



**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**

**Oral Statement**

**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.

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 all of 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.

USCBC urges China to view its WTO commitments as a baseline for additional market reform and not as an end point. By going beyond existing commitments and opening to foreign

competition those areas kept restricted under its WTO agreement, the Chinese economy will benefit even more from the dynamism that international experience and competition brings to its economy.

This statement is a summary of the broader written comments that USCBC has submitted for the hearing record.

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

China met several of the WTO market opening commitments that were to be phased in during the fifth year of membership (“year five”), specifically in the advertising, banking, architectural, engineering, urban planning services, insurance, distribution, and telecom sectors.

Regulations allowing wholly foreign-owned advertising enterprises took effect Dec. 10, 2005, and although a few weeks late, regulators released regulations instructing foreign companies how to set up wholly foreign-owned engineering firms. For banking services, in December 2006 the China Banking Regulatory Commission (CBRC) issued in 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 any remaining geographic restrictions and any non-prudential measures restricting ownership, operation, and juridical form of foreign financial institutions.

Despite these positive steps, China appears not yet to have met fully its year-five obligations in a number of areas. Restrictions continue for foreign companies seeking to provide certain types of wholesale and retail distribution services. Ongoing concerns remain about differential treatment of foreign and domestic insurers over licensing. Foreign electronic payment processing firms are still prevented from directly accessing the domestic market. Ambiguous wording in implementing regulations opening the engineering design sector leaves open the possibility that PRC regulators could limit foreign participation in the future. And lastly, the year-five commitments required China to lift all geographic restrictions on mobile voice and data services for joint ventures; to expand the geographic scope for listed domestic and international telecommunications services to include a specific list of 12 urban areas; and to raise foreign ownership cap to thirty-five percent. Regulations meeting these commitments are not known to exist.

In addition to these concerns, there remain several commitments from previous years that have yet to be fully implemented, including those for express delivery and courier services, and technical testing and freight inspection services. Further details on these issues are detailed in USCBC’s written statement.

## **BROADER WTO ISSUES**

Many challenges that foreign companies face go beyond the specific requirements of China’s WTO accession agreement, but 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.

### **National Treatment in Regulations and Enforcement**

In its 2007 survey, USCBC member companies ranked problems encountered when applying for business and product licenses and other forms of government approvals as the second most important issue affecting their operations 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 that 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. USCBC's written testimony details some of the specific problems that companies are experiencing

Recent public policy debates in China have indicated a dampening of enthusiasm in some quarters for foreign participation in the economy. Some policy makers also appear to want to expand the PRC 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. Designation of "pillar" industries, promoting "indigenous innovation," and establishing "national economic security" criteria to review deals are troublesome signposts that do not imply full market access for US companies. Government procurement is one related area of concern. US officials should use the 2007 Joint Commission on Commerce and Trade (JCCT) meeting to ensure that China is on track to join the WTO's Government Procurement Agreement and prioritize these negotiations to ensure that US companies have access to China's government procurement market on a WTO-consistent basis.

### **Intellectual Property Rights**

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 violations. Despite this, inadequate protection for intellectual property rights (IPR) continues to impede US companies in China. Respondents to USCBC's annual survey again placed IPR enforcement as the third-most-important issue of concern, with most (53 percent) 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 result is a significant indication to China that its inadequate enforcement of IPR laws is hindering its development of a modern economy.

## **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, 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 standards processes and to participate in and influence domestic 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. In 2006, the PRC government launched an initiative to promote innovation by domestic companies that could negatively impact standards-related market access issues. As a result of this initiative, the overwhelming majority of survey respondents, 90 percent, were somewhat or very concerned about China's policies favoring "indigenous innovation products."

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. Including foreign companies -- particularly those that have experience in setting and certifying compliance with standards -- in the process can only improve China's ability to meet its goals in this area.

## **Transparency**

Transparency is one of the most important issues for companies operating in China, both in terms of the ability to do business there and China's compliance with a major WTO principle. 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 noted above in obtaining licenses or participating in the standards process 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 the Ministry of Commerce (MOFCOM) Gazette, about 60 percent of survey respondents noted no improvements in transparency in the past year. The recently passed Labor Contract Law (LCL) was a positive example of China's willingness to share draft laws with the public prior to implementation. USCBC notes, however,

that most laws continue to be passed without input from the companies that will be affected by them and asks that the US government encourage China to follow the LCL example in the future.

## **Subsidies**

While PRC government subsidies to companies have never been among the top 10 priority concerns for USCBC members in our surveys, the topic has received a great deal of attention in 2007 as a result of USTR's initiation of a WTO case on the issue and the US Department of Commerce (DOC) change in policy to accept a countervailing duty (CVD) case against China, a nonmarket economy under current US law. Sixty-four percent of 2007 survey respondents indicated that 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 impact. Other survey respondents specified preferential bank financing from state banks to local companies and direct subsidies for research and development. The bottom line is that subsidies that violate WTO rules and distort trade need to be addressed. At the same time, we need to ensure we pursue a fact-based approach to identifying and addressing these subsidies.

## **BEYOND THE WTO SCHEDULE**

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 in USCBC's written testimony, but this statement will highlight the main concerns.

## **Investment**

Companies continue to closely monitor several new PRC investment policies that could negatively affect foreign participation in a number of sectors.

- National Economic Security – new regulations have introduced the term “national economic security” as criterion by which PRC regulators should evaluate potential foreign investment. WTO rules recognize the right of countries to restrict investment based on legitimate national security concerns, but these restrictions should be narrowly construed and clearly defined.
- Pillar Industries – policy opinions name several industries that will remain largely under the direct control of the central government; envision greater state intervention in a number of economic sectors; and could create new hurdles for foreign participation in several industries including engine building, power generation equipment, integrated circuits, and shipping equipment.
- Catalogue Guiding Foreign Investment – the revision of the Catalogue Guiding Foreign Investment in Industry will clearly affect how US companies are able to do business China. Of particular concern will be changes that introduce new restrictions on investment in certain sectors. We expect this catalogue to be issued soon.

These policy developments should be monitored closely to determine whether they are affecting companies' ability to participate in China's market. The United States should encourage China to move toward more market openings and away from imposing new restrictions on foreign participation in the market. One meaningful way that could be done would be for the draft changes to the catalogue, for instance, to be released for public comment prior to finalization.

USCBC encourages the US government to use all means available, including the Strategic Economic Dialogue, the JCCT, and the Joint Economic Committee, to encourage China to continue to open these sectors to foreign companies and to competition, which will help the PRC meet its ambitious economic goals.

## **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 finish line.