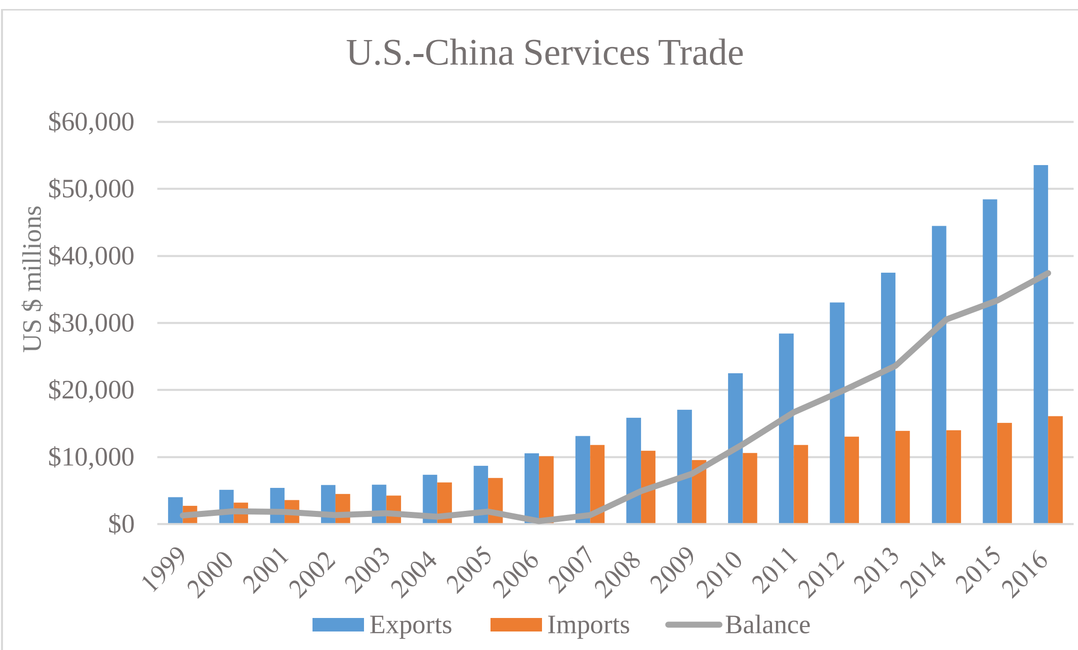
Coalition of Services Industries (CSI) Submission:
Comments Concerning China's WTO Compliance
Docket Number USTR-2017-0011

The Coalition of Services Industries (CSI) appreciates the opportunity to submit comments to assist the Office of the United States Trade Representative (USTR) prepare its annual report to Congress on China's compliance with the commitments made as a part of its accession to the World Trade Organization (WTO).

CSI, established in 1982, is the leading industry association devoted exclusively to helping America's services businesses, increasingly digitally enabled services, and workers compete in world markets. CSI member companies represent a broad spectrum of the U.S. services sector, including distribution services, express delivery, financial services, media and entertainment, telecommunications, information and communication technology (ICT) services, and professional services. These services are a critical enabler for U.S. economic growth.

U.S. Services Exports to China
In 2000, the year before its accession to the WTO, China, with nearly $5.1 billion worth of services exports, was the 12th largest destination for U.S. services exports. Last year, China was the second largest services export market for U.S. services suppliers. In 2016, U.S. services exports to China were $53.5 billion, while the United States imported $16.1 billion, resulting in a $37.4 billion trade surplus in services.[1] Based on current trends, China will become the top destination for U.S. services exports by 2020.



The United States has maintained a services trade surplus with China since 1999 (first data available), with the services trade surplus growing from $1.3 billion in 1999 to $37.4 billion in 2016.[2] In addition, services supplied through majority U.S.-invested companies in China totaled

$55 billion in 2014 (latest data available).[3] However, in recent years, U.S. investment into China in many services sectors, including finance, insurance, and professional services, has grown very slowly and in some cases, decreased.

While U.S. services exports to China have increased since China's entry into the WTO, due in large part to the progress that it has made in implementing its WTO commitments, there remain areas of non-compliance that continue to limit U.S. services exports and investment. Sector specific areas of concern are outlined below.

Audio Visual
In this area, while some progress has been made, China has not fully met its WTO obligations. In 2007, the United States brought a case to the WTO on the importation and distribution of theatrical films. The United States won this case. As a result, both countries agreed to a memorandum of understanding, commonly called the "Film MOU," which provided for a substantial increase in effective market access for the U.S. industry, including an increase in the revenue share percentage, an increase in the number of "revenue share" foreign films imported and distributed in China, and eventually an audit right.[4] Additionally, China agreed to allow additional, independent film distributors, which when fully realized could increase competition in the market. Finally, the Film MOU included a built-in periodic review, with the shared goal of expanding market access over time. That review is ongoing, and we urge USTR to put a high priority on an ambitious outcome of that built-in review.

China maintains a variety of market access barriers on broadcast TV, pay TV, and online video delivery, though most of these are not necessarily covered by China's WTO commitments. Access to its broadcast TV market is largely foreclosed through outright restrictions, quotas, and a market structure that effectively confines purchases of foreign content. Access to China's pay TV market is limited as well, with foreign channels only allowed in limited contexts, aimed primarily at foreign audiences in China. Finally, several years ago, China began imposing barriers in China's fast growing online video market. In addition to longstanding ownership restrictions, China created a new quota that limited access of foreign entertainment content to online video platforms and imposed a new onerous content registration and approval system that has disadvantaged U.S. television programs in the market. In addition, China restricts the ability of foreign online video providers to operate and distribute content, which includes through the possibility of a new ban on cross-border services. Ultimately, these restrictions have discouraged investment and participation by foreign suppliers. China also maintains a 49 percent foreign equity limit for entities supplying theater services.

Express Delivery
China's General Agreement on Trade in Services (GATS) schedule indicates that it does not have any limitations specified under Courier Services (CPC 75121), except for those specifically reserved to Chinese postal authorities by law at the time of accession. The Courier Services classified under CPC 75121 include "services consisting of pick-up, transport and delivery services, whether for domestic or foreign destinations, of letters, parcels and packages, rendered by courier and using one or more modes of transport, other than by the national postal administration." The express industry would like China to remove this segment from its Negative List. Further, China has applied overly burdensome regulatory approaches in China's domestic

express delivery market. This includes, for example, the requirement for 100-percent open box inspection, x-ray inspection, and shipper ID check for all express shipments. Additionally, express operators must be licensed at the local city level, which is a burden given the network model of this business and number of cities for which companies must be licensed.

China's current import clearance regime, supported by three channels, unnecessarily complicates trade and restricts low-value shipments, including shipments from U.S. small e-commerce businesses, from benefitting from expedited shipments treatment, as envisioned by the WTO Trade Facilitation Agreement (TFA). China's import clearance procedures are complex and supported by highly calibrated import duty and tax structures. Imports can be cleared through a choice of three channels: 1) Normal Channel; 2) E-commerce Channel (GAC 26); and 3) Postal/Personal Shipments Channel. Due to the burdensome requirements to utilize the e-commerce channel, including retailer commercial presence and registration, which is limited to companies with Chinese affiliates, the express industry would like to see streamlining and facilitation measures for shipments under the Normal Channel, based on the World Customs Organization's Immediate Release guidelines. Clearance based on value rather than the various channels discriminating between e-commerce and non-e-commerce goods would simplify documentation and applicable taxes, enhance clearance times, and facilitate returns.

Also in line with China's WTO TFA implementation, the United States should call on China to eliminate user fees charged by all agencies at each port. In 2015, in response to the Chinese central government's call to relieve the administrative burden on enterprises and further simplify the process for international trade at the border, China Customs adopted a series of measures, including efforts to reduce or cancel electronic declaration data transmission and inspection fees at different ports. While China Customs has made great strides in eliminating or reducing fees in some ports, additional trade costs can be eliminated by other border agencies at each port.

Direct Selling

In its WTO accession, China committed to lift national treatment and market access restrictions in this sector by 2004. While some progress has been made, many regulatory restrictions, including service center requirements and slow license issuance, remain for direct sellers.

Telecommunications

China's accession to the WTO permitted it to maintain foreign-equity limits on value-added and basic telecommunications services, which restricted market access for foreign suppliers. Although there was expectation that China would eventually open the sector to greater foreign participation, that has yet to occur, and, in fact, China has classified a number of new services as telecommunications services and has limited foreign participation in emerging digital services. China's publication of a new Telecom Services Catalog in December 2015 expanded regulation and market access barriers to a host of new services not typically regulated, including cloud computing, content delivery networks, and online platforms (under a broadly written provision for Information Services). China's foreign direct investment (FDI) limitations and expansive definition for value-added services, FDI limitations and high capitalization requirements for basic telecommunications services, and lack of an independent regulator remain key outstanding issues. For example, China imposes a 50 percent equity cap on foreign investment in value-added telecommunications services, and limits foreign equity to 49 percent in basic telecommunications services

With respect to cloud computing services, China has proposed new draft regulations which, if implemented, combined with existing Chinese laws, would force U.S. cloud service providers to transfer valuable U.S. intellectual property, surrender use of their brand names, and hand over operation and control of their business to a Chinese company in order to operate in China. These proposed regulations are of concern to all services companies. Cloud services provide an effective and secure way for services companies to provide their services cross-border as well as within China. To address this, the United States should secure China's commitment that it will allow U.S. cloud service providers to obtain and hold all necessary licenses for the operation and provision of cloud services in China, including those related to software, hardware, facilities, and infrastructure; allow foreign investment in Chinese companies established to provide cloud services in China; and allow U.S. cloud service providers to sign contracts for the provision of cloud services in China and use their trademarks and brands to market their cloud services. China should also allow U.S. cloud service providers to procure telecommunication services (including bandwidth) for the provision of cloud services on the same terms available to Chinese companies**.**

Insurance

U.S. access to China's insurance and retirement securities markets remains difficult as a result of restrictive Chinese measures. Foreign insurers have less than a 5 percent cumulative market share in what is the third-largest insurance and pensions market in the world.[5] Given the size and future growth of China's insurance markets, and the relatively small market share of foreign firms, the economic opportunity for foreign insurers, absent the discriminatory equity cap and prohibition on U.S. companies in the enterprise annuities sector (401k), is exponential and would deliver significant commercial benefits to U.S. industry. Revenue generated from overseas operations would help fund long-term infrastructure investments in the United States, creating jobs and supporting high-paying services jobs.

Current Chinese regulation places a 50 percent cap on foreign equity in life, health, and pension companies, a restriction that has been in place since China's accession to the WTO. While U.S. industry and the U.S. government have worked for years across different fora and platforms to eliminate this barrier to the Chinese insurance market, China has been unwilling to budge. In fact, the "Catalogue for the Guidance of Foreign Investment Industries," which was updated earlier this year, shows that China will maintain the 50 percent cap on foreign equity for life insurance companies. In addition, China has not yet authorized any U.S. investment in the enterprise annuities industry, which is China's 401k. China also places a 33 percent cap in the securities sector.

China has made some progress in liberalizing the non-life insurance sector. In 2013, China removed all restrictions on foreign non-life insurers. In January 2017, China's State Council issued the "Circular on Several Measures to Expand the Opening-up and Actively Utilize Foreign Investment," which committed to lower entry restrictions on foreign investment in several service sectors, including insurance, banking, and securities.[6] There is also a recent proposal for new regulations to restrict domestic shareholding in foreign-invested insurance companies (both life and property casualty), which will diminish the value of existing investments.

China has made several commitments on insurance at the WTO. This includes allowing 100 percent foreign equity in property insurance and reinsurance as well as prohibitions on creating conditions of ownership for existing foreign suppliers of insurance services that are more restrictive than they were on the date of China's accession to the WTO. Both of these commitments are formalized in the 2004 "Detailed Rules on the Measures for the Administration of Foreign-Invested Insurance Companies." However, questions remain on how well these commitments have been followed. Removing the foreign-equity cap has been a top priority for the U.S. financial services industry for over a decade, and it aligns well with China's domestic policy goals and economic reform agenda, which emphasizes the need to grow the services sector, deepen financial inclusion, and enhance the participation of foreign financial services firms in China.

Banking and Securities

China has exercised great caution in opening its banking sector to the United States. In particular, China has imposed capital requirements and other rules that have made it more difficult for foreign banks to establish and expand their market presence in China. It is then unsurprising that foreign banks' collective market share in 2013 was below 2 percent.[7] U.S. banks, securities, and other bodies are unable to compete on an equal footing with domestic institutions. U.S. banks are subject to a 20 percent investment ceiling (for single foreign shareholders) and a 25 percent investment limit (for multiple foreign shareholders) in local Chinese banks. Further, once a foreign-funded business in the banking sector is established, it is limited in its activity for two years. Following this waiting period, a business can expand the scope of the business, assuming it has met certain conditions, which includes holding over $10 billion in total assets.[8] There are also other restrictive regulations, including stipulations that foreign banks in China must work through branches, as opposed to subsidiaries, which have legal and economic impacts.

Equity caps on foreign ownership of securities joint ventures have not been lifted in China since 2012 and remain at 49 percent, despite the commitment to "gradually raise" the equity caps from the 2016 Strategic & Economic Dialogue (S&ED).[9] A commitment to ensuring that a foreign firm can establish a wholly-owned company in its market is a bedrock free market principle that the United States and a significant number of other countries committed themselves to many years ago.

China has made good on some of its pledges. For instance, China established an independent regulator for the financial information sector, but only after facing WTO case brought by the United States in 2008.[10] China has committed to expand opportunities for U.S. financial services firms to acquire settlement and underwriting licenses as part of the 2016 S&ED.[11] It is time for China to make the same positive step by allowing U.S. securities firms to establish wholly-owned subsidiaries without subjecting them to additional requirements that would hamper their ability to conduct business onshore on the same terms as domestic players. Lifting equity caps only nominally, while imposing additional onerous requirements that effectively impede the business of foreign securities firms, would not be a commercially meaningful outcome.

Electronic Payment Services (EPS)
China has placed restrictions on foreign companies that provide EPS, only allowing a Chinese entity to process a payment that handles renminbi. The United States brought this dispute to the WTO in September 2010, where the dispute panel ruled in the United States' favor in 2012. The following year, China announced it had implemented the WTO's ruling, but the United States disagreed with that assessment, noting that further corrective action is needed.[12] After the WTO ruling in 2015, the People's Bank of China (PBOC) issued preliminary guidelines for licensing domestic "bank-card clearing institutions" (BCCI) that would be authorized to handle transactions in renminbi. However, any BCCI application may be subject to a national security review, during which an application will not be reviewed by the PBOC. The content, duration, and relevant entities involved in the national security review process remain unclear. In addition to the BCCI licensing issue, foreign entities were restricted from applying for licenses as third-party payment providers, to process online or offline payments for third-party merchants and to issue open-loop prepaid cards. The application process began in 2011 and was closed to all submissions in 2015, after the approval of 275 licensed providers. There is no indication from PBOC, which regulates third-party payments, if or when the third-party payment license application process will be re-started. As it stands now, foreign entities do not have a formal process for entering this industry

PBOC has also created increasingly onerous technical regulations for licensing of foreign EPS providers that include potential disclosure of source code, intellectual property, and encryption keys. This effectively further restricts U.S. companies' already-limited market access in the cross-border/international space at a time when it should be moving to open China's domestic market. China had previously allowed cards with the logos of both UnionPay and a foreign payment company to be issued, but PBOC pressured banks in fall 2016 to stop issuing these "dual-branded, dual currency" (DBDC) cards, and many Chinese banks followed suit. By restricting the issuance of new DBDC cards, U.S. payments companies have already experienced declines in their reported DBDC volumes; this negative trend is expected to continue.

In 2017, as part of the U.S.-China 100-Day Action Plan, China agreed to promptly "issue any further necessary guidelines and allow wholly U.S.-owned suppliers of electronic payment services to begin the licensing process before July 16, 2017, [which]…should lead to full and prompt market access."[13] While this is a positive step, the real impact will be unclear until licenses are actually approved and banks are issuing foreign brand cards for domestic use.

Restrictions on Cross-Border Data and Data Localization Requirements
Over the last decade, China has taken wide-ranging steps to restrict data flows, including through requirements to localize data and servers in China. The free flow of data across borders is critical in every business sector as it is necessary for businesses to operate globally in an efficient and secure manner. In addition to the free flow of data, businesses also need ICT services, platforms, and other infrastructure, to provide their services, which are increasingly digitally enabled and require global connectivity. China's practices have significant impacts, including in insurance, banking, cloud computing, machine to machine, and the Internet of Things, among other areas. These data-restrictive policies impede the ability of U.S. services firms to supply cross-border services to and make investments in China. China has cited concerns over national security as the

justification for these restrictions, but in September 2015 and June 2016, China committed to the United States that measures it has taken to enhance cybersecurity in commercial sectors would be non-discriminatory and would not impose nationality-based conditions or restrictions. These restrictions are in direct contradiction of these commitments.

Moreover, China's new Cyber Security Law (CSL), along with its related implementing regulations, creates discriminatory barriers to global companies operating in China.
The law imposes significant constraints and regulatory burdens on companies' ability to transmit data outside of China; creates a data localization requirement, and discriminates against global companies across economic sectors operating in China. The law establishes data localization for network operators and operators of critical information infrastructure (CII). While the data restrictions for network operators are more flexible and establish a self-assessment framework for transferring data out of China, China's draft implementing regulations for operators of CII indicate that China is going to take a broad view of what constitutes CII and will include things like cloud computing and big data. Given that cloud computing and big data analytics are increasingly becoming critical components in the new and innovative services across an array of economic sectors, China's approach will result in unreasonable and discriminatory requirement for non-Chinese suppliers of services in the Chinese market. If China chooses to move forward with strict data localization requirements for operators of CII, it should narrowly define the scope of CII to national security critical operations and create a more flexible framework around which operators of CII can transmit data outside of China. This is particularly important as the global market for the Internet of Things continues to develop and becomes incorporated in the operations of companies across different industries.

Further, because of its unclear scope, it is unclear exactly what industries will be deemed CII. This is the case for express delivery services. However, the regulator, State Post Bureau (SPB), appears to believe that current security measures, including the vast array of data SPB already collects (on shipments, facilities, vehicles, and staff), meets CII cybersecurity needs. However, other agencies are also expected to introduce their own CII criteria that may impact firms. Relatedly, China's Civil Aviation Authority has issued draft regulations mandating data localization and certification of technology products and services for those who access and use the China air network system. China's draft e-commerce law also requires local data storage for e-commerce companies.

The CSL also potentially subjects U.S. companies to security reviews. This includes the proposed requirements to review companies' proprietary source code and allow the government to review and approve encryption measures.

We want to secure a commitment that security measures and requests for information and access to company technology and other systems be not only risk-based and balanced, but also implemented uniformly. Provincial and local agencies are increasingly requiring companies to provide information and access that is inconsistent, overly burdensome and that raises business confidentiality concerns. Additionally, any requests for new data reporting should be posted for public comment in advance of implementation, providing firms with sufficient time (at least six months) to prepare for implementation.

Other Areas
On procurement, the United States continues to engage with China to ensure that it fulfills its commitment to accede to the WTO's Agreement on Government Procurement. By doing this, China will open its huge government procurement market for U.S. businesses. However, China's most recent revised offer, according to officials, lacks strong enough commitments in a number of areas. On legal services, China continues to place restrictions on the types of legal services that foreign firms can provide and other regulatory barriers for foreign firms in establishing offices in China.

A Path Forward Through Continued Bilateral Engagement
While the first round of the U.S.-China Comprehensive Economic Dialogue (CED), which launched this year and focuses on security, the economy, trade, and investment, yielded no agreement, CSI members look forward to continuing engagement with the U.S. Government on this bilateral dialogue.[14] In addition, we look forward to the implementation of the initial commitments that China made as part of the 100-Day Action Plan, particularly on EPS and bond and settlement licensing, and further commitments to address other concerns in financial, cloud, and other key services sectors. Traditionally, the Joint Commission on Commerce and Trade (JCCT) dialogue has also been useful for making progress on and resolving issues of concern, and we urge the Administration to either revitalize this forum or create a similar results-oriented, working-level structure that can be effective in engaging on and resolving concerns. In addition, we believe that it is important to resume the U.S.-China Bilateral Investment Treaty (BIT) negotiations in order to create rules for foreign investment, allowing U.S. investors better access to the Chinese services market. In addition, the United States should consider working with other WTO member similarly negatively impacted by China's rules to try to overcome these market access and regulatory challenges.

Conclusion
While progress has been made in the implementation of China's WTO commitments, significant market access barriers remain for U.S. services companies. China continues to impose restrictions on foreign services firms, including equity cap limitations, licensing restrictions, and outright bans on foreign investment. Further, because of the important role that data plays in a modern, competitive economy, China's restrictions on data flows, information technology, and communications services, particularly cloud services, are seriously undermining the ability of U.S. services firms to access the Chinese market.

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