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to the US-China Economic and Security Commission

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**China's Compliance with WTO Commitments in
Trade in Services Sectors**

Thank you, Mr. Chairman and members of the Commission, for the opportunity to express the views of the Coalition of Service Industries (CSI) on China's implementation of its WTO commitments. CSI is the leading business association dedicated to reducing barriers to U.S. services exports and mobilizing support for domestic U.S. tax policies, that enhance the global competitiveness of US service providers. Our membership consists of US corporations and associations engaged in global financial services, telecommunications, transportation, express delivery, construction, energy, audio-visual, professional services, travel, maritime, information technology and computer and related services. Many of these companies have significant presence in China and are deeply interested in China's full implementation of its WTO commitments.

China's accession to the WTO was a significant step in obtaining better market access for US service providers and cross-cutting commitments in transparency and acquired rights. Given that China entered the WTO without having implemented its commitments in its domestic law and regulation, US industry and government must continue to work with the Chinese to ensure that China continues its market liberalization reforms.

The US has had a positive balance in its cross-border trade with China. In 1992 US exports to China were \$1.57 billion, with a surplus of \$52 million. In 2002, US cross-border services exports to China were \$6 billion, with a positive balance of \$2 billion. In 2002, China was the 10th largest destination for US cross-border services exports, whereas in 1992 China was only the 21st largest destination. This trade is composed of financial services, telecommunications, transportation, travel and tourism, education (for example, Chinese students in the US), and a large category of "business, professional and technical services." These data do not reflect – or if they do, only slightly - the commercial effect of accession, which of course occurred in December 2001. We would hope that we can shortly measure the impact of accession on US – China services trade.

Services sales by US affiliates in China grew exponentially from \$320 million in 1994 to

\$2.6 billion in 2001. By contrast, China's sales through affiliates in the US increased from \$45 billion in 1994 to \$144 in 2001. We can surmise that the volume of US affiliates' sales will continue to grow strongly as China fully implements its WTO services commitments, and our companies expand their reach into the fast growing Chinese economy.

China's WTO obligations in services are comprehensive and ambitious. They demonstrated the Chinese leadership's determination to modernize and integrate economically with the rest of the world. It took substantial political courage for the leadership to conclude the accession process over the resistance of bureaucracies, state enterprises and others vested in the status quo.

But the true value of China's commitments is to be measured by the degree they are implemented. Since accession, China has made great efforts to bring its legislation into compliance with its WTO commitments. This effort is greatly to be commended. Nevertheless, significant sectoral and cross-sectoral implementation issues persist.

Implementation of Cross-Sectoral Commitments

Excessive capital requirements, inconsistent application of regulatory transparency and licensing procedures, and inconsistent application of new rules among the provinces of China are the key issues facing our companies. China's high capitalization requirements in sectors like telecommunications and insurance are incompatible with international norms and best practices, and serve as a de-facto market access barrier.

Transparent and fair regulatory processes are absolutely necessary for trade and investment in services to flourish. China's commitments here are of very high quality. They reflect our own administrative procedures, and are a model for other WTO accession agreements. These commitments are a substantial demonstration of the value of trade agreements.

China's commitments to transparency in making and implementing laws, regulations and other measures, and in reviewing regulatory decisions, are based on the provisions of Articles III and VI of the General Agreement of Trade in Services (GATS) relating to transparency, and are intended to amplify these underlying commitments. They are of course meant to provide reasonable assurance that laws and regulations promulgated to implement China's liberalization commitments will be accomplished in a transparent way. They apply to regulatory processes related to international trade. We expect there may also be a "spillover" effect of these trade-related transparency provisions into the wider regulatory environment.

The Accession Protocol (paragraph 2(C)) contains the most important undertakings; these are supplemented by relevant sections of the Working Party Report (paragraphs 306-9,

and 324-36).

Together, they cover procedures by which laws, regulations and other measures are implemented, the creation of a system of administrative and judicial review, procedures for licensing, and the establishment of independent regulatory authorities.

Procedures for Implementing Laws, Regulations and Other Measures

In Protocol paragraph 2(C) China commits that only those laws and regulations and other measures that are published shall be enforced, and further commits that all laws and regulations shall be publicly available before they are enforced, except in emergencies, when they will be available upon implementation. An official journal must be designated for their publication. China commits to allow “reasonable periods” for comment before implementation. There is no requirement that Chinese regulatory authorities respond to comments of interested parties, or explain the reason for a decision. And to date they have implemented the “reasonable period” requirement very loosely indeed.

China also commits to establish enquiry points where any interested party can obtain all information on all laws and regulations. Requests for information should be answered in 30 days. In exceptional cases replies may be delayed up to 45 days, but only with a statement of reasons in writing to the inquiring party. Replies to the information requests of WTO Members must represent the “authoritative view” of the government of China. Other inquiring parties (individuals and enterprises) shall be given “accurate and reliable” information.

Judicial Review

China must establish independent, disinterested tribunals and procedures for prompt review of all administrative actions relating to implementation. Appeal of an administrative tribunal decision can be made to a judicial body. Notice of decisions, and a written statement of reasons for a decision, will be given to the appellant.

Licensing

The Working Party Report commits China to an important regulatory process in licensing decisions. This was a significant innovation in an accession agreement. These rules go beyond transparency to stipulate a licensing procedure that should be much simpler and faster than applicants have previously experienced. In fact the full benefit of these procedures has not been realized.

Procedures for reviewing license applications must be published before becoming effective, and they must provide “reasonable time frames” for review and decision. Applicants may request a license without an invitation by the government to do so.

Applicants must be notified whether an application is complete, and what additional information is necessary for its completion. Decisions will be taken promptly, and if an application is denied, the applicant will be informed in writing without delay the reasons for the decision. If denied, the applicant may resubmit the application.

If approved, the applicant will be informed in writing. The approval permits the applicant to start commercial operations after registration with the State Administration for Industry and Commerce (SAIC); the SAIC must complete the registration process in two months.

Independent Regulators

The independence of regulators is addressed in paragraph 309 of the Working Party Report. It provides that, for services that China has scheduled in the GATS, regulatory authorities must be separate from and not accountable to the service suppliers they regulate. Courier and rail transport services were exempted from this requirement, but the Chinese Government must regulate these two sectors in a way that does not violate its accession commitments.

Compliance with Transparency Commitments

Despite these extensive transparency commitments, US companies have been denied the right to comment, or are unable to comment due to very short periods allowed for their input even on important sectoral laws and regulations. We are also concerned that China's regulations may not be sufficiently specific in stating qualifying criteria for services providers, which gives regulators broad discretion in applying those requirements. Chinese laws, regulations, and administrative practices frequently change without warning, and may not be applied uniformly, especially on the local level. For example, there is differential treatment of imports among customs districts.

Sector-Specific Implementation Issues

Examples of China's compliance issues in market access and national treatment in services trade since accession include the following:

In insurance services, China has provided meaningful commitments for sectoral liberalization, which improve market access, provide for national treatment and allow internal branching. However, the branching commitment has not been entirely fulfilled, and the capitalization requirement still remains discriminately high for foreign branches. We hope that revised draft regulations will be soon implemented to correct these disparities. Our companies would like to confirm that branches and other insurance company operations may continue to operate under the conditions and approvals that existed prior to the issuance of new sectoral rules. We also believe that foreign companies

should be provided national treatment in obtaining provincial level licenses. The US insurance industry hopes that the ongoing dialogue between US trade officials and CIRC, the Chinese insurance regulator, will resolve these long standing market access issues.

In banking, we are concerned about the proposal of the People's Bank of China to limit RMB refinancing through bilateral inter-bank loan agreements to 40 percent of total RMB liabilities. We understand that the PBOC has abandoned this proposal, however we ask to confirm it. Additionally, China should eliminate its discriminatory branch capital requirements on foreign banks, which must pay up to five times the amount paid by Chinese banks.

In securities and asset management, US companies would like to be able to establish securities companies through vehicles of their choice. The US industry is also concerned that the new securities regulations have imposed several market access restrictions including deposit requirement on qualified institutional investors.

In express delivery, the US industry has significant reservations about the proposed extension of China Post's monopoly to deliveries of domestic letters under 500 grams, according to the draft postal regulations. These draft regulations also create a new unspecified charge on express industry revenues to help support China Post's universal service, as well as a new, unworkable licensing regime which gives new powers of supervision, inspection, and punishment to the postal regulator. Therefore, the industry urges that China Post's roles as regulator and operator be separated.

In telecommunications, we are concerned that the independence of China's telecommunications regulator has not been realized and that US telecommunications companies have not yet been licensed to provide value added services. China's regulator has also reclassified several international value-added services as basic services. Under China's accession commitments, basic services will be allowed for licensing only in December 2004, and will be subject to a 2 billion RMB capitalization requirement, which is 100 times higher than for value added services.

In freight forwarding and logistics, foreign companies confront operational restrictions on services between separate licensed areas. Furthermore, international freight forwarding companies should be extended national treatment and be entitled to obtain a national operating license.

In digital and software products, customs valuation should be based on the value of the underlying carrier medium. Chinese authorities should also provide for foreign companies' full participation in standard-setting for the Enhanced Versatile Disc standard. They should also permit foreign companies' access to government procurement of software products. China should join the WTO Government Procurement Agreement and facilitate establishment of a non-discriminatory and transparent government procurement

regime.

In IPR we believe that China's implementation of its commitments should provide for lowering the high threshold (currently RMB50,000 or about US\$6,000) used to establish prosecutable criminal offenses, extending criminal penalties to all infringements occurring on a commercial scale as required by TRIPS, and ensuring adequate criminal liability for criminal offenses.

Also, China committed to liberalize its pension market within three years of joining the WTO. To date, no regulations or laws have been released in anticipation of the opening of this important market sector. CIRC or other relevant authorities should begin a public comment process well in advance of the approaching phase-in deadline to gain the broadest level of comment and support for this fundamental undertaking.

The US services industry would greatly benefit from better market access as a result of full implementation of China's WTO accession commitments, and we hope that market access conditions will improve as China continues phasing in its accession obligations. Accession to the WTO binds China to significant structural reforms, which will reshape its services market. Foreign services providers expect that necessary regulatory amendments will be made to the full extent provided by the Protocol of Accession and the Working Party Report. In this way, China can demonstrate its commitment to its WTO obligations.

The US services industry commends efforts of the USTR, the Treasury and Commerce Departments to monitor China's compliance. We also appreciate USTR's efforts to raise important sectoral issues at the WTO Trade Review Mechanism meetings, and in bilateral negotiations and consultations. All these forums are useful in obtaining China's compliance.

Despite the disappointing outcome of the WTO Ministerial at Cancun, the US services industry still considers the WTO the principal forum to secure further meaningful liberalization of trade in goods and services on a large scale. We expect that China will be an active participant in services negotiations in the Doha Round. It is worth noting that China has submitted its offer, and we expect that in the context of these negotiations we can achieve greater progress in China's liberalization.

Thank you.

Paragraph 334 of the Working Party Report commits China to provide translations of

laws and regulations to the maximum extent possible before implementation (but in no case later than 90 days after implementation).

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