

THE US-CHINA BUSINESS COUNCIL

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China's Implementation of its World Trade Organization Commitments

**Written Testimony by the US-China Business Council
September 28, 2006**

**Submitted in response to the Office of the US Trade Representative's
Request for Comments and Notice of Public Hearing Concerning
China's Compliance with WTO Commitments
(Federal Register, Pages 42886-42887, July 28, 2006)**

OVERVIEW AND INTRODUCTION

China's entry into the World Trade Organization (WTO) was a landmark event in the bilateral trade relationship between China and the United States. China's entry agreement mandated market openings and other reforms that have significantly opened its economy to US exports and investment. The results have been clear: US exports to China in 2005 were \$41.8 billion—a figure more than twice as large as the \$19.2 billion of US exports to China in 2001, the year China joined the WTO. Moreover, the annual growth in US exports to China in the years since it joined the WTO has averaged more than 21 percent—more than twice as fast as any other major US export market during this time.

The importance of China's WTO entry for US companies is demonstrated in the recent annual survey of executives from US-China Business Council (USCBC) member companies. Eighty-two percent of USCBC survey respondents say that China's WTO entry has been meaningful for the operations of their companies in China.

US companies continue to give China guardedly positive marks on its implementation of WTO commitments. Eighty-three percent of respondents said China had done a "fair" or "good" job in implementing its WTO commitments. Four percent of respondents found China's WTO implementation efforts to be "excellent," while five percent rated China's efforts as "poor." These figures, in large part, match the findings of last year's USCBC survey.

Survey respondents identified the implementation of trading and distribution rights—the ability of a company to import and sell products in China directly without working through local intermediaries—as the most important of China's implemented WTO commitments. Respondents cited China's completed market openings in various sectors, tariff reductions, easing of restrictions on foreign ownership and investment, and some financial service reforms as the next most important WTO commitments that China has successfully implemented.

Respondents said the continuing inadequacy of intellectual property rights enforcement was China's most serious shortfall in meeting its WTO obligations. USCBC members also said that China has

failed to meet fully its commitments to open parts of its financial service sector to international competition, improve transparency, and fully apply national treatment to foreign firms.

As China approaches the end of the schedule established in its WTO entry agreement to implement market opening obligations, many of the market access concerns that are increasingly the focus of US companies are no longer the result of China not having implemented specific WTO commitments. Rather, these concerns focus on China's laws, policies, and practices that deviate from the WTO's national treatment principle, its inadequate protection of intellectual property rights, its insufficiently transparent legal and regulatory processes, and its opaque development of technical and product standards that may favor local companies. In all of these cases, the hurdles US companies must overcome result from China's falling short of full adherence to the general agreements of the WTO and not from an unwillingness to implement the specific commitments of its entry agreement.

Companies are also now confronting the fact that China's WTO entry agreement does not require it to lift certain market access restrictions. For example, foreign firms in China's securities and telecom sectors will continue to face broad barriers to involvement in China's markets even with the full implementation of China's WTO commitments. By opening these and other sectors that China may keep closed under the terms of its WTO entry agreement, China's economy would profit from the expertise and competition that would come with greater market access for foreign companies.

USCBC urges China to view its WTO commitments as a baseline for market reform and not as its full realization. China should implement its commercial obligations fully and comply with both the letter and the spirit of its WTO entry agreement. Moreover, to benefit even more from the dynamism that international experience and competition brings to its economy, China should go beyond its WTO commitments and open to foreign competition market sectors that China can keep restricted under its WTO entry agreement.

DISTRIBUTION RIGHTS: A 2006 SUCCESS STORY

USCBC member company executives ranked distribution rights—the ability to sell in China products imported or sourced from affiliated or third parties directly rather than through Chinese import-export agents and distributors—as the most important of the WTO commitments China has so far implemented. The key elements of China's distribution rights commitments were to be met by December 11, 2004, but China failed to implement these commitments in full and on time. USCBC's 2005 testimony to the Trade Policy Staff Committee, therefore, highlighted distribution rights as a main problem area in China's WTO implementation.

The slow pace of central government review of applications to establish foreign-invested commercial enterprises or to expand the scopes of existing foreign-invested enterprises to include distribution had been the main hurdle facing international companies trying to exercise this WTO-mandated right. This problem area largely disappeared in March 2006 when China's Ministry of Commerce devolved the right to grant these licenses to provincial authorities. While technical challenges remain, China's efforts in this area have done much to make distribution rights an effective reality.

Remaining technical challenges include difficulties faced by companies located in free-trade zones in issuing value-added tax invoices. In addition, existing foreign-invested manufacturers that have expanded their business scopes are limited to distributing goods similar to those they produce. Uncertainty over what constitutes "similar" goods has created difficulties for some companies seeking to exercise their distribution rights. In addition, existing manufacturers that have expanded their business scope to include distribution must ensure that no more than half of their revenue stems from their buy-sell activity.

The implementation of this commitment is enabling companies to improve the efficiency of their China supply chain management. As a result, many US companies are restructuring their legal entities to integrate their China operations into their global business more fully and efficiently.

STATUS OF “YEAR-FOUR” COMMITMENTS*

Positive Developments

China met on time or ahead of schedule the “year-four” market opening commitments (those set to be implemented by December 11, 2005), in the advertising, banking, insurance, and hospitality sectors. In advertising, China authorized the establishment of wholly foreign-owned enterprises (WFOEs). China also opened more cities to foreign banks to meet its obligations in that sector. In insurance, China lowered certain prudential requirements, though they remain high by international standards. In addition, China appears to have met its commitment to allow wholly foreign-owned restaurants and hotels.

Outstanding Concerns

Despite being more than nine months past the implementation deadline for its year-four commitments, China appears not yet to have met fully its obligations in a number of areas. For example, although China has issued regulations to meet its commitment to allow wholly foreign-owned freight inspectors, companies report being unable to obtain licenses. China also allows the establishment of wholly foreign-owned technical testing service providers, but places significant restrictions on such providers’ business activities, thus limiting the value of this commitment to companies in the sector. Similarly, the Ministry of Commerce published rules meeting the technical requirements of China’s WTO commitment in the freight forwarding sector, but the Civil Aviation Administration of China later issued a regulation that restricts the ability of wholly foreign-owned companies to book cargo space on international and domestic flights and therefore limits this market opening in ways that appear incompatible with China’s WTO commitment.

Restrictions in the courier services sector are also of concern. China’s WTO entry agreement requires it to allow wholly foreign-owned courier services to engage in any business “except for those [at the time of China’s WTO entry] specifically reserved to the Chinese postal authorities *by law*.” [Emphasis added] The only courier service meeting this criterion at the time of China’s WTO entry was the delivery of “private letters.” USCBC understands, however, that China may be close to finalizing a postal law that may exclude foreign courier service providers entirely from the domestic express delivery market and from international deliveries of packages with a mass of less than 150 grams. Although these activities may have been by policy and practice the sole domain of the PRC postal authority at the time China joined the WTO, they do not meet the strict requirement established in China’s WTO entry agreement.

ANTICIPATED ISSUES REGARDING “YEAR-FIVE” COMMITMENTS†

The deadline for China to meet its “year-five” commitments—those due by December 11, 2006—has not yet arrived. Past experience suggests China will wait until the deadline is close to issue regulations implementing many of these openings. USCBC encourages China to implement all of its year-five commitments in full and on time.

* See the attached scorecard for a detailed listing of the status of China’s implementation of its year-four and year-five WTO commitments.

† See the attached scorecard.

Although no year-five commitment can at this point be deemed outstanding, some warning signs point to potential complications for international companies hoping to take advantage of market openings China has committed to undertake by the end of 2006.

Banking

China's year-five commitments call for a set of important market openings in the banking industry. Currently, while foreign banks may, with regulatory approval, establish branches in any city to provide foreign currency services, banks are permitted to offer local currency banking services in only a handful of cities. China has, however, opened more cities to foreign banks providing local currency services than its WTO agreement requires. Although these banks may provide local currency services to foreign individuals, foreign companies, and Chinese companies, they may not offer local currency services to Chinese individuals. China is required to remove both of these restrictions, as well as any nonprudential restrictions on ownership forms, by December 11, thereby enabling foreign banks to establish branches in any Chinese city to provide local and foreign currency services to any customer. China's WTO commitments do not address the issue of foreign ownership of existing domestic banks, which is capped at less than 20 percent for any single foreign investor and 25 percent for total foreign ownership.

Although executives at international banks generally expect that China will meet these commitments, a recent proposal from the China Banking Regulatory Commission creates some concern. Based on prudential criteria, the proposal would give preference in licensing decisions to domestically established subsidiaries of foreign banks ahead of branches of foreign banks attached directly to the home office. In addition, while allowing domestically established subsidiaries of foreign banks to engage in the full range of local currency transactions, the proposal would restrict the renminbi (RMB) business of branches of a foreign bank to taking deposits of over RMB 1 million (\$125,800). Other countries, including the United States, also restrict what services foreign banks that do not domestically incorporate may offer. Nevertheless, if implemented, this proposal could make expansion in China more expensive and cumbersome for foreign banks than had been anticipated.

More broadly, securing a license under current rules to establish operations in a new city can take as long as a year. In addition, some bankers report that China's regulators employ a strategic approach when reviewing license applications, seeking to encourage foreign investment in poorer inland cities both to develop these areas and to lessen the foreign competition Chinese banks face in coastal cities. Bankers generally expect these hindrances to remain after China meets the technical requirements of its WTO commitments at the end of the year. In part because of these forecasts, only a few international banks plan to develop nationwide branch networks in China.

Electronic Payment

Similar to its commitments regarding general banking services, China's WTO entry agreement requires it to lift by December 11, 2006 geographic and client restrictions on "[a]ll payment and money transmissions services, including credit, charge and debit cards..." for local currency transactions. Currently, international electronic payment processors are limited in China to offering co-branded payment cards with China UnionPay, a payment processing monopoly established in 2002 by the People's Bank of China and owned by 80 Chinese banks. Under this system, the international company's processing network is used for foreign currency transactions outside of China while China UnionPay's network is used for all other transactions. China's WTO commitment in this sector has typically been interpreted to mean that banks in China should be allowed to choose to issue payment cards managed by either international or domestic service providers and that international companies should be allowed to process foreign and local currency transactions independently.

Officials at the People's Bank of China, however, have asserted that China's WTO entry agreement requires only that it allow foreign banks in China to issue payment cards for local currency transactions managed by China UnionPay and that it may maintain China UnionPay's monopoly on the domestic processing network. Moreover, these officials have also indicated an intention to abolish the current dual-network system. If Beijing implements its WTO commitment in the manner described by these officials and also eliminates the dual-network system, US electronic payment processing companies will, in effect, be blocked from operating in China.

Oil Wholesale

China is meant to allow wholly foreign-owned enterprises to distribute petroleum products on the wholesale market after December 11, 2006. This should mark a significant market opening for US energy companies. In the retail market for petroleum products, China's WTO entry agreement allows it to impose a cap of 30 retail stations on the retail networks of foreign energy companies, though there is some debate as to whether this cap was meant to apply at the municipal, provincial, or national level. These WTO-sanctioned restrictions make the commitment to open the wholesale market all the more important. Without it, energy companies would, in effect, be all but blocked from the downstream market. Reports indicate, however, that draft regulations to implement this commitment could leave potential wholesalers facing significant hurdles to establishing their businesses.

BROADER WTO ISSUES

In its annual survey, USCBC asked its member company executives to rank the principal issues affecting their operations in China, whether WTO-related or not. Many of the operating issues identified in the survey are not WTO-related. Indeed, respondents ranked challenges in attracting and retaining local employees as their most important operating issue. Other issues identified by USCBC executives, while not related to a specific market opening requirement established in China's WTO entry agreement, are nonetheless the result of a general shortfall in meeting broader WTO principles and as such merit the attention of the Trade Policy Staff Committee.

National treatment

Since China joined the WTO, market openings have provided increasing opportunities for international businesses. Nonetheless, USCBC member company executives report numerous examples of departures from WTO's national treatment principle, which requires governments not to discriminate against foreign companies exporting to or producing in their country. These examples can generally be grouped into three areas.

- ***Administrative licenses and business approvals*** Executives at USCBC member companies ranked problems encountered when applying for business and product licenses and other forms of government approval as the top issue affecting US companies operating in China. In some cases, these problems simply result from resource and coordination challenges faced by PRC regulators that slow the processing of applications—a non-WTO matter. But in other cases, executives at US firms believe PRC officials may be using their regulatory authority to prevent or delay the entry of foreign competition into a market to protect domestic companies.

For example, while the China Insurance Regulatory Commission (CIRC) reviews applications submitted by international insurers to open multiple new branches consecutively, it reviews applications of domestic firms concurrently. As the review process typically lasts approximately eight months, according to insurance company executives, CIRC has, in effect, limited the expansion of international insurers in China to one new branch per year while facilitating the expansion of Chinese companies. This practice severely restricts the effect of China's year-three WTO commitment to lift geographic restrictions on international insurers.

As noted above, banks face similar impediments to expanding their branch networks in China. These licensing challenges warrant close monitoring of China's implementation of its year-five commitments in the banking sector.

The process of granting licenses for the import of controlled chemicals also appears to discriminate against foreign companies. Chinese importers can obtain the required licenses from a local branch of the Ministry of Commerce within two to three weeks of filing the required documentation. Foreign companies seeking to import controlled chemicals into China, in contrast, must obtain licenses from the Ministry of Commerce's central office; the process can take from four to six weeks. This discrepancy puts foreign companies at a competitive disadvantage. In a separate issue affecting US companies involved with chemicals, China's State Environmental Protection Administration requires foreign companies to file newly created chemicals in a cumbersome registration process while apparently exempting some local companies.

In these instances and others, China appears to meet the letter of WTO-mandated market openings in certain sectors but establishes new barriers that prevent foreign companies from effectively participating in the sector—while at the same time facilitating domestic competitors.

- ***Discriminatory laws and policies*** Recent public policy debates in China have indicated a dampening of enthusiasm in some quarters for foreign participation in the economy. Some in China also appear to want to expand the government's role in directing the economy and in developing internationally competitive Chinese enterprises, while also restricting the role of international companies in certain sectors.

Between February and April of this year, China's State Council issued guidelines and supplementary notices on China's technological development through 2020. US companies generally welcome China's scientific and technological progress. Moreover, many of the policies China's government has outlined could benefit American companies operating in China by increasing the protection of intellectual property rights as a means of promoting innovation and deepening the pool of Chinese science and technology talent. Other goals of China's technology policy are more troublesome for international companies, however. The guidelines establish that China should use government procurement both to support domestic companies and to bring foreign technologies to China that Chinese enterprises do not yet have. As China is not yet a signatory to the WTO Agreement on Government Procurement, China is not required to grant national treatment in procurement decisions. These policies, therefore, do not necessarily violate specific WTO rules. Nevertheless, they call into question the commitment China made at the time of its WTO entry to sign the government procurement agreement "at the earliest possible time" and the commitment it made at the 2006 session of US-China Joint Commission on Commerce and Trade to begin formal negotiations by the end of 2007 on signing the agreement. US officials should prioritize these negotiations to ensure that US companies have access to China's government procurement market on a WTO-consistent basis.

Of more immediate concern for international companies has been the greater scrutiny being applied to foreign companies seeking to purchase existing Chinese enterprises. A number of high-profile transactions appear to have encountered complications. The State Council Opinion on the Revitalization of the Equipment Manufacturing Industry, issued in February 2006 and re-released in June, envisions greater state intervention in a number of economic sectors and could create new hurdles for foreign acquisitions of domestic enterprises building engines, power generating equipment, integrated circuits, shipping equipment, and in several other industries. In August 2006, the Ministry of Commerce released new regulations on mergers and acquisitions that would submit for government approval foreign acquisitions of "well-known" Chinese companies and brands, and give the ministry a

broad authority to block transactions that adversely affect “national economic security,” a term which the regulations leave undefined. WTO rules recognize the right of countries to restrict investment based on legitimate national security concerns, but these restrictions should be narrowly construed.

At the close of the March 2006 meeting of China’s National People’s Congress, Premier Wen Jiabao stated that China should “consistently and unswervingly press ahead with reform and opening.” USCBC welcomes this clear statement in support of market openings but nonetheless urges close monitoring of the implementation of these policies.

- ***Unequal enforcement*** US businesses operating in China continue to face an unequal enforcement environment that places them at a competitive disadvantage to their Chinese competitors. For example, while US companies generally hold themselves to the highest environmental, health, workplace safety, and other standards—often going beyond what is required by PRC law—many Chinese competitors appear to fall short of PRC law in these areas, reducing their investment and other costs associated with full compliance. Enforcement authorities, mainly at the local and provincial level, appear to focus the bulk of their attention on US and other foreign companies. Similarly, while US companies in China typically comply with their PRC tax obligations, domestic enterprises appear to be able to avoid full compliance without repercussions. Looking ahead, a key concern of US companies with China’s forthcoming Antimonopoly Law is that PRC regulators will target foreign companies that meet the law’s criteria for market dominance more aggressively than domestic firms of similar size in China. Although it is difficult to establish with certainty the presence of a policy of unequal enforcement, the need exists to impress upon China the importance of equal enforcement of business regulations.

Intellectual property rights enforcement

Like all WTO members, China is required to provide legal protection against intellectual property infringement and to provide penalties for enforcement that are sufficient to deter future violations. Despite this, inadequate protection for intellectual property continues to impede US companies in China. USCBC survey respondents ranked intellectual property rights (IPR) enforcement as China’s most serious shortfall in implementing its WTO commitments.

The ineffectiveness of China’s IPR enforcement regime stems in part from China’s reliance on administrative authorities, which are able to impose only very low penalties to enforce IPR laws, instead of relying on the court system, in which civil suits and criminal prosecutions could impose higher penalties on IPR infringers. PRC courts handled only 385 IPR-related cases in 2004, according to China’s 2005 White Paper on IPR. In contrast, local copyright administrations resolved nearly 9,500 copyright infringement cases, local administrations of industry and commerce handled nearly 52,000 trademark violations, and local patent administrations dealt with roughly 10,000 patent infringement cases. While government agencies are generally responsive to the requests of IPR holders to take administrative actions against infringers, the low penalties these government bodies can impose without court authorization serve as only a minimal deterrent to future infringements.

Beijing has taken a number of steps to address these and other issues that limit the effectiveness of its IPR enforcement. In March 2006, China’s National IPR Working Group, an interagency body under the State Council and chaired by Vice Premier Wu Yi, issued its 2006 IPR Protection Action Plan. While much of the plan focuses on ways to promote innovation, it also expresses an intention to boost enforcement activities. Most of the plan’s provisions are still in the implementation process, so its effectiveness cannot yet be fully determined.

Stemming from the action plan, China’s Supreme People’s Procuratorate, the Ministry of Public Security (MPS), the Ministry of Supervision, and the Leading Group on National Rectification and

Standardization of Market Order jointly issued an opinion in March 2006 to facilitate the transfer of IPR cases from administrative agencies to public security bureaus for criminal investigations. MPS and the General Administration of Customs in March 2006 also jointly issued rules to boost coordination in IPR cases involving products scheduled for export. China has also conducted a handful of special IPR enforcement campaigns in accordance with the action plan. These include Mountain Eagle, aimed at copyright violators; Sunshine, designed to clear cities of pirated recorded materials; and Blue Sky, targeted at individuals who distribute infringing products at trade fairs.

Despite these steps, more than half of USCBC 2006 survey respondents said there had been no improvement in China's enforcement of IPR in the past year. China's use of value thresholds to determine whether IPR infringers face criminal charges reduces the efficacy of Beijing's recent steps to facilitate criminal prosecutions of IPR violators and contributes to the sentiment of US businesses. These thresholds, although lowered in China's Supreme People's Court (SPC) December 2004 judicial interpretation, provide a loophole for IPR infringers to escape criminal prosecution by, for example, keeping the value of inventory stored at any one location below the threshold level. Moreover, calculations to determine whether the thresholds have been met are based on the price of the counterfeit product rather than that of the legitimate—and higher priced—product it imitates. China's use of numerical value thresholds appears to be inconsistent with its commitments as a signatory of the WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS), which calls for criminal sanctions in all cases of IPR violations on a "commercial scale." SPC is reviewing its 2004 judicial interpretation as part of the action plan; US officials should press for a TRIPS-consistent application of criminal sanctions on IPR violations.

Transparency

There can be no question that China's legislative and regulatory processes today are far more transparent than before. Nevertheless, as US companies expand their business operations in China, the need to have a clear understanding of China's legal and regulatory environment has substantially increased.

Limited transparency creates uncertainty and confusion for US companies. Indeed, most of the problems in obtaining licenses noted above are exacerbated by the opacity of China's regulatory bodies. For example, current challenges associated with the State Administration of Industry and Commerce's decision early in 2006 to cease registering liaison offices of foreign-invested enterprises stem in part from the fact that the decision was conceived without input from the companies it most affects.

Companies seeking licenses to engage in direct selling (referred to as "sales away from a fixed location" in China's WTO entry agreement) have also encountered licensing obstacles made more difficult by the lack of transparency. Regulatory changes to authorize direct selling came about one year after the WTO-mandated deadline of December 11, 2004 and appeared to contradict international norms. Although in March 2006, US direct seller Avon Products, Inc. received its business license, and in July 2006, Nu Skin Enterprises, Inc., also a US firm, received its license to conduct sales away from a fixed location, the applications of several direct sellers remain pending, with little to no transparency in the government approval process. Moreover, recent draft regulations issued by the Ministry of Commerce could, if implemented, add new layers of bureaucracy to the approval process.

There were some important instances of increased transparency in 2006. China's National People's Congress (NPC) solicited comments in March 2006 on the proposed Labor Contract Law and in June 2006 on the proposed Antimonopoly Law—although in the latter case only from members of the China Association of Enterprises with Foreign Investment (CAEFI). In addition to the request for comments via CAEFI, the NPC has held an ongoing dialogue with foreign companies and experts on

the Antimonopoly Law. China's government ministries and agencies also at times sought comments from international companies. For example, in August 2006, the State Intellectual Property Office solicited comments on draft revisions to China's patent law. The Ministry of Commerce solicited comments on measures governing the establishment of direct sales companies in August 2006, on revisions to China's regulations on foreign-invested venture capital firms in July 2006, and on online transactions in May 2006. The China Securities Regulatory Commission in May 2006 sought comments on its revisions to rules on buyouts of publicly trade companies.

Other regulations affecting US companies came into force without the government seeking input. For example, in July 2006, the Ministry of Information Industry imposed without advance notice new rules for the value-added telecom service sector. The China Insurance Regulatory Commission issued in July 2006 without soliciting public comment qualification requirements for senior managers of insurance companies. In addition, the Ministry of Commerce imposed in August 2006 without prior notice requirements regarding the training and recruitment of direct sales agents.

In a move that may in time help institutionalize the instances of transparency cited above, in April 2006, China's State Council issued a decree requiring all government bodies to report any regulations affecting trade to the Ministry of Commerce for publication in its official gazette. This is a welcome step toward a more transparent regulatory regime, but its immediate effects should not be exaggerated. First, the decree makes no stipulation regarding when government agencies must report their regulations. Second, the decree does not give the Ministry of Commerce the authority to ensure that other agencies are submitting regulations. To date, the gazette's scope appears far from complete. Finally, the gazette is intended for final regulations and not for drafts, so this development will not necessarily increase the opportunity for companies to provide input on policies that affect their operations.

Standards

China's technical, safety, and product standards, as well as the procedures for establishing these standards and ensuring a product's compliance with them, continue to concern American companies.

China is seeking to encourage the development of domestically owned technical standards in an effort to reduce its reliance on foreign technology. It is natural that China as a large producer of and market for a wide range of goods should take an increased role in establishing new international technical standards. In doing so, however, China should abide by its obligations under the WTO Agreement on Technical Barriers to Trade to adopt standards based solely on scientific criteria and not as a tool of trade or industrial policy.

In some instances, China's "homegrown" technical standards appear designed to assist domestic companies at the expense of international competitors. The most prominent example of this was largely China's attempt in 2004 to impose the wireless authentication and privacy infrastructure (WAPI) wireless computer network standard as a mandatory national standard. Although this issue was resolved at the 2004 session of the Joint Commission on Commerce and Trade (JCCT), WAPI reemerged in December 2005 when Beijing announced that products using WAPI technology should be given preference in government procurement. The effect of this policy so far appears limited, however. China's declaration in February 2006 of TD-SCDMA as the "national standard" for third-generation mobile telecom technology raises concerns that Chinese mobile telecom operators will face government pressure when deciding what technology to employ in their networks. China agreed at the 2004 session of the JCCT to adhere to "technology neutrality" and to allow mobile operators to choose independently which type of third-generation technology they would adopt. Unlike WAPI, however, the TD-SCDMA standard enjoys support from some international companies. China's interest in developing a native technology for radio frequency identification devices could also create significant

challenges for US businesses producing in, exporting from, and importing to China if Beijing makes it difficult for companies to use the existing—and widely adopted—international standard for these devices.

Related to but separate from these issues surrounding the development of technical standards are concerns regarding safety and product standards and the means by which products are tested for compliance. China is implementing new standards governing hazardous substances in electronic products, energy efficiency, and others. Most concerns in this regard focus on limited transparency in the process of drafting standards and possible uneven enforcement for domestic and international companies. Medical device manufacturers are particularly concerned about testing requirements. China partly addressed this issue in the wake of the 2006 JCCT, declaring that devices would be subject to just one test rather than two. But concerns remain, since two regulators will still need to certify a device's compliance. Raising more explicit concerns regarding China's adherence to WTO requirements, international companies may not participate in a program the Standards Administration of China announced in May 2006 to recruit a group of domestic companies to help draft new standards for household appliances.

Finally, US companies wanting to obtain the China Compulsory Certification (CCC) for their products continue to face delays, in part because of restrictions China places on foreign standards organizations to conduct CCC inspections and audits.

OTHER ISSUES FOR MONITORING

Two possibly emerging issues warrant close monitoring by US officials to ensure that China's policies in these areas are not inconsistent with WTO principles.

Retailing

Looking ahead, foreign retailers may face hurdles to expanding their operations in China. Retailers must apply to municipal authorities for approval to open new stores. A proposal issued in August 2006 by China's Ministry of Commerce could make it easier for municipal governments to reject these applications on the grounds that the new retail store would "disrupt" existing local commerce. Although the new metric would apply to both domestic and foreign retailers, foreign retailers are concerned they will be disproportionately affected because of a desire on the part of some local officials to protect local retailers from foreign competition. Such a practice would limit the benefits international retailers can obtain from China's year-three WTO commitment to remove most restrictions in that sector.

Express delivery

Express delivery companies could also experience new barriers as a result of policy changes currently under consideration. These companies currently operate under licenses issued by the Ministry of Commerce and separate requirements issued jointly by the State Postal Bureau and the State Administration of Industry and Commerce (SAIC). USCBC understands that PRC authorities may be considering giving an independent licensing authority to the State Postal Bureau. Given the dual nature of the State Postal Bureau as regulator and service provider—despite recent steps toward separating the two functions—it is possible that without the restraining influence of SAIC, the bureau will use its expanded authority to impede the development of foreign express delivery providers.

BEYOND THE WTO SCHEDULE

Most of China's major WTO commitments have already been implemented or are scheduled to be implemented by the end of this year. Nevertheless, even after China meets the obligations established

in its WTO entry agreement, US companies will likely continue to face market access hurdles in sectors not fully opened by China's package of WTO commitments. Two such industry sector examples are noted below.

Securities

Foreign firms operating in the securities sector recognize that China's WTO accession commitments were an important first step toward the liberalization of the country's capital markets, but these firms continue to face significant restrictions on their ability to operate in China. Foreign securities firms are limited to minority joint ventures with ownership levels capped at 33 percent; foreign participation in China's asset management sector is limited to no more than 49 percent ownership of domestic fund management firms. In addition to ownership restrictions, these firms' operations are also restricted. For instance, they are not permitted to trade and sell in the most liquid domestic market: RMB-denominated A shares. Foreign entities are also restricted in many cases from trading RMB and RMB-linked products with other enterprises in China.

Further openings in this sector should be implemented. Foreign firms, whether securities firms or commercial banks, should have the right to participate fully in the securities sector, either through a wholly owned entity or through other ownership forms of their choice, without geographic limitation—including the fundamental right to sell and trade A shares. In addition, foreign entities should be permitted full rights to offer RMB and RMB-linked products to foreign and domestic enterprises in China.

The efficient allocation of capital is a precondition for robust economic growth and job creation in China. As part of its effort to modernize its financial sector, China has embarked on a long-term effort to develop deeper and broader domestic bond and equity markets as a complement to bank intermediation for savings and investments. By adopting the measures itemized above, China would enable foreign securities firms to contribute to the development of Chinese financial markets through shared expertise on the infrastructure and techniques needed to serve clients effectively. Foreign firms can also assist in the creation of new products and services while demonstrating the benefits of high corporate governance standards.

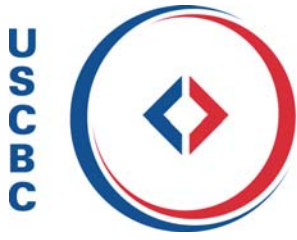
Telecom

China's WTO entry agreement provides only minimal market openings for US telecom providers. Even after China fully implements the commitments established in its WTO entry agreement in this sector, foreign investment in telecom service providers will be limited to at most 49 percent. As such, China's telecom sector has seen only limited involvement from US service providers. Moreover, China's Ministry of Information Industry issued a notice in July 2006 to close off a narrow avenue by which some international companies had managed to enter the market for value-added telecom services. Most countries, including the United States, impose some restrictions on foreign involvement in the telecom sector, but China's restrictions go well beyond international norms. Illustrative of this, US restrictions on foreign telecom providers include neither limits on the scope of services that can be offered by foreign companies approved to operate in the United States nor exorbitant capitalization requirements. China should go beyond the obligations of its WTO entry agreement and allow greater market access for US and other foreign telecom companies. By doing so, China would benefit from the advanced techniques that come with the experience these companies could bring to China.

CONCLUSION

In its almost five years of WTO membership, China has adopted policies resulting in a far more open, predictable, and profitable business environment for US companies exporting to and operating in China. Nevertheless, significant market access barriers remain in many industries and some signs

point to the emergence of new hurdles for US companies. As China reaches the end of the market-opening schedule it committed to in its WTO entry agreement, USCBC urges China to implement these commitments in full—adhering both to the letter and spirit of its market access obligation. USCBC also encourages China to look ahead to the next five years and view its work so far as the foundation for future reforms and market openings and not as the finish line.



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The chart below reflects the US-China Business Council's best efforts to track the status of China's year-four and five service sector commitments, as of September 14, 2006.

China's WTO Commitments Due on December 11, 2005	Status and Relevant Laws
Advertising	
Allow wholly foreign-owned enterprises (WFOEs) in advertising services	Done. Allowed under the Management Rules on Foreign-Invested Advertising Companies, issued by the PRC State Administration of Industry and Commerce (SAIC) and the Ministry of Commerce (MOFCOM) in March 2004 and effective on January 1, 2005.
Banking	
Expand geographic scope of local currency business for foreign financial institutions to include Shantou, Guangdong; Ningbo, Zhejiang; Shenyang, Liaoning; and Xi'an, Shaanxi	Done. The China Banking Regulatory Commission (CBRC) announced on December 5, 2005 that it would allow foreign banks to expand their local currency business into Ningbo and Shantou. In fact, China went beyond its WTO commitments and opened five other cities—Changchun, Jilin; Harbin, Heilongjiang; Lanzhou, Gansu; Nanning, Guangxi; and Yinchuan, Ningxia—in December 2005.
Insurance	
Lift compulsory cession requirements on foreign non-life insurers Lower total asset requirement of foreign insurers to \$200 million	Done. According to US-China Business Council sources at the China Insurance Regulatory Commission (CIRC), foreign-invested insurers no longer need to cede to the China Reinsurance Corp. a portion of the lines of the primary risk for non-life, personal accident, and health insurance. CIRC also lowered the minimum required total asset level for an insurance brokerage license from \$300 million to \$200 million; the lower asset requirement took effect December 11, 2005.
Other	
Allow WFOEs in courier services (except for those specifically reserved to the PRC postal authorities by law)	WFOEs allowed, but restrictions are imposed on the scope of business operations that appear to contradict the WTO commitment.
Allow WFOEs in technical testing services and freight inspection services (excluding statutory inspection services)	WFOEs allowed in technical testing services, but restrictions are imposed on the scope of business operations. Regulations have been issued that allow WFOEs in freight inspection services, but companies report being unable to obtain licenses.
Allow WFOEs in hotels and restaurants	Done.
Allow WFOEs in freight forwarding agency services Apply national treatment to capitalization requirements for foreign freight forwarding agency services	MOFCOM released the Administrative Measures on Foreign Investment in International Freight Forwarding Agency Services on December 9, 2005, but the Civil Aviation Authority of China later issued regulations that restrict the ability of foreign companies to book air cargo space.

China's WTO Commitments Due on December 11, 2006**Status and Relevant Laws****Advertising**

Allow WFOEs in advertising services

Done. Regulation on Management of Foreign-Invested Advertising Companies, issued by SAIC and MOFCOM in March 2004, took effect on December 10, 2005.

Architectural, engineering, and urban planning services

Allow WFOEs in architectural, engineering, integrated engineering, and urban planning (except general urban planning) services.

WFOEs allowed in urban planning by Regulation and Management of Foreign-Invested Urban Planning Services, issued in February 2003 by the Ministry of Foreign Trade and Economic Cooperation and the Ministry of Construction and effective from May 1, 2003. Draft Administrative Measures on Foreign-Invested Construction and Engineering Service Enterprises released by MOFCOM in October 2005 would allow engineering, integrated engineering, and architecture WFOEs. Final measures not yet issued.

Banking

Lift all geographic restrictions on local currency business for foreign financial institutions

CBRC circulated a draft proposal in August 2006 that would require foreign banks to establish domestically incorporated subsidiaries to take full advantage of these openings. CBRC expected to release detailed rules in November 2006.

Allow foreign financial institutions to provide services to all Chinese clients

Remove any non-prudential measures restricting ownership, operation, and juridical form of foreign financial institutions

Distribution and retail

Allow joint venture and WFOE wholesalers and commission agents to distribute chemical fertilizers, processed oil, and crude oil

Draft regulations would allow WFOEs but could impose restrictions on the scope of business operations.

Allow WFOE retailers with 30 or fewer outlets to sell chemical fertilizers

Draft regulations meeting this commitment are not known to exist.

Allow foreign majority-owned chain retailers with more than 30 outlets to sell motor vehicles

Draft regulations meeting this commitment are not known to exist.

Insurance

Allow WFOEs in reinsurance and large scale commercial risk insurance, as well as in international marine, aviation, and transportation insurance and reinsurance

Some types of reinsurance allowed under the Administrative Regulations on Reinsurance Business, which were issued by CIRC and took effect December 2005, but the regulations do not cover all elements of this commitment.

Telecom

Lift all geographic restrictions on mobile voice and data services for foreign joint ventures

Draft regulations meeting this commitment are not known to exist.

Expand geographic scope for listed domestic and international telecom services to include Chengdu, Sichuan; Chongqing; Dalian, Liaoning; Fuzhou, Fujian; Hangzhou, Zhejiang; Nanjing, Jiangsu; Ningbo, Zhejiang; Qingdao, Shandong; Shenyang, Liaoning; Taiyuan, Shanxi; Wuhan, Hubei; Xiamen, Fujian; and Xi'an, Shaanxi; raise foreign ownership cap to 35%