



Coalition of Service Industries

**Statement by the
Coalition of Service Industries before the
Trade Policy Staff Committee**

**“China's Compliance With WTO Commitments:
Seventh Year Review”**

October 2, 2008

The Coalition of Service Industries (CSI) appreciates the opportunity to present its update on China's compliance with services commitments in the World Trade Organization (WTO). CSI is the leading business association dedicated to reducing barriers to U.S. services exports and mobilizing support for policies that enhance the global competitiveness of U.S. service providers. Our membership consists of U.S. corporations and associations engaged in many commercially important services sectors. Many of our member companies have significant presence in China and are deeply interested in China's full implementation of its WTO commitments and the continuation of sectoral reforms.

After its WTO accession, China registered impressive growth in the services sector, which now constitutes over 40% of Chinese GDP. The Chinese government has come to the realization that it cannot base its economic success story on manufacturing alone, but services play a crucial role in moving China's production up the value ladder, and in developing China as a more diversified, robust, and innovative economy. However, severe under-development of the services sector still poses an obstacle to implementing China's economic objectives. Thus, the Chinese leadership has acknowledged that maintaining China's competitive edge will require promoting value-added services.

U.S. - China bilateral services trade and economic relations also developed dramatically in recent years. U.S. cross-border services exports increased from \$4.9 billion in 2001 to \$9.1 billion in 2006, with the U.S. services trade surplus growing from \$1.3 billion to \$1.9 billion. U.S. exports were especially strong in education, business, transportation, technical and financial services.

China's WTO accession commitments expedited essential economic reforms, which meant to open China's commercially important services sectors to foreigners and spur growth in the services sector. This liberalization was supposed to allow foreign companies to increase the scope of their operations by lowering equity restrictions, restrictions on commercial presence for foreign investors, and providing national treatment. However, in many areas, for example distribution and motor vehicle finance, China delayed substantially the implementation of its commitments.

To remove services trade barriers, our two countries have been engaged in recent years in a number of trade and economic forums, which include the Joint Commission on Commerce and Trade (JCCT), Joint Economic Committee (JEC), and the Strategic Economic Dialogue (SED). We value the progress that the U.S. Government has made in those forums. For example, JCCT process has resulted in obligations which committed China to submit its WTO offer in government procurement last year, helped eliminate the license backlog in distribution, and ensured the use of legal software by all Chinese government agencies. However, China is yet to implement many of its obligations, including further liberalization of the insurance market, creating favorable market access in express delivery, and strengthening its IPR enforcement efforts.

We are pleased that the last SED round resulted in the launch of bilateral investment treaty negotiations and the transportation forum, commitments to expand foreign companies' participation in securities and asset management services, China's additional transparency pledges, and assurances that China will work towards a successful outcome to the Doha Development Round. At the same time, we would also like to see China address other substantive, long-standing issues in services market access, and provide more detail on how and when its new liberalization initiatives will be implemented.

We are concerned that the positive dynamic of the U.S. - China bilateral trade dialogue is slipping away due to increased protectionist trends in China. This development is surely unhelpful to securing progress on key services trade issues, including those identified in our status report on China's WTO compliance below.

SERVICE INDUSTRY SUGGESTIONS TO **U.S.-CHINA TRADE FORUMS**

CROSS-SECTORAL ISSUES

U.S. businesses continue to face significant obstacles in licensing and regulatory transparency, intellectual property rights (IPR) protection, government procurement, and anti-monopoly regulation.

Regulatory and Licensing Transparency

We commend China's efforts to strengthen regulatory transparency and adhere to public notice and comment requirements, which were promulgated under the State Council's directive of March 2006. At the 2007 and 2008 SED meetings, China confirmed its commitment to improve regulatory transparency and predictability, such as publishing all trade-related measures before they enter into force and providing an opportunity for public comment. However, CSI members are concerned that interested parties have often been unable to comment on important trade rules, and that transparency issues regarding licensing and implementation of trade measures persist.

It is in China's interest to fully embrace regulatory transparency. China made substantial WTO commitments to regulatory and licensing transparency, such as notice and comment requirements for new trade laws and regulations, improved licensing procedures, and judicial review. However, full implementation of these commitments simply has not taken hold in the Chinese bureaucracy. Chinese laws, regulations, and administrative practices frequently change without warning, and are frequently not applied uniformly. We are also concerned that China's rules often provide regulators with broad discretion, resulting in unpredictable rules and decisions.

A modern economy requires transparent government and regulation, including in the judicial process. Transparent rule-making and licensing are one of the best ways to fight corruption in China. Through consistent, adequate notice and comment periods and the involvement of key stakeholders in the regulatory development process, many specific trade and investment problems U.S. companies continue to confront might be eliminated. Moreover, Chinese regulators should review and discuss comments from U.S. industry submitted as part of the notice and comment process, and incorporate recommendations as appropriate. We encourage the Chinese Government to seek active participation by all stakeholders in regulatory reform. Preparation of new postal legislation, for example, would benefit from active consultation with the private express delivery industry. China should also consult with the private sector on its pending telecom bill, draft insurance law, and other important sectoral legislation.

Chinese officials acknowledge that their regulatory agencies for securities, insurance, and other services are not sufficiently developed. China's trade negotiators have repeatedly used this argument as a reason to deny better offers on services. We suggest that USTR, Treasury, and other agencies offer technical assistance to help the Chinese strengthen their regulatory institutions. For instance, the Chinese telecom regulators are not sufficiently independent in their functions and responsibilities from the state-owned monopolies. Establishing independent regulators could serve as the basis for a significant expansion of China's services sectors. We must also address the concern that a growing number of Chinese regulatory bodies interpret their mission to be the development of domestically owned and managed industries, often to the detriment of foreign owned companies operating in those industries.

Intellectual Property Rights (IPR) Protection

Elimination of China's trade barriers in audiovisual, software, and IT goods and services is one of the factors that can help solve China's piracy problem and foster sound investment and economic growth, benefiting both U.S. and Chinese producers. However, current trade barriers and regulations make it difficult for U.S. companies to enter the Chinese market to supply legitimate IPR products, thereby ceding the market to counterfeit and pirate products.

China's piracy and counterfeiting at the wholesale and retail levels, end-user piracy, Internet piracy, multi-channel signal piracy, and unauthorized access to 'overspill'

satellite pay-TV programs remain rampant due to remaining inadequacies in China's laws, lenient penalties, uncoordinated enforcement among local and national authorities, and the lack of transparency in administrative and criminal enforcement. The piracy rate for optical media products and software is reported to be over 90 percent. Internet piracy is growing rapidly. In fact, China is the hub of websites that stream pirated broadcast content and channels. China's law still stipulates inadequate criminal liability for copyright offenses, e.g., corporate end-user and Internet piracy, unclear protection for temporary copies, and overly broad exceptions to protection of computer software. Criminal prosecution of piracy remains restricted by the Chinese criminal code, which requires a demonstration that piracy is occurring for the purpose of making a profit.

At the 2007 JCCT meeting, the Chinese government stated some progress in IPR enforcement, including accession to the World Intellectual Property Organization Internet treaties, a crackdown on the sale of computers with pirated software, efforts against counterfeit textbooks, and joint enforcement raids. The State Council has recently approved new guidelines to promote innovation and new technologies through stronger IPR enforcement and adherence to international IPR practice. However, China remains on USTR's Special 301 "Priority Watch List," thus, we hope that the Chinese government will make further substantive efforts to implement its IPR commitments and solve its piracy issues.

Government Procurement of Software

Although China has submitted its initial WTO offer on government procurement, the offer falls short of acceptable standards. It excludes sub-national agencies and many state-owned enterprises from its coverage, prohibits procurement in many important service sectors, such as infrastructure construction and utilities, sets a long transition period, and stipulates a high threshold value for qualifying projects. We are also look forward to implementation of China's 2008 JCCT commitment to submit a more ambitious government procurement offer to open China's \$35 billion market and ensure a competitive supply of services to Chinese consumers.

We continue to urge China to withhold implementing new procurement regulations that do not conform to GPA principles, including the *Implementing Draft Measures on Government Procurement of Software* of March 2005. CSI members are concerned that these draft measures provide for strong preferential treatment of Chinese suppliers by restricting government procurement to domestic software products. To qualify as "domestic," these products must be "manufactured" in China and the China-based development cost of the software must be at least 50%. The software copyright must also be owned by a Chinese entity or first registered in China.

China's draft measures also contain a procurement preference for open source software that is inconsistent with international practice, the WTO Government Procurement Agreement, and sound, efficient, and merit-based procurement policy. We believe that any procurement regime should be based on performance, and not favor any technology or licensing model.

The draft measures propose the possible purchase of foreign software only on the basis of product-by-product waivers, and only if the software provider satisfies unspecified requirements with respect to the level of the company's investment, R&D expenditures, outsourcing work performed, or taxes paid in China. Thus, this exception will benefit a small group of providers, and will not promote the ultimate goal of developing a competitive, advanced software industry in China, based on international best practice.

China's domestic preference policy contradicts the general trend in international trade and procurement law toward open, transparent, technology-neutral, and non-discriminatory access to global markets. The measures will severely limit market access of our members, especially software companies, to China's government procurement, and will create a dangerous precedent for other sectors. The rules also run counter to the spirit of openness China committed to when it became a WTO member and assumed observer status with respect to the WTO Government Procurement Agreement.

Anti – Monopoly Legislation

CSI is concerned about China's Anti-Monopoly Law (AML), which came into force on August 1, 2008. Its provisions permit Chinese competition authorities to exempt state-owned enterprises (SOE's) from AML enforcement in strategic sectors, and thus allow SOE's to abuse their monopoly positions or engage in anti-competitive practices. It would be very unfortunate for China's development if SOE's were to form buyers' cartels or engage in other forms of monopolistic conduct designed to enhance their market power when negotiating transaction terms with private domestic and multinational vendors.

The law defines "monopolistic conduct" as conduct that "eliminates or restricts competition in China." The law's provisions on anti-competitive conduct by administrative agencies and trade associations appear weaker than those applied to the private sector. However, its provisions on unilateral conduct and "abuse" of IP rights are open-ended and could cover conduct that increases efficiency or expands consumer welfare.

As with other policy tools such as government procurement, national standards, and regulations on foreign direct investment into China, the interpretation and resulting enforcement of the AML will have significant implications for U.S. companies with innovative technologies and IPR based products and services.

The law raises the following specific issues:

- *Definition of "dominant market position" and types of anti-competitive conduct.* The law establishes broad parameters to determine whether a company has a dominant market position. It also defines "dominant market position" as a market position held by companies "that can control the price or quantity of products or

- other transaction conditions by the relevant market or can block the access of other undertakings to the relevant market.” Foreign enterprises found to have abused a dominant position by withholding proprietary technology might confront cease-and-desist orders under Article 47 directing them to transfer IPR and technology to their Chinese competitors.
- *IPR treatment.* The law is “not applicable to conducts by undertakings to protect their legitimate intellectual property rights in accordance with IP law and relevant administrative regulations.” However, “this law is applicable to the conducts by undertakings to eliminate or restrict market competition by abusing intellectual property rights stipulated in IP law and administrative regulations.” “Abuse” of IP is not defined further. This is an important issue given that most IP is held by foreign companies, and thus brings in a concern where China may pursue a more aggressive approach to enforcement. In addition to its definition, clarification of enforcement by SIPO is also necessary.
 - *Merger and “acquisition of control” regime.* The law requires advance notice of mergers and “acquisitions of control” that meet certain thresholds and governs the review of such transactions. We are concerned that some provisions are inconsistent with practices in the U.S. and other major jurisdictions and could possibly be used unfairly against U.S. companies. China’s inconsistent merger review regulations, such as the Interim Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, also raise questions of China’s WTO compliance.
 - *Remedies for violations.* In addition to injunctions, penalties and criminal prosecution, the law provides that agreements between competitors or sellers and buyers that violate the law are null and void. A more appropriate remedy in such cases should be to eliminate the offending practice or agreement provision.
 - *Implementation.* An “Antimonopoly Enforcement Authority” is trusted with enforcing the law directly or through delegation of authority to regional and local governments. While it is not clear to what extent this provision will be given effect, the prospect that AML enforcement authority might be delegated to regional and local government officials is unsettling because those officials may have no background in competition law or economics.

CSI members call for fair, transparent, non-discriminatory, and consistent enforcement of the implementing regulations. We suggest that China continue to invite industry comments, both directly and through business and trade associations, as it implements the AML and to ensure that enforcement authorities do not discriminate against foreign suppliers or seek to protect domestic firms, SOE’s, or other Chinese entities.

SECTOR-SPECIFIC ISSUES

Insurance

After amending China's Insurance Law in 2003, the China Insurance Regulatory Commission (CIRC) followed with important implementing rules concerning the administration of insurance companies, asset management, risk control and other aspects of insurance regulation. However, we would also like to stress the following important barriers in the Chinese insurance sector:

Foreign Equity Restrictions

CSI, the American Council of Life Insurers, the American Insurance Association and partner associations in Canada, Great Britain and Japan documented their concerns that CIRC's recent draft *Measures on the Administration of Equity Interests in Insurance Companies* ("Measures") would place discriminatory requirements on foreign companies and hamper market access in China. Specifically, we stressed the following national treatment issues in the joint comments submitted to CIRC in April 2008:

Restrictions on investment in same type companies. The Measures appear to prohibit foreign financial institutions which have obtained approval for investments in China's insurance market from investing in other insurance companies "of the same type." This would prohibit insurance holding companies from engaging in the common practice of investing in multiple insurance companies of the same type to provide better service by segmenting business in accordance with the needs of the insured.

Furthermore, this restriction would prohibit foreign insurance companies from having equity interests in more than one foreign-invested insurance enterprise, or in one such enterprise and an equity interest in a Chinese insurance company. We believe that this constitutes a violation of both GATS Article XVII and Article XVI.2(a), the latter of which prohibits limitations on the number of service suppliers. Moreover, this rule would not parallel the regulations on foreign investment in the commercial banking industry, which allow equity interests in more than one commercial bank in addition to wholly-owned or joint venture subsidiaries. Indeed, there appears to be no legitimate rationale for this difference in treatment between the two financial service sectors.

Discriminatory Minimum Asset Requirements. Foreign financial institutions must have minimum aggregate assets of US\$2 billion in order to invest in a Chinese insurance company. We do not believe this is justifiable. Foreign financial institutions, unlike joint ventures or wholly-owned enterprises, are investors with no obligation to invest beyond the purchase price or capital contribution for the equity interest they acquire. If they have sufficient funds to acquire such equity interest, there should be no requirement that they possess assets beyond the purchase price for their equity interest. This is particularly so given that the Measures are also proposing an investment cap of 20% (as provided in Article 4).

Equity cap for single investors. The Measures place a 20% equity interest cap on foreign investment in domestic insurance companies. This equity cap improperly prevents the acquisition of a majority interest and other large investments across all insurance sectors. As this requirement does not apply to domestic enterprises, it runs counter to GATS Article XVII. We also believe this restriction would violate GATS Article XVI:2(f), which does not permit WTO Members to place limitations on the participation of foreign investment in scheduled services.

Discriminatory profitability requirements. The rules would require foreign financial institutions to have three consecutive years of profitability while domestic enterprise juridical persons only have to demonstrate a record of profitability. Again, this would appear to violate GATS Article XVII.

The Measures also appear to stipulate discriminatory restrictions on acquiring equity interests in insurance holding and asset management companies. Foreign investment funds, mutual funds and consortia appear to be prohibited from holding equity interests. In addition to these restrictions, investors would be subject to burdensome reporting requirements for share acquisitions.

Foreign Investment Cap

CSI strongly encourages CIRC to lift the FDI cap, so that companies could more easily bring in capital to hire workers, deploy world class service platforms and invest in China's capital market. In order to protect the safety and soundness of the market, CIRC should have the authority to allow for foreign partners to increase their capital. Chinese JV partners should also be free to sell their stake to their foreign partners (as part of an orderly continuation of the company) if they choose to redeploy their capital.

Restrictions on Branches and Subsidiaries with Foreign Participation

China undertook in its WTO accession agreement to eliminate all geographic restrictions on foreign-invested life and non-life companies, and brokers by December 11, 2004. As for national treatment, China did not include in its WTO accession schedule any limitations regarding its obligations on form of establishment in the insurance sector. China also made commitments to allow internal branching consistent with the phase out of geographic restrictions. Despite these commitments, the following restrictions are still in place:

Discriminatory Branch Approval. The issue of current approval of multiple branch applications by foreign insurers has been raised at the SED, JCCT and JEC, but no progress has been made. Foreign insurers repeatedly report that they are told by CIRC officials that multiple branch applications cannot be submitted at the same time, or if submitted will not be concurrently examined and approved. There is evidence indicating that domestically-invested insurance companies, even new companies, have been permitted to expand aggressively through multiple branch applications approved

concurrently. By contrast, it appears that no foreign-invested insurance companies have benefited from concurrent branch approvals.

Senior officials at CIRC have previously confirmed to USTR their commitment to allow foreign companies to establish multiple concurrent branches. We call on CIRC to confirm this intention publicly, during the JCCT, and in an administrative clarification to all CIRC staff.

CIRC should respond to single as well as multiple license applications within the timeframe they have set for themselves. The most critical aspect of the licensing process is the timely review of applications and a response within the timeframe CIRC has specified in its own regulations.

Capitalization Requirements. China requires RMB 200 million in registered capital for initial establishment of foreign insurance companies either as a branch or subsidiary. Also, for companies that have chosen to first establish as a branch, China requires RMB 200 million in registered capital for each additional sub-branch, and, for those companies that were first established as a subsidiary, China requires RMB 20 million in registered capital for each location (or branch) of that subsidiary until total registered capital for the company reaches RMB 500 million.

CIRC should provide a legitimate rationale for these capitalization requirements and explain to the U.S. Government why it would not be possible for CIRC to rely on the financial reserves of the parent company in the case of firms establishing as a branch, and of the initial subsidiary in the case of firms establishing as a subsidiary.

Limits on Single Mutual Funds

Under Article 8 of CIRC's *Interim Regulations for Insurance Companies' Investment in Mutual Fund* revised in December 2005, investment in a single mutual fund cannot exceed 3% of the last month's total assets. While CIRC may intent to set this cap for risk control and diversification purposes, this restriction creates a barrier to insurance investment. Mutual funds are already well diversified investment vehicles, because both regulatory and fund companies' internal policies have diversification requirements.

The 3% cap has a more severe impact on JVs, since most of them are small or medium-size companies. Larger, wholly-owned life insurers have a greater asset base, and they can more easily absorb limits on single fund investments. For small and medium-size companies, the 3% limit means that they have to bring more funds into their portfolios. This can also lead to lower quality funds in the portfolio and can result in poor investment performance. The requirement hinders insurance companies from fully using their expertise in selecting quality mutual funds and fund management companies.

Lifting the investment cap will help level the playing field for JV insurance companies that are mostly small or medium-size companies. It will also improve the fund

performance by enhancing companies' selection of quality funds, and put China into conformity with international practice, since there is no such cap in other markets.

Investment of Assets

Overseas Utilization of Insurance Foreign Exchange Funds. CIRC's *Provisional Measures on the Administration of the Overseas Utilization of Insurance Foreign Exchange Funds* establish a qualifying threshold (total assets of RMB 10 billion) for companies to be able to invest their foreign exchange capital in overseas funds or equities. CSI members would like to know the rationale for this requirement. Industry is concerned that even though this limitation applies to both domestic and foreign providers, only the largest insurers, i.e., mostly domestic companies, will have the necessary assets to qualify. Many foreign-invested insurers invariably will not qualify unless CIRC recognizes the assets of the parent foreign company when determining the asset level of a foreign-invested company. To rectify this concern, CIRC should credit global insurers' international operating experience and capital in fulfillment of current seasoning and asset threshold requirements (eight years in the market, ten billion RMB) for asset managers.

Insurance Asset Management Restrictions. Under Article 8 of CIRC's *Interim Regulations for Insurance Assets Management Companies*, only providers that have held licenses for more than eight years are permitted to apply to establish an insurance asset management company. Although China previously stated that this limitation applies to both domestic and foreign providers, it effectively excludes all foreign companies entering the market since China's WTO accession in 2001. Again, there appears to be no legitimate rationale for this restriction. To rectify this concern, CIRC should credit global insurers' international operating experience and capital in fulfillment of current seasoning and asset threshold requirements (eight years in the market, ten billion RMB) for asset managers.

Investment Channels. From an investment perspective, excessive and often discriminatory capitalization requirements continue to act as constraints on foreign insurers' ability to compete with locally established insurers on a fair and equitable basis. In December 2005, CIRC's *Insurance Fund Management Regulation* enforced outsourcing of the asset management (on-balance and off-balance sheet funds) of small and medium insurance companies to an Insurance Asset Management Company (IAMC). The draft regulation stated that an insurance company that does not own an IAMC must outsource all its investments in equities, corporate bonds and mutual funds to an IAMC or any professional investment institution (no specific definition was given).

An IAMC is a subsidiary company to be set up by insurance companies that have total assets of at least RMB 10 billion. Currently there are nine approved IAMCs that are all formed by large domestic companies. CIRC's official rationale is that an IAMC has better internal controls and investment capabilities for improving insurers' risk management and returns. However, both domestic and foreign insurers do not want to outsource their investment function, which is a core business element, to their

competitors. There are concerns regarding potential disclosure of investment asset portfolio information to competitors and potential conflicts for the IAMC to allocate assets to its parent insurance company's portfolio or those of competing insurance companies. If the proposal is implemented, all small and medium-size companies that are not able to set up their own IAMC will lose the right to manage their own assets to their competitors' IAMC. Many small and medium-size insurers viewed this initiative as a policy favoring large domestic insurers.

We suggest that insurers should also have the option of outsourcing investment assets to mutual fund companies. This will allow insurers to work with mutual fund companies (several with foreign partners) to leverage their extensive experience and global best practices on fund management. Such arrangements will also help avoid conflict of interest of outsourcing assets only to domestic insurance asset management companies that are competitors, and will promote efficiency and better service.

Corporate Bond Market Access. Corporate bonds are one of the most important asset classes for insurers. In China, the corporate bond market is moving from a guaranteed model to a market-oriented, non-guaranteed model. While the China Banking Regulatory Commission (CBRC) has been discouraging banks to provide guarantees, CIRC has not allowed insurers (the largest purchasers of corporate bonds) to invest in the non-guaranteed bonds due to credit risk concerns. The conflicting decisions by the banking and insurance regulators have created uncertainty, hindered corporate bond market issuance, and development of this market.

While the industry takes into consideration CIRC's concerns, there is a strong need for insurers to make proper asset allocations with this asset class. The current limitation in the corporate bond market environment has further limited choices of investment vehicles for insurance companies. Fixed-income securities are the best match for insurance liabilities, especially for traditional products. We strongly encourage the regulators to provide effective guidance and regulations to promote the corporate bond market.

Statutory Insurance

Foreign insurance companies are currently shut out of China's "statutory insurance business." Such business, according to China, includes "third party auto liability insurance." To date, China has not provided a good rationale for allowing only local insurance companies access to this market.

Indeed, while China appears to take an exception to "statutory insurance business" in its coverage of service sectors in providing "national treatment" for foreign non-life insurance companies under the GATS, China separately agreed to provide foreign companies market access to the "full range of non-life insurance services" by 2003. China's GATS Schedule explicitly states that "[w]ithin 2 years after China's accession, foreign non-life insurers will be permitted to provide the full range of non-life insurance services to both foreign and domestic clients." These contradictory statements in China's GATS Schedule raise serious concerns regarding China's WTO obligations under Articles XVI and XVII of the GATS, particularly in light of the guidance from various WTO panel and appellate body reports on interpreting the GATS and WTO schedules.

Furthermore, strong commitments to liberalize the statutory insurance sector are in China's own interest. Given the growing number of vehicles and the mandatory nature of this line of insurance, it is imperative that China opens its "statutory insurance" market to allow foreign companies' expertise, quality products and services, and healthy competition. Otherwise, China runs the risk of seeing a rise in claims and premium costs, resulting in domestic insurance companies becoming insolvent due to insufficient capital, and consumer outcry. CIRC Chairman Wu Dingfu has recently highlighted data inaccuracies and poor claims services as two of the main problems plaguing China's third party auto liability insurance market.

Political Risk Insurance Product Approval

Non-life insurance companies have been unable to gain CIRC approval to provide political risk insurance (PRI) coverage for Chinese companies.

China Export and Credit Insurance Corporation (Sinasure), is wholly owned by the Chinese government. Sinasure is the only insurer allowed to offer political risk insurance for non-domestic exposures. It appears that CIRC has been delaying the approval of foreign insurers PRI products because they have been instructed to protect Sinasure's monopoly, even though the market badly needs the additional capacity and expertise that American companies would bring.

If companies gain approval to underwrite political risk in China, Chinese investors could access enhanced, highly sophisticated risk management practices. Numerous Chinese companies have expressed a deep interest in access to new risk transfer options. China Ex-Im Bank and China Development Bank have indicated that they are not satisfied with Sinasure's service and limited capacity.

Innovative Products

The insurance industry is concerned that CIRC is considering a regulation that may limit the sale of unit-link products. The regulator has conveyed that it views unit-link products as investment products and that insurers should focus more on traditional protection products. Unit-link products are contracts which customers hold for the long-term and can provide higher returns for customers. These products are sold on international insurance markets, and have supported innovation in the insurance sector.

By limiting this product, CIRC will curb innovation in the market. At the same time, there are already effective distribution/good sales practices that foreign companies have deployed in China and worldwide to support unit-link products. By adopting good distribution practices, China will further strengthen compliance, disclosure and effective needs assessment of products.

Insurance Brokers

Brokers provide important market expertise and help educate the public on the need for risk management and insurance. Insurance brokers generate new business opportunities for insurance carriers and provide valuable services to businesses and individual consumers. Nevertheless, China denies national treatment in insurance brokerage to provide foreign brokers with the same scope of business activities as domestic firms, e.g. claims handling, risk management services and consulting, handling application process and placement services, and reinsurance brokerage. Foreign brokers are also unable to provide services for small business, group life, and health business and affinity programs.

Reinsurance

Senior officials at CIRC have confirmed to USTR their commitment to allow foreign reinsurance and insurance companies to conduct cross border reinsurance with Chinese direct insurers or reinsurers on the same basis as reinsurance companies admitted in China. Industry would call on CIRC to confirm this intention in an administrative clarification to all CIRC officials. This clarification should state that China will suspend implementation of the 2005 *Regulations on Administration of Reinsurance Business*, as the regulation discriminates against foreign reinsurance companies by requiring right of first refusal for 50% of each primary company's reinsurance program with domestically admitted re-insurers. CIRC should also clarify that for purposes of these measures a 100% owned insurance operation may cede to a parent or affiliate insurance company.

China Post

Several Chinese language sources have substantiated reports that CIRC has approved China Post Group's launch of an insurance business through a wholly owned subsidiary China Post Life Insurance Co. Ltd. ("China Post Life"). China Post Life is expected to establish a nationwide insurance business, based on its 37,000 existing offices. It would appear from press reports that CIRC may consider granting China Post approval to operate throughout all of its existing offices and branches simultaneously, which is equivalent to blanket concurrent approval of all existing branches.

It is as yet unclear whether China Post Life will be a fully privatized insurance company that will be required to operate under the same rules as existing private sector insurers. However, this development calls into question issues of national treatment for branch approvals and the challenge for foreign companies when Chinese domestic insurers receive multiple licenses concurrently, while foreign insurers must wait consecutive approvals.

If China Post Life is not regulated in the same manner as its private sector counterparts, it will become potentially a dominant market competitor which enjoys regulatory and other discriminatory advantages, including unequal application of solvency rules, product approval and licensing intermediaries.

China took no reservation for a postal insurer in the Protocol of Accession, thus strict national treatment rules should apply. The proposed China Post reform also raises cross-subsidization concerns. Therefore, we ask that CIRC's intention with respect to China Post be clarified.

Banking

In the banking sector, we would like to underline that existing sectoral trade barriers hamper US companies' market access and development of a healthy Chinese banking sector. We suggest that the US Government impress on Chinese counterparts the importance of taking the following steps to open China's banking services market:

Remove investment caps and allow establishment in the form of choice. Foreign investors in Chinese banks remain limited to 20 percent ownership by a single investor, with total foreign investment limited to 25 percent. Such caps are a significant obstacle to China's achievement of a more balanced, resilient, and stable economy and should be removed. Participation in Chinese markets by foreign banking institutions would bring world-class expertise and best practices with regard to products and services, technology, credit analysis, risk management, internal controls, and corporate governance. Countries which have followed this policy have seen a dramatic improvement in the efficiency and soundness of their financial sector, an increase in available credit, and the development of deep and liquid financial markets that spur economic growth.

China should also allow foreign banks to establish a presence in the corporate form of their choice. The efficient deployment of the capital and other resources of foreign financial institutions requires the flexibility to determine which particular corporate form – whether a wholly-owned subsidiary, branch, representative office, joint venture, or majority equity investment in an existing Chinese company – is most economical and appropriate within the broader strategic investment parameters. Restrictions on operational form can discourage foreign financial institutions from initiating business activities in China, despite finding the market attractive, which will not serve the interests of the consumer.

Ensure national treatment. While China imposes no explicit limits on the number of licenses provided to foreign banks and remaining geographic and customer restrictions were phased out as of December 2006, Chinese agencies and regulations continue to treat foreign banks more restrictively than domestic banks. For example, regulations require three years of operation and two continuous years of profitability before foreign bank branches are permitted to carry out local currency business.

Chinese authorities have also been slow to act on foreign banks' applications and continue to permit foreign banks to open only one branch every 12 months. In addition, a portion of foreign banks' branch capital must be deposited in Chinese banks, and foreign banks remain subject to minimum interest rate rules when borrowing from Chinese

banks. Most problematic, the 75 percent loan-to-deposit cap is a single-obligor limit (10% of capital to a single borrower group) and effectively discriminates against foreign banks because their small number of branches, exacerbated by a slow approval process, limits the deposit base of foreign banks.

Adopt a risk-based approach to capital. China imposes substantial asset and capital requirements on foreign banks that it does not apply to domestic banks. To establish a subsidiary in China, a foreign bank must have total assets of more than US\$10 billion and the subsidiary must maintain minimum capital of 1 billion renminbi (US\$129.2 million); to establish a branch, foreign banks must have total assets of more than US\$20 billion and each branch must maintain minimum operating capital of about \$12 million. These capitalization requirements also contribute to a bias in favor of subsidiaries over branches, though along with such other factors as the desire to engage in domestic retail business which requires a bank to incorporate locally and to participate in China's deposit insurance scheme.

China should change the way it assesses the capitalization of a bank to take into account a firm's overall risk and consolidated capital rather than using the current fixed minimum capital requirement. This change would bring China's capital requirements into alignment with global standards.

Asset Management and Securities

Foreign firms are currently permitted to own no more than 49% of joint-venture asset management firms in China, which is consistent with China's WTO accession commitments. The current restrictions make it difficult for U.S. asset managers to control and run their businesses as they would prefer. We strongly urge China to go beyond its WTO commitments by allowing foreign firms to choose their form of establishment and equity participation levels, and permitting competition on the same basis as domestic firms. Increased participation of U.S. asset managers would help introduce world-class expertise and best practices with regard to products, services, risk management, internal controls, operations and governance. In addition, competition brought by U.S. asset managers would accelerate the adoption of such techniques and methodologies by domestic firms.

We are encouraged by changes to China's programs for qualified domestic institutional investors (QDIIs) that permit investments in overseas equities markets and should enable ordinary Chinese investors to benefit from asset diversification. We hope that the new rules will be implemented in a fair and transparent manner that allows all qualified asset managers—domestic and foreign—to participate on an equal basis. We encourage China to further liberalize restrictions on foreign investments held in the domestic portfolios of Chinese investors. Despite the recent liberalization, the restrictions are still quite stringent. If China further loosens the restrictions, domestic mutual funds, pension funds, and other institutions would be able to pursue portfolio diversification through international investment, creating advisory and management opportunities for U.S. asset managers.

We are encouraged that at the 2007 SED Meeting China reported that it had implemented its commitment to open further the A-share market to foreign investors by increasing the quota for qualified foreign institutional investors (QFIIs) from US\$10 billion to US\$30 billion and that certain entities have recently received QFII status. We are also encouraged that in April 2008 China announced that it intends to amend its rules on investments by QFIIs, including reducing time limits for QFIIs to remit funds out of China and permitting QFIIs to open foreign exchange accounts, and that at the Fourth SED in June 2008 China agreed to reduce the lockup period for certain QFIIs to 3 months. All these steps supplement the China Securities Regulatory Commission's revision of the QFII program in 2006. China also announced that it will resume joint venture licensing and expand the scope of security companies' operations, which we hope will be implemented in a non-discriminatory manner. However, China continues to severely restrict outside investment in its securities markets, and foreign investors that do receive the limited licenses and investment quotas have to contend with complex requirements and bureaucratic hurdles that may disproportionately affect regulated entities. We continue to urge China's greater liberalization of the QFII regime to remove restrictions on investments by QFIIs, especially those restrictions on remittances that limit liquidity and raise the cost of investing in Chinese securities.

Enterprise Annuities

In the spring of 2005, Chinese regulators started establishing an enterprise annuity (EA) system as a second pillar individual account, defined contribution retirement program. Conservatively, industry observers estimate that within 10 years the assets under management for this program should be close to \$100 billion. Within 25 years they should reach \$1 trillion, which is how long it has taken the U.S. 401(k) system to reach its current \$3 trillion in assets. Participating in this type of growth is paramount for firms in worldwide retirement benefits leadership positions.

"One Stop Shop." Industry welcomes China's interest in developing its EA system and its pledge during SED II to introduce a streamlined system for financial services firms seeking to provide enterprise annuity services. However, rules and standards for the provision of EA services remain unclear and act as a significant deterrent to market access and full participation in the market. The regulations prevent one company from providing a comprehensive package of services (custodian, administration, asset management, and trustee). China should authorize single provider plans under a single license, which would enable a "one stop shop" to improve cost effectiveness of the plans, particularly for small and medium enterprises in China. The EA pension system needs changes and this is precisely the right time to implement them. The system is in a nascent stage and changes would not unduly harm or competitively impact either domestic or foreign providers. In fact, the changes would help to grow the market substantially, increasing the participation of employers and employees, and decreasing the future pension debt burden on the Chinese government.

Tax Incentives. CSI members are encouraged by the recent Government of China announcement of the creation of an inter-agency committee to develop unified national tax incentive policies for both employer and employee contributions to EA. A number of provinces in China have issued policies that provide various levels of tax incentives for corporate EA contributions, while many others do not have such policies in place. On the employee side, there is no individual income tax incentive for EA contributions. We believe that tax incentives are necessary for promoting private pensions and are crucial to the healthy development of the pension market. Therefore, we recommend that the State Tax Bureau and the Ministry of Finance enact unified national tax incentive policies for both employer and employee contributions as soon as possible.

Foreign Participation Limit. Foreign participation in the enterprise annuity market should be encouraged in the interest of introducing tested professional pension management experiences from other mature pension markets in the world to the fledgling EA market in China. As pension is included in China's WTO commitments under the section covering life insurance, we believe that foreign equity ownership in all EA service provider entities should be allowed up to at least the same current limit as life insurance companies (50%). This limit however should represent a floor and not a ceiling, and in support of building momentum for the WTO's Doha Round negotiations, CSI calls for the Government of China to remove this limitation and allow 100% ownership.

Master Trust Plan. The current EA rules do not allow master trust plans, hence all EA plans have to be set up as individual trusts. This makes small plans unattractive to service providers. There is a strong need on the part of medium and small size companies for such plans in order to enjoy good quality service at a lower cost. Current rules effectively shut the small companies out of the enterprise annuity market. We encourage the Ministry of Human Resources and Social Security to work with various other Chinese regulators to allow EA service providers to offer master trusts such that the medium and small size market can also be covered.

Pension Asset Investment. EA rules stipulate that no more than 20% of EA assets can be direct equity investments and no more than 30% can be invested in equity-related investment. This significantly limits the potential for higher long term returns for pension assets. In addition, the kinds of investment options allowed for EA assets are rather limited. We believe that a higher percentage should be allowed in equities, and that EA service providers should be allowed a broader range of investment options. This will help ensure a higher long term return for pension assets while at the same time allowing for prudent diversification to control risks. There should also be a timeline for allowing pension assets to be partially invested overseas to further diversify their risk. Adding to offshore investments is a formula that has worked well for other markets, namely Chile where 30% of the assets can be invested offshore and the expectation is within two years to increase that level to 60%. It is a natural evolution in an effort to further diversify and insulate the system from local country risks as evidenced by Mexico enhancing their offshore allocations in the last two years.

Pension Regulator. While the Ministry of Human Resources and Social Security is the main regulator for EA, a lot of collaboration is needed between the Ministry and the other financial service regulators such as China Securities Regulatory Commission (CSRC), CBRC, and CIRC. Further, it requires a lot of work and manpower to set up and run a well-regulated private pension market in China and much more dedicated and focused resources are needed at the regulator level, without which the policy making and approval process would naturally be slow. We believe that it is vital to have a fully staffed centralized decision-making pension regulator with dedicated resources so as to ensure that the EA regulatory system remains sound and healthy. It is also vitally important that China open up the EA market to foreign financial services entities through the approval of joint venture license applications.

Electronic Payment Services

Although China represents an extremely large potential market for the vibrant U.S. electronic payments industry, U.S. electronic payments providers, global leaders in these services, have very limited market access in China. Currently, foreign electronic payments cards cannot be issued by any bank (local or foreign) unless they are co-branded with China UnionPay (CUP). CUP was established by the People's Bank of China (PBOC) in 2002 as a monopoly domestic electronic payments provider and processor. We believe these restrictions violate China's accession commitments in financial services, which came into force on December 11, 2006.

The PBOC has asserted that allowing foreign banks to issue CUP credit and debit cards to Chinese consumers by the December 11 deadline was all that was required for China to meet its WTO commitments. This is clearly not the case. China's GATS schedule requires that it provide for unrestricted market access and national treatment for "payments and money transmission services, including credit, charge, and debit cards." This means that China must allow financial institutions to issue payment cards of their choice and permit foreign providers to process both foreign currency and domestic currency transactions without CUP involvement. Banks cannot be required to issue only one brand or co-branded domestic payment cards.

In addition, China committed to unrestricted market access and national treatment for "advisory, intermediation, and other auxiliary financial services" for other financial services listed in its schedule, including payments. China also committed to open market access for the "provision and transfer of financial information, and financial data processing...by supplier[s] of other financial services," and took no exceptions that would allow any domestic payments processor to operate as a monopoly.

WTO mandates that countries may not use standards to exclude foreign service providers in sectors in which they have made specific commitments. Thus, China must adopt standards for electronic payments processors that are neutral in law and fact.

Telecommunications

China's narrow interpretation of market access opportunities for foreign participants and lack of an independent regulator remain key outstanding issues, which contradict its WTO accession commitments. Specifically, foreign market entry is being delayed by the Ministry of Industry and Information's definition of value-added services (VAS) for international value added network service licensing. The regulator has construed the meaning of VAS in China's WTO commitments so narrowly that any commercially important sectors, such as IP-virtual private networks (IP-VPN) services demanded by global enterprises, are excluded.

China's unreasonably high capitalization requirements for basic services and the prohibition on resale absent a basic services license have also greatly limited market access in both basic telecommunications and VAS. We believe that resale should be permitted, and subject to appropriately lower market entry requirements.

China's requirement to select a state-owned, licensed telecom company as a joint venture partner is also problematic. Incumbent licensees have limited incentive to partner with foreign competitors. Allowing foreign parties to partner with new entrant Chinese firms would create new opportunities for creative investment in telecom infrastructure and foster the type of competition that would benefit Chinese customers with better service and competitive pricing. It is not an ideal model for promoting competition to require foreign telecom service providers to partner with a company that may also be a horizontal competitor of their joint venture.

Contrary to its claims, China has not implemented its WTO Reference Paper commitment to establish an independent regulator. The Chinese Government still owns and controls all major telecom operators, and the Ministry of Industry and Information serves in the chain of command as a leader rather than a regulator of the sector.

Despite the WTO commitment to discuss further sectoral liberalization, China has yet to submit an improved telecom offer with broader market access, including higher foreign equity participation. Ideally, China should commit to relax or eliminate foreign direct investment restrictions in all licenses, going beyond present WTO commitments by allowing 100 percent foreign direct investment. This would promote efficient, more profitable operations capable of providing the best quality services.

Prior to the September 2008 JCCT meeting, China announced that it was halving its capitalization requirement for a basic telecom service license, from RMB 2 billion to RMB 1 billion. This is a positive development that, if combined with new, favorable arrangements for foreign equity participation, would demonstrate China's commitment to open its telecom services market to foreign investors.

Express Delivery

Fast, reliable express delivery services (EDS) are a key component of the vibrant, competitive logistics industry that China has recognized as crucial to its economic growth. Reliable, time-definite domestic express delivery services can advance China's policy goal to expand economic growth and prosperity throughout the regions and provinces. Unfortunately, however, many of the actions taken or proposed by the Chinese government will stunt the healthy growth of this important industry in China, raise costs to Chinese producers that rely on EDS, and harm the overall competitiveness of China's economy.

Draft Postal Law – On April 28, 2008, the PRC government issued the 10th draft of its postal law. The draft still contains the problems identified in earlier drafts, but the industry's most pressing concerns are provisions that would discriminate against foreign-invested EDS firms by effectively barring them from the domestic express document delivery market. The draft also proposes to impose a "fee" on EDS companies to benefit China Post's Universal Postal Service Fund without clarifying how this tax will be levied and how the revenue will be used. This provision could impose an undue burden on EDS firms and appears to require private EDS companies to fund China Post's competing delivery businesses (*e.g.*, Express Mail Service). Finally, the draft would grant China Post other competitive advantages for both its competitive and monopoly businesses (tax exemptions, government-allocated property, expedited dispatch, etc.)

The provisions prohibiting foreign-invested firms from the domestic express delivery market should be removed, and the draft's other problems should be effectively addressed before the bill passes. We understand that the State Council's Legislative Affairs Office will discuss the draft postal law at the State Council's next leadership meeting chaired by Premier Wen Jiabao and this action is a precursor to including the draft postal law on the National People's Congress agenda for November.

China's postal reform and its new postal law should establish equal treatment for foreign-invested EDS companies relative to the non-monopoly businesses of China Post and local Chinese delivery companies by barring special advantages or treatment for any group. One of the best ways to do this would be to clearly and narrowly define China Post's monopoly on the delivery of letters through an enumerated weight and price limit, which is consistent with common practice in other jurisdictions.

SPB Measures – The State Post Bureau (SPB) introduced "Measures for the Express Market Management" (Measures) on July 16, 2008. The Measures evince a regulatory approach at odds with the development of an efficient, cost-effective EDS industry. The Measures make mandatory Chinese industry standards that SPB has repeatedly told the USG and foreign industry were voluntary. Those standards are not in conformance with international practice, so compliance with them will entail costly changes to practices and procedures that are accepted in all other markets. The Measures would create a new rating system for express firms, but contain no details about who will conduct this rating and how it will be implemented. The Measures also require EDS firms to "record" their

Headquarters and Branch locations with the local Postal Bureau in each province. The paperwork required for those procedures varies from province to province, which puts an unnecessary and costly burden on networked businesses. Finally, the Measures grant SPB powers of inspection that go beyond the powers extended to SPB under China's 1986 Postal Law.

SPB Standards – In January 2008, the SPB issued advisory standards for conducting EDS operations and, when industry objected to some of the standards, stressed that they were not mandatory. As noted above, the new “Measures for the Express Market Management” make those standards mandatory. The standards are unduly burdensome without adding value to the service. They seek to regulate many aspects of day-to-day business practices and operations of EDS firms despite the fact that U.S. EDS firms have been operating their businesses and serving their customers successfully for decades.

Various EDS trade associations have presented EDS firms with agreements and requirements, which, if signed or accepted, would put those firms at risk of violating not only their own country's anti-competition laws, but also China's new anti-competition law. If EDS companies refuse to sign these agreements or accept these requirements, they are threatened with exclusions from certain markets within China and with being posted on a website improperly and inaccurately identifying them as a “bad” EDS company.

The central government should ensure that these advisory standards for the EDS industry are not made mandatory through implementation by local SPB offices or local EDS trade associations. It should also ensure that EDS trade association practices and agreements do not violate China's anti-competition laws and do not put foreign-invested EDS firms at risk of violating their own country's similar laws. In addition, the PRC should eliminate unnecessary reporting requirements, such as the SPB proposal to require monthly reports from EDS firms.

Air Freight Sales Agency Licenses – EDS firms provide freight forwarding to their customers as part of their broad portfolio of services. However, General Administration of Civil Aviation of China (CAAC) regulations restrict wholly foreign-owned enterprises (WFOEs) from obtaining Air Freight Sales Agency Licenses, which prevent wholly foreign-owned EDS firms from booking space directly with air carriers in China. Without the ability to book space on aircraft, WFOEs cannot perform an essential part of air freight forwarding services and cannot fully enter the air freight forwarding market in China. These CAAC regulations should be modified to allow WFOEs to obtain Air Freight Sales Agency Licenses.

Raise Customs Minimum – A balanced, efficient customs regime is essential to promoting the fast, streamlined movement of goods across borders in the global marketplace, and improvements in customs are especially important to facilitate the rapid movement of goods throughout the world, in which EDS firms specialize. One simple way the PRC government could improve the efficiency of its customs regime is to raise its *de minimis* level to RMB 1400 (approximately US \$200).

Road Transportation

In its WTO accession protocol, China committed to open trucking to wholly foreign-owned enterprises, and full implementation of this commitment was to occur in December 2004. However, the extremely complicated and prolonged application processes for trucking licenses effectively serve as a barrier to market access. The applications require various transportation authorities' approvals at both the central and provincial levels. In many cases, approvals have not been granted to EDS companies well after passage of the 15-day commitment applicable to municipal and provincial governments and the 30-day commitment applicable to the central government. Trucks and other cargo vehicles are also largely denied city access during the business day in many key Chinese cities, creating unusual challenges to both Chinese and foreign service-providers and serving as yet another market access barrier. EDS companies are forced to use passenger vans for pick-up and delivery services, and, while this practice is generally accepted, fines and vehicle impoundment are becoming more frequent.

The Chinese government should simplify and streamline the application process for trucking licenses, remove the requirement for separate central and provincial level approvals, and, to the degree possible, consolidate the regulatory and licensing process into one central office. It should also significantly improve its compliance with its existing commitments to grant licenses within 15 days (municipal and provincial) and 30 days (national). EDS trucks and other cargo vehicles should be allowed to access China's major cities during the business day. Having access to the best, most efficient express delivery services is especially critical in major metropolitan business centers during the business day.

Retail Services

Organized retailing services are a critical component of the development of a robust consumer society in China. Foreign retailers help enhance the level of service, contribute to improving critical infrastructure and supply chain management, and stimulate domestic consumption. They also help to maintain sustainable and healthy development of the national economy. Despite all these benefits, we would like to identify the following sectoral restrictions and practices that hamper the development of China's retail services.

National treatment in approval process. The *Measures for the Administration on Foreign Investment in the Commercial Sector* ("Measures for Commercial Sectors") issued by MOFCOM in 2004 stipulate unequal treatment of foreign and domestic retailers. If a foreign retailer opens more than 30 stores with the business area of each store exceeding 300 square meters and would like to open another store, the new application must be examined and approved by three levels of government – local, provincial, and central. In contrast, domestic retailers are allowed to apply directly to the registration authority

(AIC) for a new store business license without having to undergo the lengthy three-level approval process.

We are pleased with China's commitment at the 2008 JCCT that removes MOFCOM from the approval process. However, it will still be a two step process for foreign retailers, since the provincial and local steps will remain. We also look forward to seeing how the new approval process will work in practice as it is implemented regionally.

Similar discriminatory treatment also applies to sellers of some merchandise including pharmaceuticals, pesticides, mulching film, chemical fertilizers, processed oils, grain, vegetable oil, sugar, cotton, tobacco, CDs and DVDs. In order to sell these products, foreign retailers must obtain special permits and licenses from central government agencies. This process takes them far longer than it does domestic retailers, who only deal with local government agencies. Thus, we suggest that these disparities in the treatment of foreign and domestic retailers should be removed.

Restrictions on ownership. Ownership limitations in NDRC's *Foreign Investment Industry Catalogue* and the *Measures for Commercial Sectors* are overly restrictive. A foreign retailer, that opens more than 30 stores in China selling certain commodities of different brands and from different suppliers, cannot be more than 49 percent foreign owned. By contrast, the limit for Hong Kong and Macao investors is 65 percent, but it is still low. The restricted commodities include pharmaceuticals, pesticides, agricultural films, fertilizers, refined oils, food, vegetable oil, sugar and cotton, among others.

Registered Capital. According to Article 7 of the *Measures for the Administration on Foreign Investment in the Commercial Sector* ("Measures for Foreign Investment") issued by MOFCOM, the minimum registered capital for foreign retail investors must be compliant with the relevant provisions in the Company law and with other relevant regulations. Although company law states that minimal capital investment is fairly low (between RMB 300,000 and RMB 500,000), in practice foreign retailers are usually asked by MOFCOM to increase their registered capital by many times this amount each time they apply for a new outlet. No such provision exists for domestic retailers regardless of the number of their outlets.

Restrictions on tobacco. On March 7, 2007, the NDRC issued rules, which state that foreign commercial enterprises are not allowed to conduct wholesale or retail business related to tobacco. Foreign invested retailers that currently sell tobacco products will not be authorized to sell these products after their current permits expire in late 2008.

Audiovisual, Publishing, and IT Products and Services

Since our last submission, little has changed in terms of market access and national treatment in China's audiovisual and IPR services. CSI continues to support fully the US request for a WTO panel to review China's market access restrictions in this sector. We also encourage China to remove its limitations on foreign ownership in distribution and

video replication, publishing, TV stations, and theater holding companies as one means to curb piracy. The elimination of market access barriers to distribute foreign pay TV programs and services, and an increase in the number of foreign revenue-sharing films allowed into the Chinese market are also important. We believe that some of the piracy issues can be alleviated by allowing foreign media companies to have greater market access and a greater stake in their Chinese investments.

China's WTO accession commitments in audiovisual services allow for foreign minority participation in cinema operations. However, China refuses to permit foreign majority enterprises, except in select cases that were grandfathered under a terminated experimental policy to allow up to 75% foreign investment in select cities. China also insists that the foreign partner cannot serve as Chairman of the cinema joint venture even if approved by its board.

China increased the number of foreign revenue-sharing films allowed into the market each year to 20, a minimal market opening measure. The terms of the revenue-sharing contract are dictated by the Chinese Government, and are not commercially reasonable by any standard. China continues to disrupt orderly marketing by instituting blackout periods when foreign films cannot be shown, and by imposing revenue targets. The orderly distribution of home entertainment products is also impaired by the terms of commercial agreements and the imposition of rules restricting the choice of business partners.

China also maintains primetime broadcasting and foreign content restrictions in pay and non-pay television. China does not permit the licensing of foreign pay television services, which stifles the growth of its cable and digital platforms. Most recently, the government issued a series of rules for the *Administration of Internet Audiovisual Program Services*, creating new online video content regulations that place significant restrictions on foreign broadcasters. It is equally important that market access and a flexible regulatory environment be created to ensure digital investment in areas such as IPTV and online content services. All these restrictions, along with the lengthy approval process, only serve to expand the spread of illegal pirated content.

In the audiovisual distribution services sector, China is not abiding by its retail distribution services commitments, which are to allow foreign majority control with the ability to sell AV products. Contrary to this commitment, China has restricted foreign majority controlled retailers from securing AV retailing licenses.

In the publishing sector, control over content remains strict and China has stated that it will not approve any more foreign titles under Chinese publishing licenses, except technical and scientific publications. We find this decision troubling and urge China to reconsider it.

We are concerned that the pace of China's economic reforms in services has slowed and that Chinese policy makers might be now more inclined to yield to local protectionist pressures. On the other hand, China's spectacular growth signals that its economy is a large beneficiary of liberal trade reforms. To maintain this growth and keep Chinese exports competitive, China should live up to its services commitments fully and help advance further liberalization at the Doha Development Round.

As the experience of the failed mini-ministerial meeting this July showed, China has been regrettably unhelpful in facilitating progress at the WTO negotiations. Although the services signaling conference was moderately successful, China provided only minimal services indications of little economic value to its trading partners. We are disappointed that China did not give a more ambitious signal in financial services.

China's more constructive participation in the Doha Development Round will be crucial to break the prolonged stalemate at the WTO negotiations. It will be equally important to maintaining the strength of the WTO regime that the Chinese implement their existing commitments in services fully and without delay.

A more cooperative position from the Chinese Government to ensure substantive liberalization would demonstrate to the Congress and the new U.S. administration that China is a reliable commercial partner, committed to meaningful reforms.