



Coalition of Service Industries

**Statement by Robert Vastine
President of the Coalition of Service Industries
Trade Policy Staff Committee
United State Trade Representative
September 14, 2005**

Thank you for the opportunity to testify on China's implementation of its WTO accession commitments and market access issues in services. The Coalition of Service Industries (CSI) strongly supported China's accession to the WTO and legislation to grant PNTR status. However, China's compliance with its commitments remains a significant problem almost 4 years after accession. U.S. companies still face complex barriers, including many that were due to be dismantled in whole or in part pursuant to China's WTO commitments.

I regret that many issues identified in last year's CSI statement remain outstanding. We can only ask that the agencies represented here continue to use all forums available to remove the barriers described below.

Cross-Sectoral Issues

Excessive Capitalization Requirements

We acknowledge China's efforts to reduce required capitalization levels in insurance. However, more progress is needed. Capitalization requirements remain high given assumed risks and international practices. Chinese regulators also continue to impose excessively high capital requirements that bar market access in asset management, securities, telecommunications, freight forwarding and logistics. Overly high capitalization requirements are not an effective way to ensure financial solvency. Such restrictions prevent the efficient use of scarce capital and, importantly, impede the expansion of China's economy.

Emergency Safeguard Mechanism

Article 45 of China's Foreign Trade Law permits the use of emergency safeguard measures (ESMs) against services imports. ESMs for services are not provided in China's terms of accession or in the General Agreement on Trade in Services (GATS). We strongly oppose any efforts to employ a services safeguard mechanism.

Transparency

According to the General Accounting Office report "US Companies' Views on China's Implementation of Its Commitments," of March 24, 2004, US companies consider China's

commitments in transparency of laws, regulations, and practices among the most important. We certainly agree. Despite China's extensive transparency commitments, US companies in some cases have been denied the right to comment on new regulations, or have been unable to do so because comment periods have been too short. Rather than specifying all criteria that foreign firms must satisfy, China's rules often provide regulators with broad discretion, resulting in varying rules and decisions. Chinese laws, regulations, and administrative practices frequently change without warning, and may not be applied uniformly, especially at the local level.

Government Procurement

China's 2003 Government Procurement Law requires that the Chinese government purchase only domestic goods, services and works, with limited exceptions. China is in the process of developing both general and sector-specific implementing regulations for government procurement, and in March, 2005, initial draft implementing measures on software procurement were promulgated. These are important, precedent-setting regulations because the treatment of software under the law will influence how China treats government procurement in other sectors it deems strategic for its development.

The Chinese government is China's largest single purchaser of IT goods and services. U.S. IT goods and service providers currently enjoy a substantial share of this important market, with a potential value of over \$8 billion to U.S. firms. U.S. industry has raised strong concerns about the proposed regulations, which would severely restrict market access by non-Chinese companies.

These government procurement practices are in conflict with the principles of the WTO Government Procurement Agreement (GPA), which stipulates open, pro-competitive, merit-based and technology-neutral procurement of goods and services. Although China is still an observer to the GPA, it committed to begin negotiations to become an official GPA member "as soon as possible."

At the July, 2005, meeting of the U.S.-China Joint Commission on Commerce and Trade, China agreed to delay issuing the draft regulations to allow for further consideration of public comments and to revise the regulations to make them consistent with WTO rules. China announced that it would accelerate its efforts to join the WTO Government Procurement Agreement by initiating technical consultations with WTO Members. China also agreed to ensure that central, provincial and local governments use only legally licensed software by the end of 2005, and will extend the program to companies and state-owned enterprises, in 2006.

CSI commends this positive development to open China's government procurement markets, however, further efforts will be needed. China has yet to ensure that its software procurement is conducted on a transparent, non-discriminatory, merit-based and technology-neutral basis. China should also secure a sufficient budget to implement its commitment to legalize all government software use.

Intellectual Property Rights Protection

China's piracy and counterfeiting at the wholesale and retail levels, end-user piracy, and Internet piracy remain rampant due to lenient penalties, uncoordinated enforcement among local, provincial 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 in excess of 90 percent. Although recent copyright amendments and regulations made progress toward bringing Chinese law into compliance with TRIPS, the law still provides 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. Overall, the issue of IPR protection is marked by a readiness of the central government to address the problem, while implementation at local levels remains unsatisfactory.

IPR Enforcement Regime

Chinese agencies should better coordinate to improve enforcement of administrative and criminal measures. Administrative enforcement is slow, cumbersome, and rarely results in deterrent fines. Although Chinese authorities have undertaken administrative enforcement actions against pirates, the government's refusal to share information about the activities of CD plants and about the ultimate outcomes of its actions makes it difficult to assess China's efforts. Copyright authorities are typically understaffed, and lack skills and resources, as well as a mandate to take strong administrative measures.

Civil copyright enforcement is also hampered by the courts' unwillingness to grant provisional remedies on an *ex parte* basis, even though the amended law now authorizes such remedies.

China's criminal law has rarely been used to prosecute copyright piracy because of the high thresholds for criminal liability. The Supreme Court's recent Judicial Interpretations (JIs) have failed to establish an acceptable framework for criminal prosecutions and deterrent penalties for IPR violations. The new JIs make only minimal decreases in the monetary thresholds, and leave damages to be calculated at pirate prices. The new thresholds may be effective only if they bring more criminal cases against pirate manufacturers and distributors.

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. This is very difficult to demonstrate, particularly if it happens online. China should closely adhere to TRIPS which requires criminalization of "copyright piracy on a commercial scale"- not just piracy for profit.

Under the new rules, online infringements that meet the thresholds are criminalized, but the ability to use these rules in practice has yet to be tested. At the JCCT meeting in 2004, China agreed to join the WIPO "Internet" Treaties, and we look forward to implementation of this commitment.

Although China's rules criminalize importing and exporting pirate products, criminal penalties are very low, since liability results from China's rules covering "accomplices." As a result, China remains a large producer and distributor of high-quality counterfeit optical media, software and IT-related products for both local and foreign markets. Chinese customs must be able to refer large-scale pirate seizures for strict criminal prosecution.

Local copyright authorities and local administrations should cooperate to ensure adequate administrative enforcement against all types of copyright offenses, including corporate end-user software piracy and unauthorized loading of software on computers. Chinese authorities at the national and provincial levels should also conduct aggressive investigations to trace the source of

pirate production, impose criminal sanctions on pirate producers and distributors, and institute a zero tolerance policy for the sale of infringing materials.

To ensure that improvements in China's enforcement regime yield meaningful gains for U.S. right holders, the industry suggests that the U.S. Government establish evaluation criteria that provide an objective and verifiable mechanism to measure progress in China's IPR protection. These criteria should assess (i) criminal, civil and administrative enforcement against all forms of piracy and counterfeiting; (ii) end-user compliance with IPR laws; and (iii) government-sponsored public education and awareness programs about compliance with IPR laws. Actual increases in China's purchases of legitimate U.S. IPR products represent an important tool to measure progress in IPR protection.

Market Access for IPR Products

Elimination of China's trade barriers in audiovisual, software, and IT goods and services can help solve China's piracy problem. Current rules make it difficult for US services companies to enter the Chinese market to supply legitimate products, thereby ceding the market to counterfeit producers. We encourage China to increase the 49% cap on foreign ownership of distribution and video replication companies.

Prohibition of foreign participation in TV stations and theater holding companies, and limited foreign ownership in cinema theaters also represent significant market access barriers. Under the WTO accession agreement, China allowed only for minority foreign participation in cinema operations. Subsequently this capital restriction was revised to allow 75% foreign investment on an experimental basis in selected cities. But recent regulations rolled back this limited liberalization.

China increased to 20 the number of foreign revenue-sharing films allowed into the market each year, a minimal market opening measure. However, any such quota, along with the lengthy approval process, also serves to promote the spread of illegal pirated content. China should consider increasing revenue sharing beyond 20 films, eliminate the import monopoly and the distribution duopoly, and eliminate or reduce the "black-out" periods for foreign film screening. Primetime broadcasting and foreign content restrictions for pay and non-pay television broadcasters should also be reduced.

China's censorship clearance procedures for optical media should be streamlined. These procedures give another advantage to pirate producers by severely hindering timely distribution of legitimate CD, VCD, and DVD products in China. China should institute a film rating system to facilitate expedited censorship.

In publishing, despite new regulations that allowed wholly foreign-owned enterprises in publication retailing and wholesaling, the state's control over content remains strict.

China should also allow foreign investment in publishing. Guidelines have been issued to permit private equity in publishing enterprises, which were previously controlled exclusively by the state. However, this liberalization is limited to domestic Chinese private investment. We had hoped that these guidelines would facilitate a move to allow foreign investment, but new regulations issued in August 2005 put progress on hold.

Restrictive licensing policies on retail outlets also inhibit the industry's ability to provide consumers with timely access to legitimate products. Retail chain stores should be granted a national license to distribute CDs and other media products, instead of requiring separate licenses in each jurisdiction. China should also clarify the authority and procedures for the issuance of retailers' AV licenses.

Technology Standard Setting Issues

China's movement toward adopting unique national technology standards instead of available international standards threatens to become a significant barrier to foreign competition, and to undermine China's ability to export its own products.

CSI appreciates the US government's efforts to address the issue of standard setting for China's wireless local area network (WLAN) encryption. However, the scope of the problem is much broader, since China is developing unique national technology standards across a wide range of products. China's development of the TD-SCDMA digital cellular standard is another example of restrictive standard setting efforts. As a result of problems in the development of the TD-SCDMA standards, further cellular licensing has been postponed, and trade opportunities and foreign investment that could be predicated on the use of the globally-recognized CDMA and GSM standards have not materialized.

Voluntary, industry-led, consensus based, and non-discriminatory standards are essential to promote interoperability, competition and innovation. As a general matter, technology standards should not be mandated by governments. Standards, and the technologies they embody, should be allowed to compete in the marketplace.

CSI members are also concerned about the issues of protection of foreign patents, the inability of foreign companies to be voting members of the standards development groups, and attempts to severely limit compensation for intellectual property rights as the new standards are being developed.

We encourage China's participation in international standard setting bodies and urge it to align its standards development with international practice. It is also important to protect intellectual property rights embodied in standards through China's adoption of clear rules consistent with international practice.

Sectoral Issues

Insurance

Since the amendment of China's Insurance Law in 2003 by the National People's Congress, China's Insurance Regulatory Commission (CIRC) has issued several important implementing regulations. In line with its WTO accession commitments, CIRC announced in December 2004 that all its geographic restrictions on foreign insurance entities had been removed, and that foreign companies are now allowed to provide health, group, and pension/annuity insurance. Brokerage companies were also permitted to hold up to 51% of shares in joint companies. Despite these positive developments, significant market access and national treatment impediments for foreign insurers remain.

Concurrent Branch Licensing

Insurance entities that established an initial branch would appreciate greater clarity regarding procedures and approvals for establishing subsequent branches, sub-branches, and related entities.

Foreign invested insurance entities should enjoy national treatment, and be able to apply for any number of branch approvals simultaneously at any given time, as well as receive new product licenses without delay. Provisions covering branching in the Administrative Regulations and the Foreign-Invested Implementing Rules are silent on the number of branches a company may apply for at one time, and whether branch approvals will be granted consecutively or concurrently. A number of Chinese companies have received branch approvals on a concurrent basis, even when first establishing their businesses in China. In contrast, US insurance companies have not been receiving branch approvals on a concurrent basis, including when first establishing their business.

Non-Life Insurance Branching

Prior to China's WTO accession, a number of foreign insurance entities were allowed to establish operations in the PRC. These companies were requested by the Chinese Government to incorporate as operational branches, not as subsidiaries. However, the Draft Insurance Company Administrative Regulations and the Draft Trial Implementing Rules issued in 2003 do not appear to contain a provision on the maintenance and development of these branch operations. Therefore, CSI members would like to clarify the administrative procedures under which a guaranteed branch/sub-branch structure¹ is allowed. Accordingly, regulations should be developed to govern branches already established in China, and future branches that may be established. These regulations should conform to the internationally accepted branch/sub-branch operating structure.

Foreign insurance entities should be able to choose their corporate form and establish a branch or a sub-branch, backed by the strength of the parent organization. Being the same legal entity as its parent, the branch's rights and obligations are those of the foreign parent, and all branch policies and liabilities are backed by the foreign parent's full asset base. We would also like to ensure that China fully implements its commitment to allow branch establishment according to the phase-out of geographic restrictions.

Provincial Branching and Sub-Branching

It is essential for foreign branches, sub-branches and subsidiaries to be able to compete with domestic companies on an equal footing, and to operate in each province with access to all its cities, prefectures, and municipalities. Regulations do not specify if CIRC's approval to establish a branch will be sufficient to permit operations throughout a province. In addition, it is unclear if insurance entities are able to apply for multiple sub-branches simultaneously.

¹ "Guaranteed branch/sub-branch structure" means branches and sub-branches whose solvency is guaranteed and supported by the total assets of the parent company.

National Treatment for Capitalization Requirements

In 2003, CIRC substantially lowered its capitalization requirements to RMB200 million for initial establishment and RMB20 million for each additional branch to a cap of up to RMB500 million. However, the new capitalization levels are too prescriptive, and are still much higher than international norms with respect to specific business models and assumed risks. According to the industry study “A Recommendation for Revisions to the Capitalization Requirement Rules for Life Insurance Companies Operating in China,” China’s new capitalization requirements remain higher than in eleven important Asian markets, and much higher than in the United States and the European Union.

China should ensure that the initial establishment fee of RMB200 million includes the right to establish sub-branches without limitation on numbers. China has not adequately explained how the branching capitalization requirement of RMB20 million for each additional branch is prudentially justified.

Overseas Utilization of Foreign Exchange Funds

With respect to CIRC’s “Provisional Measures on the Administration of the Overseas Utilization of Insurance Foreign Exchange Funds” released on August 9, 2004, we are concerned that the threshold for utilization is unjustifiably high. Paragraphs 4 and 5 of the article entitled “Insurance fund move precludes qualified domestic institutional investors (QDII)” states that only the largest companies, which excludes foreign participating companies, are authorized to access overseas fund/equities. These provisions have significant national treatment implications, and should be expanded to allow utilization by foreign participating companies.

Group Life “Master Contract Coverage”

On December 11, 2004, the CIRC announced that China’s commitments to provide market access in group, health, pension, and annuity insurance had been fulfilled by the deadline set in the WTO. However, CIRC has yet to issue implementing guidelines that identify entities covered under group life “master contract coverage,” and to specify qualifying criteria for insurance entities interested in providing this coverage. We also urge the Chinese government to permit any insurance entity with a group license to provide coverage to a principal policyholder under a master contract, and to members of the group represented by the principal policyholder, regardless of their location in China.

Transparency

We ask that China give insurance entities a reasonable period to review and comment on proposed new measures as provided in the accession agreement. We are pleased that CIRC offered the opportunity for public comment on its “Trial Implementing Rules for the Administration of Foreign-Invested Insurance Companies” and “The Administrative Regulations on Insurance Companies” both issued in 2003, and the Insurance Law issued in December 2004. However, having the opportunity to comment on important sectoral regulations is still rare.

In 2005, China issued regulations of interest to insurers, such as rules on administration of insurance agencies, asset management, stock investment transactions, and investment in subordinated bonds without the opportunity for public comment. Therefore, we encourage the

CIRC to allow all interested parties to participate in the entire rule-making process through submission of data, written or oral statements, and arguments, in advance of the issuance and implementation of all regulations. We also hope that CIRC will ensure that foreign companies' comments and interests are clearly reflected in its final rules.

We welcome the fact that CIRC's "trial implementation" regulations are open to revision as needed. The U.S. insurance industry fully supports China's efforts to develop and refine its insurance regulatory system. We remain committed to engaging in constructive dialogue with Chinese regulators, and encourage them to consult with US and other international experts as they continue to develop the Chinese regulatory system.

Improving the transparency of the rulemaking process as well as maintaining equal application of licensing and solvency rules to foreign and domestic companies is especially important as new regulations are being released. Some new regulations appear to have unreasonable provisions that will put many new entrants at a competitive disadvantage in the marketplace. Specifically, these regulations allow companies with licenses for more than eight years to invest in a much broader range of assets than companies entering the market since China joined the WTO. Such arbitrary provisions are inconsistent with China's national treatment commitment and have no prudential rationale. We urge an open discussion of their prudential justification.

Acquired Rights

CSI members seek confirmation that existing direct branches and other insurance company operations may continue, but are not required, to operate under the same conditions and authorities accorded at the time of establishment, whether or not the said condition and/or authority complies with new rules, including operations, financial structure, capital and mode of establishment. China should exempt existing companies from compliance with new rules if such companies choose to maintain their existing status, which should be protected as an acquired right. A company that chooses to maintain its existing status should not be penalized by additional, alternative restrictions on its ability to operate and expand business in China.

Any company should be permitted to expand its business into new cities and provinces, and into new product lines, including group business, consistent with China's insurance commitments. Restrictions that are not based on international norms are counterproductive both for the companies and for the Chinese economy, and should not be applied to new foreign entrants, either.

CSI and the U.S. insurance industry strongly support the dialogue between CIRC and U.S. insurers and intermediaries. This dialogue is organized under the auspices of USTR and the US Embassy in Beijing, and is an important forum in which to raise issues of concern. We appreciate China's commitment at the last plenary of the JCCT to hold a meeting of the insurance forum at the end of this year to discuss regulatory concerns and further liberalization in the insurance sector. We hope CIRC will also include other relevant Chinese Government officials in order to open the dialogue on issues of asset management and taxation, as well as invite global companies and industry representatives to join the program.

Banking

On June 26, 2004, China's *Administrative Measures on Foreign Debt of Foreign Banks in China* went into force, restricting the foreign-currency lending of foreign bank branches and their offshore funding. These measures will work to the significant detriment of Chinese businesses and borrowers, including Chinese financial institutions, which rely on international banks for an increasing proportion of their financing needs. Under these rules, foreign-currency denominated loans to corporate clients may not be converted into *renminbi*. Foreign banks will also be unable to issue Standby Letters of Credit in foreign currency for the benefit of Chinese banks in order to allow corporate clients to borrow *renminbi* from these banks. Together, these measures will discourage *renminbi* expenditures by foreign investors whose presence is actively sought in the Chinese economy.

The measures also introduce a quota, which limits foreign-currency financing of foreign banks in China from their head office and offices in third countries. These restrictions are especially damaging, since China's domestic inter-bank market for foreign currency is almost non-existent and foreign bank branches are heavily dependent on funding from their head offices or offices in third countries.

Although identical restrictions are applicable to domestic banks, their effect on foreign banks are disproportionately negative. Foreign banks have little access to the *renminbi* market, and their clients are more internationally oriented, with a greater need for flexible foreign exchange transactions.

Asset Management and Securities

On December 21, 2001, the China Securities Regulatory Commission (CSRC) issued the Joint Venture Rules for asset management companies, which do not provide a defined set of approval criteria, and give the CSRC broad discretion to impose additional qualification requirements. The rules also stipulate that foreign firms must have at least RMB 300 million (US\$36 million) to qualify as a joint venture partner, an amount which is significantly higher than similar requirements imposed by any other national jurisdiction. Since it is generally agreed that asset management firms do not need capital reserves to protect investors, this requirement serves almost solely as a market access barrier.

We understand that CSRC does not appear to be abiding by its own regulations which require it to give notice of the status of a joint venture application within 30 days. We also understand CSRC may be in the process of changing its regulations regarding joint venture establishment requirements. We would appreciate the opportunity to comment on those changes.

In asset management and securities, CSI urges China to go beyond its WTO commitments to allow foreign firms to choose their form of establishment, to own up to 100% of securities and asset management firms, and to compete in those sectors on the same basis as domestic firms. We also ask that China permit foreign-owned entities to engage in a full range of securities activities, including underwriting and secondary trading of government and corporate debt, and A-shares. Foreign securities firms should be allowed to trade *renminbi* and *renminbi*-linked products with Chinese entities, as well as create, distribute, and trade derivatives.

We are pleased that China has taken steps to open the A-share market to foreign investors by adopting rules on qualified foreign institutional investors (QFIIs). However, many institutional investors are unable to take advantage of the rules because the following aspects of the QFII rules limit their practicality:

- The rules restrict the percentage of an issuer's securities that may be held by any single QFII and all QFIIs in the aggregate.
- The rules require each QFII to commit total investment of at least US\$50 million to a special QFII account.
- Certain elements of the QFII licensing process lack transparency. For example, the licensing rules include a provision that allows the CSRC and SAFE to give priority consideration in granting licenses to "pension, insurance or mutual funds that have a good investment record in other markets."
- Investment quotas must be fully funded within 3 months, and the unused portion of quotas expires. This period should be increased to at least a year.
- The invested amount must remain in the QFII account for at least a year for open-end funds and three years for closed-end funds, and any remittances from the account must be approved in advance by the State Administration of Foreign Currency Control (SAFE).²

We understand that the CSRC is reviewing the lock up periods for investment for a possible change in the requirement. We would welcome such an amendment to the QFII rules, which would encourage further investment by QFIIs.

Private Pensions

CSI welcomes the Chinese government's publication of key enterprise annuity regulations in May 2004. We believe tax-favored, employer-sponsored supplementary private pension plans, managed by professional financial services firms - insurers, pension and retirement savings companies, banks, securities and mutual fund companies - constitute an important component in helping China address the challenge of its growing aging population. We would, however, encourage Chinese authorities to consider the following suggested improvements to the program:

- China should clarify details of existing regulations, including the licensing process and procedures as well as information on the regulatory and supervisory authorities of private pension companies. China should also ensure a level playing field for banks, securities firms, asset management companies, and insurers when they apply to an appropriate financial services regulatory body before securing approval from the Ministry of Labor and Social Security (MOLSS).
- The tax regime should enable employers to make tax-favored contributions to their employees' pension plans. The rules should also provide tax deferral for individuals contributing to their defined contribution pension accounts, similar to U.S. 401(k) plans.

² The lock up rules pose regulatory compliance issues for mutual funds, which are required to meet redemptions at all times. As a result, most US mutual funds obtain exposure to China not under the QFII rules, but by investing in Chinese securities available in Hong Kong.

- Chinese authorities should ensure strict sectoral supervision and allow market driven fees on private pension businesses, without fee caps.

Express Delivery Services

Draft revisions to China's Postal Law contradict accession commitments in market access and national treatment, and raise the following issues:

- **Market Access for Foreign Providers.** The draft legislation provides China Post with an absolute monopoly for all shipments weighing less than 350 grams. Regarding shipments over 350 grams, there is a provision prohibiting delivery of "addressed letters, printed matters and parcels" by foreign invested enterprises unless they are in the form of express delivery services. We believe that the enlarged scope of this monopoly is a flagrant violation of the horizontal rollback provision in China's WTO commitments.

The draft also stipulates that when the State Council's rules regarding the international express industry contradict the legislation, the Council's rules will prevail. However, there are inconsistencies in those provisions, and we are concerned that the State Council can change its regulations at any time.

- **Universal Service Charge on Express Industry Revenues.** China should establish a clear division between the universal postal service obligation and businesses outside the universal service in which China Post may be involved, including express delivery services and logistics. The draft postal legislation creates a new, unspecified charge on express industry revenues. The size of this fee and the basis on which it will be charged remain to be outlined in regulations. We understand that this fee is intended to support China Post's universal service obligation to deliver mail to remote regions. However, it is not the obligation of the express industry to fund China Post's responsibility to provide universal postal service, which is distinct from express delivery.

China also must ensure that the government provides no subsidies or benefits, either directly or indirectly, to the businesses outside the universal service. This means that there must be no exemption from taxes and other fees, and no special treatment by government agencies in the transport of goods outside the universal service.

- **Regulator's Independence.** The draft postal legislation fails to provide for the establishment of an independent regulator. Recently announced reforms in the structure of China Post allegedly split China Post's regulatory and business functions into two new independent organizations, but no details on how this plan will operate in practice are available. Having a postal agency as regulator puts US companies at a serious competitive disadvantage and raises significant market access concerns.
- **Licensing Procedures.** The license/entrustment agreed under China's access negotiation is up for renewal. Express Delivery firms had originally agreed to apply for the entrustment on the basis of a number of conditions – including that the application would only be made once by the head office (and not the subsidiary offices) and that the time period for entrustment would coincide with that of the firms international freight forwarding licenses issued by MOFCOM. That understanding was codified in China Post Order 556 of 2002. China Post has violated this agreement and ignored its own regulations: the new

entrustments for the express delivery firms have been extended for a limited period of six months until the end of 2005, the latter on the basis that the entrustment procedure may change in the new postal law.

Moreover, the draft legislation establishes a new, unworkable licensing regime with new authorities of supervision, inspection, and punishment granted to the postal regulator. Express delivery companies and their existing subsidiaries, that have already been issued licenses under existing regulations, as well as all future subsidiaries should not be required to re-apply and/or apply as appropriate for the licenses with the new regulatory authority.

Freight Forwarding and Logistics Services

MOFCOM revised the international freight forwarding (IFF) rules on December 11, 2002 to permit majority foreign ownership of IFF ventures. However, the revised rules do not provide a schedule for establishing wholly foreign-owned IFF enterprises. We would like to ensure that China will allow wholly foreign-owned freight forwarding subsidiaries according to its schedule of commitments, by December 2005, and that interested foreign companies will be able to provide their comments before such rules become law.

On July 26, 2002 MOFTEC issued the “Notice on Relevant Issues Regarding the Experimental Establishment of Foreign-Invested Logistics Companies,” which allowed foreign providers to conduct the full range of logistics services in eight provinces and cities. However, IFF companies are being permitted only to engage in local delivery within the city or province in which they are licensed to operate, but not between the specified areas.

The licensing process in logistics and freight forwarding remains non-transparent, costly, and time consuming. Logistics companies applying to provide multi-modal services face the arduous task of acquiring and interpreting information about requirements that vary depending on the national authority and the province where they file the application. Freight forwarding enterprises should be extended national treatment, and should be able to obtain national operating licenses.

CSI members also urge China to extend national treatment to the equity capital requirements of US freight forwarding and logistics companies. The minimum registered capital in freight forwarding equals US\$1 million, which is twice as high as the requirement for domestic companies. To provide third party logistics services, foreign companies must meet a US\$5 million capital requirement.

Telecommunications

China has made no market access improvements to its 2003 Catalog of Telecommunications services, which was implemented by the Ministry of Information Industry (MII) with no opportunity for public comment. The resultant telecommunications service classification regulations redefine basic and value added services so as to protect the state-owned incumbent providers. For example, in the value added services list, they limit IP-virtual private networks (IP-VPNs) to “domestic” services (i.e., excluding the international IP-VPNs to corporations investing in China), and delete “resale” services. A basic services license, available to foreign invested joint ventures in three major cities only since December 2004, is subject to a RMB 2

billion (US\$250 million) capitalization requirement, which is 100 times higher than for value added service licensees.

US industry continues to urge Chinese authorities to classify value-added and basic services in a manner that encourages competition and limits pre-qualification capitalization requirements to those directly related to specific risks of a new venture.

CSI members believe that the MII cannot be considered an independent telecom regulator because it continues to support state enterprises. The regulator has persisted in issuing rules distinctly favorable to state owned enterprises without inviting public comment, contrary to China's obligations.

As we reported last year, we are pleased that China is circulating a long awaited telecom bill among its government agencies. We hope this bill will address outstanding sectoral issues, and be available for public comment well before it comes into effect. We also hope that the JCCT telecommunications dialogue, launched this year, will resolve the sectoral capitalization and resale issues.

Digital Products Customs Valuation

China made WTO commitments with respect to customs valuation to apply digital products tariffs based on the value of the underlying carrier medium rather than on the imputed value of the content (i.e. on the basis of projected royalties). In June 2003, however, China issued regulations which do the exact opposite. Chinese authorities should reverse these regulations and ensure that customs valuation for all forms of digital products (including, software, movies and music) is based on the value of the underlying carrier medium.

We appreciate the Chinese Government's recent decision to reform its currency regime to secure eventually a more level playing field with foreign goods and services providers. It is equally important that China makes its regime in services more open to foreign competition. Experience shows that China's economy has greatly benefited from the foreign investments, technology and expertise stemming from liberalized services trade. To ensure sustainable growth and development, and to facilitate its further integration into the world's economy, China should continue to open its market in key services sectors.

The WTO Doha Round negotiations are an important opportunity for China to advance its domestic and global services trade liberalization agenda, and to establish its leadership role within the community of developing countries in the WTO.

China's recent revised services offer, like that of many other developing countries, is weak. We hope that as negotiations proceed China will improve its offer at the same time that it improves its implementation of prior commitments.