



**Statement by the  
Coalition of Service Industries on  
China's Implementation of WTO Commitments  
Ways and Means Trade Subcommittee Hearing**

Thank you, Mr. Chairman and members of the Subcommittee, for the opportunity to express the views of the Coalition of Service Industries (CSI) on U.S.-China services trade and China's implementation of WTO services commitments. 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 its sectoral reforms.

Since WTO accession, China has conducted comprehensive trade reforms that opened key services sectors to foreign participants, improved trade policy predictability, and expanded China's foreign markets. According to the World Bank, Chinese global cross-border services exports grew from \$5.7 billion in 1990 to \$62 billion in 2004. China's exports in travel, IT and communication services were especially strong. U.S. cross-border exports to China also increased by 61% from \$5.6 billion in 2001 to \$9 billion in 2005. The U.S. services trade surplus with China now stands at \$2.6 billion, and is based on strong U.S. exports in business, professional, educational, financial, and telecommunications services.

Despite the robust growth of U.S.-China services trade, China's economy is unbalanced, because its policies continue to favor export-oriented manufacturing sectors, as opposed to local consumption-generated growth based on demand. As a result of these skewed policies, Chinese services sectors have experienced lower growth than the goods sector, and comprise only 41% of GDP. This is less than the average services GDP in low and middle income countries, and much lower than in the U.S., where private services are 78% of output, and 80% of private sector employment.

The development of China's services sector is also hampered because U.S. companies are still unable to take full advantage of its WTO commitments due to erratic implementation. In our reviews of China's services trade record, we specifically stressed systemic, cross-cutting issues, such as market access and national treatment, poor services infrastructure, the lack of transparency, the lack of intellectual property rights (IPR) protection, and other challenges. We support the U.S. Government's decision to raise these overarching issues at the U.S.-China Strategic Economic Dialogue (SED), which we urgently hope will also create a solid foundation for solving many sector-specific trade impediments in other forums.

## **Structural and Systemic Issues for Strategic Economic Dialogue**

CSI members support the objective that the SED process should remove structural barriers that impede both China's growth and U.S. access to its markets through trade and investment. Services sectors have become increasingly important to China's further infrastructure growth and global competitiveness. Therefore, we suggest that the SED forum focus on the following systemic issues:

### **I) Increased Regulatory and Licensing Transparency**

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. 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 outstanding specific trade and investment problems U.S. companies continue to confront might be eliminated.

We also encourage the Chinese Government to seek active participation by all stakeholders in regulatory reform. The review of the 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. The opportunity for meaningful public comment on China's legislative measures is required by GATS rules on transparency and China's WTO accession commitments on notice and comment.

### **II) Strengthening Key Regulatory Institutions**

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 regulator is not sufficiently independent in its functions and responsibilities from the state-owned telecom monopolies. Enactment of a Telecom Law that would establish an independent regulator could serve as the basis for a significant expansion of the telecom sector and those industries that depend on competitive telecom services. U.S. experience with telecommunication regulation could surely be useful!

### **III) Financial Sector Modernization**

The structural rigidities of the Chinese financial system are well known. The system perpetuates bad loans from state banks to state enterprises, starves small and medium services companies of funds and encourages investment in sectors suffering from overcapacity, which leads to China's continued exploitation of export markets. All this results in poor savings returns for Chinese citizens and widespread economic inefficiencies. Chinese leaders have indicated they are aware of these shortcomings and of the need to strengthen the Chinese financial services sector.

China's objective of modernizing its financial sector can be achieved by continuing to liberalize foreign investment policies in the financial services sector. China will need to redouble its efforts to increase regulatory transparency, permit full foreign ownership of investments, and offer a full choice of juridical form.

A more open market will allow foreign financial services suppliers to introduce new and innovative products that could serve as models for health insurance coverage, retirement savings, and accidental death and dismemberment benefit plans. This will require full national treatment for foreign firms in all areas affecting operation and expansion of business.

### **IV) Promoting Innovation and Technical Assistance**

Because China and the U.S. share the goal of promoting innovation in services to secure economic growth, both countries should collaborate on research and development of the new field of "services science." Services science is a multidisciplinary field that combines training for technology, science, management and engineering skills. IBM is partnering with the Chinese Ministry of Education and leading universities to develop this new academic field of study, and collaboration between research universities in both countries provides an excellent partnership opportunity.

We support and encourage China's ambitious goal of developing a competitive IT and computer and related services sector. However, this requires the Chinese Government's strong commitment to preparing a globally competitive workforce. U.S. associations and their members have the necessary expertise in the training and certification of highly skilled IT services specialists, and can help Chinese authorities to meet their export and domestic IT worker development goals.

In its "Opinion on the Reform and Development of the Insurance Industry" of June 26, 2006, the Chinese State Council states that foreign insurers should be relied upon as a source of innovation and high standards, and that market demand should be the driving force in determining the need for new products. China Insurance Regulatory Commission (CIRC) leadership endorses these goals. Nevertheless, the current regulatory process does not allow for the rapid approval of new products and appropriate tax treatment to

encourage the sale of sophisticated new policies. For example, CIRC has failed to allow foreign carriers to provide political risk insurance for Chinese companies with exposures in foreign markets, even though there is keen demand for this product. Additionally, the inadequate tax deductibility of producer commissions hinders the sale of sophisticated insurance products.

#### **V) Increased Market Access in Sectors Dependent on 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 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. 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.

#### **Sector-Specific Issues for Joint Commission on Commerce and Trade**

In addition to its overarching systemic issues, China should resolve the following sector-specific issues, which are addressed mainly at the Joint Commission on Commerce and Trade (JCCT). We appreciate that the U.S. Government also raises these sector-specific trade barriers at Transitional Review Mechanism (TRM) meetings in the WTO, but we are disappointed at China's lack of responsiveness to these efforts. It is essential that China honor its WTO services obligations and carry out its commitments in the JCCT.

#### **Financial Services**

CSI has been working closely with the U.S. Government to urge the Chinese leadership to implement its existing WTO commitments fully and liberalize China's financial services sector further. The Chinese Government should improve its WTO financial services commitments to reflect the following principles: the ability to own 100% of investments; establish in the juridical form of choice; enjoy non-discriminatory, national

treatment in all aspects of business; have permission to supply services cross-border to sophisticated consumers; and rely on greater regulatory transparency with effective notice and comment periods. These principles would give U.S. financial firms new, commercially meaningful opportunities in China.

## **Insurance**

After issuing the amendment to China's Insurance Law in 2003, CIRC followed with important implementing rules regarding the administration of insurance companies, asset management, risk control and other aspects of insurance regulation. We appreciate that CIRC also allowed interested parties to provide comments on the draft Insurance Law. Despite these developments, significant market access and national treatment concerns remain:

- **Branching**. The ability to grow business geographically through branch and sub-branch expansion is the most important issue for many foreign insurance companies in China. We are concerned that branch approvals for US providers are still being granted one at a time, while established and start-up Chinese companies receive approval to open multiple branches. This practice is contrary to international practice, impedes competition, and most importantly violates China's WTO national treatment commitment for insurance. Senior officials at CIRC have confirmed to USTR their commitment to allow foreign companies to establish multiple concurrent branches. We are pleased with this statement, and would call on CIRC to confirm this intention in an administrative clarification to all CIRC officials. Most important of all is a change in actual practice.

**Subsidiary Conversion** Despite CIRC's effective requirement that foreign-owned insurers convert their Chinese operations from branches to subsidiaries (notwithstanding China's WTO commitment to allow foreign general insurers to operate on either a branch or subsidiary basis), the regulator continues to delay approval of companies' applications for such conversion. This delay contravenes CIRC's own regulation (Baojian Fa 45, page 3, section 6) that requires its response to applications within two months. The delay – over a year for some companies -- has created uncertainty and confusion in corporate planning as insurers eager to expand can only apply for permission to open new offices three months after the conversion process is approved. We urge CIRC to adhere to its own regulation and approve applications on a timely basis.

- **Capitalization Requirements**. CIRC should confirm that the RMB 200 million capital requirement for initial establishment, whether as a subsidiary or a branch, includes the right to establish sub-branches without limitation on numbers, and without having to satisfy any additional capital requirements. The Chinese government has yet to provide its rationale for requiring additional capital of RMB 20 million for each additional branch, particularly given that any additional branches would still be backed by the full asset base of the admitted entity and have to comply with all CIRC solvency rules.

- **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 5 billion) for companies to invest their foreign exchange capital in overseas funds or equities. CSI members are 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 will not qualify unless CIRC recognizes the assets of the parent foreign company when determining the asset level of a foreign-invested company.

- 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.
- 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 a national treatment basis. We applaud this action, and 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 reinsurers. CIRC should also clarify that for purposes of these measures a 100% foreign-owned insurance operation may cede to a parent or affiliate insurance company.
- Acquired Rights. Companies operating in China at the time of WTO accession are entitled to continue operating and geographically expand their business on the basis of their previous juridical form.

### **Asset Management and Securities**

Foreign firms are currently permitted to own 49% of joint-venture asset management firms in China, consistent with China's WTO accession commitments. 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.

For asset management firms, the Chinese Joint Venture Rules require foreign firms to have at least RMB300 million (U.S.\$39 million) in paid-in capital to qualify as a joint venture partner. This requirement is significantly higher than in other jurisdictions, and serves as a market barrier to U.S. companies. Asset management firms do not need large amounts of capital to protect investors because their business is not capital intensive, and client assets typically are not at risk if the asset manager experiences financial difficulties.

A high regulatory capital requirement disproportionately affects foreign asset managers because their operations are typically not as significant as their operations in their home country. As a result, domestic firms will be able to comply with a large capital requirement more easily than foreign firms. Additionally, while large banks or broker dealers may not find it difficult to meet high capital requirements, many smaller, independent firms are part of the highly successful asset management industry in the United States.

We are encouraged by recent developments that allow Chinese nationals and corporations to invest in overseas markets as qualified domestic institutional investors (QDIIs). 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.

Although we are pleased that China took steps to open the A-share market to foreign investors by adopting rules on qualified foreign institutional investors (QFIIs), the CSRC and SAFE have been slow to amend the rules to increase their practicality. We understand that anticipated revisions would address many of our concerns, including a reduction of the lock-up period from one year to three months and a simplified approval process for remittances, but these revisions have been delayed repeatedly. We urge greater liberalization of the QFII regime to remove restrictions on investment by QFIIs.

## **Pensions**

CSI members are pleased that the Chinese government has issued its new enterprise annuity initiative to provide better retirement security for its citizens. However, the new regulations are incomplete and ambiguous. Thus, we suggest that the enterprise annuity rules be clarified further, and implemented in a transparent and predictable way. To ensure companies' compliance, China should specifically clarify the licensing process and procedures, and provide information on the regulatory and supervisory authorities, and operation requirements, with a view to securing a level playing field among the various financial services entities that offer such products. We would also suggest that pension providers be permitted to apply for a comprehensive license covering all required entities (Trustee, Custodian, Record Keeping and Fund Management), such that they can service all aspects, including a pension plan member's retirement plan.

In May 2005, it was reported that the Ministry of Labor and Social Security (MOLSS) had stopped accepting applications for enterprise pension funds. Although MOLSS has indicated that there will be future application periods, it has not identified the date when applications will be accepted again.

CSI members also suggest that China adopt a universal approach to taxation of pension plans and that its tax regime enable employers to make tax-favored contributions to employees' pension plans. Tax rules should provide tax deferral for individuals that contribute to defined contribution pension accounts, similar to U.S. 401(k) plans. As the U.S. experience shows, tax incentives are essential for strong and healthy development of private pension plans.

We also encourage the Chinese pension regulator to promote high sectoral standards and professional management by separating financial companies' pension operations from other businesses. This can be done through establishing pension subsidiaries, a trust entity, such as a master trust, which would provide for financial protection of pension plan members, or setting up a mechanism to better separate pension assets from other assets.

### **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 also 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 Information Industry'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. Further, the requirement that foreign telecom service providers may only enter into a joint venture with one of the existing state-owned enterprise telecom providers is problematic.

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 Information Industry 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.

The industry hoped that the JCCT Telecom Dialogue would offer a useful vehicle to ensure China's WTO compliance and advance industry interests in liberalizing its telecommunications market. The Telecom Dialogue is already well into its second year with no tangible progress evident. At last year's JCCT Plenary meeting, the U.S. government was able to obtain China's commitment to address the capitalization requirement. We look forward to its substantial reduction, but there has been no progress to date.

### **Express Delivery**

U.S. express delivery service (EDS) industry members are concerned that the Chinese government has not yet released the details of its plans for postal reform and that it has not taken into account the serious concerns that the industry has expressed about the draft postal law. The opportunity to review the postal reform plan and draft law, and the opportunity for meaningful public comment on China's postal measures are required by GATS rules on transparency and China's WTO accession commitments on notice and comment.

The current (eighth) draft postal law – which industry has not been allowed to see – reportedly attempts to narrowly define express delivery services contrary to China's WTO market access commitments, and includes national treatment violations for domestic delivery services. The law would grant China Post a monopoly on letter delivery with two exceptions. The first exception would allow for international express letter delivery, subject to a separate set of regulations. The second would apply to letters and certain official documents of more than 150 grams. However, the second exception

is not available to foreign-invested EDS suppliers, and would explicitly prohibit foreign-invested enterprises from supplying domestic express letter delivery services in China.

China's draft law and postal reform plan would apply a tax on all entities operating under the expanded postal monopoly. The current draft does not include specific percentages for a universal postal service fund tax. We are concerned that this measure would result in millions of dollars of lost revenue for U.S. companies and would increase the cost of trade. At the same time, it is unclear how this fund would be used by China Post, so there is a possibility that it would be used to subsidize its express delivery services.

The draft would also grant new powers to the State Postal Bureau (SPB) to regulate the international express industry. This includes subjecting mergers and acquisitions of EDS companies' operations in China to review and approval by the SPB.

We understand that the eighth draft includes several articles that give state-owned China Post, its subsidiaries and branches, including its express delivery arm EMS, many competitive advantages against private companies. These advantages include exemption from traffic regulations; expedited priority dispatch ensured by other transportation companies; preferential access to air, rail and sea transport; as well as potential tax breaks and subsidies. In addition, postal enterprises that engage in competitive letter express businesses like EMS are not subject to the licensing requirements that other express delivery companies must follow.

#### *China Post's Entrustments Issue*

Despite Chinese government assurances and published regulations stating that entrustment certificates from China Post would be processed one time only and be valid for the duration of the firms' international freight forwarder licenses (i.e., several years), the SPB granted these certificates for a limited time only, most recently for the calendar year 2007. Although those same assurances and regulations state that firms would be granted one entrustment at the national level and the new branches would be "recorded" with the SPB, the SPB has directed companies to entrust locally. However, the local Postal Authorities in headquarters' jurisdiction claim that they lack the authority to entrust more than headquarters' operations. This entrustment regime violates China's WTO commitments not to roll back companies' market access rights and not to use licensing procedures to restrain foreign competition.

#### **Freight Forwarding and Logistics Services**

Revised international freight forwarding (IFF) rules issued on December 1, 2005, implement China's commitment to allow wholly foreign owned IFF ventures, but regulations published by the Civil Aviation Administration limit the ability of wholly foreign owned IFF enterprises to provide the full range of such services. To book cargo space on an airline in China, an IFF enterprise must obtain an Air Freight Sales Agency License from the CAAC. There are two categories of air freight sales agency licenses: Class A, which allows the holder to book cargo space on international flights; and Class

B, which allows the holder to book cargo space on domestic flights. Wholly foreign owned enterprises are unable to obtain these licenses, which are available only to domestic firms and joint ventures.

We believe this restriction is a violation of China's WTO full market access commitments in freight forwarding agency services (CPC 748 and 749) under "Services auxiliary to all modes of transport." The explanatory note to the CPC system clearly and explicitly includes aircraft space brokerage services. If China intended to require licensing, and such licensing would have limited market access, such an exception should have been explicitly scheduled in the services schedule included in the Protocol of Accession.

### **Audiovisual, Publishing, and IT Products and Services**

We 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. Some of the piracy issues can be alleviated by allowing foreign media companies to have 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. In addition, China does not permit the licensing of foreign pay television services, which stifles the growth of its cable and digital platforms.

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 imposition of rules restricting the choice of business partners, and by the terms of commercial agreements. In addition, China maintains primetime broadcasting and foreign content restrictions in pay and non-pay television. 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.

### **Government Procurement of Software**

We welcome China's commitment to begin formal Government Procurement Agreement (GPA) negotiations and submit its Appendix I offer by the end of 2007. In the interim, China should 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 for 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.

### **Conclusion**

China's WTO accession opened a very important services market to U.S. suppliers, but China's services sector reforms must be fully implemented and, for maximal benefit, go beyond WTO commitments. As China's manufacturing experience shows, an open market provided many benefits to the Chinese economy. There is no reason why the same policy would fail in services.

China's full implementation of services commitments and continued services trade liberalization can promote the development of its services sectors, increase the inflow of services investment, and help resolve its complex economic and social issues. To build the infrastructure of a modern economy, China will have to rely on sophisticated services offered by foreign companies.

As a large exporter, China also has a significant stake in promoting globalization under the Doha Development Agenda. Despite its growing role in global trade, China has not been an active proponent of ambitious trade offers in services. The success of the Doha Round depends on constructive participation of key developing countries, such as China. We hope the Chinese Government will be a "responsible stakeholder" and step up its negotiating efforts by submitting a high-value services offer and encouraging other important developing countries to do the same.