

**THE US-CHINA BUSINESS COUNCIL**

美中贸易全国委员会

**China's Implementation of Its World Trade Organization Commitments  
An Assessment by the  
US-China Business Council**

**Trade Policy Staff Committee Hearing  
September 27, 2007**

**OVERVIEW AND INTRODUCTION**

China's entry into the World Trade Organization (WTO) in 2001 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 2006 were \$55.2 billion—an increase of 187 percent since 2001, the year China joined the WTO. China is now the fourth-largest market for US exports, compared with its position as ninth-largest at the time of WTO entry, and is our third-largest market if combined with Hong Kong.

US-China Business Council (USCBC) member companies consistently say that China's WTO entry has been vital to their success in China. In a survey of USCBC members in 2006—the last year of China's schedule of market openings—82 percent said that China's WTO entry was beneficial to their business. Reduced tariffs, the elimination of import licenses and quotas, the opening of more sectors to foreign participation (especially services sectors), and the easing of restrictions on business operations, have all greatly benefited American companies and will continue to do so in the years ahead.

As China has reached the end of WTO-scheduled market opening obligations, many of the market access concerns on which US companies increasingly focus are no longer the result of China's failure to implement 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 these cases, the hurdles US companies must overcome result from China's falling short of full adherence to the general principles of the WTO and not from an unwillingness to implement the specific commitments of its entry agreement (although this testimony will also identify specific commitments not yet fulfilled).

As companies continue to experience success in providing goods and services to the Chinese market, they will likely encounter sectors and industries where there is no specific, required WTO market opening. USCBC hopes that PRC authorities will adopt the guiding spirit of WTO principles to ensure that sectors outside the scope of its specific WTO commitments also benefit

from increased transparency, national treatment, and liberalization. By opening these sectors, 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.

## **SUCCESS STORY: DISTRIBUTION RIGHTS**

Trading and distribution rights were arguably the most important cross-sectoral opening in China's WTO entry agreement. Trading and distribution rights in essence allow a foreign company to sell product in China from any supplier—related party or third party, domestic or overseas—as well as maintain and control inventory in-country. Previously, foreign companies could only sell directly in China product they themselves made in China.

Companies initially ran into licensing issues as they sought to adopt this 2004 commitment. Barriers to achieving distribution rights ranked second in USCBC's survey of top problems that year. As China made improvements to the distribution and trading rights regulatory regime, distribution rights dropped to the seventh-ranked problem last year. This year, the issue has entirely dropped out of the list of top ten concerns for US companies operating in China. Not all distribution rights issues are resolved—some product scope issues and direct selling issues remain, for example—but PRC authorities should be applauded for their efforts to enable foreign companies to trade and distribute product. In this year's USCBC survey, 83 percent of respondents said that distribution rights have improved their company's ability to access customers and suppliers in China.

## **STATUS OF “YEAR-FIVE” COMMITMENTS\***

China is generally considered to have met several “year-five” market opening commitments (i.e. the fifth year of scheduled commitments in the 2001 entry protocol), in the advertising, banking, architectural, engineering, urban planning services, insurance, distribution, and telecom sectors. Nevertheless, US companies have expressed concern over some implementation aspects of these commitments.

In advertising, China met its commitment to allow wholly foreign-owned enterprises (WFOEs) in advertising services well ahead of time under the Management Rules on Foreign-Invested Advertising Companies, a regulation that was issued by the PRC State Administration of Industry and Commerce (SAIC) and Ministry of Commerce (MOFCOM) and that took effect on January 1, 2005.

In architectural, engineering, and urban planning services, WFOEs were allowed in the urban planning sector under regulations issued by the Ministry of Construction (MOC) that took effect in May 2003. And, although delayed, MOC issued implementing regulations for Decree 114 in January 2007 that enabled foreign companies to set up wholly foreign-owned construction engineering design enterprises. These implementing regulations substantially improved the

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

climate for foreign companies by enabling them, for example, to cite overseas project experience in the initial application process.

China's year-five commitments also called for a set of important market openings in the banking industry. The China Banking Regulatory Commission (CBRC) issued in December 2006 regulations detailing how foreign banks could establish domestically incorporated subsidiaries to provide full local currency business to all clients. Beginning in April 2007, foreign banks were beginning to receive approvals to offer local currency services under these regulations. In addition, regulators removed remaining geographic restrictions and non-prudential measures restricting ownership, operation, and juridical form of foreign financial institutions.

## **Outstanding Concerns**

Despite being more than nine months past the implementation deadline for its year-five commitments, China appears not yet to have met fully its obligations in several areas or have implemented regulations that do not appear to comply with the letter or spirit of its WTO commitments.

### *Electronic Payments*

Similar to its commitments regarding general banking services, China's WTO entry agreement required 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 by December 11, 2006. In response to the US government's continued urging of China to meet its WTO obligations, China announced at the May 2007 Strategic Economic Dialogue (SED) that it will allow foreign banks and financial institutions to issue local currency credit and debit cards immediately but only as long as they carry the China Union Pay (CUP) logo.

Although China's WTO obligations provides for unrestricted market access and national treatment for financial services including electronic payments, CUP remains the only national payment system. Officials at the People's Bank of China (PBOC) 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 CUP and that it may maintain CUP's monopoly on the domestic processing network. If Beijing implements its WTO commitment in the manner described by these officials US electronic payment processing companies will, in effect, be blocked from operating in China.

### *Distribution and Retail*

China's WTO commitments required the removal of several hurdles for WFOE and joint venture companies in various aspects of distribution and retail operations. In particular for year-five, the agreement required China to allow foreign majority-owned chain retailers with more than 30 outlets to sell motor vehicles. Regulations meeting this commitment are not known to exist. In addition to these year-five commitments, other concerns remain for foreign retailers in China as described below.

### *Insurance*

While there has been progress in the insurance sector, most notably the license approvals of branches of several foreign insurance companies on August 1, 2007, China is falling short of fully implementing its insurance-related WTO commitments. For example, part of the year-five requirements was to allow WFOEs in reinsurance and large scale commercial risk insurance, as well as in international marine, aviation, and transportation insurance and reinsurance. While some types of reinsurance are allowed under the Administrative Regulations on Reinsurance Business, which took effect December 2005, the regulations still do not cover all elements of this commitment. In addition, insurance companies remain concerned about the approval of branching licenses, as noted in the next section on outstanding prior-year commitments.

### *Telecommunications*

China's year-five commitments included a pledge to lift all geographic restrictions on mobile voice and data services for joint ventures, expand the geographic scope for listed domestic and international telecom services to include a specific list of 12 urban areas, and raise the foreign ownership cap to thirty-five percent. Draft regulations that would meet any of these commitments are not currently known to exist.

### *Engineering & Construction*

The Ministry of Construction's release of implementing regulations for Decree 114, although late, was an important factor in meeting the Dec. 11, 2006 commitment to allow WFOEs in engineering and construction activities. However, ambiguous wording in the implementing regulations leaves open the possibility that PRC regulators could limit foreign participation in the future. For instance, the implementing regulations list as "temporary" certain allowances for foreign companies, implying that MOC could simply revoke those allowances at its discretion.

## **OUTSTANDING COMMITMENTS FROM PAST YEARS**

In addition to unfulfilled commitments from December 11, 2006, USCBC would like to highlight commitments from past years that PRC regulators have yet to implement fully.

### *Distribution and Retail*

If foreign retailers have more than 30 stores in China; sell specific products such as books, magazines, grain, or vegetable oil; or sell multiple brands from multiple suppliers they can only do so through minority-owned joint ventures. These requirements impede the ability of foreign retailers to take full advantage of retail opportunities. Moreover, draft regulations that allow localities to reject licenses for new retail outlets based on possible disruption of existing local commerce appear designed to limit foreign retailers' ability to fully access the market. Applications from foreign retailers for zoning and other commercial licenses also appear to be processed more slowly than those of domestic retailers. Finally, local officials appear to have different criteria for domestic and foreign retailers when determining registered capital amounts required to open additional outlets.

Foreign pharmaceutical companies also face administrative barriers distributing their product in China because of differing inspection processes for imported and domestically produced product. Imported active pharmaceutical ingredients must undergo a compulsory, time consuming

inspection that domestic firms producing locally do not, limiting how quickly and cost effectively foreign pharmaceutical companies can move product to market.

### *Insurance*

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.

### *Banking*

When expanding their branch networks in China, banks face similar licensing impediments to those that insurance companies face. These licensing challenges warrant close monitoring of China's implementation of its year-five commitments in the banking sector. In addition, capital requirements for the establishment of foreign bank branches are different from those for domestic banks.

### *Freight Inspection Services*

While regulations exist implementing China's Dec. 11, 2005 commitment to allow wholly foreign-owned freight inspection services, companies report being unable to obtain licenses and are unable to determine from government authorities the cause of the delays.

### *Delivery and Courier Services*

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 MOFCOM and separate requirements issued jointly by the State Postal Bureau and SAIC.

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 deliveries of international-origin packages with a mass of less than 150 grams. Although these activities may have been by practice the sole domain of the PRC postal authority at the time China joined the WTO, they do not meet the requirement "by law" established in China's WTO entry agreement.

USCBC understands that the State Postal Bureau is developing new regulations in addition to the Postal Law and existing regulations on delivery and courier services, but recent drafts have not been released for public comment. These regulations should be developed in a transparent manner and ensure a level playing field for all market competitors, domestic or foreign.

### *Construction & Engineering*

Foreign companies wishing to provide construction and engineering services face extremely high capital requirements and limits on the types of projects on which they can bid. In addition, under Decree 113, which is a different regulation from the one noted earlier in this testimony, foreign construction companies cannot use their overseas project experience when applying to upgrade their existing licenses in China and therefore cannot work on larger projects.

## **BROADER WTO ISSUES**

In its annual survey, USCBC asked its member company executives to rank the principal issues affecting their operations in China. Many of the top challenges identified fall outside the purview of China's WTO accession. Indeed, respondents ranked difficulty in attracting and retaining qualified local employees as their most important operating issue. Other issues that USCBC member companies identified, 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. USCBC encourages the Committee to look carefully at how China can be encouraged to meet the spirit of these principles, rather than just the letter of its WTO accession agreement.

### **Protectionism and National Treatment**

For the first time, USCBC member companies cited concerns over protectionism, both in China and the United States, as one of the most important issues to their China operations. While this testimony will not delve into the political concerns in the United States, 40 percent of survey respondents reported that protectionism in China had gotten worse in the past year, and an additional 16 percent cited new protectionism problems.

Developing Chinese investment policies have been frequently cited as possible indications of intent to reverse the openings made as part of the WTO accession. USCBC member companies cite a few areas where they believe China may have deviated from the WTO national treatment principle and moved toward a more protectionist stance. 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 desire to expand the government's role in directing the economy and in developing internationally competitive Chinese enterprises, while also restricting the role of foreign companies in certain sectors. Of immediate concern has been the greater scrutiny 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, 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, MOFCOM released new regulations on mergers and acquisitions that would require government approval for 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.

#### *Government Procurement*

Some of the policies China’s government has outlined in the past year could prove troublesome for foreign companies wishing to sell the government entities. These policies state that government authorities 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. Nevertheless, the recent policies 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 Joint Commission on Commerce and Trade (JCCT) meeting to begin formal negotiations by the end of 2007 on signing the agreement. US officials should use the 2007 JCCT to ensure that China is on track to meet this commitment and prioritize these negotiations to ensure that US companies have access to China’s government procurement market on a WTO-consistent basis.

#### *Unequal Enforcement*

US companies operating in China continue to believe that they face an unequal enforcement environment that places them at a competitive disadvantage to their Chinese counterparts. 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 are believed to be able to avoid full compliance of PRC requirements without repercussions. Enforcement authorities, mainly at the local and provincial level, appear to focus the bulk of their attention on US and other foreign companies.

Looking ahead, a key concern of US companies with China’s new Antimonopoly Law is whether 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. Given ongoing company experience and anecdotal evidence, the need exists to impress upon China the importance of equal enforcement of all regulations.

#### **Transparency**

Transparency is one of the most important problems that companies face in China, both in terms of the ability to do business and China’s compliance with a major WTO principle. In practice, transparency means an open rule-making system, where laws, regulations, standards, etc., are published for comment in advance of their implementation and officials consider and incorporate suggested modifications into finalized regulations. There can be no question that China’s legislative and regulatory processes today are far more transparent than ever before. Nevertheless, as US companies expand their business operations in China and China continues to

refine its laws and regulations, 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, and potential competitive disadvantages. Indeed, most of the problems in obtaining licenses or approvals are exacerbated by the opacity of China's regulatory bodies. Despite the PRC State Council's March 2006 notice requiring all laws and regulations affecting trade in goods, services, intellectual property, or foreign exchange to be published in MOFCOM's Gazette, about 60 percent of USCBC 2007 survey respondents noted no improvements in transparency in the past year. China could take a significant step toward greater transparency by fully implementing the State Council's notice and by instituting mandatory comment periods on all new laws and regulations. While the recently passed Labor Contract Law was a positive example of China's willingness to provide draft laws to the public for comment prior to implementation, most laws continue to be passed without input from the companies that will be affected by them. For example, regulations that were not released for comment prior to implementation include new regulations on medical devices, disclosure requirements for insurance companies, regulations on entry into the flat glass industry, implementing regulations on China's new mergers and acquisitions law, and multiple new product safety regulations and labeling requirements.

### **Administrative Licenses and Business Approvals**

USCBC member companies ranked problems encountered when applying for business and product licenses and other forms of government approval as the second most important issue affecting their operations in China. Licensing problems touch on many areas of WTO compliance, especially commitments to transparency and national treatment, mentioned earlier. 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 approval and licensing authority to prevent or delay the entry of foreign competition into a market to protect domestic companies. In both cases, improved transparency and national treatment are necessary for foreign firms to secure the necessary licenses and business approvals that enable them to have the full market access that WTO allows.

For example, China's State Environmental Protection Administration requires foreign companies to register newly created chemicals in a cumbersome registration process that does not follow the internationally accepted practice of allowing exemptions for low-volume quantities of most polymers. Moreover, many changes to the required filing processes are unannounced, making it very difficult for companies to comply.

This testimony also notes the example of insurance and banking license issues above.

### **Intellectual Property Rights (IPR) 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. Respondents to USCBC's annual survey again placed IPR enforcement in the top three issues of concern, with most reporting that China's level of IPR enforcement had remained unchanged in the past year. USCBC has advocated the need to remove loopholes in Chinese law that undermine the application of criminal penalties to deter piracy and supports USTR's WTO case to address this.

As part of this year's survey, USCBC further asked respondents how China's IPR enforcement record affects the types of activities their companies are willing to undertake in China. Three-quarters of respondents noted that China's lack of viable IPR protection affected their willingness to bring their most advanced products and technologies to China's markets or to engage in research and development there. This response is a clear indication that the inadequate enforcement of IPR laws is hindering China's development into a more advanced economy.

### **Standards and Conformity Assessment**

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 unique 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 internationally accepted technical standards. In doing so, however, China should abide by its obligations under the WTO Agreement on Technical Barriers to Trade to adopt domestic standards based solely on scientific criteria and not as a tool of trade or industrial policy. Moreover, China should make use of internationally accepted standards when they exist. The ability to get information on these standards setting processes and to participate in standards setting is a central part of navigating any market. In China, that ability is frequently impeded, because of both a non-transparent standards setting process and the use of unique domestic standards that sometimes put foreign companies at a disadvantage.

Half of all survey respondents indicated that China's standards and conformity assessment environment had not changed in the past year, and another quarter said the situation had deteriorated. Nonetheless, survey respondents reported some improvements in their ability to participate in China's standards setting process. Most respondents, 47 percent, evaluated their participation as "fair" or "average," indicating that they have some success in getting information on the processes and that they are occasionally included in standards setting, up from 37 percent in 2006. More respondents indicated this year that they had a good level of participation in the process—19 percent versus 8 percent in 2006. This may be because companies with more experience in the market may have allocated more resources to managing this process. As a result, some companies have become more familiar with the PRC standards-setting and conformity assessment process and have been able to participate more effectively.

At the same time, the remaining 34 percent of survey respondents view the standards setting process as poor, an increase from the 23 percent of respondents who responded in this way in 2006. This increase in dissatisfaction with the PRC standards setting process is especially

troubling given the volume of new standards coming out of China and the increasing number of US companies wanting to sell there.

As noted in the 2006 report, the PRC government has launched an initiative to promote innovation by domestic companies that has raised concerns about the impact of the innovation drive on standards-related issues. The overwhelming majority of survey respondents, 90 percent, were somewhat or very concerned about China's policies favoring "indigenous innovation products." Only 10 percent of respondents were not concerned.

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. This is of particular concern given China's new push to improve compliance with product and food safety standards. 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 duplicative testing would be eliminated. 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 lengthy and cumbersome conformity assessment procedures. These difficulties stem from delays in accrediting foreign testing and certification organizations to conduct CCC testing, certification, inspections, and audits; refusals to accept test data from foreign testing bodies as per the WTO TBT Agreement on Technical Barriers to Trade; unwillingness to make use of existing internationally-accepted technical regulations; and duplicative testing requirements. China should take concrete steps to eliminate these standards and conformity assessment barriers, thus further opening their market for US goods.

## **Subsidies**

While PRC government subsidies to companies have never been among the top 10 priority concern for USCBC members noted in the annual survey, the topic has received a great deal of attention in 2007 as the US Department of Commerce (DOC) changed its policy and accepted a countervailing duty (CVD) case against China, a nonmarket economy under current US law. Countervailing duties enable countries to counter import surges that are due to unfair subsidies in an exporting country. US policy has, until recently, declined to apply CVDs to nonmarket economies like China because of the difficulties in determining what constitutes a subsidy in such economies. The DOC's decision ended that policy.

The existence of illegal subsidies is difficult to prove, and USCBC does not know of specific or reliable data detailing the nature and scope of potentially illegal subsidies. However sixty-four percent of 2007 USCBC survey respondents indicated that they believe they compete with domestic Chinese firms that receive subsidies, and 85 percent of those companies indicated that

their competitiveness had been affected by those subsidies. In some cases, US companies do not know the specifics of the subsidies and can only speculate about their nature and impact. Other survey respondents specified preferential bank financing from state banks to local companies and direct subsidies for research and development. If illegal government subsidies exist, they need to be addressed. But it is critical that any effort to remedy suspected subsidies be fact-based, not speculative.

## **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. Several specific concerns are noted below.

### **Investment**

Throughout 2006 and this year, companies continued to monitor several new PRC investment policies. Of primary concern is MOFCOM's Provisions on Acquisition of Domestic Enterprises by Foreign Investors, effective September 8, 2006, which allows a review of foreign mergers and acquisitions that may affect the country's "national economic security." Many view this policy as an indication that China will attempt to limit foreign participation in certain sectors for economic, not security, purposes. In March 2007, MOFCOM also issued the Antimonopoly Filing Guidelines for Mergers with and Acquisitions of Domestic Enterprises by Foreign Investors, which some companies and legal experts have felt are burdensome.

The 2007 survey asked respondents how these economic security reviews had affected their prospective business opportunities in China. Most noted that it was too early to tell (52 percent), but 10 percent said that the new rules had made it more difficult to do business.

The PRC is also in the process of revising its Catalogue Guiding Foreign Investment in Industry, which affects how US companies are able to do business in China. Of particular concern will be changes that may place new restrictions on investments in certain sectors. This issue should be monitored closely to determine whether it is affecting companies' ability to participate in China's market. The United States should encourage China to move toward more market openings, rather than imposing new restrictions on foreign investment. A meaningful way that could be done would be for the draft changes to the catalogue to be released for public comment prior to implementation.

### **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' operating scopes 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, commercial banks, or other financial service providers, should be able to participate more 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 greatest beneficiary of these changes would be China itself. More efficient allocation of capital would help improve the quality, composition and speed of both 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 listed 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.

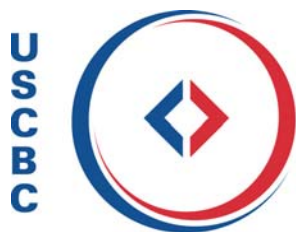
## **Telecom**

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 telecom services providers face extremely high capital requirements and are limited to a 49 percent stake in any venture. 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 lowering capital requirements and raising ownership caps. By doing so, China would benefit from the advanced techniques that come with the experience these companies could bring to China.

## **CONCLUSION**

In its first 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 ceiling.



## THE US-CHINA BUSINESS COUNCIL

美中贸易全国委员会

The chart below reflects the US-China Business Council's (USCBC) best efforts to track the status of China's year-four and five service sector commitments, as of May 2007.

China's WTO Commitments Due on December 11, 2005	Status and Relevant Laws
<b>Advertising</b>	
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 took effect on January 1, 2005.
<b>Banking</b>	
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.
<b>Insurance</b>	
Lift compulsory cession requirements on foreign non-life insurers	Done. According to USCBC 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.
Lower total asset requirement of foreign insurers to \$200 million	
<b>Other</b>	
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	MOFCOM released the Administrative Measures on Foreign Investment in International Freight Forwarding Agency Services on December 9, 2005, but the General Administration of Civil Aviation of China (CAAC) later issued regulations that restrict the ability of WFOEs to book air cargo space.
Apply national treatment to capitalization requirements for foreign freight forwarding agency services	

## 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.

Done. 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 (MOC) and took effect on May 1, 2003. MOC issued the Decree 114 Implementing Regulations in January 2007, allowing engineering, integrated engineering, and architecture WFOEs.

### Banking

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

Allow foreign financial institutions to provide services to all Chinese clients

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

Done. CBRC issued regulations that took effect in December 2006 that require foreign banks to establish domestically incorporated subsidiaries to take full advantage of these openings. As of April 2007, banks were beginning to receive approvals to offer local currency services under these regulations.

### Distribution and retail

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

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

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

MOFCOM issued regulations that took effect in January 2007 that allow WFOEs but appear to impose limits on what operations WFOEs can practically undertake.

MOFCOM has approved applications but implementation hurdles remain at the local level.

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%