股。</p>
5	<i>Regulations on the Management of Employment of Foreigners In China</i> (Ministry of Foreign Affairs, Ministry of Public Bureau, and MOFTEC) (Jan 1996) [Category 1]	劳动部、公安部、外交部、外经贸部关于颁发《外国人在中国就业管理规定》的通知	<p>Article 6 The position for hiring a foreigner must be one having special demand for foreigners, where there are temporarily no appropriate candidates in China, and it shall not violate relevant state provisions. Employers may not employ foreigners for art performances of a commercial nature, except for those persons who meet the requirements of Item 3, Article 9 of these Provisions.</p> <p>Article 18 Employers and the foreigners employed by them shall conclude employment contracts. The term of such an employment contract may not exceed five years. An employment contract is terminated upon expiration, but may be renewed after handling the examination and approval formalities under Article 19 of these Provisions.</p>	<p>第六条 用人单位聘用外国人从事的岗位应是有特殊需要，国内暂缺适当人选，且不违反国家有关规定的岗位。用人单位不得聘用外国人从事营业性文艺演出，但符合本规定第九条第三项规定的人员除外。</p> <p>第十八条 用人单位与被聘用的外国人应依法订立劳动合同。劳动合同的期限最长不得超过五年。劳动合同期限届满即行终止，但按本规定第十九条的规定履行审批手续后可以续订。</p>
6	<i>Measures for the Pilot Program of Securities Investment in China by RMB Qualified Foreign Institutional Investors</i> (PBOC, SAFE, CSRC) (Aug 2013) [Category 1]	人民币合格境外机构投资者境内证券投资试点办法	<p>Article 2 For the purpose of these Measures, “RMB qualified foreign institutional investor (hereinafter referred to as the “RQFII”)” means a foreign legal person that uses overseas RMB funds to make securities investment in China with the approval of the China Securities Regulatory Commission (“CSRC”), and after obtaining the investment quota approved by the State Administration of Foreign Exchange (“SAFE”).</p> <p>Article 3 The CSRC shall, in accordance with law, supervise and administer the securities investment made by RQFIIs in China, the People's Bank of China (“PBC”) shall, in accordance with law, administer the RMB bank accounts opened within China by RQFIIs, and the SAFE shall, in accordance with law, administer the investment quotas of RQFIIs, and the PBC shall, jointly with the SAFE, monitor and administer the inward and outward remittance of capital of RQFIIs in accordance with law.</p> <p>Article 4 To carry out securities investment business in China, an RQFII shall authorize a domestic commercial bank qualified as a QFII custodian to be responsible for its asset custody business, and authorize a domestic securities company to purchase or sell securities on its behalf.</p>	<p>第二条 本办法所称人民币合格境外机构投资者（以下简称人民币合格投资者），是指经中国证券监督管理委员会（以下简称中国证监会）批准，并取得国家外汇管理局（以下简称国家外汇局）批准的投资额度，运用来自境外的人民币资金进行境内证券投资的境外法人。</p> <p>第三条 中国证监会依法对人民币合格投资者的境内证券投资实施监督管理，中国人民银行（以下简称人民银行）依法对人民币合格投资者在境内开立人民币银行账户进行管理，国家外汇局依法对人民币合格投资者的投资额度实施管理，人民银行会同国家外汇局依法对人民币合格投资者的资金汇出入进行监测和管理。</p> <p>第四条 人民币合格投资者开展境内证券投资业务，应当委托具有合格境外机构投资者托管人资格的境内商业银行负责资产托管业务，委托境内证券公司代理买卖证券。</p>
7	<i>Interim Measures for the Administration of the Import of Crude Oil, Oil Products, and Fertilizers through State Trading Enterprises</i> (MOFTEC) (Jul 2002) [Category 2]	原油、成品油、化肥国营贸易进口经营管理试行办法	<p>Article 2 The State puts the import of crude oil, oil products, and fertilizers under the control of State-operated trading. The tariff numbers of crude oil, oil products, and fertilizers shall be formulated and adjusted by the Ministry of Foreign Trade and Economic Cooperation (hereinafter referred to as the “MOFTEC”) in conjunction with the State Economic and Trade Commission (hereinafter referred to as the “SETC”) and the General Administration of Customs, and shall be released by the MOFTEC.</p> <p>Article 4 State-operated trading enterprises are enterprises or entities that have been authorized by the State for importing and operating certain goods subject to the control of State-operated trading.</p> <p>Article 5 The list of State-operated trading enterprises shall be determined, adjusted, and released by the MOFTEC.</p> <p>The MOFTEC shall consult with the SETC while determining and adjusting the list of State-operated trading enterprises.</p> <p>Article 6 With respect to goods subject to the control of State-operated trading, the State permits non-State-operated trading enterprises to carry out certain portion of the import thereof.</p> <p>Article 9 State-operated trading enterprises shall engage in State-operated trading business under the instruction of the MOFTEC and the SETC.</p>	<p>第二条 国家对原油、成品油、化肥进口实行国营贸易管理。原油、成品油、化肥具体税号由对外贸易经济合作部(以下简称“外经贸部”)会同国家经济贸易委员会(以下简称“国家经贸委”)、海关总署制定、调整,外经贸部负责公布。</p> <p>第四条 国营贸易企业是经国家特许,获得从事某类国营贸易管理货物进口经营权的企业或机构。</p> <p>第五条 国营贸易企业名录由外经贸部确定、调整并公布。外经贸部在确定和调整国营贸易企业名录时商国家经贸委。</p> <p>第六条 对实行国营贸易管理的货物,国家允许非国营贸易企业从事部分数量的进口。</p> <p>第九条 国营贸易企业在外经贸部和国家经贸委指导下从事国营贸易业务。</p>

8	<i>Opinions of Chongqing Municipality on Deepening Reform of the Food Circulation System</i> (People's Government of Chongqing) (Nov 2004) [Category 2] [Distribution]	重庆市人民政府关于深化粮食流通体制改革的意见	(2) Further advance the reform of enterprise property right system of state-owned grain enterprises. Separate governmental functions from enterprise management, advance merger and acquisition, reduce historical burdens, downsize surplus staff, establish and improve corporate governance structure, so as to enable the enterprises to be market entities with independent management and responsibility for their own profits and losses as well as strengthen their market competitiveness and better exercise their roles of major [distribution] channels. Each district or county (or autonomous county or city) may establish a grain enterprise wholly invested by or held by the state. Grain enterprises that operate and manage State and local grain reserves and that provide army rations shall, in principle, be wholly state-owned or state-controlled enterprises.	(二) 进一步推进国有粮食企业产权制度改革。实行政企分开, 推进兼并重组, 消化历史包袱, 分流富余人员, 建立健全法人治理结构, 使企业真正成为自主经营、自负盈亏的市场主体, 提高市场竞争能力, 更好地发挥主渠道作用。每个区县(自治县、市)可以组建1个国有独资或国有控股的粮食公司。 对承担中央、地方储备粮经营管理和军粮供应任务的粮食企业, 原则上实行国有独资、国有控股为主的产权制度。
9	<i>Anti-Monopoly Law</i> (Standing Committee of NPC) (Aug 2007) [Category 1]	中华人民共和国反垄断法	Article 31 Where a foreign investor participates in the concentration of undertakings by merging and acquiring a domestic enterprise or by any other means, which could have an impact on national security, the matter shall be subject to national security review as is required by the relevant State regulations, in addition to the review on the concentration of undertakings that shall be carried out in accordance with the provisions of this Law.	第三十一条 对外资并购境内企业或者以其他方式参与经营者集中, 涉及国家安全的, 除依照本法规定进行经营者集中审查外, 还应当按照国家有关规定进行国家安全审查。
10	<i>Notice on the Transfer of State-owned Property Rights in Companies</i> (SASAC) (Dec 2006) [Category 1]	国务院国有资产监督管理委员会、财政部关于企业国有产权转让有关事项的通知	II. On the transferring of state-owned property to foreign investors In the transfer of the property rights of properties that are state-owned, if the transferee is a foreign enterprise or any other foreign economic organization or individual (hereinafter referred to as foreign investors), it shall be handled according to the following provisions: i. The transfer of property rights of properties that are state-owned to foreign investors shall be conducted publicly in the property right exchange market. Where it is necessary to adopt the method of agreement-based transfer under a special circumstance, it shall comply with the relevant provisions on approval of agreement-based transfer in the Measures and this Notice. ii. When the transferor puts forward the requirements for acceptance, it shall, by making contrast with the Catalogue of Industries for Guiding the Foreign Investment and other relevant provisions, give hints in the announcement on transfer of property rights where there are restrictive or prohibitive provisions of the State on the acceptance of property rights of target enterprises by foreign investors. iii. In case the foreign investor is confirmed as the transferee through the property right exchange market, the transferor shall report it to the relevant government agency for examination and approval according to the relevant management provisions of the State.	二、关于外商受让企业国有产权 在企业国有产权转让中, 涉及受让方为外国的企业和其他经济组织或者个人的(以下统称外商), 应当按以下规定办理: (一) 向外商转让企业国有产权应在产权交易市场中公开进行。特殊情况下, 确需采取协议方式转让的, 应符合《办法》及本通知中关于批准协议转让的相关规定。 (二) 转让方在提出受让条件时, 应对照《外商投资产业指导目录》及相关规定, 对国家对外商受让标的企业产权有限制性或禁止性规定的, 应在产权转让公告中予以提示。 (三) 通过产权交易市场确定外商为受让主体的, 由转让方按照国家有关管理规定报政府相关职能部门审核批准。
11	<i>Provisions on the Administration of the Publications Market</i> (2011) (MOFCOM and GAPP) (Mar 2011) [Category 1]	出版物市场管理规定(2011)	Article 16 The State allows to establish Sino-foreign equity/cooperative joint venture enterprises and wholly foreign-owned enterprises engaging in distribution activities for books, newspapers, periodicals and electronic publications, allows to establish Sino-foreign cooperative joint venture enterprises engaging in distribution activities for audio-visual products. Where any of them engages in the chain operation business for books, newspapers and periodicals, and has over 30 chain stores, foreign party shall not be allowed to hold a controlling stake. Foreign investors shall not violate the aforesaid restriction on 30 chain stores through disguised form of equity participation. The conditions to be met for setting up a foreign-invested enterprise that engages in the general distribution, wholesale, retail and chain operation of publications and the approval procedures that the administrative department of press and publication shall follow are included in the relevant provisions in Article 6 to Article 15 of these Provisions. After the applicant has obtained the approval document from the administrative department of press and publication, it must also file an application to the competent department of commerce to go through the review and approval process for foreign investment in accordance with the relevant laws and regulations and, within 90 days after the approval is granted, collect the License for Publication Business from the original administrative department of press and publication that grants the approval by producing the approval document and the Approval Certificate for an FIE. The applicant shall collect the business license from the local administrative department for industry and commerce according to law by producing the License for Publication Business and Approval Certificate for an FIE.	第十六条 国家允许设立从事图书、报纸、期刊、电子出版物发行活动的中外合资经营企业、中外合作经营企业和外资企业, 允许设立从事音像制品发行活动的中外合作经营企业; 其中, 从事图书、报纸、期刊连锁经营业务, 连锁门店超过30家的, 不允许外资控股; 外国投资者不得以变相参股方式违反上述有关30家连锁门店的限制。 设立外商投资出版物总发行、批发、零售、连锁经营企业应具备的条件及新闻出版行政部门的审批程序按照本规定第六条至第十五条的有关规定执行; 申请人获得新闻出版行政部门批准文件后, 还须按照有关法律、法规向商务主管部门提出申请, 办理外商投资审批手续, 并于获得批准后90天内持批准文件和《外商投资企业批准证书》到原批准的新闻出版行政部门领取《出版物经营许可证》。申请人持《出版物经营许可证》和《外商投资企业批准证书》向所在地工商行政管理部门依法领取营业执照。

12	<i>Interim Measures for the Administration of Sino-foreign Equity Joint and Cooperative Joint Medical Institutions</i> (MOFTEC and MOH) (May 2000)	中外合资、合作医疗机构管理暂行办法	<p>Article 8 The Sino-foreign equity joint or cooperative joint institution to be established shall satisfy all the requirements as mentioned below:</p> <p>1. It shall be an independent legal person;</p> <p>2. The total investment shall not be lower than RMB 20,000,000;</p> <p>3. The proportion of shares or interest of the Chinese party in the Sino-foreign equity joint or cooperative joint medical institution shall not be lower than 30%;</p> <p>4. The term of the medical institution shall not be longer than 20 years;</p> <p>5. other conditions as prescribed by the health administrative authorities on the provincial level or above.</p>	<p>第八条 设立的中外合资、合作医疗机构应当符合以下条件:</p> <p>(一) 必须是独立的法人;</p> <p>(二) 投资总额不得低于2000万元人民币;</p> <p>(三) 合资、合作中方在中外合资、合作医疗机构中所占的股权比例或权益不得低于30%;</p> <p>(四) 合资、合作期限不超过20年;</p> <p>(五) 省级以上卫生行政部门规定的其它条件。</p>
13	<i>Examination, Approval and Registration of Foreign-invested Seeds Companies</i> (MOA, NDRC etc, Sep 1997)	农业部、国家计委、外经贸部、国家工商行政管理局关于印发《关于设立外商投资农作物种子企业审批和登记管理的规定》的通知	<p>Article 2 For the purposes of these Provisions, a foreign-invested enterprise for crop seeds shall mean a Sino-foreign equity/cooperative joint venture enterprise that develops, produces, and deals in crop seeds. The establishment of a foreign-invested marketing and sales enterprise for crop seeds and a wholly foreign-owned enterprise for crop seeds is not permitted for the time being.</p> <p>Article 4 The establishment of a foreign-invested enterprise for crop seeds shall, in addition to compliance with the conditions stipulated by the relevant laws and regulations and the policies of China's seed industry, meet the following conditions:</p> <p>(1) The Chinese party that applies for establishing a foreign-invested enterprise for crop seeds shall be an enterprise that has the qualification for the production and dealing in of crop seeds and have been verified and approved by the relevant competent department; the foreign party shall be an enterprise that is at a higher level in respect of scientific breeding, seed production technology, and corporate management and has a favorable reputation;</p> <p>(2) The superior varieties (germplasm resources) from overseas, advanced seeds techniques and equipment can be introduced or adopted;</p> <p>(3) The registered capital shall meet the following requirements: In the case of an enterprise for grain, cotton, or oil crop seeds, the registered capital shall not be less than USD2 million; in the case of an enterprise for other crop seeds, the registered capital shall not be less than USD500,000; and</p> <p>(4) In the case of the establishment of an enterprise for grain, cotton, or oil crop seeds, the investment made by the Chinese party shall account for more than 50%.</p>	<p>第二条 本规定所称外商投资农作物种子企业, 是指中外合资、合作开发生产经营农作物种子的企业。暂不允许设立外商投资经营销售型农作物种子企业和外商独资农作物种子企业。</p> <p>第四条 设立外商投资农作物种子企业, 除符合有关法律、法规规定的条件和我国种子产业政策外, 应具备以下条件:</p> <p>(一)申请设立外商投资农作物种子企业的中方应是具备农作物种子生产经营资格并经其主管部门审核同意的企业; 外方应是具有较高的科研育种、种子生产技术和企业管理水平, 有良好信誉的企业。</p> <p>(二)能够引进或采用国(境)外优良品种(种质资源)、先进种子技术和设备。</p> <p>(三)注册资本符合以下要求: 粮、棉、油作物种子企业的注册资本不低于200万美元; 其他农作物种子企业的注册资本不低于50万美元。</p> <p>(四)设立粮、棉、油作物种子企业, 中方投资比例应大于50%。</p>
14	<i>Notice on Carrying Out 2008 National Tax Investigation</i> (MOF and State Administration of Taxation) (Mar 2008) [Category 1]	财政部、国家税务总局关于做好2008年全国税收调查工作的通知	<p>As required by taxation reform, policy adjustment and tax administration analysis, key enterprises subject to investigation shall be determined respectively by national tax agencies and local tax agencies of each locality according to the following requirements:</p> <p>(1) National tax agencies must conduct tax investigation on no less than 300 foreign invested enterprises (FIE). If less than 300 FIEs are located within the jurisdiction, all of them must be investigated. The number of FIEs to be investigated in Beijing, Tianjin, Dalian, Shanghai, Jiangsu Province, Ningbo, Xiamen, Qingdao, Guangdong Province and Shenzhen should be more than 1200, of which 70% should be manufacturing enterprises.</p> <p>(2) Local tax agencies must conduct tax investigation on no less than 300 foreign invested enterprises (FIE). If less than 300 FIEs are located within the jurisdiction, all of them must be investigated.</p>	<p>根据税制改革、政策调整和税收管理分析的需要, 重点调查企业由各地国税、地税机关分别按以下要求确定:</p> <p>(一) 国税机关: 调查的外商投资企业不少于300户, 本地外商投资企业不足300户的, 全部列入调查, 其中, 北京、天津、大连、上海、江苏、宁波、厦门、青岛、广东、深圳等10个地区应达到1200户以上, 这些调查户数中70%以上应为生产性企业;</p> <p>(二) 地税机关: 调查的外商投资企业不少于300户, 本地外商投资企业不足300户的, 全部列入调查;</p>
15	<i>Notice on Issues Related to Strengthening the Tax Source Management Work on Foreign-related Enterprise Income Tax</i> (People's Government of Beijing) (Jun 2004) [Category 1]	北京市国家税务局转发国家税务总局关于加强涉外企业所得税源管理工作有关问题的通知的通知	<p>1. A monitoring mechanism on key tax sources of foreign-invested enterprise income tax shall be established; enterprises who paid the most tax and the taxes paid by those that accounted for 50% of the total annual revenue of the foreign-invested enterprise income tax within the jurisdiction shall be included for monitoring as a key tax source of foreign-invested enterprise income tax. Sub-bureaus of each district and county and sub-bureaus directly under the municipal bureau shall establish accounts respectively for each key tax source enterprise included in the monitoring, and shall be aware of the information related to financial accounting, and production and operation, etc., of such enterprises.</p>	<p>一、建立涉外企业所得税重点税源监控机制, 对构成本辖区涉外企业所得税年度收入总额50%的前列各企业, 均应纳入涉外企业所得税重点税源进行监控。对纳入监控的重点税源企业, 各区、县局, 各直属分局应分户建立台账, 及时了解掌握其财务核算和生产经营等有关信息。</p>

16	<i>Notice of the State Council on Printing and Issuing the "Twelfth Five-Year" Development Plans for the National Strategic Emerging Industries</i> (State Council) (Jul 2012) [Category 1]	国务院关于印发“十二五”国家战略性新兴产业发展规划的通知	<p>V. Policy Measures</p> <p>(i) To increase the support by fiscal, tax and financial policies.</p> <p>1. To increase the support by fiscal and tax policies. We shall, on the basis of integrating current policy resources and making full use of existing capital channels, establish a mechanism for stable growth of fiscal investment, set up special funds for the development of strategic emerging industries, and focus on supporting major key technologies R&D, major industrial innovation development projects, industrialization of major innovative achievements, major application demonstration projects, and innovation capability building, etc.</p>	<p>五、政策措施</p> <p>（一）加大财税金融政策扶持。</p> <p>1.加大财税政策扶持。在整合现有政策资源、充分利用现有资金渠道的基础上，建立稳定的财政投入增长机制，设立战略性新兴产业发展专项资金，着力支持重大关键技术研发、重大产业创新发展工程、重大创新成果产业化、重大应用示范工程及创新能力建设等。</p>
17	<i>Guiding Opinions on Further Supporting the Restructuring and Revitalization of Key Industries and Curbing Overcapacity in Some Industries through Financial Service</i> (PBOC, CBRC, CSRC, CIRC) (Dec 2009) [Category 3]	中国人民银行、银监会、证监会、保监会关于进一步做好金融服务支持重点产业调整振兴和抑制部分行业产能过剩的指导意见	<p>10. We shall encourage all banking financial institutions to innovate in financial products and support enterprises in key industries that innovate, import or absorb key technologies and major equipment which have development potential and have a high degree of industrial linkage, and promote the indigenous innovation of domestic enterprises and localizing the manufacture of major technical equipment. We shall encourage all banking financial institutions to launch businesses such as buyer's credit and letter of guarantee for the export of ships, so as to provide diversified financial support for the export of ships and the technology improvement, research and development of ship export enterprises.</p>	<p>（十）鼓励各银行业金融机构创新金融产品，支持重点产业企业创新、引进和吸收成长性好、成套性强、产业关联度高的关键技术和重大设备，推动国内企业自主创新和重大技术装备国产化。鼓励各银行业金融机构开办船舶出口买方信贷和保函等业务，为船舶出口、船舶出口企业技改研发提供多元化的金融支持。</p>
18	<i>Notice on Promoting the Development of the Shanghai New Energy Automobile Industry Formulated by the Municipal Development and Reform Commission and the Municipal Economic Information Commission</i> (The General Office of Shanghai Municipal People's Government) (Dec 2009) [Category 1] [Automobile]	上海市人民政府办公厅转发市发展改革委市经济信息化委制订的《关于促进上海新能源汽车产业发展的若干政策规定》的通知	<p>Article 6 This Municipality shall arrange special funds to support the integrated whole-vehicle development of new-energy automobiles and the technical breakthrough and industrialization of key parts. With respect to an industrialization project listed in this city's major projects on independent innovation and high-tech industry development, the proportion of the special fund support shall generally not exceed 10% of the total newly added investment of the project; with respect to a major industry sci-tech key-problem-tackling project including 3E key parts and public platform building project, the proportion of the special fund support shall generally not exceed 30% of the total newly added investment of the project; and the support shall be specifically granted through the modes of capital fund injection (including the follow up investment of the career-starting guidance fund), loan interest discount and investment subsidies.</p> <p>Article 7 Support shall be given to renovation and enlargement projects of new-energy vehicles, introduction projects of technology and equipment and projects of acquisition and merge of overseas enterprises and R&D institutes with core technology and with relatively controlling share rights in new-energy automobile industry, and loan interest discount or free financial aid shall be granted according relevant provisions of this Municipality.</p> <p>Article 8 With respect to transformation projects of advance technologies with recognized indigenous IPR in the new-energy automobile industry, support shall be given through special funds for the transformation of advance technologies according to relevant provisions of this Municipality.</p>	<p>第六条 本市安排专项资金，支持新能源汽车的整车集成开发、关键零部件的技术突破和产业化。列入本市自主创新和高新技术产业发展重大项目的产业化项目，专项资金支持比例一般不超过项目新增总投资的10%；重大产业科技攻关项目，包括“三电”等关键零部件和公共平台建设等项目，专项资金支持比例一般不超过项目新增总投资的30%；具体通过资本金注入（含创业投资引导基金跟进投资）、贷款贴息、投资补助等方式给予支持。</p> <p>第七条 支持新能源汽车的改扩建项目、引进技术和装备项目、企业收购兼并境外拥有核心技术的企业和研发机构且获得相对控股权的项目，按照本市有关规定给予贷款贴息或无偿资助。</p> <p>第八条 对新能源汽车企业经认定的拥有自主知识产权的高新技术成果转化项目，按照本市有关规定，由高新技术成果转化专项资金给予支持。</p>

19	<i>The Notice on Implementing Several Supporting Policies for the Outline of the National Medium- and Long-Term Program for Science and Technology Development (2006-2020)</i> (State Council) (Feb 2006) [Category 1]	国务院关于印发实施《国家中长期科学和技术发展规划纲要(2006—2020年)》若干配套政策的通知	<p>22. Establishing systems where fiscal funds shall be used to procure indigenous innovation products. Establish authentication systems of indigenous innovation products, and set up authentication criteria and assessment systems. The authority of science and technology and general economic departments will conduct authentication on indigenous innovation products according to public and fair procedures and announce the results to the general public. The Ministry of Finance and relevant authorities will determine the Government Procurement Catalogue of Indigenous Innovation Products (the "Catalogue") from the scope of authenticated indigenous innovation products, and manage the catalogue in a dynamic way.</p> <p>Increase budget control and prioritize the arrangements of indigenous innovation projects. Whenever government agencies at any level, public institutions and bodies (hereinafter referred to as "purchasers") use fiscal funds in procurement, they shall first consider purchasing products listed in the catalogue. When purchasers prepare the annual department budget, they shall identify indigenous innovation projects. During the approval process, the finance department shall first ensure budgets for purchasing indigenous innovation projects. Urge purchasers to conscientiously purchase indigenous innovation products by exercising the supervisory roles of fiscal, auditing and inspecting authorities.</p> <p>For major national construction projects and other major equipment and products procurement projects where fiscal funds are used, the relevant authorities shall list the promise of procuring indigenous innovation projects as one of the conditions in their projects application and clearly indicate the specific requirement of procuring indigenous innovation projects. For key projects with investment from government at the state or local level, the ratio of procuring domestic equipment shall be no less than the 60% of the total value. The finance department shall not release the funds if the requirements of procuring indigenous innovation projects are not satisfied.</p>	<p>(二十二) 建立财政性资金采购自主创新产品制度。建立自主创新产品认证制度，建立认定标准和评价体系。由科技部门会同综合经济部门按照公开、公正的程序对自主创新产品进行认定，并向全社会公告。财政部会同有关部门在获得认定的自主创新产品范围内，确定政府采购自主创新产品目录（以下简称目录），实行动态管理。</p> <p>加强预算控制，优先安排自主创新项目。各级政府机关、事业单位和团体组织（以下统称采购人）用财政性资金进行采购的，必须优先购买列入目录的产品。采购人在编制年度部门预算时，应当标明自主创新产品。财政部门在预算审批过程中，在采购支出项目已确定的情况下，优先安排采购自主创新产品的预算。发挥财政、审计与监察部门的监督作用，督促采购人自觉采购自主创新产品。</p> <p>国家重大建设项目以及其他使用财政性资金采购重大装备和产品的项目，有关部门应将承诺采购自主创新产品作为申报立项的条件，并明确采购自主创新产品的具体要求。在国家和地方政府投资的重点工程中，国产设备采购比例一般不得低于总价值的60%。不按要求采购自主创新产品，财政部门不予支付资金。</p>
20	<i>Urgent Notice regarding the Orderly and Healthy Development of the Oil Refining and Ethylene Industry (NDRC; MOFCOM)</i> (Dec 2005) [Category 1]	国家发展改革委关于炼油、乙烯工业有序健康发展的紧急通知	<p>4. Heavy workload in energy-saving, consumption-reducing, clean production and localization of technical equipment of petrochemical industry</p> <p>Large petrochemical installations have been listed as a key area of the State's revitalizing equipment manufacturing industry. We must actively adopt technologies and domestic equipment that are developed indigenously or re-innovated after being imported, digested and absorbed, strengthening the capability of indigenous innovation and system integration.</p>	<p>四、石化工业节能降耗、清洁生产和技术装备国产化的任务繁重</p> <p>大型石化装置已列为国家振兴装备制造业的重点领域，必须积极采用国内开发及引进消化吸收再创新的技术和国产设备，强化自主创新和系统集成能力。</p>
21	<i>Regulations of Tianjin Municipality on Patent Promotion & Protection</i> (Standing Committee of Tianjin People's Congress) (Jun 2011) [Category 1]	天津市专利促进与保护条例	<p>Article 23. For government procurement and other procurement where financial funds are used, products with indigenous patents shall be considered first.</p> <p>When indigenous innovation products with patent rights enter the market, and if the products are recognized as to be in line with the development trend of national economy and advanced technology as well as to have market potential and need support, the government shall begin to procure or order these products.</p>	<p>第二十三条 政府采购及其它使用财政性资金进行采购的，应当优先购买含有自主研发专利技术的产品。</p> <p>具有专利权的自主创新产品首次投向市场的，符合国民经济发展要求和先进技术发展方向，具有较大市场潜力并需要重点扶持的，经认定后，政府进行首购或者订购。</p>
22	<i>Notice on the Distribution of the 12th Five Year Plan for National Intellectual Property Development</i> (SIPO, NDRC and other agencies) (Sep 2011) [Category 1]	知识产权局、发展改革委、科技部等关于印发《国家知识产权事业“十二五”规划》的通知	<p>[China] needs to develop, as soon as possible, a few research institutions that are influential internationally and a bulk of key enterprises with indigenous IPR, international brand recognition, and international competitiveness.</p>	<p>尽快形成若干具有世界影响力的研发机构和一批拥有自主知识产权、国际知名品牌、国际竞争力较强的优势企业。</p>

23	<i>Guiding Opinions on Promoting the Development of Strategic Emerging Industries in International Markets</i> (MOST, MOFCOM and other agencies) (Sep 2011) [Category 3]	商务部、发展改革委、科技部等关于促进战略性新兴产业国际化发展的指导意见	<p>1. Highlighting characteristics of industries and clarifying the direction of development</p> <p>The promotion of international development of strategic emerging industries requires us to understand recent developments in economic globalization, gradually deepen international cooperation, actively explore new models of cooperation, and participate in international cooperation at a higher level so as to enhance the capability of independent development and core competitiveness of strategic emerging industries. To promote the international development of China's strategic emerging industries, we shall accurately define the position thereof and clarify the direction thereof. First, we shall enhance the international development level of strategic emerging industries in research and development, manufacturing, marketing and other aspects so as to enhance the competitiveness of the whole industrial chain; second, we shall enhance the international development capability of personnel, enterprises, industrial alliances and innovation bases in strategic emerging industries so as to enhance their competitiveness as market players; third, we shall create a favorable environment conducive to the international development of strategic emerging industries, and improve the supporting and security systems; fourth, we shall appropriately manage the mutual relationship between the two markets, and consolidate the domestic foundation for the international development of strategic emerging industries.</p>	<p>一、突出产业特点，明确发展方向</p> <p>促进战略性新兴产业国际化发展就是要把握经济全球化的新特点，逐步深化国际合作，积极探索合作新模式，在更高层次上参与国际合作，从而提升战略性新兴产业自主发展能力与核心竞争力。促进我国战略性新兴产业国际化发展应准确定位，明确方向。一是提高战略性新兴产业研发、制造、营销等各环节的国际化发展水平，提升全产业链竞争力；二是提高战略性新兴产业人才、企业、产业联盟、创新基地的国际化发展能力，提升市场主体竞争力；三是营造有利于战略性新兴产业国际化发展的良好环境，完善支撑保障体系；四是处理好两个市场的相互关系，夯实战略性新兴产业国际化发展的国内基础。</p>
24	<i>Opinion on Further Supporting the Development of Small and Micro-Enterprises and Helping Private Enterprises to Become Bigger and Stronger</i> . (People's Government of Guangdong Province) (Nov 2013) [Category 1]	广东省人民政府关于进一步扶持中小微企业发展和民营企业做大做强意见	<p>Article 2 Cultivate and Strengthen Privately-owned Companies</p> <p>(16). Support key private-owned enterprises in taking the lead to apply for special funds relating to provincial strategic emerging industries, commercialization of important national and provincial research and development achievements, provincial (academy) cooperation between operating and study, and provincial key laboratories, accelerating critical breakthroughs in core technology and industrialization technology. (Responsive entities: the Guangdong Finance Bureau, Guangdong Economic and Information Commission, and Guangdong Science & Technology Commission)</p> <p>(17). Prioritize land support for investment projects of key private enterprises. The local authorities shall build systems of special protections over land use of key private enterprises, enlarging the scale of land provided to private enterprises (Responsive entities: the Department of Land and Resource of Guangdong Province.</p> <p>(18). Encourage banks and other financial institutions to increase credit aid to key private enterprises. Relevant authorities may arrange the special funds for development of key financial industries to those banks of which the loans provided to key private enterprises increase rapidly according to the loans provided by each of them. (Responsive entities: the Guangzhou Branch of the People's Bank of China, Guangdong Banking Regulatory Commission, Guangdong Finance Office, Guangdong Finance Bureau).</p> <p>(19). Encourage local authorities to set up supportive funds relating to listing stocks on a stock exchange. Support key private enterprises to obtain financing by issuing shares, bonds, convertible bonds, M&A and private equity. Support qualified key private enterprises to participate in reform and restructure of existing local financial institutions in Guangdong province, and establish, by means of promotion or offer, corporate finance company, automotive finance company, financial leasing company, equity investment firm, shipping insurance company, and consumer finance company, etc. (Responsive entities: the Guangzhou Branch of the People's Bank of China, Guangdong Banking Regulatory Commission, Guangdong Finance Office, Guangdong Securities Regulatory Commission)</p>	<p>二、培育壮大民营骨干企业</p> <p>16. 支持民营骨干企业牵头申报省战略性新兴产业、国家重大科技、重大成果转化、省部（院）产学研合作、重点实验室等专项资金，加快突破关键核心和产业化技术。（省财政厅、经济和信息化委、科技厅负责）</p> <p>17. 对民营骨干企业的投资项目优先给予用地保障。各地应建立民营骨干企业用地专项保障制度，加大民营企业用地供给规模。（省国土资源厅负责）</p> <p>18. 鼓励银行业金融机构加大对民营骨干企业的信贷支持，对民营骨干企业贷款规模增长较快的银行业金融机构，相关单位可根据各银行机构的贷款支持情况，在安排扶持重点金融产业发展专项资金时给予综合考虑。（人民银行广州分行、广东银监局、省金融办、省财政厅负责）</p> <p>19. 鼓励各地设立上市扶持基金，支持民营骨干企业通过发行股票、债券、可转换债、并购私募债等方式并购重组融资。支持符合条件的民营骨干企业参与广东现有地方金融机构改革重组，以及发起设立或参与设立企业财务公司、汽车金融公司、融资租赁公司、股权投资企业、航运保险公司、消费金融公司等新型金融机构。（省金融办、人民银行广州分行、广东银监局、广东证监局负责）</p>
25	<i>State Policies on Industrial Technology</i> (MIIT and other agencies) (May 2009) [Category 1]	国家产业技术政策	<p>Article 2 Meeting the national economic and social development needs. Make more efforts in digesting, absorbing and re-innovating imported technologies, emphasize the research of core and key technologies that can be used broadly for industrial development, do our best to realize the domestic production of key technological equipment, meet the national economic development needs and engineering construction needs, guarantee economic security, wash out the backward techniques, technologies and production capacities of high consumption and high pollution, develop circular economy, gradually form an energy-saving industrial structure and an energy-saving consumption structure, and establish an environment-friendly industrial technical system.</p>	<p>第二条 满足国民经济和社会发展需要。加强引进技术的消化吸收再创新，重点研究产业发展的核心、关键共性技术，着力实现重大技术装备的国产化，满足国民经济发展的需要，满足国家工程建设的需要，保障国家经济安全；加快淘汰高消耗、高污染的落后工艺技术和生产能力，大力发展循环经济，逐步构建节约型的产业结构和消费结构，形成绿色产业技术体系。</p>

26	<i>Notice on Issuing the Guiding Opinion for Energy Work in the Year 2014</i> (National Energy Administration) (Jan 2014) [Category 3]	国家能源局关于印发2014年能源工作指导意见的通知	<p>III. Key tasks (vi) Advance energy-related technology innovation by developing important projects We shall adhere to indigenous innovation, and encourage the introduction, digestion, absorption and re-innovation, taking major energy projects as the carrier, government as the leader and enterprises as the subject to establish a mechanism for indigenous innovation systems which combines the force of the government, enterprises, schools, research institutions and users, and shall promote localization of energy equipment, and “upgrade” scientific and technological energy equipment.</p> <p>(2) Advance localization of key equipment by developing important projects. We shall lay emphasis on localization of key equipment involved in exploration and exploitation of shale gas, coalbed gas and offshore oil and gas, liquefaction and storage of natural gas, nuclear energy and pumped storage power stations. Advance indigenous R&D of large-scale gas turbine, speed up research and manufacture of megathermal components and construction of verification platform. Formulate guidelines on promoting healthy development of the industry of energy equipment manufacturing. We shall speed up the building of an indigenous innovation technology platform by energy enterprises and energy equipment manufacturing enterprises, promote localization of energy equipment, enhance the level of independence of energy equipment, form an internationally competitive energy equipment industrial system, and actively support energy equipment enterprises to “go abroad”.</p>	<p>三、重点任务 (六)以重大项目为载体,大力推进能源科技创新 坚持自主创新,鼓励引进消化吸收再创新,以能源重大工程为载体,以政府为主导、以企业为主体,建立政、产、学、研、用相结合的自主创新体制机制,推动能源装备国产化,打造能源科技装备“升级版”。</p> <p>2、依托重大工程推动关键装备国产化。重点推动页岩气和煤层气勘探开发、海洋油气开发、天然气液化和接收、核电、抽水蓄能等重大装备国产化。推进大型燃气轮机自主研发,加快高温部件研制和验证平台建设。制订出台促进能源装备制造健康发展的指导意见。加快能源企业及能源装备制造企业自主创新技术平台建设,推进能源装备国产化,提升能源装备自主化水平,形成有国际竞争力的能源装备工业体系,积极支持能源装备企业“走出去”。</p>
27	<i>Opinions on Deepening Drug Review and Approval Reform and Further Encouraging Drug Innovation</i> (CFDA) (Feb 2013) [Category 1]	国家食品药品监督管理局关于深化药品审评审批改革进一步鼓励药物创新的意见	(1) Encourage Drug Innovation Based on Clinical Value. R&D and assessment of innovative drug should be driven by clinical value, focusing on novelty and originality of materials as well as attaching importance to the assessment of clinical value. The relevant authorities will accelerate the examination and assessment process in relation to the registration of indigenous medicine with indigenous IPR which have better curing effects to major diseases, rare diseases and elderly and children diseases and have been included in major special projects of National Science and Technology Plan.	(一)鼓励以临床价值为导向的药物创新。 创新药物研发和审评应以临床价值为导向,既关注物质基础的新颖性和原创性,更应重视临床价值的评判。 对重大疾病、罕见病、老年人和儿童疾病具有更好治疗作用、具有自主知识产权和列入国家科技计划重大专项的创新药物注册申请等,给予加快审评。
28	<i>Notice of General Office of the State Council on Forwarding the Opinions of National Planning Commission on Implementation of Localization of Urban Rail Traffic Equipment</i> (General Office of the State Council) (Feb 1999) [Category 1]	国务院办公厅转发国家计委关于城市轨道交通设备国产化实施意见的通知	6. In order to promote smooth implementation of localization of urban rail traffic equipment, the state will organize experts to assess the localization of vehicles and mechanical and electric equipment in urban rail traffic projects, and may offer appropriate incentive policies to those projects which satisfy the aim of localization as well as guide provincial governments to procure domestic equipment. The state will give preference to the provision of overseas preferential loans or recommend domestic banks to provide foreign exchange loans to the urban rail traffic projects that have been approved, with respect to the construction funds needed in the aforesaid projects. And, the state will include the indigenously-developed projects and the projects with digestion and absorption of imported technology into special plan and offer appropriate subsidies.	六、为促进城市轨道交通设备国产化的顺利实施,国家将组织专家对城市轨道交通项目的车辆和机电设备进行国产化考核,对达到国产化目标的项目,可考虑给予适当的鼓励政策,引导地方积极采用国产设备。凡经批准的城市轨道交通项目,所需的建设资金,国家将优先考虑安排国外优惠贷款或向国内银行推荐安排外汇贷款;对国内自主开发、引进技术消化吸收的项目,在高技术产业化实施中,国家将列入专项计划并给予适当的资助。
29	<i>Notice on Ensuring Application Process for 2010 Government Investment Projects</i> (Beijing Municipal Commission of Economy and Informatization, Beijing Municipal Bureau of Finance, Beijing Municipal Development and Reform Commission) (Jul 2009) [Category 1] [Horizontal]	北京市经济和信息化委员会、北京市财政局、北京市发展和改革委员会关于做好2010年政府投资信息化项目申报工作的通知	(2) Implement Policies on Supporting Indigenous Innovation: in order to unleash the effects of E-government to promote indigenous innovation and industrial development, all units should, in light of the requirements of relevant policies on government procurement such as the Initial Procurement of Zhongguancun Indigenous Innovation Products, “strictly examine and approve the procurement of imported products; it is imperative to procure domestic products only if domestic-branded products can satisfy the needs.” And, by reference to the catalogue formulated by municipal science commission and municipal commission of economy and informatization, all units shall give preference to the procurement of software and hardware products with indigenous innovation in informatization projects; in case foreign brand products are required, strict justifications and special explanations should be given.	(二)落实支持自主创新等政策: 为发挥电子政务建设在促进自主创新、带动产业发展方面的作用,各单位要按照中关村自主创新产品首购订购等相关政府采购政策要求,“严格审核进口产品的采购,凡国产品牌产品能够满足需求的都要采购国内产品”,参照市科委和市经济信息化委目录,在信息化项目方案中,优先选用自主创新的软硬件产品,必须选用国外品牌产品时要经过严格论证并特别说明。

30	<p><i>Notice on Promoting the Development of Shanghai New Energy Industry</i> (People's Government of Shanghai) (Dec 2009) [Category 1] [Energy]</p>	<p>上海市人民政府办公厅转发市发展改革委市经济信息化委制订的《关于促进上海新能源产业发展的若干规定》的通知</p>	<p>3. Actively supporting the development of new energy equipment manufacturing</p> <p>(2) Setting up special-purpose funds. The special fund established in this Municipality for major projects of the independent innovation and the development of high-tech industries shall chiefly support enterprises in carrying out major projects of high-tech industries, research and manufacture of key technological equipments, R&D of important common linchpin technology and public service platform in the new energy fields.</p> <p>(3) Encouraging technical innovation. A transformation project of advanced technologies with recognized indigenous IPR owned by a new energy enterprise shall be given financial support for its R&D, under relevant provisions, from this Municipality's special fund for the transformation of advanced technologies.</p> <p>A project of a new energy enterprise concerning the mere introduction of technology and production machine tools and other equipment to raise its core competitiveness, or a project concerning the acquisition and merger of an overseas enterprise or a R&D institution with core technology as well as holding relatively controlling shares shall be given financial aid under relevant provisions of this Municipality.</p> <p>Support and encourage new energy enterprises to apply for domestic and overseas patents for their absorbed and innovated technologies. In respect to the patent right of invention obtained from foreign countries, this Municipality's IPR department shall grant not more than 30,000 yuan to subsidize each piece of patent right applied for in a particular foreign country (not more than three countries); in respect to an enterprise applying for the domestic patent, subsidies shall be granted according to the actual payment of patent application fees; in respect to obtaining domestic invention patent rights, the actual examination fees, authorization fees and the annual fees in the second and third years after the authorization shall be subsidized according to the actual payment.</p>	<p>三、积极支持新能源装备制造业发展</p> <p>(二) 设立专项资金。本市设立的自主创新和高新技术产业发展重大项目专项资金，重点支持企业实施新能源领域的高新技术产业发展重大项目、重大技术装备研制项目、重要共性关键技术研发项目和公共服务平台项目。</p> <p>(三) 鼓励技术创新。新能源企业经认定的拥有自主知识产权的高新技术成果转化项目，按有关规定，由本市高新技术成果转化专项资金予以研发支持。</p> <p>对新能源企业为提高核心竞争力单纯引进技术和生产母机等装备的项目，或收购兼并境外拥有核心技术的企业和研发机构且获得相对控股权的项目，按本市有关规定给予资助。</p> <p>支持和鼓励新能源企业为吸收和创新的技术申请国内外专利。对获得外国发明专利权的，由本市知识产权部门给予每件一个国家最高不超过30000元的专利申请费资助（最多不超过3个国家）；对企业申请国内专利的，按专利申请费实际缴纳费用资助；获国内发明专利权的，对发明专利的实审费、授权费及授权后第二年、第三年的年费，按实际缴纳费用资助。</p>
31	<p><i>Notice on Issuing the Opinions on Protecting and Promoting the Development of Time-honored Famous Brands</i> (MOFCOM and other agencies) (Mar 2008) [Category 1]</p>	<p>商务部、发展改革委、教育部等关于印发《关于保护和促进老字号发展的若干意见》的通知</p>	<p>4. To establish a promotion system and give an impetus to time-honored famous brands to enhance their competitive capabilities in the market</p> <p>(4) To support the innovation and development of time-honored famous brands by using the fiscal fund. Support time-honored famous enterprises to inherit and develop magnificent traditional crafts and technologies, strengthen marketing, deepen cultivation of indigenous brands. Support to establish time-honored famous enterprises oriented public service platform and system, and provide services in terms of management consulting, human resource training, publicity for developing domestic and overseas market and project introductions, etc. All qualified companies may, under relevant provisions, apply for policy support such as the pertinent brand development funds, the funds exclusive for promoting the development of small and midsize enterprises and funds for small and midsize enterprises to explore the international market. Local authorities of commerce at various levels may adopt effective measures to provide fund support for time-honored famous enterprises according to respective financial situation.</p> <p>(5) To support the time-honored famous brands to explore markets. In the government procurement and the procurement of foreign aid materials, a priority should, under the same conditions, be given to time-honored famous brand products. In the allocation of import and export quotas and the licensing of franchise businesses, time-honored famous brand products and enterprises should be given a priority within the licensing scope as provided for by laws and regulations. When organizing various kinds of economic and trade fairs, exhibitions and trading activities, relevant government organs should provide exhibition booths to qualified companies and products in priority and should support the enterprises to overcome the difficulties they encounter during an exhibition. Support time-honored famous enterprises to enter into international market by attending exhibitions, tours and exchange programs, etc. More efforts should be made to develop time-honored brand souvenirs, tourist products of time-honored brands should be actively popularized and a priority should be given to time-honored brand products in receptions and souvenir procurement for foreign affairs. Exercise the roles of institutions functioning abroad to assist time-honored famous enterprises in attracting foreign investments from abroad and developing overseas market.</p>	<p>四、建立促进体系，推动老字号增强市场竞争能力</p> <p>(四) 运用财政资金支持老字号创新发展。支持老字号企业继承、挖掘优秀传统文化、技术，加强市场营销，深度培育自主品牌。支持构建面向老字号企业的公共服务平台和服务体系，在经营管理咨询、人才培养及拓展国内外市场的宣传、项目推介等方面提供服务。凡符合规定条件的老字号企业，均可按规定申请国家有关品牌发展资金、促进中小企业发展专项资金、中小企业国际市场开拓资金等政策的扶持。地方各级商务主管部门和财政部门可结合实际，视本地财力情况，采取有效措施，加强对老字号企业的资金支持。</p> <p>(五) 支持老字号开拓市场。在政府采购和援外物资采购方面，同等条件下优先考虑老字号产品。在进出口配额分配和特许经营许可方面，在法律法规许可范围内优先考虑老字号产品和企业。有关政府部门组织的各类经贸洽谈、展示交易活动，要为老字号企业和产品优先提供展示摊位，并对企业参展过程中遇到的困难予以支持。支持老字号企业采取组团参展、单独参展、考察交流等方式了解国际市场，寻找商机。加大老字号纪念品的开发力度，积极推广老字号旅游产品，在外事接待、纪念品采购中优先选择老字号产品。充分发挥各驻外机构的力量，为老字号企业到国外招商引资、开拓国际市场提供便利。</p>

32	<i>Notice on the Distribution of the Catalogue of Key Technologies and Vital Products in the State's Information Industry with Indigenous Intellectual Property Rights</i> (MIIT) (Dec 2006) [Category 1]	信息产业部关于印发《我国信息产业拥有自主知识产权的关键技术和重要产品目录》的通知	<p>The development and industrialization of the technologies and products listed in the Catalogue will be given more support by the national science and technology scheme and construction investment. Enterprises that have developed the technologies and products in the Catalogue shall be supported in terms of patent application, standards setting, and international trade and cooperation, etc., so as to form a batch of preponderant enterprises with indigenous intellectual property rights, well-known brands and relatively strong international competitiveness.</p>	国家科技计划和建设投资将对列入目录的技术和产品的研制及产业化予以重点支持。对开发目录中技术和产品的企业在专利申请、标准制定、国际贸易和合作等方面予以支持，以形成一批拥有自主知识产权、知名品牌和较强国际竞争力的优势企业。
33	<i>Notice on the Distribution of the Action Plan of Guangdong Province for the Year 2014-2015 on Building A Powerful Province with Quality</i> (People's Government of Guangdong Province) (Apr 2014) [Category 1]	广东省人民政府办公厅关于印发广东省建设质量强省2014—2015年行动计划的通知	<p>1. Strengthen Standardization Work</p> <p>(1) To establish and improve the system of standardization. We shall focus on areas of strategic emerging industries such as areas of high-end new electronic information, electric automobiles, LED lighting, high-end equipment manufacturing, energy saving and environmental protection, new energy, and new materials, etc., as well as on manufacturing industry areas such as inter-city railway, automobile, shipbuilding, steel, petrochemical, nuclear power equipment, wind power equipment, and numerical control machine, etc., through the research and development of the plans and roadmaps for standardization, and promote the establishment of advanced standards with indigenous intellectual property rights.</p> <p>(6) To support enterprises and strengthen their brand-building capacities. We shall improve the services to key enterprises, guide enterprises to formulate and implement brand cultivation plans and to enhance their ability of indigenous innovation and quality management, intensify brand protection, in order to build a group of internationally competitive and influential brand-names.</p>	<p>一、加强标准化工作</p> <p>（一）建立健全标准体系。重点在高端新型电子信息、电动汽车、LED照明、高端装备制造、节能环保、新能源、新材料等战略性新兴产业领域，以及城际轨道交通、汽车、船舶、钢铁、石化、核电设备、风电设备、数控机床等制造业领域，研究出台标准体系规划与路线图，推动制定具有自主知识产权的先进标准。</p> <p>（六）支持企业加强品牌建设。完善对重点企业的直通车服务，引导企业制定实施品牌培育规划，提升自主创新和质量管理能力，加大品牌保护力度，培育一批具有国际竞争力和影响力的名牌产品和名牌企业。</p>