Prepared Testimony of Christine Bliss
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Market Access Challenges in China
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Chairman Cornyn, Ranking Member Casey, members of the subcommittee—thank you for the opportunity to present the views of the Coalition of Services Industries (CSI) on market access issues in China.

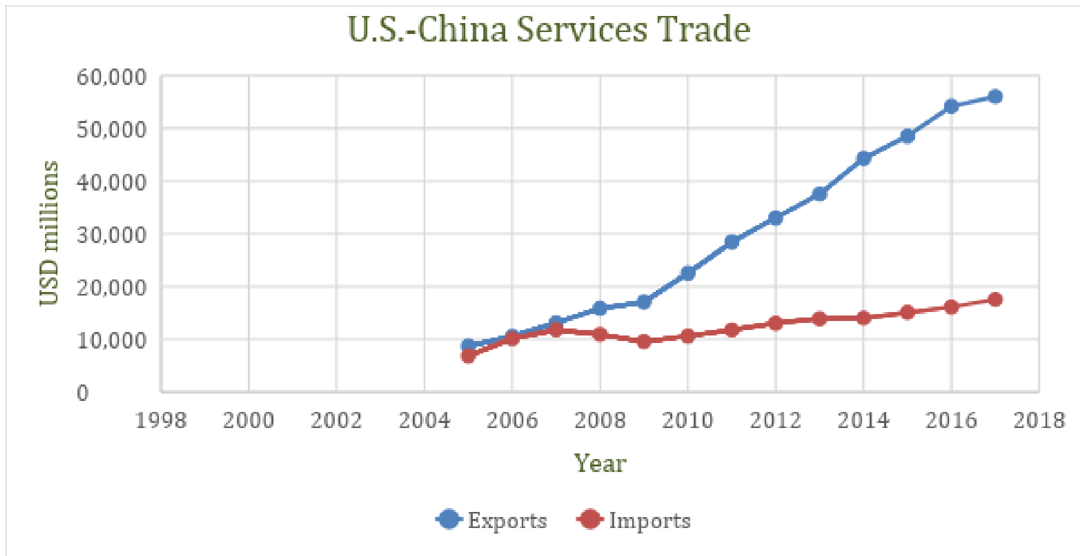
For more than three decades, CSI has been the leading industry association devoted exclusively to promoting the international objectives of U.S. services companies and associations. Our members include the vast array of U.S. companies that provide services and digitally enabled services—domestically and internationally—including information and communication technology (ICT) services, financial services, express delivery and logistics, media and entertainment, and distribution and professional services.

The services sector is a bedrock of the U.S. economy. Services account for about 75% percent of U.S. private sector jobs, $730.6 billion in U.S. exports, and nearly 80 percent of U.S. gross domestic product (GDP). Services, including digitally enabled services, are a part of and enable every single sector of the U.S. economy. Moreover, ICT services drive U.S. productivity overall. Services allow all businesses to be more productive, reach more customers in more foreign markets, and ultimately, support a better livelihood through higher wages and greater opportunities.

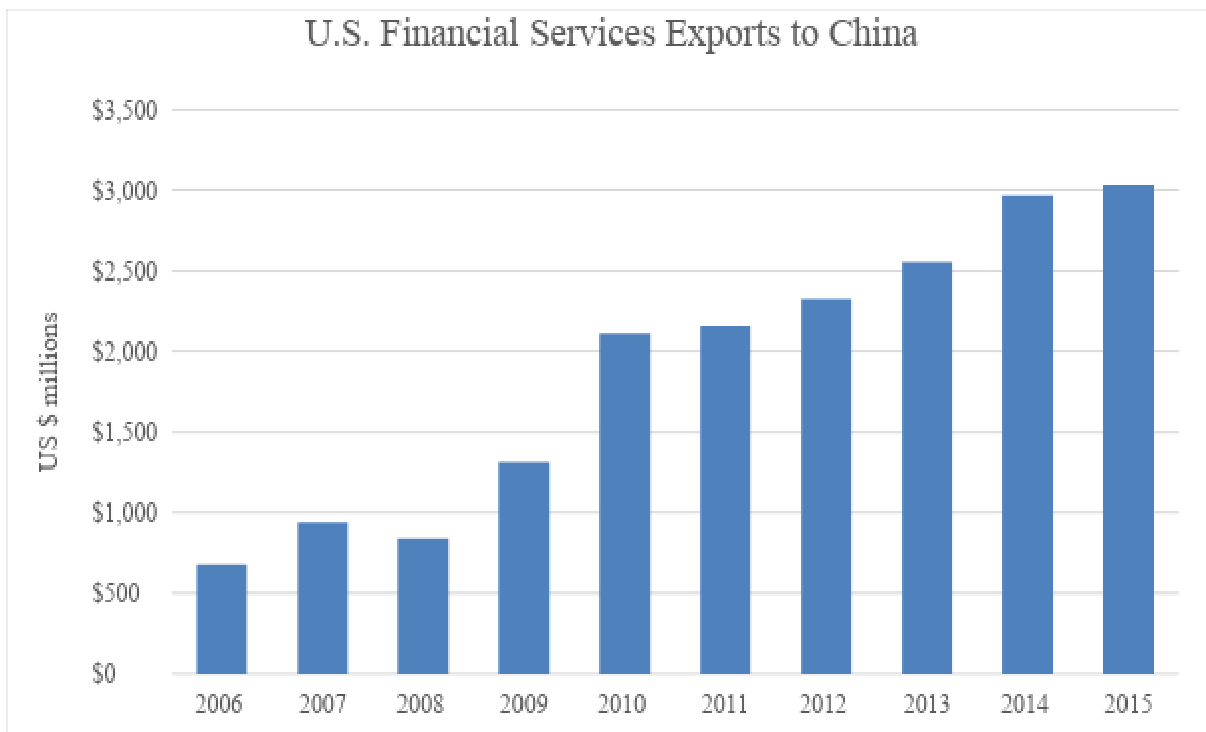
Current State of Play in China

China was the second largest services export market for U.S. services providers in 2017, with $56 billion in U.S. services exports, and a $38 billion services trade surplus.[1] From 1999 to 2007, the United States maintained a services trade surplus with China of around $1 billion. Since then, U.S. services exports have more than quadrupled, resulting in the growth of the U.S. services trade surplus with China from $1.3 billion in 2007 to $38 billion in 2017.[2] This growth over the last decade in U.S. services exports to China, along with the bilateral services trade surplus with China, exceeds the growth in U.S. services exports to other nations (54 percent), and exceeds the increase in the global U.S. services trade surplus (which has risen by 115 percent).[3] China has thus become one of the fastest growing markets for U.S. services.

[1] "Table 3.2. U.S. International Trade in Services by Area and Country, Seasonally Adjusted Detail, China," Bureau of Economic Analysis, U.S. Department of Commerce, March 21, 2017, https://www.bea.gov/itable/.
[2] Ibid.
[3] Ibid.



The financial services sector has been an area of great strength for U.S. services providers. Over the last decade, the United States has increased its financial services exports to China by 347 percent, totaling over $3 billion in 2015.[4] This growth rate is the second highest among all U.S. trade partners and nearly triple the average global financial services export growth rate.[5]



Despite the growth of U.S. financial services exports and China's stated intent to provide greater services market access, significant market access barriers remain, including existing and

[4] "Table 2.3. U.S. Trade in Services, by Country or Affiliation and by Type of Service, China," Bureau of Economic Analysis, U.S. Department of Commerce, December 19, 2016, https://www.bea.gov/itable/.
[5] Ibid.

proposed discriminatory regulations in areas such as restrictions on data flows, information technologies, equity cap limitations, licensing restrictions, and outright bans on foreign investment.

Thank you to the members of the Senate Committee on Finance—including Senators Cornyn, Scott, Heller, Crapo, Portman, Cassidy, Isakson, and Thune—among other Senators, for your leadership on these issues. Your September 2017 letter to the Administration regarding trade and investment barriers that harm U.S. financial services institutions and their ability to grow the American economy outlined many of our issues. We appreciate your leadership on these and other trade issues.

China has long insisted that it is an open market with clear rules. Unfortunately, this position does not match reality. While China continues to increase its investments abroad and engage in more trade with its partners, U.S. firms have an increasingly difficult time competing on a fair playing field in China. U.S. firms have considerable experience that could prove beneficial to China as its economy develops further, but this requires that U.S. companies have non-discriminatory access to the Chinese market. China's current short-sighted approach means that China risks losing the significant benefits and expertise of U.S. services firms.

China's Treatment of Data and Technology

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.

The free flow of data means that companies can integrate staff around the world, maintain their customer networks as well as their supply chains, and ultimately build their competitiveness. For instance, financial services companies rely on the ability to transfer data quickly and easily across the globe to provide better service to their clients at lower cost. This means that consumers can access their accounts from any location, whether they are performing a simple bank transfer or more complex transactions. Further, cross-border data flows increase access to capital for start-ups and allow small businesses, through digital marketplaces, to tap into foreign markets and receive payments from customers.

Over the last decade, China has taken wide-ranging steps to restrict data flows, including through requirements to localize data and servers in China. Because of the widespread use of and reliance on customer data by many services firms, these practices have significant impacts, including in insurance, banking, and cloud computing, among other areas.[6] These data-restrictive policies impede the ability of U.S. services firms to supply cross-border services and to make investments in China. The inability to operate cross-border, the loss of efficiency, the increase in costs, and other impediments reduce U.S. competitiveness. The Office of the U.S. Trade Representative (USTR) has recently raised concerns at the World Trade Organization (WTO) over China's recent restrictions on cross-border data services (including Virtual Private Networks or VPNs),

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[6] Nigel Cory, "Cross-Border Data Flows: Where Are the Barriers, and What Do They Cost," Information Technology & Innovation Foundation, May 1, 2017, https://itif.org/publications/2017/05/01/cross-border-data-flows-where-are-barriers-and-what-do-they-cost.

and the types of companies able to offer those services. The restrictions impact the availability of services and suppliers for important business communication services in China. There have also been reports of China blocking VPNs used by foreign businesses in China.

Moreover, as noted in the letter to China's Cybersecurity Administration signed by a global coalition of industry associations, including CSI, China's Cyber Security Law (CSL), along with other current and proposed regulations, has the potential to create additional, discriminatory barriers and impose significant compliance burdens for suppliers of a wide number of services due to the CSL's broad and vaguely defined scope. Particularly concerning is China's proposed requirement that all Chinese personal data must be stored domestically. 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. China is still developing implementing regulations nine months after the law has gone into effect, creating a great deal of uncertainty around the obligations around different kinds of data. Specifically, measures regarding the cross-border transfer of data and the scope of Critical Information Infrastructure were written quite broadly and contain the strictest requirements around localized storage of data and cross-border transfer.

China restricts foreign firms from providing cloud services directly in China and imposes numerous discriminatory restrictions. In addition, new draft regulations, if implemented, combined with existing Chinese laws, would force U.S. cloud service providers to hand over operation and control of their business to a Chinese company in order to operate in China, and also transfer valuable U.S. intellectual property and use of their brand names. These proposed regulations are of concern both to U.S. cloud service providers as well as the many services and other U.S. sectors that rely on cloud services to operate in 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.

China's regulation of cloud services flows from its decision to classify cloud services as a telecommunications service, which, based on China's rules, restricts foreign providers to a maximum 50 percent equity limit. A similar approach has been taken with other services not typically regulated as telecom services, such as content delivery networks and internet platforms. China's approach is inconsistent with the global approach that does not regulate or restrict foreign participation in these types of services. China should loosen these policies to increase market access for US providers of these and other types of communications services.

China has cited concerns over national security as the justification for many of 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 commitments and commitments China has made to open up its market.

China imposes other severe restrictions in ICT services as well. It fails to provide non-discriminatory market access for a broad range of online services—requiring joint venture partners for online services and then failing to issue approvals for those joint ventures. It fails to allow U.S. companies to provide video and music services on a cross-border basis. And more broadly, China completely blocks a wide range of legitimate US websites and services, as USTR has highlighted in its recent National Trade Estimate report.

Insurance Markets in China

U.S. access to China's insurance and retirement securities markets remains difficult because 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.[7] 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 (China's 401k), is exponential and would deliver significant commercial benefits to U.S. industry. Profits generated from overseas operations would help fund long-term infrastructure investments in the United States, create jobs, and support high-paying service 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 in 2001. Removing this equity cap has been a top priority for the U.S. financial services industry for over a decade. At the end of 2017, China announced it would allow 51 percent foreign ownership in Chinese life-insurance companies in three years and lift that restriction entirely in five years. This is a welcome development and strong signal of liberalization from China, though follow-through and implementation are of utmost importance to ensure the equity cap is lifted in an effective manner. Liberalization in the life insurance sector would benefit Chinese consumers who need greater access to insurance and more stable protection and investment options in light of China's recent market volatility.

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 services sectors, including insurance, banking, and securities.[8] But, further action is needed.

[7] "The 13th Five-Year Plan – China's transformation and integration with the world economy," KPMG, October 2016, https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2016/10/13fyp-opportunities-analysis-for-chinese-and-foreign-businesses.pdf.

[8] "Circular on Several Measures to Expand the Opening-up and Actively Utilize Foreign Investment," State Council of China, January 17, 2017, http://www.gov.cn/zhengce/content/2017-01/17/content_5160624.htm.

The elimination of the equity cap 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. Liberalization in the life insurance sector would benefit Chinese consumers who need greater access to insurance and more stable protection and investment options in light of China's recent market volatility.

China has not yet authorized any U.S. investment in the enterprise annuities industry, which is China's 401k industry. In addition to equity restrictions in China, there is a 33 percent cap in the securities sector. 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. The United States should seek confirmation from China's insurance regulator that the existing "Foreign-Invested Measures" will continue to govern, with respect to foreign equity and all other issues involving insurers, with at least 25 percent foreign investment. It should also seek confirmation that the proposed regulations will not be applied retroactively to foreign-invested insurance companies.

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 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. In short, explicit and implicit barriers in China's insurance sector mean that U.S. firms are unable to fully tap into this critical market.

Banking and Securities Barriers

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 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.[9]

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

[9] "Future Directions for Foreign Banks in China 2014," Ernst & Young, 2014, http://www.ey.com/Publication/vwLUAssets/EY-foreign-bank-china-report-2014/$FILE/EY-foreign-bank-china-report-2014.pdf.

billion in total assets.[10] There are also other restrictive regulations, including stipulations that foreign banks in China must work through branches, as opposed to subsidiaries. These restrictions 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).[11] China has announced it will allow foreign companies to hold 51 percent of domestic securities firms, up from 49 percent, with the plan for the 51 percent cap to be removed three years after the new limit takes effect. Again, a welcome development that requires proper implementation. Following through on this commitment to ensure that a foreign firm can establish a wholly-owned company in its market is a bedrock free market principle that the U.S. and a significant number of other countries committed themselves to many years ago. 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 those subsidiaries' ability to conduct business onshore on the same terms as domestic players.

China has also committed to expand opportunities for U.S. financial services firms to acquire settlement and underwriting licenses as part of the 2016 S&ED.[12] CSI's member companies look forward to working with the U.S. and Chinese governments to ensure proper and effective implementation of these licenses is underway.

Electronic Payment Services

In May 2017, opening China's domestic market for U.S. electronic payment services (EPS) suppliers via a bank card clearing institution (BCCI) licensing process was included in the 100 Day Action Plan between the United States and China. Several U.S. EPS suppliers filed their BCCI applications in 2017 and all are still pending review by the People's Bank of China (PBOC) at this time.

China has committed through its WTO obligations, and more recently under the 100 Day Action Plan, to ensure "full and prompt" market access for U.S. EPS suppliers. CSI urges this commitment to be upheld as soon as possible.

A Path Forward Through Continued Bilateral Engagement

Despite the market access issues I've outlined, it is important to keep in mind that China represents a significant opportunity for U.S. services firms. China is the third largest destination for American goods and services.[13] In fact, U.S. exports to China supported 1.8 million new jobs

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[10] "2017 National Trade Estimate," China, Officer of the United States Trade Representative, Executive Office of the President, March 2017, https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2017/2017-national-trade-estimate, 87-88.

[11] "2016 U.S.-China Strategic and Economic Dialogue Joint U.S.-China Fact Sheet – Economic Track," U.S. Department of Treasury, June 7, 2016, https://www.treasury.gov/press-center/press-releases/Pages/jl0484.aspx.

[12] Ibid.

[13] Oxford Economics, "Understanding the U.S.-China Trade Relationship," *U.S. China Business Council,* January 2017, https://www.uschina.org/sites/default/files/Oxford%20Economics%20US%20Jobs%20and%20China%20Trade%20Report.pdf, 4.

and $165 billion in GDP in 2015.[14] One cannot underestimate the potential of the Chinese market—one-fifth of the world's population and almost 10 percent of global wealth is China.[15] China also holds the largest middle class in the world. In order to increase the services surplus with China, we recommend identifying incentives to open up new opportunities for U.S. firms. Any approach designed to further U.S. interests ought to recognize that the Chinese market has much to offer for American companies and their employees.

CSI supports efforts to constructively engage with China because it is critical for the United States to address the current and growing trade and investment challenges facing U.S. services providers operating in China. We believe that a measured and holistic approach in engaging with China and avoiding harm to U.S. businesses, workers and consumers is of the utmost importance. Close cooperation with our international partners is also an essential element for success.

CSI and its members stand ready to work with you in crafting a comprehensive and transparent approach to ensure that the full spectrum of barriers to U.S. services providers operating in China are addressed in a manner that demands action from China and minimizes the real threat of reciprocal punitive measures. CSI believes that a carefully calibrated approach with robust input from industry will facilitate the most positive outcome.

Thank you for your time. I look forward to answering your questions.

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[14] Ibid., 4.

[15] Richard Kersley & Markus Siterli, "Global Wealth in 2015: Underlying Trends Remain Positive," *Credit Suisse,* October 2015, https://www.credit-suisse.com/corporate/en/research/research-institute/news-and-videos/articles/news-and-expertise/2015/10/en/global-wealth-in-2015-underlying-trends-remain-positive.html.