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In response to:
The President's 2012 Trade Agenda
Wednesday, March 7, 2012
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Washington, D.C. 20008

SIFMA Comments on the Administration's 2012 Trade Policy Agenda

Mr. Chairman, Ranking Member, and Members of the Committee, the Securities Industry and Financial Markets Association (SIFMA) appreciates the opportunity to comment on the Senate Finance Committee's hearing on the Administration's 2012 Trade Policy Agenda.[1] Our submission will focus primarily on the ongoing plurilateral and multilateral trade and investment negotiations. Specifically, we cover the following key, commercially significant industry trade priorities:

- the conclusion of a robust financial services chapter to the Trans-Pacific Partnership (TPP) agreement;
- the importance of granting Russia Permanent Normal Trade Relations (PNTR) in a timely manner;
- improving the U.S. trade relationship with China by reducing and eliminating barriers for the industry;
- working through the EU-U.S. High Level Working Group on Jobs and Growth to remove unnecessary barriers to transatlantic commerce and investment; and
- a reinvigoration of Bilateral Investment Treaty (BIT) negotiations with India and China.

Our comments also outline eight key elements of a robust financial services chapter that should serve as a baseline for all multilateral and plurilateral negotiations and investment agreements. Future trade agreements should strive to include strong protections for the financial services industry and set high standards for other global and regional trade agreements. High standard agreements will allow the industry to compete with other globally active firms and operate on a level playing field.

[1] The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org

Benefits to the U.S. Economy and Financial Services Sector

Continued Growth and Support of U.S. Jobs

The conclusion of ongoing plurilateral and bilateral agreements and the removal of unnecessary barriers to trade and investment will have an immediate, meaningful impact on the U.S. economy by creating American jobs and bolstering an already robust services export sector.

The services sector is an important part of the U.S. economy that is poised for further growth with the conclusion of successful trade agreements and the removal of obstacles to market access. Recent research suggests that business services, which include the financial services sector, employ twenty five percent of U.S. workers. Business-services employment grew by more than 20 percent over the past 10 years and employee compensation averaged about $56,000 per year.[2] Importantly, large U.S. based multi-national companies with operations overseas are also vital to U.S. job creation. Recent studies found that 2.3 U.S. jobs are created for every one affiliate employee located overseas.[3]

As the U.S. economy becomes more dependent on the services sector, it should remain an important part of the U.S. trade agenda. The U.S. services sector enjoys a comparative advantage when operating globally and a recent study from the Organization for Economic Cooperation and Development (OECD) suggests the services sector is poised to benefit from significant opportunities, including a "global boom in infrastructure that could generate $40 trillion … from the private sector," in the next two decades.[4] Financial services will be vital to financing and supporting these types of projects. Continued access to these markets is critical for both the financial services industry and American growth -- the U.S. International Trade Administration (ITA) estimates that every $1 billion in exports supports 5,000 American jobs.[5]

Barriers to trade and obstacles in these important markets need to be eliminated to support the continued growth of the American economy and increased strength of the financial services sector.

Plurilateral Trade Negotiations

Trans-Pacific Partnership

The financial services industry strongly supports the conclusion of a TPP agreement that includes a robust financial services chapter modeled after the Korea Free Trade

[2] J. Bradford Jensen, *U.S. should focus on business services, not manufacturing*, Washington Post, February 23, 2012. http://wapo.st/wS3yNT
[3] Matt Slaughter, How U.S. Multinational Companies Strengthen the U.S. Economy, U.S. Council Foundation, Spring 2009, pg. 4. http://bit.ly/xbqf2c
[4] Frederic Ottesen, *Infrastructure Needs and Pension Investments: Creating the Perfect Match,* OECD Journal: Financial Market Trends, Volume 2011 – Issue 1. http://www.oecd.org/dataoecd/37/32/48619609.pdf
[5] U.S. Export Fact Sheet, International Trade Administration, July 12, 2011. http://1.usa.gov/nfvPSP

Agreement (FTA). As mentioned above, the criteria below should serve as a benchmark for a strong financial services chapter not only within the TPP, but also in all future plurilateral and multilateral negotiations and investment agreements. Future trade and investment agreements that contain the following protections offer a strong platform for the financial services industry to operate on a level playing field internationally.

- Allow foreign securities firms to establish a new commercial presence or acquire an existing commercial presence;
- Permit 100 percent ownership, as well as the right to establish in corporate form of choice;
- Provide national treatment (i.e., treat foreign financial sector participants and investors on the same basis as domestic investors for regulatory and other purposes);
- Allow foreign securities firms to provide services cross-border to sophisticated clients (i.e., "qualified investors") without establishing a commercial presence and without being subject to separate licensing and approval requirements of the type that generally apply to firms commercially present in a market;
- Permit consumers to travel outside their territories to obtain any capital markets related service;
- Commit to procedural aspects of regulatory transparency (including commitments of prior comment) to allow both suppliers and consumers of capital markets related services to know what the rules are and have confidence that the rules will be applied;
- Eliminate economic needs tests; and
- Permit dissemination and processing (within country and cross-border) of financial information to provide clients with services necessary for the conduct of ordinary business.

In developing a 21st century agreement, the Administration should build on "best of breed" provisions from recent agreements, such as those in the U.S.-Korea Free Trade Agreement and the Rwanda BIT, rather than simply inventorying provisions from existing FTAs with TPP countries. A mere recounting of existing agreements would not reflect the global and rapidly changing nature of the financial services sector. A strong investment chapter that applies equally to financial services investors, including with respect to core protections and investor-state dispute settlement, is vital given that reaching foreign customers most often requires foreign investment.

Following the recently concluded Melbourne Round, we also remain concerned by Australia's ongoing refusal to accept the investor-state dispute settlement provisions outlined in the agreement. While the United States, Australia and other governments have worked carefully to address this issue both through substantive provisions and procedural mechanisms, Australia's rejection is hindering the ability of the TPP negotiations to produce strong enforcement outcomes and may have a corrosive effect on other elements of the negotiations.

Bilateral Trade Relationships and Agreements

Russia PNTR

The financial services sector will receive significant benefits and protections as part of Russia's accession into the WTO. Under the agreement, Russia will allow 100 percent foreign ownership of all commercially meaningful types of non-insurance financial services firms, including banks, broker dealers, and investment companies.

Foreign companies can own and trade a full range of securities, lead-manage Russian securities issuance, and participate in financing of privatization of government-owned firms. Russia will allow important cross-border services such as financial leasing, financial information, and data processing, as well as credit cards and other types of payments.

A critical feature of granting Russia PNTR is the acceptance of WTO dispute resolution procedures. This mechanism uses external panels and experts and carries penalty provisions that are enforceable. The dispute resolution procedure is effective and has been successfully employed by the US in 70 percent of the 95 complaints that the U.S. has initiated under the WTO procedure.

A decision by Congress on whether to grant Russia PNTR is needed quickly. Russia is likely to complete its accession into the WTO by July 2012. Without PNTR in place at the time of accession, U.S. financial institutions operating in Russia will compete on an unlevel playing field against non-U.S. firms seeking entrance or continuing to do business in the Russian market.

A Level Playing Field in China

Perhaps most importantly, financial services firms face the most significant and persistent obstacles when doing business in China. The industry is currently working through a number of government-sponsored forums, primarily the Strategic and Economic Dialogue (S&ED), to foster a constructive, sustained dialogue with our Chinese counterparts. We continue to believe the development and liberalization of the financial services sector in China is essential to sustain a global economic recovery and allow financial services firms to compete on a level playing field in the world's second largest economy.

Despite the improved level of engagement through the S&ED, commitments made within the dialogue have failed to provide a roadmap that would lead to the elimination of ownership and other market access restrictions. The removal of such obstacles remains an industry priority.

China remains one of the few major markets to impose substantial barriers to entry for financial services firms. Recent reports by the OECD show empirically that China has the most restrictive barriers for entry for the financial services sector in OECD and G20 countries. *Annex A* highlights the restrictions financial services firms face when operating in China as compared to other OECD and G20 countries.

Additionally, we believe the increased global profile of China's economy and capital markets – underscored by its Financial Stability Board membership, and its recent appointment to International Organization of Securities Commission's (IOSCO) Technical Committee – should be met with a corresponding reduction and elimination of discriminatory barriers to foreign firms.

The joint World Bank/PRC Development Research Center of the State Council report, "China 2030" attests to the importance of liberalizing China's financial sector, noting "China's financial system remains repressed and suffers from key structural imbalances."[6] It also adds:

> "The aim of financial sector reforms should be to build a competitive, balanced, efficient, safe, and sound financial system that meets the demands of the corporate, household, and government sectors … To reach these objectives, financial sector reform should follow an implementation road map that is properly sequenced, and, because the financial sector will remain vulnerable to crises, be sustained as a priority through the next two decades."[7]

While access to China's financial services markets for foreign firms remains limited, China's financial services industry is starting to expand into major financial centers, including the U.S. The Industrial & Commercial Bank of China (ICBC) recently acquired both a U.S. broker-dealer and a depository institution, while the Bank of Communications received approval from the Federal Reserve to establish a branch in California.[8],[9] It has also been reported that China's largest brokerage firm, CITIC Securities, is planning to enter the U.S. market.[10] Notably, Chinese firms seeking to do business face no restrictions on the size or scope of their operations and must only meet the prudential requirements established by U.S. regulators.

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[6] China 2030, World Bank/PRC Development Research Center of the State Council, pg.28. Accessed March 1, 2012. http://bit.ly/xo9O7c
[7] Ibid.; pg. 29
[8] Wall Street Journal, *China Makes U.S. Inroads, Snapping Up Broker Unit*, October 31, 2010. http://on.wsj.com/aWyDPM
[9] U.S. Federal Reserve Announcement, April 8, 2011. http://1.usa.gov/wJegBr
[10] Wall Street Journal, *China's Citic Planning Push Into U.S. Market*, February 14, 2012. http://on.wsj.com/Ajejde

China is also working to develop platforms to allow it to better compete in the global financial markets. The Shanghai Stock Exchange Strategic Plan, introduced in 2010, aims to develop the Exchange into "one of the most influential bourses in the world, boasting a mature stock market, an improved bond market, a highly developed fund market, an abundance of securities derivatives and an increasingly rational investor structure."[11] Without a more open financial system, China will be unable to attract sufficient foreign investment to achieve these goals.

Underscoring the importance of the globalization of the financial services industry and access to growing markets, Treasury Secretary Timothy Geithner noted last year:

> "As developing economies in the most populous countries mature, they will demand more and increasingly sophisticated financial services, the same way they demand cars for their growing middle classes and information technology for their corporations. If that's true, then we should want U.S. banks positioned to compete abroad."[12]

To achieve these aims, more work must be done to liberalize China's financial services sector and allow for financial services firms to operate on a level playing field.

Reducing Unnecessary EU-U.S. Barriers

We are supportive of further dialogue through the EU-U.S. High-Level Working Group on Jobs and Growth and are encouraged by recent calls for the removal of unnecessary barriers to transatlantic commerce and investment. We believe the financial services sector is well placed to benefit from the reduction of barriers to trade and the negotiation of an investment agreement.

The financial services sector currently faces numerous extraterritorial issues, both new and previously raised, that risk impeding or disrupting the efficient functioning of U.S. and global financial markets. To remedy this, we encourage the use of three "gateways" for modernizing the regulation of global business – regulatory recognition, exemptive relief and targeted rules convergence – in solving the difficulties to which extraterritorial measures give rise. Fragmented or conflicting regulation, even when the policy objectives are the same, would negatively impact the ability of market users and participants to raise capital, manage risk and contribute to economic growth.

We are also working through other forums such as the Financial Markets Regulatory Dialogue (FMRD) in addition to the EU-U.S. High Level Working Group to address our concerns.

Bilateral Investment Treaties

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[11] Shanghai Stock Exchange, December 13, 2010, http://bit.ly/zs13AC, Accessed March 1, 2012.
[12] Noam Scheiber, *The Escape Artist*¸ The New Republic, February 10, 2011. Page 7. http://bit.ly/hnqjsK, Accessed February 15, 2011.

We encourage the Administration to conclude its review of the model BIT as quickly as possible. We support a model BIT that offers strong protections for financial services, including provisions that allow financial institution investors the same access to investor-state dispute settlement mechanisms as other U.S. investors and were included in the U.S.-Rwanda BIT.

We also support the reinvigoration of BIT negotiations with China and India. A BIT provides strong international law protections that are enforceable through independent international arbitration tribunals. BITs are crucial to protecting existing investments in these countries, encouraging new investment, and are vital for global firms that operate in these markets.

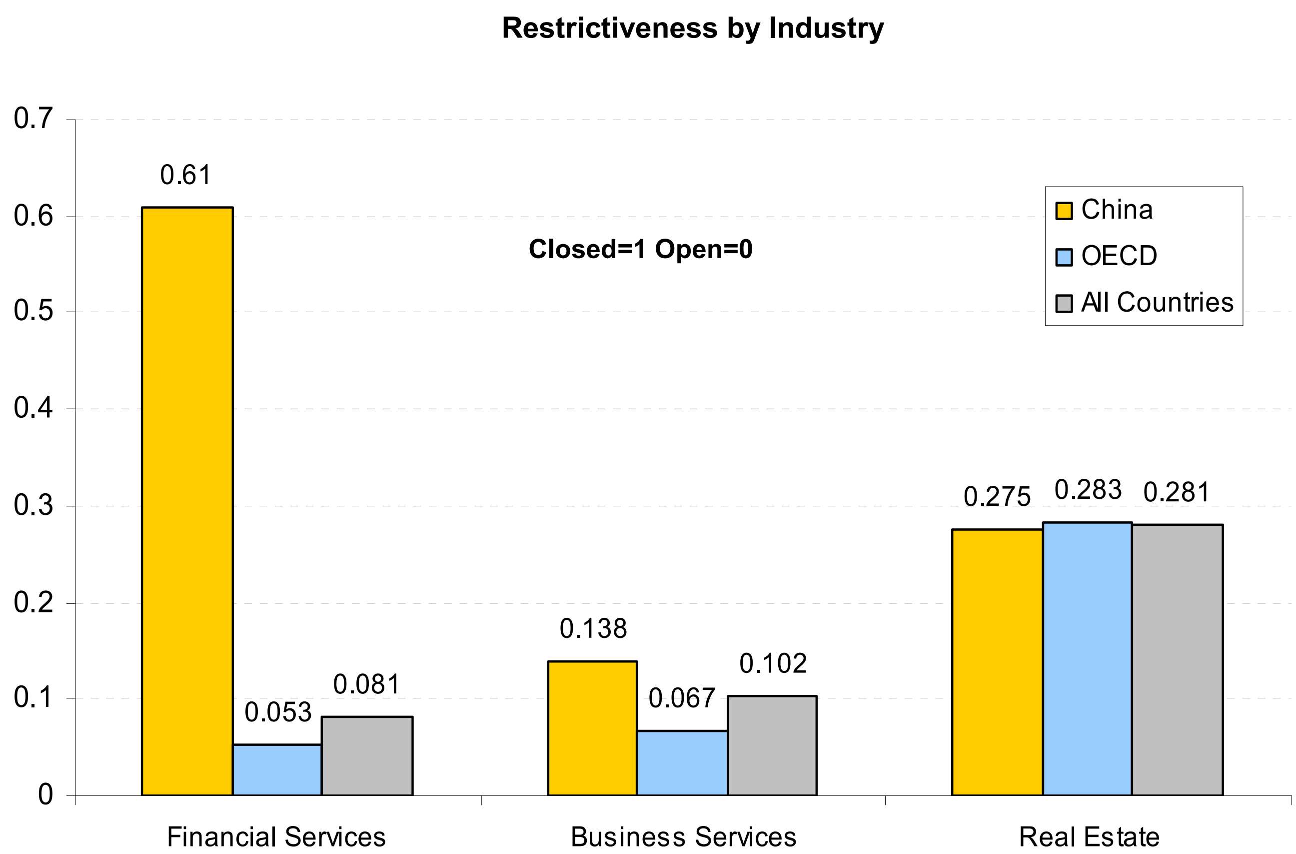
Conclusion

SIFMA believes that concluding the TPP agreement, granting Russia PNTR, working toward a more liberal and developed financial services sector in China, strengthening the EU-U.S. trade relationship, and approving BITs, offers Congress and the Administration an opportunity to secure open and fair access to foreign markets for U.S. firms and their clients. To sustain its recovery, the financial services sector must continue to position itself globally to meet the demands of its U.S. and foreign clients.

Free-trade agreements and access to growing markets are key components of the global economic recovery. The financial services sector helps to facilitate and support these agreements. For the financial services industry to help multinational companies take advantage of these global opportunities, they must have the ability to provide, for example, currency-related products, deal with cross-border tax differences, offer country risk assessments, develop global cash-management facilities, and provide country-specific investment advice and solutions: all key services provided by global financial institutions to promote U.S. exports.

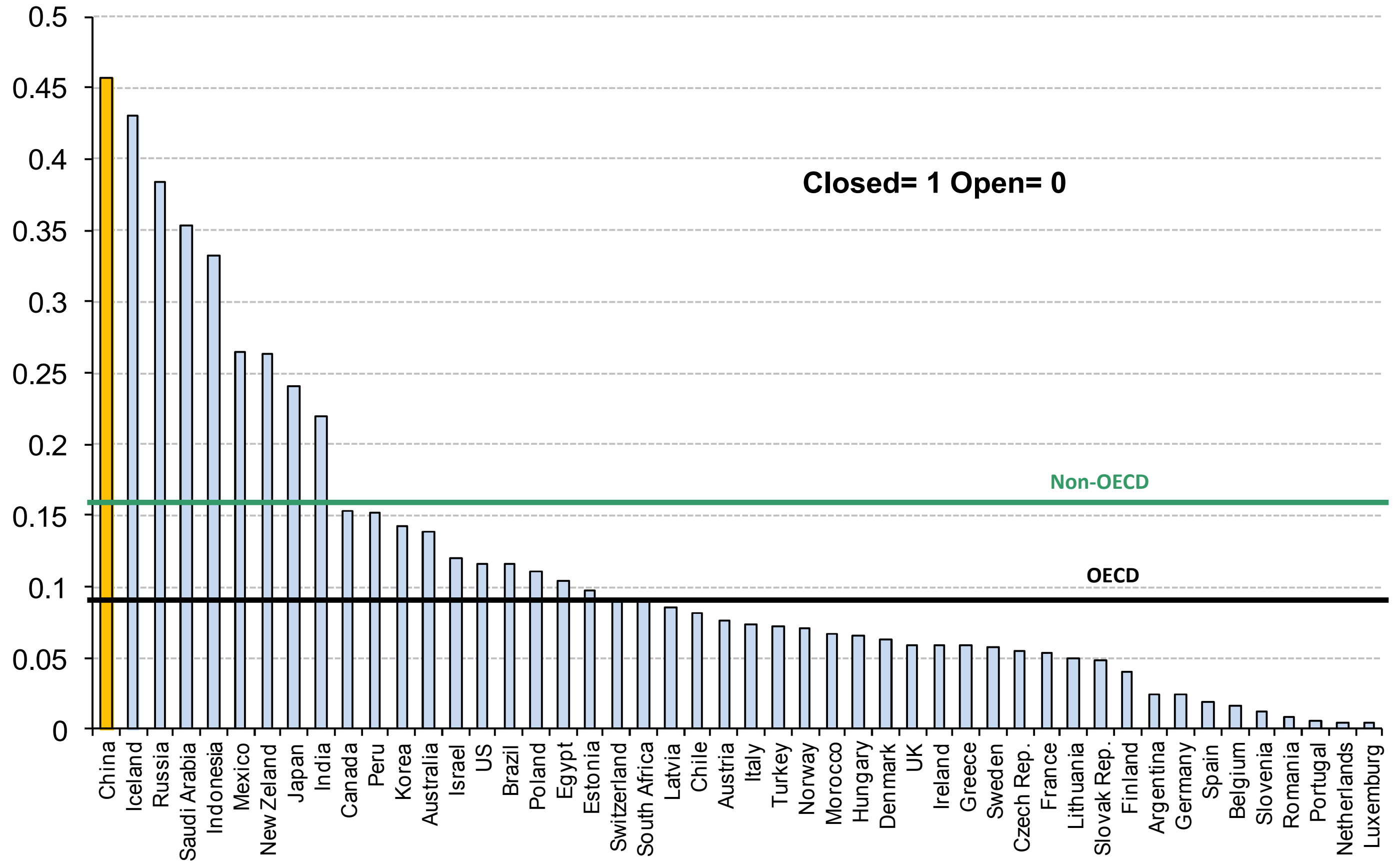
SIFMA looks forward to continuing to work with Congress and the Administration to pursue free-trade and investment agreements, and engage on other global, regional, and bilateral tracks that enhance U.S. competitiveness abroad and support jobs at home.

Annex A — Barriers to Market Access in China



Source: Blanka Kalinova, Angel Palerm and Stephen Thomsen (2010), "OECD's FDI Restrictiveness Index: 2010 Update", OECD Working Papers on International Investment, No. 2010/3, OECD Investment Division, www.oecd.org/daf/investment

Restrictiveness by Country



Source: Blanka Kalinova, Angel Palerm and Stephen Thomsen (2010), "OECD's FDI Restrictiveness Index: 2010 Update", OECD Working Papers on International Investment, No. 2010/3, OECD Investment Division, www.oecd.org/daf/investment