



U.S.-CHINA TRACK II DIALOGUE ON THE DIGITAL ECONOMY

CONSENSUS AGREEMENT

December 2022 and February 2023
Zoom meeting

The U.S. team led by the **National Committee on U.S.-China Relations** and the Chinese team led by the **China-U.S. Green Fund** convened their fifth Track II Dialogue on the Digital Economy virtually through Zoom on December 19, 2022, and February 13, 2023 (December 20, 2022 and February 14, 2023 in China). The dialogue brought together U.S. and Chinese experts from academia, think tanks, and industry for non-governmental, off-the-record, in-depth, and frank discussions on digital economy issues of concern to both countries. (See the participant list below.)

The two sides focused on the areas of data and enterprise services, and semiconductors. Both teams agreed that, although China and the United States are in fierce competition, there is still room for cooperation in the digital economy. This document sets forth recommendations that both sides can take to their respective governments.

STATE OF U.S.-CHINA RELATIONS

The two sides recognize that the current state of the bilateral relationship makes cooperation between China and the United States very difficult, accelerating the trend of decoupling. Both teams acknowledged several factors giving rise to this trend:

1. The two countries are in the midst of increasingly intense competition. The United States no longer sees China as a cooperation partner but rather identifies it as the only adversary with both the ability and the will to challenge the United States' position in the world. The United States perceives the next decade as a key period to this strategic competition. The U.S. side notices that Chinese media openly discuss "the rise of the East and the fall of the West" and that the 21st century will be "China's century." These views and statements are fueling mutual antagonism between the two countries. At this time, considering that the technology blockade from Western countries such as the United States is increasing, China will only increase its efforts in achieving technological self-sufficiency and independence while also pursuing a leading position in many important high technology sectors. The United States will strengthen its industrial and trade policies to protect its leading position in important technological and economic sectors. Both countries seek to continue to strengthen the use of a range of government policies to gain respective competitive advantages in this increasingly intensive competition.

2. The trend of technology conflict and decoupling will continue alongside constrained business ties. Despite this growing competitive trend, currently, trade between the two countries remains at a high level, and companies on both sides seek opportunities to do business in the other country and in other international markets. However, in the face of a more intensive overall competition, engagement mechanisms and multilateral bodies, such as the World Trade Organization (WTO), are weakened, and it is difficult to protect the normal trade relations between the two countries. Each country is continuing to pursue methods to favor its own industries and continue the game of restrictions and counter-restrictions, which may result in continued market, industry, and technology decoupling in the medium to long-term future between the two countries.

3. Information and Communication Technology (ICT) and the broader digital economy is now at the forefront of the strategic competition between China and the United States. This is highlighted by both countries' pursuit of control and countermeasures. The United States has successively introduced new export controls that target Chinese entities and has joined forces with relevant countries to impose restrictions on Chinese companies; on the other hand, China is considering blocking the exports of its own strategic technology (such as solar technology), further emphasizing supply chain and technology independence in pursuit of industrial and technology chain security. Certain policies will exclude foreign companies from the supply chain. The U.S. side believes the Chinese government continues to defend its companies, even in the case of clear violations of international export controls or questionable data collection practices; for its part, the Chinese side believes that the United States is politicizing and weaponizing trade and technology cooperation by distorting the principle of market competition and pursuing unilateral blockades, sanctions and decoupling and breaking against China in key technology areas.

4. Risks and Damage of Decoupling. Both countries have their respective national security concerns that motivate the two governments to enact market access, data transfer and technology transfer barriers. However, it is important to understand the national security risks in decoupling:

- reduced business, academic and personal interactions between the United States and China, mutually beneficial connections that act against distrust and suspicion;
- reduced global growth and economic growth in both countries.

This would lead to overcapacity and overinvestment in both countries, with the cost of additional spending ultimately being paid for by consumers in both countries.

At the same time, it should also be noted that the continued digitization of major global economies requires the orderly integration of respective advantages on the basis of enhancing strategic mutual trust, creating more space for cooperation, and striving to achieve win-win cooperation.

AGREED UPON PRINCIPLES

The participants to the dialogue agreed on the general principles in the following two areas.

Overall Approach

While taking measures that each government believes are necessary for its own national security and economic security, both countries should agree that their common goal is mutually beneficial open markets based on transparent, agreed upon, and enforceable provisions for the conduct of international business. Both sides acknowledge that setting overly ambitious goals in the short-term around this shared vision is bound to be difficult to achieve in light of the current complicated political environment. Therefore, we recommend that the two countries agree on individual smaller cooperative steps in specific areas in order to demonstrate the feasibility and practicality of mutually beneficial cooperation. In addition, we recommend cooperation and consultation on new areas including digital economy, green energy, healthcare, and food security that will be of benefit to the citizens of China, the United States, and many other countries.

In Data and Financial Services

1. The United States and China need to find a common concept and language system in terms of data processing and sharing. They also need to discuss the similarities and differences of legal and policy guidelines in a timely manner, so as to prevent the formation of two mutually incomprehensible and incompatible systems and to prevent companies from having to comply with two different sets of laws and regulations. Both countries should ensure the convenience and freedom for commercial organizations to provide data abroad according to business needs on the basis of abiding by the laws of the host country.

2. Promoting cross-border financial services between China and the United States is in the interest of both countries, and communication and cooperation should be strengthened within the framework of WTO rules and market mechanisms. The U.S. side is particularly concerned with the obstacles and difficulties in market access for U.S. enterprises in certain areas in China, and China should fulfill its obligations under WTO accession to further open its financial market and take reciprocal measures so that more foreign investors can operate on a level playing field.

3. Clear standardized and enforceable regulations and processes are a prerequisite for the free flow of data across borders, and both countries need to encourage the designing of rules for cross-border data flow based on international

standards at the institutional level to facilitate the free flow of data between them.

4. In addition to traditional financial services and cross-border data transmission, cooperation in frontier areas such as financial technology and digital assets should be explored. Additionally, free trade ports and free trade zone special area policies in the Hong Kong SAR and the Mainland could provide a middle ground for finding cooperation in the financial sector between China and the United States.

5. Privacy-preserving technology should be explored to enable cooperation in medical, biotechnology, environmental protection and other fields. With mutually recognized standards for rendering sensitive personal information unrecoverable while remaining useful, actors in the two countries could cooperate while addressing security concerns.

In Semiconductors

1. Semiconductors have become an indispensable part of the modern global economy thanks, in large part, to the scientific and technological innovation represented by the United States and China's large and burgeoning market. These existing hard-won results should be valued and maintained.

2. Looking at the current global distribution of industry and technology chains, it is difficult for any country to be self-sufficient in the entire semiconductor supply chain, and it is widely recognized in the industry that sustainable development of the industry can only be achieved through maintaining the semiconductor industry's unique global value chain. China's vast market for multiple demands, ranging from electric vehicles to consumer smartphones is an important driver of global industrial and semiconductor industry growth. Stronger business cooperation between China and the United States in these non-sensitive sectors is necessary to fuel industry investment in next generation technologies and their applications.

3. The increasing focus by governments worldwide on the security and resilience of their semiconductor supply-chains is a real challenge to open cooperation in the global semiconductor sector. The United States is concerned that unrestricted exports of some semiconductor technology to China will undermine its military and strategic technology competitiveness. American priorities in terms of semiconductors and national security include the following: (1) maintaining a U.S. military comparative advantage through export controls on strategic advanced logic and memory chips relevant for high performance computing and their associated fabrication, thereby reducing China's potential for military or dual-use chip development, and (2) denying chips to companies known to violate human rights and participate in China's military civil-fusion program. China is concerned that its dependence on U.S. semiconductor technology will jeopardize its industrial and technological development, and its national security priority dictates that domestic chips meet the rigid needs of most sectors in the event that supplies are cut off. In light of this, China and the United States should discuss clear "rules of the road" for what relates to national security in the semiconductor domain. While it is natural for governments to view national security through their own lens and for there to be definitional gaps, some progress can be made. For example, non-sensitive finished commercial chips not currently controlled by any existing international regime should generally not be considered to pose national security risks. Further, if one of the U.S. government's concerns is the military end-use of advanced semiconductor technology, then the two countries should explore credible and constructive implementation mechanisms for end-use verification monitoring for advanced chips. At the same time, the U.S. side believes that the Chinese government should consider revising relevant security laws and regulations to make clear that Chinese companies have the right to decide not to operate at the behest of the government including obligations to assist intelligence agencies and aid the operation of China's civil-military fusion program.

4. While track II dialogues, such as this one, are very important, active communication at the Track I level is essential to clarify each other's strategic objectives and avoid miscommunication. It is imperative to re-establish communication mechanisms at the Track I level, or, at the very least Track 1.5 level discussions.

RECOMMENDATIONS TO BOTH GOVERNMENTS

Based on their discussions, the two dialogue teams offer the following proposals to the governments of both nations.

In Data and Financial Services

1. Currently, the Beijing Pilot Digital Trade Zone, the Shanghai and Zhejiang Pilot Free Trade Zones, and the Hainan Free Trade Port have all formulated cross-border data transfer programs. We recommend that China and the United States build on this foundation and focus on typical application scenarios such as cross-border e-commerce, cross-border payment, supply chain management, and service outsourcing to explore safe, standardized, and credible models for cross-border data flow. Today, there are a number of examples of cross-border collaboration between commercial enterprises, including hardware and software sales and investment, that demonstrate the art of the

possible in this current environment.

2. The legislation on cross-border data flow in various countries is based on three main objectives: first, from the perspective of individuals, to pursue the protection of data privacy; second, from the perspective of industries, to promote the cross-border flow of non-sensitive data among enterprises to protect their commercial interests; and third, from the perspective of countries, to protect national security and development interests by maintaining data sovereignty and security. We recommend that both nations try to harmonize their domestic regulations as much as possible to avoid further decoupling in the digital economy sphere.

3. The cross-border transfer of data involves multiple constraints such as ethics/privacy and security, technical safeguards, market transactions, etc., and different countries' and regions' focus on different priorities. We suggest that both nations seek common ground on these multiple constraints as early as possible, reach a consensus on the definition and scope of data and its cross-border flows, promote the establishment of mutually beneficial institutional arrangements such as trustworthy and factually-based data cross-border rules, prevent restrictions set by countries, and protect and promote the orderly two-way flow of enterprise data across borders in both directions.

4. Environmental and medical research are safe data exploration fields with great room for cooperation. We suggest that the two countries establish pilot cooperation on the basis of privacy and data security through technical means such as "anonymization" and privacy preserving computing (e.g., support secure computation over encrypted data). Based on the experience gained from the pilots, cooperation could gradually be expanded.

In Semiconductors

1. Maintaining a healthy semiconductor industry ecosystem is of great significance to accelerate global economic recovery; the potential bilateral semiconductor trade and investment between China and the United States is far from being realized. We suggest that the United States rapidly increase trade opportunities for the Chinese side in non-sensitive areas (such as chips for cell phones (including 5G), PADs, TVs, where their end-use can be verified as strictly civilian), while the Chinese side also allow more opportunities for U.S. companies to enter the local market on a wholly-owned basis.

2. In view of the fact that the commercial technology of consumer electronics should generally not be subject to export controls, we recommend that the U.S. government, based on objective and impartial criteria and processes, continue to regularly assess the security concerns of companies included on the Entity List, and remove companies not involved in security risks from the list in a timely manner pursuant to appropriate U.S. legal and regulatory processes. As part of the above recommendations, we suggest that both governments learn from the experience of the PCAOB (particularly in the areas of on-site review of financial records in China, inspection of factories and determination that safeguards are in fact in place and that legal procedures can be trusted) to help establish a trusted "white list" of permitted semiconductors by reaching verification agreements and on-the-ground review.

3. It is unlikely in the near-term that China and the United States will agree to refrain from restrictions on high-performance semiconductors and associated technology used in sensitive areas such as strategic deterrence; therefore, we recommend that both governments discuss ways to permit greater room for cooperation by demarcating strategic vs non-strategic forms and applications of semiconductor technology. Both governments must accept the reality that many standard commodity semiconductor products and technologies used in today's military hardware equipment are dual-use and ubiquitous, and therefore should refrain, where possible, from imposing restrictions on such non-sensitive non-controlled for export commodity semiconductors. Both countries should also find ways to collaborate on AI applications involving semiconductors that do not pose security risks – ranging from climate change simulations to life science discoveries.

4. Commercial innovation and a healthy global semiconductor ecosystem will drive the next generation of technology breakthroughs. Therefore, we recommend that the legislative and decision-making bodies of both nations seek input from the private sector before implementing major policies and regulations that may have a significant impact on the global semiconductor industry.

5. In view of the U.S. side's concern regarding the dual-use nature of related products such as high-performance semiconductors on which it has imposed controls, we recommend consideration of a pilot program to permit limited Chinese users who can submit to a robust end-user verification and auditing program to use such chips strictly for civilian purposes such as in the life sciences. Such a pilot program could help build trust and confidence so that, in some limited circumstances, exports could be permitted of these high-performance semiconductors.

FUTURE AREAS OF COOPERATION

Given that trust between our two nations is at an extremely low point, the governments should find ways to improve communication to avoid future misunderstandings. There are many areas where the interests of the two nations align. The participants recommend that the two governments find ways to develop confidence building measures and cooperation in three critical areas to help further understanding and cooperation between our nations: green energy, healthcare, and food security. In each of these fields, there are specific issues that are amenable to U.S.-China cooperation, either through private sector efforts or through governmental initiatives. Matters that the two governments should deal with include: establishing guardrails for such cooperation, as well as frequent review of such efforts. We hope both governments will recognize the urgency of cooperating on these issues and take swift action to address these global challenges.

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