



美国信息产业机构

United States Information Technology Office

*Information Technology Industry Council – Semiconductor Industry Association –
Software & Information Industry Association –
Telecommunications Industry Association*

USITO Recommendations for 2014 JCCT Information Communications Technology (ICT) Industry Priorities

**Written Submission to the
US Department of Commerce and
The United States Trade Representative**

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I. Introduction and Summary

The United States Information Technology Office (USITO) is pleased to have the opportunity to provide input for the 2014 U.S.-China Joint Committee on Commerce and Trade (JCCT). We applaud both the Department of Commerce and the Office of the United States Trade Representative for the continuous hard work by your agencies to address our industry's important concerns through the JCCT and other U.S.-China bilateral trade mechanisms. While much progress has been made, we continue to face significant challenges that impede market access to China's information and communication technology (ICT) sector.

With an ICT market predicted to reach \$396.7 US billion dollars¹ in 2014 and showing an increase of 11.1% year on year, China continues to represent an enormous opportunity for the U.S. ICT industry. According to Gartner, China ICT spending grew by nearly 14% in 2012, and hit \$323 US billion dollars in 2013.² The export of U.S. ICT's to China reached nearly \$14 U.S. billion dollars in 2012, accounting for over 12.5 percent of all U.S. exports to the China market.³ It is imperative that the U.S. ICT industry is positioned to fully compete in a fair, transparent, predictable and equitable manner for the tremendous opportunity the Chinese market presents.

While many of our members continue to achieve commercial success, a number of problematic policies within China continue to disadvantage the U.S. ICT industry. These challenges are broken down into the following seven general categories:

- Market Access & Government Procurement
- Intellectual Property Protection
- Technical Standards
- Information Security
- Telecommunications
- ICT Services & Cloud Computing
- Energy and Environmental Protection

The USITO 2014 JCCT Priorities Submission provides a broad overview of our key challenges in the China market that we hope the U.S. Government can address through the JCCT.

¹ IDC Predictions 2014. Online available at <http://www.idc.com/getdoc.jsp?containerId=prCN24672914>

² Gartner. Online available at <http://www.gartner.com/newsroom/id/2583215>

³ 2012 Exports to China of NAICS Total All Merchandise. Last Viewed February 21, 2013. US International Trade Administration.

II. Market Access & Government Procurement

a. Equal Access to Strategic Emerging Industries Initiatives

As China pursues its 12th Five-Year Plan and Strategic Emerging Industry development goals, a number of programs and regulations are being implemented in an opaque fashion that create difficulties for multinational companies doing business in China, and in the worst cases, are discriminatory. Many of these policies include “forced localization” or local content requirements. For example, the Chinese government has outlined problematic policy initiatives including striving to satisfy 30 percent of domestic Chinese semiconductor demand with local IP by 2015, reaching an 80 percent self-sufficiency rate for flat-panel displays by 2015, and providing preferential government procurement treatment to domestic information security products.

- **Recommendation 1:** Urge China to cease the process of adopting directives from the State Council and related government Ministries establishing domestic content requirements as a matter of national industrial policy. Instituting local content requirements or performance requirements are inconsistent with China’s obligations in the WTO and lead to market inefficiencies as well as serious product quality and security risks; and
- **Recommendation 2:** Consistent with the WTO Technical Barriers to Trade (TBT) Agreement (when applicable), openly share draft regulations and allow a sufficient comment period (minimum 90 days) to receive industry input. Ensure that the laws/regulations are clear and that all questions raised are answered clearly well in advance of any implementation dates.
- **Recommendation 3:** Urge relevant government ministries to grant multinational companies’ legally established China entities equal access to government sponsored programs and incentives.

b. IC Industry Support Measures

Recent developments signal that China is prioritizing the development of an indigenous Chinese semiconductor industry. In December 2013, domestic media reported that the Chinese State Council will establish a Semiconductor Industry Support Leading Group headed by Vice Premier Ma Kai. In parallel, media reports highlighted the creation of a new semiconductor investment fund with total state investment as high as 100 billion RMB (16.5 billion USD) or more annually. China’s Ministry of Industry and Information Technology (MIIT) announced in December the establishment of the first regional investment fund in Beijing of 30 billion RMB (5 billion

USD) and the second regional investment fund in Tianjin of 200 million RMB (32 million USD) was announced in March 2014. Taking into account the context, these recent developments are part of an evolving focus on developing a self-sustaining industry of Chinese semiconductor companies and related downstream ICT sectors.

While details are still emerging regarding the Chinese semiconductor investment fund, some early reports are quite troubling. For instance, one report suggested that the fund would target specific Chinese companies, listing roughly a dozen of them. The same report indicated the impending injection of resources would ‘enable them to compete’ with multinational companies. The injection of substantial funding to specific Chinese companies for industrial policy goals has the potential to create over capacity and inflict grave harm on the worldwide semiconductor industry and market.

Furthermore, the World Semiconductor Council (WSC), an organization with participation by regions representing over ninety-five percent of the worldwide market (including the Semiconductor Industry Associations in China and the United States) reaffirms its commitment to the healthy development of the worldwide industry annually. CEOs and government/authorities from all regions have embraced the following principle:

“While the WSC supports appropriate stimulus measures by the respective governments and authorities, WSC confirms its views that government actions should be guided by market principles and avoid adoption of protectionist or discriminatory measures. WSC confirms that competitiveness of companies and their products, not the interventions of governments and authorities, should be the principal determinant of industrial success and international trade, and that assistance should be provided in a market-oriented fashion.”⁴

- **Recommendation 1:** Encourage the Chinese government to embrace an open and transparent process that enables foreign governments and industry to provide input on all elements of the new plan and the IC investment fund before it is finalized; and
- **Recommendation 2:** Strongly urge the Chinese government that all elements of the plan and the IC investment fund should be compatible and fully in line with its commitments to the World Trade Organization (WTO), APEC, and the Government/Authorities Meeting on Semiconductors (GAMS), among other forums.

⁴ http://www.semiconductorcouncil.org/wsc/uploads/joint_statement_17th_meeting.pdf

c. Expansion of the World Trade Organization's Information Technology Agreement

Negotiations to expand product coverage in the World Trade Organization's (WTO) Information Technology Agreement (ITA) are at a standstill. Negotiations were halted in November 2013 when China was not able to match the ambitions of the other 25 ITA negotiating parties. China identified over 100 sensitive lines where it was not willing to eliminate tariffs. As the world's largest exporter and importer of ICT products, China stands to gain tremendously from an expanded ITA. Prompt expansion of the ITA is high priority for the US and global tech sectors.

- ***Recommendation 1:*** USG engage Chinese leadership at senior-most levels to urge China's prompt re-engagement in ITA expansion negotiations that would lead to an ambitious, commercially meaningful outcome. The APEC Ministers' Responsible for Trade meeting in mid-May may be an opportunity by which to conclude the negotiations.
- ***Recommendation 2:*** China's ambition levels and readiness to negotiate should be viewed as an indicator of how China will engage in future plurilateral agreements such as the Environmental Goods Agreement and the Trade in Services Agreement.

d. Liberalization of Foreign Investment Regime

On September 27th, 2013, the State Council released its Framework Plan for the China (Shanghai) Pilot Free Trade Zone (Shanghai Pilot FTZ), unveiling many details of the pilot program, including general rules, objectives and policies, as well as a list of 18 different sectors open to multinational investment in the zone. At the inauguration of the Shanghai Pilot FTZ, the Shanghai municipal government published its "Special Administrative Measures (Negative List) on Foreign Investment Access to the China (Shanghai) Pilot Free Trade Zone (2013)" (Negative List), which outlines specific restrictions on foreign investment in the 18 sectors. MIIT later published a special set of implementation measures for the opening of telecom value-added services in the Shanghai Pilot FTZ.

According to the General Plans and Negative List, four limited sectors in the information communication technology (ICT) space will be further opened in the Shanghai Pilot FTZ to foreign investment. These are classified under the heading of "Value-added Telecommunication Services: Information Transmission, Software, and Information Technology Services", based on the Industrial Classification for National Economic Activities (2011 Edition). However, many restrictions remain, including in most cases a 50 percent cap on foreign equity ownership, and regulators from both MIIT and the Shanghai Pilot FTZ still considering many "over-the-top" ICT services

such as cloud computing that simply use the network, not provide telecom services, as a telecom value-added service based on the current “Basic Telecommunications Services Catalogue” managed by MIIT.

- **Recommendation 1:** Acknowledge the efforts of the Chinese government to establish the Shanghai Pilot FTZ, particularly the use of a negative list approach and pre-establishment national treatment;
- **Recommendation 2:** Urge the Chinese government to further implement opening and reform policy measures in an expeditious and comprehensive manner in the Shanghai Pilot FTZ. Specifically, this should be in the form of not classifying traditional computing services such as “cloud computing” as a telecom VAS for the purposes of the FTZ, and more broadly, nationwide;
- **Recommendation 3:** Request the Chinese government take into account the views and concerns of multinational investment enterprises through appropriate mechanism and direct dialogue;
- **Recommendation 4:** Include the Shanghai Pilot FTZ and other future FTZs as a regular agenda item of JCCT;
- **Recommendation 5:** The Chinese government has highlighted that one important function of the Shanghai Pilot FTZ is to identify policies which can be replicated and implemented nation-wide basis. It will be helpful if the Chinese government could clarify what these policies will be and should be, as well as the timeline for nation-wide implementation.

e. Accession to the Government Procurement Agreement (GPA)

USITO appreciates the considerable effort that the U.S. Government has made thus far to urge China to produce a meaningful offer to accede to the GPA. In December of 2012, China made its fourth accession offer. A key issue for USITO members will be coverage of sub-central government entities and state-owned enterprises (SOEs).

- **Recommendation 1:** Urge China to take a comprehensive approach to cover sub-central government entities, including provincial, municipal, and county-level governments, and create a meaningful Annex 3 addressing SOEs, consistent with its commitments already taken in its WTO accession protocol. Ensure that critical sectors, like telecommunications, are covered.

f. Broad Exemption for ICT Goods and Services for Procurement Rules

In 2010 the Ministry of Finance (MOF) published the draft Administrative Measures for Government Procurement of Domestic Products for comment. These draft rules would

require goods and services to contain 50 percent domestic content in order to be accredited as a domestic product. A key issue for USITO members would be to seek an exemption for ICT goods and services given the global and complex nature of the ICT industry supply chain. According to these regulations, the Chinese Government could be discouraged from buying ‘foreign’ products even though those products’ final manufacturing takes place in China. In 2013, the Ministry of Finance indicated that it intends to pass these regulations relatively soon.

- **Recommendation 1:** Urge MOF to provide exemptions for the procurement of ICT goods and services for any measure mandating the government procurement of domestic products and provide adequate time for public comment for any new government procurement regulations published by MOF.
- **Recommendation 2:** Urge MOF to provide adequate time for public comment for any new government procurement regulations published by MOF.
- **Recommendation 3:** Urge the Chinese government to align the definition of “domestic products” across all central agencies, including the General Administration of Customs, to ease companies’, both multinational and domestic, governance of government procurement and trade compliance.

III. Intellectual Property Rights

a. Semiconductor Counterfeits

Data from the member companies of USITO Parent Association the Semiconductor Industry Association (SIA) and other sources, has shown that semiconductor counterfeiting is a major issue. In April 2012, market research firm iHS iSupply reported that “The five most prevalent types of semiconductors reported as counterfeits represent \$169 billion in potential risk per year for the global electronics supply chain.”⁵ Data also suggests that a significant percentage of counterfeit semiconductor products originate from China. In January 2014, a co-conspirator in a scheme to traffic counterfeit goods into the United States plead guilty for his role in bringing 289 shipments of counterfeit integrated circuits (ICs) from China. The U.S. Attorney’s Office in the State of Maryland that handled the case found that the

⁵ IHS iSupply press release, “Top 5 Most Counterfeited Parts Represent a \$169 Billion Potential Challenge for Global Semiconductor Market,” April 4, 2012: [http://www.isuppli.com/Semiconductor-Value-Chain/News/Pages/Top-5-Most-Counterfeited-Parts-Represent-a-\\$169-Billion-Potential-Challenge-for-Global-Semiconductor-Market.aspx](http://www.isuppli.com/Semiconductor-Value-Chain/News/Pages/Top-5-Most-Counterfeited-Parts-Represent-a-$169-Billion-Potential-Challenge-for-Global-Semiconductor-Market.aspx).

defendant imported all of the counterfeit ICs with the help of co-conspirators based in China.

Semiconductors are the “brains” behind an incredibly diverse range of end products and systems such as healthcare and medical equipment, communication networks, emergency response systems, electric power grids, industrial and automation systems, and transportation systems and controls. Given the criticality of these end-use products and systems, counterfeit semiconductors pose risks to health and safety wherever they are used worldwide. In addition to counterfeit semiconductors creating a clear and present danger to the public, counterfeits also result in the loss of intellectual property for the original manufacturer. The sale of counterfeits erodes sales of legitimate products and causes job losses and damage to world economies.

USITO is greatly encouraged by the ground-breaking commitments in the 24th JCCT deliverables to increase enforcement against counterfeit and substandard semiconductors and enhance cooperation on cross-border investigations. The SIA requests that the U.S. government strongly encourage the Chinese government to build on these commitments and follow similar actions of other countries around the world interested in stopping the production and trade of counterfeit products, including:

- **Recommendation 1:** Identify counterfeiting operations in their country involving semiconductor products, permanently terminate these operations by confiscating and destroying counterfeit products and counterfeit making equipment and supplies, cut-off support networks such as landlords that knowingly rent facilities to counterfeiters and their sales channels, arrest and vigorously prosecute all who are knowingly involved in the manufacture, distribution, and sale of counterfeit semiconductors;
- **Recommendation 2:** Devote appropriate resources to support both China-only enforcement actions as well as multi-national law enforcement joint operations including investigations, information sharing, raids, seizures, and arrests of criminals.
- **Recommendation 3:** Work with rights holders and governments around the world to develop and implement effective programs for Chinese Customs authorities to detect counterfeit semiconductors and prevent their import/export.
- **Recommendation 4:** Strengthen anti-counterfeit and related intellectual property laws; and enable prosecutors to more easily investigate and prosecute criminals involved in counterfeiting; and
- **Recommendation 5:** Support the efforts of the World Semiconductor Council Anticounterfeiting Task Force and engage in cooperative activities with industry.

b. Software Piracy

Software piracy in China translates into fewer jobs and less economic growth both in the United States and China. China has set its goals to become an innovation economy, and its senior leadership has publicly stated on numerous occasions that the lack of IP protection is hindering that effort. Successive JCCT agreements, the visit of President Hu to the United States in 2010, and the November 2011 announcement to make permanent the Special Campaign under the leadership of Vice Premier Wang Qishan are significant. In 2014, the JCCT should intensify its work, building on the key measures that the State Council has set out over the past few years. For 2014, the JCCT should focus as a matter of priority on:

- ***Recommendation 1: SOE software legalization.*** USITO supports the full implementation of China's bilateral commitment to software legalization by State Owned Enterprises (SOEs) at all levels and notes that as part of the China's SOE going out strategy, China should ensure that its state enterprises (from SASAC and the financial sector) are above reproach in terms of their use of legitimate software. State companies make up 80 percent of the value of the stock market in China.
 - China should establish a serious program of legalization that covers all SOEs, starting with the largest and most active global companies. Such a program would include: (1) rigorous government oversight that requires SOEs to treat software as an asset for property purposes, a concept that China has already agreed to; (2) adoption of transparent Software Asset Management practices through certified SAM providers with third-party audit oversight, comparable to what other major companies are doing around the world; and (3) ensure the necessary budget for SOEs to undertake this much needed transformation, recognizing the relationship that the State Council has with SOEs as outlined in the joint DRC/World Bank 2030 Report.
- ***Recommendation 2: Government Legalization.*** The USG should verify that China should maintain its efforts as a matter of priority both in ensuring a sustained legalization effort after the initial efforts were completed in 2013, and in ensuring the safety and viability of government networks to combat fraud in the channel as well as deter cybercrime.
 - China and the United States should focus on an on-going effort in this area by, (1) exchanging best practices to establish a rigorous and workable audit program and benchmarks such as raising the level of software spend in the overall level of IT spend comparable to other governments; (2) establishing

accountability mechanisms for government personnel; and (3) improving efforts to address channel fraud.

- **Recommendation 3: Product Coverage:** China should expand its current government software legalization program to include all types of software, not just office, operating system, and anti-virus products. Any expanded program that covers SOEs should also adopt this broader scope as well.

c. Service Invention Remuneration (SIR)

Draft regulations for remuneration of service inventions, released in November 2012 by the State Intellectual Property Office (SIPO), contain provisions that link compensation for inventions to ambiguous and difficult-to-define market valuations, introducing potential unlimited risk and cost for R&D conducted in China. From the latest version released for comment by SIPO in April 1st, 2014, we have seen very limited improvement from previous versions.

- **Recommendation 1:** USITO advocates that any regulations in this realm should unequivocally state that inventor-employee agreements or contracts supersede any provisions for compensation outlined in the proposed SIR.

d. Anti-Monopoly Law

While Chinese leadership continues to pledge that the market will play a greater role in China's economy, government actions continue to advance industrial policies in a coordinated manner including using the Anti-Monopoly Law as a tool for industrial policy. AML implementation by MOFCOM, SAIC and NDRC in recent years has accelerated along with concerning trends.

National Development Reform Commission (NDRC) officials have been publicly outspoken about the important role that industrial policy considerations should play in antitrust enforcement in China and their intention to broaden significantly the scope of their review of competitive practices in a wide range of "strategic sectors." The NDRC tactics have been aggressive and out of step with best practices of competition authorities globally⁶.

⁶ <http://www.reuters.com/article/2013/08/22/us-china-antitrust-idUSBRE97K05020130822>

In 2013, the State Administration for Industry and Commerce (SAIC) released a draft IPR enforcement regulation that is intended to implement the anti-monopoly law. A number of provisions contain overly broad, ambiguous and potentially subjective criteria for IP licensing and what constitutes IP abuse that could easily undermine domestic innovation and multinational investment. For example, characterizing unilateral refusal by dominant companies to license their “essential IP” to competitors and others per Article 7 of the Draft IPR Regulation is another form of misappropriation that undermines the very essence of IPRs – that is, the right to exclude others to enable inventors to recoup their investment. The draft’s new determinations of what constitutes IP abuse not only falls well outside of mainstream global antitrust law, but is also inconsistent with the licensing provisions in other Chinese laws and regulatory measures.

While we appreciate recent efforts by MOFCOM to accelerate the M&A approval process for simple cases, there remains considerable lack of transparency in the overall M&A review process. This problem, combined with the recent, well-publicized dramatic increase in NDRC investigations of multinational companies for price-related issues, has spurred fears that multinational companies seeking to protect IPR in competitive domestic markets may ultimately be subjected to discriminatory administrative pressures.

- **Recommendation 1:** USG should advocate for clear and transparent definitions and terms that recognize the rights of IP licensors in line with global antitrust norms and best practices
- **Recommendation 2:** USG should advocate that antimonopoly law not be used a tool for industrial policy purposes that distort the market and create unfair advantages for local firms operating in the market.

IV. Technical Standards

a. Discriminatory Indigenous Standards

The Chinese government continues to promote the development of indigenous domestic standards that deviate from existing global versions. China’s 12th Five Year Plans for ICT Development and Standardization call for hundreds of new national standards to be developed over the next five years. Many of these standards such as

EUHT⁷ and WAPI are developed outside of international norms in an opaque manner that limits foreign participation. For example, the WAPI standard sees to be finding its way into a number of domestic standards, such as *Information Security Technology – Basic Security Requirement for Office Devices Testing*. An internationally developed and widely adopted industry standard for wireless network access already exists, and we hope that China does not mandate additional products to support WAPI.

Furthermore, while many of these standards are ostensibly labeled voluntary (and thereby not triggering the requirement for China to notify to the WTO), the standards end up as de facto or unwritten mandatory requirements in conformity assessment schemes. Equally challenging is China's continued reluctance to accept globally oriented standardization coalitions as valid standards development organizations.

- **Recommendation 1:** The U.S. Government should expeditiously inquire about the details of implementation for WAPI, office equipment security, ZUC, and other indigenous standards, specifically on related government procurement, product testing and certification, and network access license (NAL) requirements. Also, the U.S. Government should ask China to create a mechanism to facilitate and monitor its compliance with its WTO TBT obligations to notify the WTO of new technical requirements and provide a minimum of 60 days for comment, while urging China to provide longer comment periods when possible. Additionally, where testing and certification is a requirement for market access, we recommend the development of the testing criteria to be transparent and inclusive with no mandate for the sharing of sensitive information.
- **Recommendation 2:** The U.S. Government should continue to stress the importance of technology neutrality, the adoption of international standards as opposed to China-only standards, and urge the Chinese Government to create a mechanism to facilitate and monitor its compliance with its commitment to not mandate technical standards, consistent with the letter and spirit of the WTO Technical Barriers to Trade Agreement;
- **Recommendation 3:** Establish an open, transparent standards development process, based on market forces, that permits equal participation of foreign and domestic companies and representatives in the standards and conformity assessment process, and based upon broad and publicly declared industry

⁷ UHT, also known as 'ultra high-throughput' wireless LAN or Super-LAN, is a wireless LAN standard developed by Nufront, a Chinese company founded in 2004 and supported by the Ministry of Science and Technology (MOST) National Science & Technology Megaprojects fund

support; and

- **Recommendation 4:** Encourage further Chinese participation in international standards organizations, including Institute of Electrical and Electronic Engineers (IEEE) and Internet Engineering Task Force (IETF), and their official recognition of these organizations' work product as international standards.

b. Foreign Participation in Chinese Standards Development Organizations

At least two standard development organizations in the ICT sector have significant barriers to participation by foreign enterprises. In many SDOs where foreign companies are granted observer status, they have no voting rights, aren't able to stand for election at member conferences for technical committees, aren't able to draft standards, and are often charged higher fees than domestic counterparts. This includes many Chinese SDOs engaged in the development of information security standards, in addition to standards for the communications and telecoms industry; both of these SDOs are under the purview of MIIT, not China's Standardization Administration (SAC).

- **Recommendation 1:** Urge the USG to confirm with MIIT that all legally registered foreign enterprises in China can fully participate in standards development organizations that are engaged in the development of commercial technology standards. Furthermore, foreign companies should be granted full voting and participatory rights in all Chinese ICT SDO's. This would be consistent with China's obligations to Article E under *Substantive Provisions* of WTO Technical Barriers to Trade (TBT) Annex 3: Code of Good Practice for the Preparation, Adoption and Application of Standards⁸ (Please see the whole article in the Appendix):
 - The standardizing body shall ensure that standards are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.

c. SAC Patents & Standards Regulation

In December of 2012, the Standardization Administration of China ("SAC") published the Regulatory Measures on National Standards Involving Patents (Interim) (Draft for Public Comments). USITO notes that some of the most concerning aspects of the

⁸ As agreed upon at the WTO Uruguay Round Agreement by TBT signatories, and implemented in 2000 for developed countries and 2004 for developing countries. Please see http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm.

Draft Regulations have been removed or revised, and thanks the Chinese Government for that. These include for example removing compulsory licensing from the Measures, including Reasonable and Nondiscriminatory Licensing, and other actions that help align these with international practices. There are some aspects of the Measures, however, that remain a concern to industry including the meaning of Legal Liability, the extent and nature of the disclosure obligations/verification materials and what patents are subject to these Measures.

- **Recommendation 1:** Urge that SAC confirm that provisions regarding legal liability simply put standards participants on notice that failure to disclose may be a breach of the written policies of standards development organizations and may be a violation of Chinese law depending upon the facts and circumstances. Also, that alleged violations and potential remedies will be determined and addressed by the appropriate Chinese court or governing body with authority to adjudicate such alleged violation;
- **Recommendation 2:** Recommend that the regulations be revised so that patents subject to these Measures are Chinese Patents. In other words, Patents refer to those that are filed or issued in China. The Measures should also clarify that “patent applications” only include published patent applications. Patents subject to the Measures means only those claims contained in patents that would be required to implement a standard consistent with the ISO/IEC/ITU Guidelines for Implementation of the Common Patent Policy. Finally, The definition of “known to them” in Article II, paragraph 1 is limited to those patents known to be essential by the Participant without requiring the Participant to perform patent searches or investigate whether there are third party patents;
- **Recommendation 3:** Urge SAC to confirm that reasonable and nondiscriminatory terms and conditions referenced in the license declaration may include other customary license terms such as reciprocity, including a RAND licensing commitment may be conditioned upon receiving a reciprocal licensing commitment; and
- **Recommendation 4:** Push SAC to publish for comment the GB/T “Special Procedures for the development of Standards Part 1: Standard Related to Patents” which set out disclosure of patent information and patent licensing declaration requirements. Based on a USITO Standards and conformity WG meeting with CNIS, this standard has already been sent to SAC for final approval, thus it is unlikely there will be another round of comments as previously requested by USITO.

d. CCC Regulation Implementation

The CCC scheme strictly regulates ICT manufacturers. Vendor compliance is becoming increasingly challenging with the implementation of an increasing number of CCC oriented standards.

In addition, China's National Certification and Accreditation Administration (CNCA) has literally required all product certification and testing of regulatory compliance to take place in China, and by designated Chinese testing and certification agencies. Despite CNCA's encouraging announcement at the 2012 JCCT that legally established onshore entities of foreign testing and certification agencies are eligible to provide CCC-certification work, USITO has yet to observe CNCA's indications to call for foreign testing and certification agencies' application as accredited conformity assessment bodies (CABs) in China.

CNCA's fulfillment of this commitment, in practice, will lower costs and shorten the lead time of products manufactured by multinational companies, established in China or overseas, to get tested and certified by the CCC mark. Foreign testing and certification agencies' participation into CCC certification will not only connect the Chinese certification process to international best practices and address multinational companies' concerns of IP leakage during the certification process, but also will practically expand the capacity of certification agencies to handle more certification enquires concurrently.

- **Recommendation 1:** Transition periods for implementation of CCC standards are insufficient, and are usually less than one year. In practice, industry needs two years to implement approvals and labeling changes, and for technical changes that result in hardware changes, at least four years is needed for implementation. A case in point is the GB4913 requirement, in which implementation time is inadequate;
- **Recommendation 2:** China should grandfather (allow import and sales of) products that had CCC approval prior to any particular rule change. Rule changes should not be applied retroactively and only impact new product designs introduced after the rule change becomes mandatory. This is in line with global practice;
- **Recommendation 3:** Repair parts should be allowed for import and maintenance operations to maintain the product at the same level of standards compliance that the product originally met when it was first sold in China. We want to ensure that products sold to Chinese customers continue to operate for many years. This also helps reduce waste, another of China's top policy concerns; and
- **Recommendation 4:** Products and repair parts should be allowed to be

imported with CCC labeling as long as the CCC approval was valid on the date that the product or repair part was manufactured. This is verified by looking at the date-of-manufacture (DOM) and comparing it with the CCC certificate. The CCC certificate may be expired on the date of import, but the key should be that the CCC certificate is valid on the DOM. Far too much time and resources are spent to rework the labeling for products that complied with the rules and had a valid CCC approval on the date that the product was built.

- **Recommendation 5:** Request CNCA to commit a practical and formal timeline, as a solid follow up action to CNCA's previous commitment, to call for applications for both foreign invested and domestic CABs in the area of CCC mark certification.
- **Recommendation 6:** Urge the Chinese government to remove "investment in CCC certification services" in the category of "M745 quality inspection services" in the 2013 version of the "negative list" adopted in the Shanghai FTZ, to ensure foreign CABs' ability to establishment domestic entities and provide CCC certification services in the Shanghai FTZ.

e. Network Access License / Type Approval

USITO appreciates the U.S. government's work in pursuing commitments from the Chinese to streamline its type approval process for mobile telecommunications equipment and believes China should fully realize its 2010 JCCT commitment with respect to Type Approval, creating a streamlined, viable and flexible system going forward. Unfortunately to date, implementation of MIIT's "one-stop shop" commitment has not resulted in the simplification of the actual equipment testing process with regard to Network Access License (NAL) requirements or NAL/CCC duplicative testing issues. MIIT has established a telephone number for telecommunications manufacturers to call for information; however, this and any other of its efforts have not actually shortened the time required to obtain type approval license.

- **Recommendation 1:** Continue to press China to improve its Type Approval process based on established industry recommendations;
- **Recommendation 2:** Urge adoption of a comment period prior to implementation of changes to testing processes;
- **Recommendation 3:** The United States and China should negotiate and conclude a MRA for testing and conformity assessment; and
- **Recommendation 4:** Hold another Conformity Assessment/Type Approval workshop to address ongoing challenges and progress made with its processes, with emphasis to discuss upcoming requirements to China's telecom build-out.

f. Product Safety Requirements for ITE (GB4943.1)

China issued GB4943.1-2011 product safety standard for ITE on 1 December 2012 including some significant deviations from the globally accepted IEC60950-1 standard. These differences include the addition of unique testing, certification and labeling requirements for products intended for use at high altitudes and for those to be used in tropical climates. The specific requirements are not aligned with the global industry norm to design and manufacture ITE products such as notebook computers and power adapters for use up to 3000m. As a result, companies will be required to either redesign, test, certify, and label products for a very limited market (above 3000m up to 5000m) or they will be forced to apply an inaccurate and misleading label stating the product is intended for use below 2000m—and will be prevented from selling into a major market where consumers live between 2000 and 3000m. USITO comments and engagement on this issue to express our views have been non-productive.

- **Recommendation 1:** Industry recommends China allow for greater flexibility in implementation by CNCA permitting the addition of a product label for products that are safe for use at 3000m, postpone enforcement beyond January 2013 to avoid testing/certification delays, and provide adequate clarification on climate restrictions and other outstanding questions.

g. Initial Product Inspections (IPIs) of Overseas Factories

Delays associated with CQC conducting overseas initial product inspections (IPIs) of factories have been a long-standing source of industry frustration. Given the rapid product cycle of high tech devices, it is essential to get new products to market in the minimal time. CQC has cited passport and visa issues as well as CNCA and legal restrictions as the primary causes of these delays.

- **Recommendation 1:** Encourage CNCA to let third parties conduct IPIs and give CQC the opportunity to better leverage its global offices to speed up these inspections.

V. Information Security

a. Commercial Encryption Regulations

Under China's implementation of its 1999 commercial encryption regulations, foreign IT products that implement cryptographic functionality can be sold in China as long as their "core function" is not encryption. Sales of foreign encryption products themselves are banned, as is the use of foreign encryption technology. The Office of State

Commercial Cryptography Administration (OSCCA) is currently revising these regulations. Another related concern is the trend towards the mandatory or de facto adoption of Chinese developed encryption standards in the commercial market, such as the ZUC encryption algorithm⁹. At the 2012 JCCT, the Chinese government confirmed that it will not mandate the adoption of any particular encryption standard for the commercial Chinese telecom market, but did not address any potential testing and certification requirements. Furthermore, in 2013 the JCCT secured an agreement from China to not require any sensitive or proprietary business information be divulged during the certification of IT products that support the ZUC encryption algorithm.

In addition, USITO understands that many of China's *state-owned* enterprises such as telecom carriers and banks are being forced to adopt Chinese indigenous encryption standards regardless of the Chinese Government JCCT commitment and other public positions that it would not do so. For example, China's latest banking card specifications require that only Chinese cryptographic algorithms can be supported within state-owned enterprise banking systems. Similar requirements have also been drafted for China's mobile payment technology to be adopted by state-owned banks. These de-facto requirements to use indigenous Chinese algorithms represent a significant market access barrier for foreign IT firms given that encryption technology is still considered a state-secret and any approval to operate in this space would require significant divulgence of sensitive IP to China's commercial encryption regulators.

- **Recommendation 1:** At a minimum, ensure a transparent revision process for the 1999 regulations, where stakeholders are given at least 60 days to comment and comments are seriously considered by the relevant agencies;
- **Recommendation 2:** : The U.S. Government should ask China to create a mechanism to facilitate and monitor its compliance with its WTO commitments to adopt global, market based technical standards in the area of commercial encryption technology consistent with the letter and spirit of the WTO Agreement on Technical Barriers to Trade. In particular, the U.S. Government should recognize state-owned enterprise decisions to solely adopt indigenous Chinese encryption standards as a de facto mandate and treat it as such. Any deviation from internationally accepted cryptography algorithms or other standards should be notified to the WTO; and
- **Recommendation 3:** The U.S. Government should continue to press the Chinese Government on the importance of not implementing onerous testing

⁹ ZUC is a Chinese encryption algorithm for 4G LTE.

and certification requirements for encryption technology and standards such as ZUC, that would include a review of source code, low/high level design, and/or other sensitive business confidential IP.

b. Proposed Chinese Supply Chain Security Regulations & Potential National Information Security Review Commission

In 2013, China's Ministry of Industry & Information Technology (MIIT) indicated through public statements that it will initiate a review of national security risks posed by foreign ICT vendors operating in China. This would include an assessment of related supply chain security risks and concerns raised by foreign ICT equipment and services. While no specific policy initiatives have been announced to date, industry is concerned that such potential actions would be detrimental to the U.S.-China bilateral trade relationship, and given the globalized nature of today's supply chain infrastructure – in which China is a major player and which has led to significant economic growth and job creation in China - and cross-border innovation, counterproductive to increasing security. In addition, the creation in 2014 of a Central Network Security & Informatization Leading Small Group, to be led by President Xi Jinping, also indicated that it would possibly focus on similar efforts.

- **Recommendation 1:** Urge China to recognize that product security is a function of how a product is made, used, and maintained, not by whom or where it is made. Discrimination based on national origin is not an effective means of achieving security assurance
- **Recommendation 2:** Recommend China to work through existing global institutions and standards organizations to meet its security needs preserving interoperability, openness, and a global market.

c. Multi-Level Protection Scheme (MLPS)

The Multi-Level Protection Scheme (MLPS) is China's cyber security policy framework designed by the Ministry of Public Security (MPS) to guarantee the security of information systems operated by Chinese critical infrastructure companies. USITO has identified the market value of China's critical infrastructure classified under MLPS as more than \$65 billion USD (Gartner). The set of MLPS policies continue to bar foreign information security products, by mandating that all information security products deployed within a large subset of MLPS information systems be developed by Chinese information security companies and be based on Chinese IP in their key components. Additional product testing provisions also require companies to disclose product source code, encryption keys and other confidential business information. At the 2012 JCCT, the U.S. Government made what appeared to be a significant

breakthrough in securing an agreement from the Chinese government to begin revising MLPS to reflect China's commitment to de-link innovation policy from IP requirements. Despite the 2012 agreement, no formal talks or revisions to the MLPS measures have taken place.

- ***Recommendation 1: IP & Product Restrictions:*** Through a new bi-lateral working group on cyber security, urge China to commit in writing to removing requirements for domestic IP at Level-3 and above commercially oriented systems along with any requirements for mandatory product testing in government-affiliated laboratories. China should also be urged to drop any technical requirements under MLPS that prescribe product functionality for commercial information systems, as these are developed for a global rather marketplace. China should also clarify in writing that the core-function test applies to the regulation of encryption technology under the MLPS regime;
- ***Recommendation 2: Adoption of Global Standards:*** Urge China to follow globally accepted best practices and the adoption of global standards (such as Common Criteria, ISO/IEC 15408) and join agreements such as the Common Criteria Recognition Arrangement (CCRA) for non-commercial critical information infrastructure (CII). Decisions for product testing of Commercial CII should be based on market conditions, NOT government regulations; and
- ***Recommendation 3: Transparency:*** Urge MPS to carry out transparent and robust dialogue with all stakeholders, foreign and Chinese, regarding any new or revised measure for the protection of critical information infrastructure.

VI. Telecommunications

a. 4G Licensing & Standards

China has been an active participant in developing 4th Generation mobile broadband standards through the Time Division Duplexing Long Term Evolution (TD-LTE) standard. As a Chinese government supported 4G standard, TD-LTE has been given certain commercial advantages in the China market. Most notably, in December 2013 MIIT released its first tranche of 4G licenses to mobile operators that were limited to TD-LTE licenses rather than allowing for licenses to also be granted for the globally used Frequency Division LTE (FD-LTE) standard.

- ***Recommendation 1:*** China should move forward as expeditiously as possible to license, under fair, reasonable, and non-discriminatory terms and conditions, 4G mobile service in a technology-neutral manner that enables

telecommunications service providers the flexibility to determine which 4G standard best meets their business models.

b. 5 Ghz Spectrum Licensing

In January of 2013, MIIT released its finalized decision regarding 5150-5250 and 5250-5350 MHz spectrum allocation for unlicensed use. These two bands will be allocated for public use, while the 'middle' 5 GHz band, 5470 - 5725 MHz will be withheld for the time being. We understand that the State Radio Regulatory Committee (SRRRC) has begun working on implementation measures and testing methods for these spectrum bands, but the documents have not been released. These technical requirements will eventually be implemented as part of the Radio Type Approval (RTA) license, part of the three-part type approval market access requirements in China.

- ***Recommendation 1:*** Urge China to continue in the liberalization of the 5GHz band by further opening the middle 5470 – 5725 MHz for unlicensed public use in a technology-neutral manner;
- ***Recommendation 2:*** Strongly recommend that China adopt global standards and best practices for the type approval of ICT equipment operating at the 5GHz band; and
- ***Recommendation 3:*** Hold another Spectrum workshop to address ongoing challenges and progress made with its processes, with emphasis to discuss upcoming requirements to China's telecom build-out.

c. Telecommunications Foreign Direct Investment (FDI)

China limits foreign direct investment in telecommunications to 49 percent for basic services and 50 percent for value-added services (VAS). A further problematic restriction is the requirement that foreign telecom service providers may enter into a joint venture only with one of the existing state-owned enterprise telecom providers. In 2013, China appeared to take small steps to liberalize telecom industry investment by implementing the Mobile Communication Reselling Trial Program that allows mobile virtual network operators (Chinese investors only) to lease mobile wireless capacity from Chinese SOE telecom operators for commercial re-sale. The trial program will expire in December 2015, which effectively eliminates the potential for foreign investment in the mobile virtual network operator market for at least the next two years.

- **Recommendation 1:** Increase the FDI limit to 100 percent for telecommunications services and eliminate the requirement for a joint venture; and
- **Recommendation 2:** Strongly suggest China allow foreign investors to participate in the current Mobile Communication Reselling Trial Program as a small step to opening the Chinese telecom market to foreign mobile virtual network operator firms.

d. Value Added Services (VAS)

Market entry opportunities for U.S. telecommunications service providers in China are limited by an overly narrow definition of VAS for value added network service licensing. The approach that China has taken to regulating VAS, including its insistence on classifying certain VAS as basic services which requires a joint venture relationship with one of China's three state owned telecom operators, has created significant barriers to foreign entry.

- **Recommendation 1:** Encourage liberalization of China's telecommunications service sector broadly, de-linking VAS from basic services and extending the definition of VAS for telecommunications utilizing a "negative list" approach (all services not classified as Basic are deemed VAS).
- **Recommendation 2:** Urge China to limit revisions to the current China's *Catalog of Telecommunications Service Categories* that do not further restrict the ability of foreign companies to operate basic services or VAS.

e. Telecom Capitalization Requirements

China's unreasonably high capitalization requirement for basic telecommunications services has greatly limited market access. Basic telecommunications services licenses are subject to U.S. \$160 million capitalization requirement, which is 100 times larger than the capital requirement for China's VAS licensees, and comprises an excessively burdensome restriction that violates Article VI of the GATS. A foreign service provider otherwise meeting the licensing qualifications is unlikely to allocate such capital to a new and risky enterprise, and a Chinese joint venture partner is unlikely to divert this capital from its core business.

- **Recommendation 1:** China should eliminate its capitalization requirement for basic service and remove this barrier to market access.

VII. ICT Services & Cloud Computing

USITO members have expressed a keen interest in opportunities in the cloud computing and ICT services market in China, as well as the development of the domestic cloud computing industry. Cloud computing is explicitly classified as a Strategic and Emerging Industry (SEI) under 'Next-Generation IT' in the State Council Circular and incorporated into the National 12th Five-Year Plan. This classification presumably indicates that cloud computing will attract significant investment from central and local governments over the course of the 12th Five Year Plan (2011~2015). Despite large opportunities, foreign companies are concerned about the promulgation of regulations and standards that could constitute barriers to entry in the cloud computing industry.

Discriminatory market access barriers for foreign firms in China include a current regulatory structure led by MIIT that classified many "over-the-top" ICT business services as a telecom "value-added service" or "VAS." Many of these services such as cloud computing simply utilize the telecom network as a means for transmission of data, not actually engaging in the commercial operations of the network thus are not "facilities-based."

According to USITO understanding, foreign entities in China are required to obtain two licenses in order to operating cloud computing services in the market, which includes the "Internet Data Center" or "IDC License" and then a content or application layer VAS license depending on the business. Currently, the IDC category of licenses is prohibited for foreign companies, and all other VAS categories of licenses can only be obtained through operating a joint venture. Thus, foreign companies must engage with a local partner through a formal joint-venture or business relationship, which often includes significant forced transfer of technology or business know-how.

- **Recommendation 1:** Any revision of China's Catalog of *Telecommunications Service Categories* or *Telecom Law* should reflect the current market conditions and allow both foreign and domestic companies to provide cloud computing services in the China market. Cloud computing and other non-facilities based ICT services should not be defined as either a basic or a value added service under the Telecom Catalog. Please see Section F (VAS) regarding industry recommendations for providing value-added telecom services without a joint venture partner;
- **Recommendation 2:** Urge China to not require that data centers used for the purpose of providing commercial cloud computing services be hosted within Chinese borders and further open this category to foreign investors; and

- **Recommendation 3:** Urge China to not adopt unique indigenous technical standards for cloud computing that would create market access barriers for foreign firms operating in China.

VIII. Environment & Energy Efficiency

Sustainability issues are a key aspect of the "China Dream" championed by President Xi Jinping. Public opinion polls show that pollution is among the top three public concerns in China, along with food safety and corruption. Air, water, and soil pollution takes a heavy toll on human health and social stability in China. While the extraordinary growth of the Chinese economy has been a major economic success story of the past two decades, it has come with high environmental costs due to rampant pollution. Now the cost for cleaning up China's notorious air pollution has been given a price tag - \$290 billion, which was presented by Ministry of Environmental Protection Director General Zhao Hualin in July 2013. A few months later, China published a \$330 billion action plan to tackle pollution of its scarce water resources through state media on Feb 18, 2014.

While USITO members fully support the policy goal of environmental protection and energy efficiency improvement in China, and welcome the opportunity to help provide technology solutions, we caution the disconcerting trend of policies and standards that are potentially discriminatory, fail to take into consideration of the environmentally sound global practices, and/or formulation of policies that are contradictory to the science-based approach widely adopted by global stakeholders. There are also cases that important policies and mandatory requirements being developed without engaging key industry players, including USITO member companies. Considering the magnitude of investment that Chinese government committed to policy development in this area, our members expect to face increasing challenges and discrimination. Below are a few examples of such policy issues:

a. China RoHS

Chinese regulations governing the material content of electronic products are set forth in the Management Methods for Control of Pollution in Electronic Information Products, commonly known as "China RoHS." The Management Methods set forth a voluntary conformity certification program that involves mandatory pre-market testing in government designated laboratories, potential factory inspections, and other procedures which could add significant delays in time-to-market, expenses, create potential trade barriers, and result in the disclosure of proprietary information or other intellectual property. These burdensome requirements are not in compliance with the

Code of Good Practice in the WTO Agreement on Technical Barriers to Trade (TBT), which China agreed to comply with and which applies to voluntary conformity assessment programs. USITO continues to have concerns with the potential for this program to inform the future mandatory, pre-market conformity certification program, to be linked to government procurement or to become a standard for certain projects or manufacturers, thereby resulting in a de facto "mandatory condition" for doing business in certain situations in China.

- **Recommendation 1:** MIIT and CNCA should embrace the best practice of self-declaration of compliance (SDOC) in the administration of RoHS similarly to what the European has done with its RoHS recast program. To the extent that third party testing is required, the program should follow the recommendation of the World Semiconductor Council (WSC) that “harmonization between any mandatory or voluntary certification procedures already in place in the global community. This would include the recommendation for the use of IEC 62321, or equivalent standard test results, from any ISO 17025 certified test laboratory.” MIIT and CNCA should also encourage Chinese labs to adopt IEC 62321 and ISO 17025 and encourage other countries that require third party testing to accept the results so Chinese companies can avoid the costs of multiple testing as they export outside of China; and
- **Recommendation 2:** MIIT and CNCA should adopt SDOC as one option of Conformity Assessment in the revised China RoHS Management Measures and China RoHS voluntary certification program. When considering further development of the China RoHS framework, the following concepts should be taken into consideration: meaningful collaboration between MIIT and industry on candidate items to be included in the Catalogue; exemptions harmonized to EU RoHS so as not to have fragmented international requirements, including appropriate exemptions for mission critical infrastructure and products solely designed for research and development purposes and made available on a business to business only basis.

b. China’s Gold Plating Ban

In early 2013, China’s National Development and Reform Commission (NDRC) issued a ban on the use of cyanide in gold plating processes. Without a public comment period or WTO/TBT notification, this globally unprecedented and outright ban mandates elimination of gold plating activities by Jan 1st, 2015. Gold plating is a common practice employed by connector makers, semiconductor manufacturers, and printed circuit board companies. Any replacement of cyanide solution needs to meet stringent technical requirements and go through sophisticated qualification processes.

The alleged cyanide-free solution would have to pass a multi-year testing and qualification process to determine if it could become a viable alternative to the well-established cyanide gold plating processes currently employed by manufacturers across numerous sectors. If implemented, this ban would lead to significant reconstruction of global supply chain for the ICT sector, medical devices, automobiles, and aircraft industry.

A core group of tech trade associations, including USITO, ITI, SIA and the printed circuit board (PCB) manufacturers association IPC, actively sought an exemption for the ICT industry throughout 2013. On September 23, 2014, NDRC released a notice postponing the implementation of the ban due to issues with the reportedly cyanide-free solution, and owing to the coordinated concerns presented by a wide range of industry groups.

With the revision of the industrial catalogue that contains this ban coming up in the 2nd half of 2014, USITO is working closely with other industry stakeholders to provide more input to NDRC in supportive of an exemption for the IT sector.

- **Recommendation 1:** NDRC should fully consider the globally accepted, environmentally sound practices of the stakeholders in the semiconductor industry, connector manufacturers, and PCB companies and provide an exemption for these players in the revised industrial catalogue

c. China WEEE

The Chinese government has been developing policies governing the collection, transportation, dismantling, and recycling of waste electrical and electronic equipment (WEEE) and funding of the aforementioned activities which have created substantial impact on the global ICT industry. The industry is aware of uneven implementation of fee collection among different products categories, and between companies. Without financial transparency of the China WEEE fund, cross product category subsidizing is one of the major concerns of USITO members. We believe that China's policy on WEEE recovery and disposal are still in its infancy, requiring a lot of exploration and practice efforts, and the implementation for the first batch of products needs much improvement in many areas. So the time is not ripe to expand the scope of products greatly.

However, the Government has already started considering including additional products to the 2nd batch of China WEEE product catalogue, such as mobile phones, microwave, printers, and copiers, which would also incur fees. On December 24, 2013, NDRC issued the *Priorities of Adjustment to the Catalogue of Waste Electrical and Electronic Products Subject to Disposal* that proposed a wide range of products to be covered by the adjusted 1st batch of China WEEE product catalogue. USITO submitted

comments to raise industry's significant concerns over the pace of which Chinese government expands the product scope.

- **Recommendation 1:** Urge the Chinese government to address a series of implementation problems associated with the first batch of China WEEE products, in particular cross-subsidizing across different product categories
- **Recommendation 2:** NDRC should carefully evaluate the financial situation of the China WEEE fund, provide transparency of such situation, and review cost-benefit analysis on electronics recycling before adding more products to the catalogue; and
- **Recommendation 3:** We suggest MOFCOM exclude WEEE manufacturers from the definition of "recycler" in the upcoming China WEEE recycling management measures and incentivize multi-stakeholders, including EEE producers, to participate in formal channels of collection.

d. China Clean Production Assessment Indicator System

The National Development and Reform Commission (NDRC) recently issued the draft "Assessment Indicator System of Clean Production for Electronic Device (Chips) Manufacturing." Some of the provisions in the draft raise potential trade concerns. Some of the values required for calculations, as well as product output, are considered valuable and proprietary information that most companies seek to protect from disclosure to competitors and others. There is also concern about potentially discriminatory implementation of the indicator system. Section 5.3(3) of the "Notes to Drafting of the Assessment Indicator System of Cleaner Production for Electronic Device (Semiconductor Chips) Manufacturing (Draft for comment)" states that the indicator system should include "phased implementation based on local conditions." Among other things, this principle references "the characteristics of production" and "different technical and economic indicators." The impact of this provision is unclear and may suggest that domestic companies may not be held to the same standards as foreign companies operating in China. Section 9 of this document further references the economic impact of investments in clean production technologies, and suggests that foreign companies may be able to absorb these costs more than domestic companies.

- **Recommendation 1:** NDRC should maintain open dialogue with stakeholders to clarify questions, ensure that intellectual property is not disclosed, and ensure that all semiconductor manufacturing facilities in China, both foreign and domestic, are held to the same standards.

e. China Server Energy Efficiency Standard

The Chinese government is in the early stages of drafting a national energy efficiency standard for servers. The standard's framework presents a two-tiered structure: a minimum market entry requirement, and energy efficiency top-runner recognition. One of the main issues identified so far concerns the testing method for active mode. In early January 2014, the lead researchers at the China National Institute of Standardization (CNIS) indicated that they were considering a China-custom approach in building server energy efficiency metrics. The industry has invested a sizeable amount of resources in the past years to develop the custom codes for the Server Efficiency Rating Tool (SERT). A China unique approach that veers away from the global norm would create significant and potentially discriminatory barriers to market for many global and Chinese players alike.

- **Recommendation 1:** CNIS should create at least three categories of server types that are in alignment with the ENERGY STAR@ definitions. The three categories are unmanaged, managed, and resilient servers. Each server category has a distinct power profile and distinct purposes for data center clients, so it is critical to set individual limits for each category.
- **Recommendation 2:** China to use all or some of the SERT work lets or SPECPower_{ssj_2008} to set the active energy requirements and to allow the use of the SERT idle score if an idle criteria is chosen.

Appendix 1: USITO Background

The USITO is an independent, non-profit, membership-based trade association, representing the U.S. information communication technologies (ICT) industry in China. Founded in late 1994 by the leading U.S. ICT industry associations, USITO seeks to provide new insights and approaches to the many complex challenges facing the ICT industry in China, which sits at the heart of the U.S.-China trade relationship. USITO serves as the China representative of four parent associations, including:

- Information Technology Industry Council (ITI)
- Semiconductor Industry Association (SIA)
- Software and Information Industry Association (SIIA)
- Telecommunications Industry Association (TIA)

USITO also represents approximately 40 leading U.S.-based companies actively engaged in China, drawn from across the spectrum of information and communication technologies.