



## U.S.-China Economic and Security Review Commission

Monthly Analysis of U.S.-China Trade Data

September 4, 2014

### Highlights of this month's edition

- **Bilateral trade:** U.S. cumulative deficit with China through July \$8.2 billion higher than last year, on track to break record; exports outpace imports by 3 percentage points.
- **Bilateral policy issues:** U.S. business associations slam Chinese antitrust crackdown as discriminatory; Chinese applicants dominate EB-5 investor visa program.
- **Policy trends in China's economy:** China opens hospital ownership to foreign investors.
- **Sector spotlight – Express delivery services:** After years of delays, China grants foreign companies licenses to extend domestic express package delivery services.

### Bilateral Goods Trade

The U.S. trade deficit in goods with China registered \$30.9 billion in July, the highest monthly deficit so far this year, and almost \$1 billion higher than the July deficit last year. The cumulative bilateral deficit through the first seven months of 2014 reached \$186.2 billion, an increase of \$8.2 billion over the same period last year. That puts the deficit on track for a new annual record.

In better news, U.S. goods exports to China grew by 6.9 percent year-on-year in July, outpacing imports, which grew by 3.5 percent. Through the first seven months of 2014, exports are up 6.7 percent, imports 5.1 percent. Given the size of the current trade imbalance, however, this difference in growth rates is not large enough to offset the deficit. On a month-on-month basis, exports shrank by 1.1 percent, and imports expanded by 1.9 percent.

Table 1: U.S. Trade in Goods with China, January-July, 2014  
(US\$ billions; growth %)

	Jan	Feb	Mar	Apr	May	Jun	July
<i>US\$ billions</i>							
Exports	10.4	9.9	10.8	9	9.2	9.4	9.3
Imports	38.2	30.7	31.2	36.3	38	39.4	40.2
Balance	(27.8)	(20.9)	(20.4)	(27.3)	(28.8)	(30.1)	(30.9)
Total	48.6	40.6	42.1	45.3	47.2	48.8	49.5
<i>Balance YTD (US \$billions)</i>							
2013	(27.8)	(51.4)	(69.2)	(93.4)	(121.2)	(147.9)	(178)
2014	(27.8)	(48.7)	(69.1)	(96.4)	(125.2)	(155.3)	(186.2)
<i>yoy growth %</i>							
Exports	10.4%	8.2%	13.6%	0.9%	5.4%	1.4%	6.5%
Imports	2.7%	-6.1%	14.4%	9.6%	3.7%	1.6%	3.5%

Source: U.S. Census Bureau, NAICS database (Washington, DC: U.S. Department of Commerce, Foreign Trade Division, September 2014). <http://www.census.gov/foreign-trade/balance/c5700.html>.

Transport equipment led U.S. exports to China once again in July. At \$2.3 billion, these shipments accounted for nearly one quarter of bilateral exports, but declined by 6 percent year-on-year. Chemicals exports increased by 17 percent. On the decline were exports of agricultural products, food, and waste and scrap. Other top exports to China remained fairly steady (see Table 2A).

*Table 2A: Top U.S. Goods Exports to China in June, 2013-2014*  
(US\$ millions)

	Value (US\$ mn)		Yoy growth
	2014	2013	(%)
1 Transportation Equipment	2,289.9	2,158.6	6%
2 Chemicals	1,146.9	980.3	17%
3 Computer & Electronic Products	1,412.6	1,390.1	1.6%
4 Machinery, Except Electrical	797.7	783.8	1.8%
5 Waste and Scrap	618.4	717.1	-16%
6 Food and Kindred Products	373.8	400.9	-7.2%
7 Agricultural Products	287.7	349.7	-21.6%

Source: U.S. Census Bureau, NAICS database (Washington, DC: U.S. Department of Commerce, Foreign Trade Division, September 2014). [http://censtats.census.gov/cgi-bin/naic3\\_6/naicCty.pl](http://censtats.census.gov/cgi-bin/naic3_6/naicCty.pl).

The top categories of U.S. imports from China all grew, some by double digits (see Table 2B). Computer and electronics products declined slightly, down 7.2 percent month-on-month and 2.5 percent year-on-year. However, imports of such products continue to vastly outpace exports.

*Table 2B: Top U.S. Goods Imports from China in June, 2013-2014*  
(US\$ millions)

	Value (US\$mn)		Yoy growth
	2014	2013	(%)
1 Computer and Electronic Products	13,123.5	13,454.1	-2.5%
2 Apparel & Accessories	3,530.3	3,661	-3.7%
3 Electronic Equipment, Appliances and Components	3,374	2,924.2	15.4%
4 Miscellaneous Manufactured	3,279.7	3,036.4	8%
5 Machinery, Except Electrical	2,512.8	2,014.5	24.7%
6 Leather & Allied Products	2,385.4	2,528.5	-6%
7 Fabricated Metal Products	1,752.5	1,685.5	4%

Source: U.S. Census Bureau, NAICS database (Washington, DC: U.S. Department of Commerce, Foreign Trade Division, September 2014). [http://censtats.census.gov/cgi-bin/naic3\\_6/naicCty.pl](http://censtats.census.gov/cgi-bin/naic3_6/naicCty.pl).

## Bilateral Policy Issues

### ***China's Antitrust Crackdown Widens, Drawing Criticism of Unfair Enforcement***

An increasing number of U.S. companies feel unwelcome in China as the government's antitrust crackdown intensifies, drawing criticism for opaque rules and unfair targeting.

While foreign **and** domestic companies have been investigated, the U.S.-China Business Council (USCBC) found that “foreign companies appear to have faced increased scrutiny” in recent months.<sup>1</sup> According to USCBC’s 2014 member survey, 86 percent of companies are concerned about China’s antimonopoly law enforcement, and nearly 30 percent fear they will be targeted in future investigations.<sup>2</sup> According to USCBC, some foreign companies facing antitrust probes have been pressured to “admit guilt,” and have been advised not to involve foreign lawyers or challenge investigations by Chinese authorities.<sup>3</sup> USCBC President John Frisbie said the companies’ concerns point to shortcomings in “due process, transparency, and the methodology for determining remedies and fines” in China.<sup>4</sup>

The deteriorating investment environment for foreign companies operating in China is causing some U.S. firms to reconsider their participation in the Chinese market. According to a recent survey conducted by the American Chamber of Commerce (AmCham) in China, 60 percent of U.S. companies surveyed feel less welcome in China than in previous years, while 49 percent believe recent pricing or anticorruption campaigns are targeting foreign firms.<sup>5</sup> AmCham China Chairman Gregory Gilligan warned China’s “onerous laws, regulations, and practices” in certain sectors of the economy could “seriously [impair] China’s ability to attract the investment that will be crucial in taking the country to the next stage of economic development.”<sup>6</sup> This sentiment is echoed in the results of a survey conducted by the European Union Chamber of Commerce; according to the survey, 61 percent of European companies that have operated in China for more than a decade found doing business there to be progressively difficult.<sup>7</sup>

Pushback from Western companies comes as Chinese regulators fined 12 Japanese auto parts makers—including Hitachi Ltd., NSK Ltd., NTN Corp., and Sumitomo Corp.—a total of \$202 million for colluding over prices for parts, cars, and bearings.<sup>8</sup> Under antimonopoly law, Chinese authorities can levy fines as high as 10 percent of a company’s China sales; the modest \$28.5 million fine levied against bearings maker NSK Ltd.<sup>1</sup>, however, amounted to less than 2 percent of the company’s annual revenue in China.<sup>9</sup>

Fines levied against Japanese auto parts makers could foreshadow penalties to be imposed upon German car makers Audi AG, BMW AG, and Daimler AG, all of which have been investigated for parts pricing violations by China’s National Development and Reform Commission (NDRC), an agency with authority over industrial policy and price regulation. Audi, BMW, and Daimler have already responded to NDRC investigations by cutting prices on spare parts.<sup>10</sup>

Since coming under antimonopoly investigation in late July<sup>ii</sup>, Microsoft Corp. (Microsoft) was instructed by China’s State Administration for Industry and Commerce (SAIC) to reply by September 21, 2014, to inquiries about the compatibility of its Windows operating system and Office software.<sup>11</sup> State-run media reported that Microsoft’s use of verification codes, an antipiracy mechanism in place to impede large-scale software piracy common in China, may have violated China’s antimonopoly law.<sup>12</sup>

### ***Chinese Applicants Dominate EB-5 Visa Applications, Quota Reached for FY 2014***

Driven by demand from wealthy Chinese individuals, EB-5, a U.S. federal immigration program that grants foreigners visas in exchange for job-creating investments, ran out of its

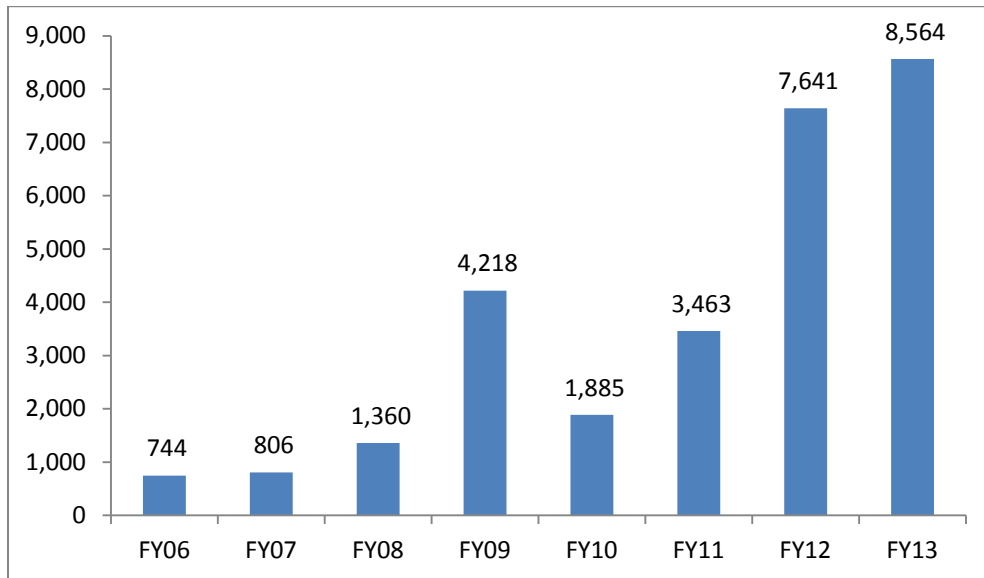
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<sup>i</sup> NSK Ltd., one of the world’s largest manufacturers of auto bearings, was fined in March 2014 by the European Commission for violating the European Competition Law in its sales of bearings. In January 2014, NSK was fined by Canada for violating competition laws in its bearings sales there. In September 2013, NSK pleaded guilty to U.S. charges of antitrust law violations and was subsequently fined. Colum Murphy, “China Fines Japanese Auto-Part Makers \$202 Million,” Reuters, August 19, 2014. <http://online.wsj.com/articles/china-fines-nsk-for-antimonopoly-violations-1408441149>.

<sup>ii</sup> For more information on the Microsoft investigation, see the August 2014 edition of the USCC trade bulletin. [http://origin.www.uscc.gov/sites/default/files/Research/August%202014%20Trade%20Bulletin\\_0.pdf](http://origin.www.uscc.gov/sites/default/files/Research/August%202014%20Trade%20Bulletin_0.pdf).

allotment of visas for this fiscal year (FY).<sup>iii</sup> According to the U.S. State Department, investors from China accounted for about 85 percent of visas granted under the program in FY 2014, and more than 80 percent in FY 2013.<sup>iv</sup> As Figure 1 shows, interest in the EB-5 visa program has been increasing, but this is the first time the 10,000 per FY quota of visas was exhausted. While rising demand for EB-5 visas has led to year-long backlogs for applicants, enthusiasm for the program is not expected to wane—though the delays may reduce the program’s usefulness for developers seeking money for their projects.<sup>13</sup>

Figure 1: EB-5 Visas Issued, by Fiscal Year



Source: U.S. Citizenship and Immigration Services.

According to U.S. Citizenship and Immigration Services estimates, as of September 2013 the EB-5 program created 57,300 jobs and raised more than \$8.6 billion.<sup>14</sup> EB-5 funds have been used for everything from yoghurt franchises to hotels, with EB-5 regional centers pooling capital for larger projects.<sup>15</sup> About a quarter of all organizations authorized to handle EB-5 capital operate in California, and the state has seen substantial investment. According to San Bernardino city officials, EB-5 investors contributed \$96 million and 4,000 jobs to the local economy. In Kern County, a retail center is expected to bring 1,664 jobs.<sup>16</sup> For Chinese investors, though, visas—not economic gains—are the primary interest. As a New York lawyer who works with Chinese clients pointed out, these investors “aren’t coming for the investment. They are coming here for their children to obtain a better education and to get residence as an insurance policy.”<sup>17</sup>

For all its economic benefits, the EB-5 program is not without detractors. A number of ventures have been fraudulent, and scam artists have targeted foreigners who hope to gain

<sup>iii</sup> Created by Congress in 1990, the Immigrant Investor Program (known as EB-5) allocates 10,000 immigrant visas per fiscal year to qualified individuals on the basis of their capital investment in a commercial enterprise in the United States. The minimum investment requirement for an EB-5 investor is \$1 million or, alternatively, \$500,000 in a Targeted Employment Area (TEA), which is either in a high unemployment area (where the unemployment rate is at least 150 percent of the national average) or a rural area. If approved, the investor receives a temporary visa (for themselves and their family) that can be converted into permanent residency (i.e., Green Card) if the investment creates or preserves at least ten jobs. U.S. Citizenship and Immigration Services, “EB-5 Immigrant Investor.” <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor>.

<sup>iv</sup> By law, no country is allotted more than 7 percent of all visas available in any FY; however, if a country does not use their maximum allocated visas, the State Department makes the leftover visas available to other countries. This practice has allowed Chinese applicants to exceed their allotment. Miriam Jordan, “Investor Visas Soaked Up by Chinese,” *Wall Street Journal*, August 27, 2014. <http://online.wsj.com/articles/investor-visas-soaked-up-by-chinese-1409095982>.

Green Cards. In 2012, the North American Securities Administrator Association, a group of state regulators, labeled EB-5-related fraud as one of the top new threats to investors.<sup>18</sup> And in 2013, the Securities and Exchange Commission warned of “investment scams targeting foreign nationals who seek to become permanent lawful U.S. residents.”<sup>19</sup>

The growing Chinese demand for EB-5 visas is evidence of a broader trend of wealthy Chinese fleeing China’s pollution, poor food safety, and the uncertain political environment created by Xi Jinping’s anticorruption crackdown. A survey by Hurun Report, a Shanghai-based research firm, shows that 64 percent of China’s rich (defined as those with assets in excess of \$1.6 million) are either emigrating or planning to do so.<sup>20</sup> Residency-for-investment programs around the world have been taking advantage of this trend. In 2012, Australia launched its Significant Investor Visa program, which grants residency to those who put 5 million Australian dollars (\$4.7 million) into a government-approved investment; by July 2014, 88 percent of the 343 such visas granted were to mainland Chinese investors.<sup>21</sup> Portugal grants residency permits to those who purchase real estate worth at least 500,000 euros (\$659,000); as of July 2014, 81 percent of such permits went to Chinese citizens.<sup>22</sup> More exotic locations, including Caribbean countries, offer similar programs. Canada ended its investor immigration program—which granted visas in exchange for 800,000 Canadian dollar (\$734,245) interest-free loans to the country’s provincial governments—in February 2014, saying the program did not bring enough economic benefit, and “significantly undervalued” Canadian residency.<sup>23</sup>

## **Policy Trends in China’s Economy**

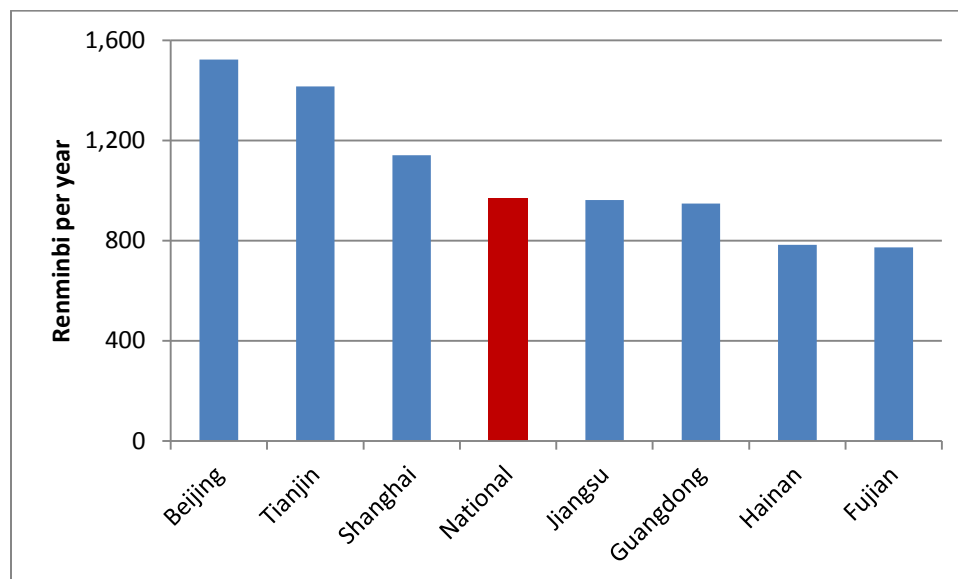
### ***China Opens Hospital Ownership to Foreign Investors***

In late August, China’s Ministry of Commerce and National Health and Family Planning Commission announced a pilot program that will allow foreign investors in some parts of the country to set up new hospitals. The program will apply to Beijing, Tianjin, and Shanghai municipalities, as well as to the provinces of Jiangsu, Fujian, Guangdong, and Hainan.<sup>24</sup> Foreign investors will be allowed to either set up new hospitals or buy existing ones, with no minimum requirement on the size of the investment.<sup>25</sup>

The announcement follows a similar ownership reform in the Shanghai Free Trade Zone (FTZ), a special economic zone established last fall to pilot a host of economic reforms. German hospital operator Artemed Group, in conjunction with other investors, will set up a hospital in the FTZ, making it the first Chinese hospital to be fully funded by foreign capital.<sup>26</sup> Among the other hospital operators making use of the pilot reform is the U.S. company Chindex International, already the leading foreign-invested healthcare provider in China.<sup>27</sup>

Although the pilot programs target the relatively affluent areas of eastern China, the level of development among the selected provinces varies considerably (see Figure 2). Urban per capita healthcare spending in Beijing, Tianjin, and Shanghai is well above the national average. On the other end of the spectrum, Fujian and Hainan spend about half as much on health per capita as Beijing. Jiangsu and Guangdong are roughly on par with the national average. The pilot reforms could demonstrate how foreign ownership plays out in hospitals that differ in terms of quality and patient profiles.

Figure 2: Provinces Targeted by Hospital Ownership Reform:  
Annual per Capita Spending on Health in Urban Areas  
(RMB per year)



Source: China National Health and Family Planning Commission, via CEIC data.

Relaxing ownership rules on hospitals in China is not a novel proposition. In the leadup to China's World Trade Organization (WTO) accession in 2001, the government of then president Jiang Zemin took preliminary steps to relax restrictions on foreign and private investment in the country's healthcare sector, mirroring pro-market policies in other industries. Joint ventures between foreign investors and Chinese healthcare providers were permitted in 2000—the domestic healthcare provider was required to retain a minimum of 30 percent Chinese ownership. In the ensuing decade, however, the administration of President Hu Jintao did little to further relax these rules, in line with its protectionist stance toward domestic services industries.<sup>28</sup>

In 2009, the government slightly raised the permitted share of foreign ownership in hospital joint ventures. The impetus was the release of a long-awaited healthcare reform bill, the product of three years of deliberation by the senior party leadership. The government invested more than \$371 billion in healthcare between 2009 and 2012, which accounted for 5.7 percent of total fiscal spending.<sup>29</sup> In China's 2014 central government budget, healthcare is among the fastest growing items—along with national defense—and surpasses spending on science and technology.<sup>30</sup> The government has extended public health insurance to some 95 percent of China's population.<sup>31</sup> At the Third Plenum of the 18th Party Congress, held in November 2013, the government offered further suggestions for healthcare reform.<sup>v</sup>

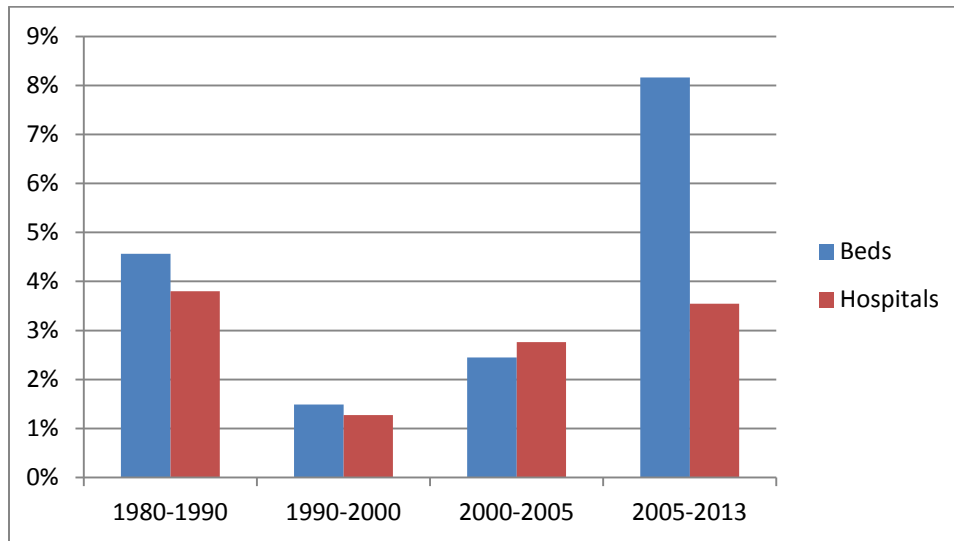
Still, many experts argue public hospitals are the least successful area of China's healthcare reforms.<sup>vi</sup> Part of the problem is that the Ministry of Health acts as both regulator and administrator of hospitals, and so has a vested interest in limiting outside influence. China's

<sup>v</sup> Important policy suggestions set out in the Third Plenum Decision include: (1) integrate medical services across regions and rural and urban areas, especially at the grassroots level; (2) pay medical staff based on performance and skill, and allow physicians to practice in many locations; (3) allow private providers to be incorporated as designated locations for medical insurance, and give priority to nonprofit medical institutions; (4) reform the method of paying for medical insurance; and (5) expand medical insurance to cover catastrophic diseases.

<sup>vi</sup> For more information, see the U.S.-China Economic and Security Review Commission's hearing on "China's Healthcare Sector, Drug Safety, and the U.S.-China Trade in Medical Products," held in April 2014.

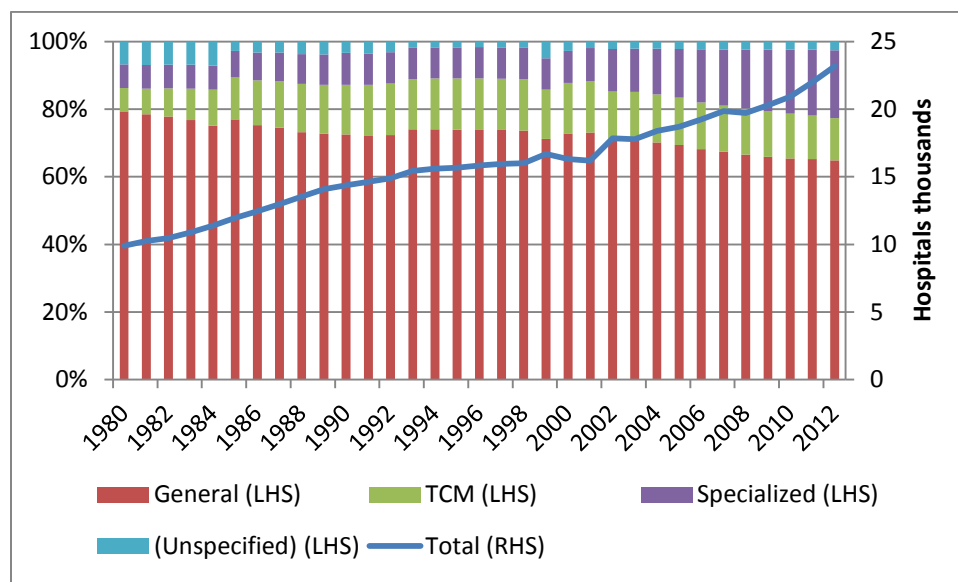
hospital capacity increased significantly over the past decade, after stagnating in the 1990s (see Figure 3). Yet much of the increase has been in the form of hospital beds, so that existing facilities are becoming more and more crowded. Although the government has tried to promote local clinics, patients still prefer larger hospitals where the quality of treatment is better. Meanwhile, many of the new hospitals coming onto the market are small, specialized facilities (see Figure 4) that do not treat acute cases or offer extended inpatient care. Private providers are underutilized because patients distrust the quality of private doctors, or can make better use of their public health insurance benefits in general hospitals run by the state. Nonpublic healthcare institutions account for 47 percent of the country's total, yet provide only 11 percent of beds.<sup>32</sup>

Figure 3: Growth of Hospital Beds and Hospital Units in China  
(Compound annual growth, %)



Source: China National Health and Family Planning Commission, via CEIC data.

Figure 4: Number of Hospitals in China by Type



Note: TCM = traditional Chinese medicine; LHS = left-hand side axis; RHS = right-hand side axis.  
Source: China National Health and Family Planning Commission, via CEIC data.

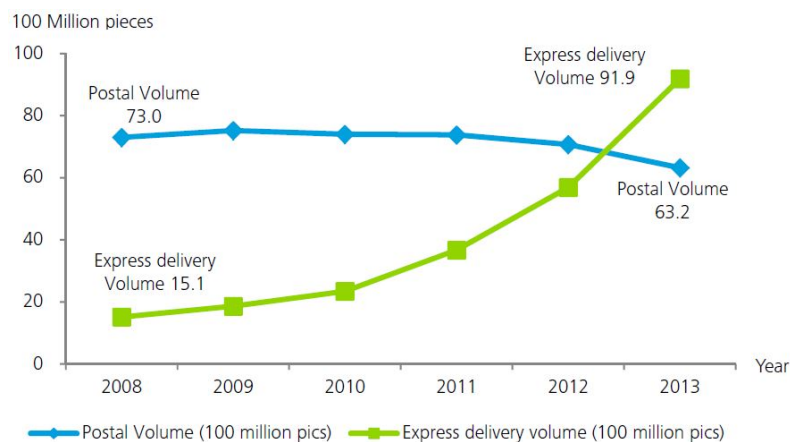
The new ownership reforms are no panacea. Approvals for foreign-owned hospitals will be supervised by provincial governments, which could lead to interference by local interest groups. Only investors from Hong Kong, Macau, Taiwan, and Hong Kong will be allowed to practice traditional Chinese medicine.<sup>33</sup> China's Ministry of Commerce hopes that foreign investors can provide an international caliber of knowledge of hospital management and services, advanced technology, and equipment; and can supplement or improve any weaknesses of local healthcare. One of the most immediate effects, though, could be fierce competition between foreign and local providers for China's limited pool of qualified medical staff. Many young Chinese avoid entering the medical profession due to low pay, rampant corruption, and the risk of being attacked by angry patients.<sup>34</sup>

### Sector Focus – Express Delivery Services in China

In August, China approved licenses for FedEx Corporation and United Parcel Service, Inc. (UPS) to resume offering domestic express package delivery services in select Chinese cities, including Beijing.<sup>35</sup> Based on China's WTO commitments, foreign express delivery service (EDS) companies have been entitled to establish wholly foreign-owned subsidiaries in China since 2005.<sup>36</sup> However, after a revision to China's Postal Law in 2009, EDS firms were forced to reapply for licenses from China's State Postal Bureau (SPB), which has been slow to issue the new licenses to foreign firms.<sup>37</sup> The recently issued licenses bring UPS and FedEx's market access back to their pre-2009 levels, but do not grant any additional market access. In addition, the 2009 Postal Law continues to ban foreign EDS firms from providing domestic document delivery services, a rule that appears to violate China's WTO obligations. While the United States and European Community (EC) raised concerns about foreign discrimination in the EDS market at the time of the Postal Law's revision, no formal case has been brought against China at the WTO.<sup>38</sup>

Bolstered by China's flourishing e-commerce sector, the EDS market in China has grown into the world's second largest after the United States.<sup>39</sup> According to a study released this year by Deloitte and the Development and Research Center of China's SPB, EDS companies in China delivered over 9 billion pieces and experienced a 61.6 percent year-over-year growth rate in 2013.<sup>40</sup> By the end of 2013, monthly express delivery volumes were on par with 2006's total yearly volume. Both domestic and international deliveries have enjoyed rapid growth over the past five years, but growth rates have been faster for domestic EDS—with intra-city growth at 80 percent year-over-year and cross-regional growth at 50 percent year-over-year in 2013.<sup>41</sup> In addition, 2013 marked the first time in China's history that total and per capita EDS volume surpassed traditional postal service volume, as shown in Figure 5.<sup>42</sup>

Figure 5: Express Delivery versus Postal Delivery Volumes

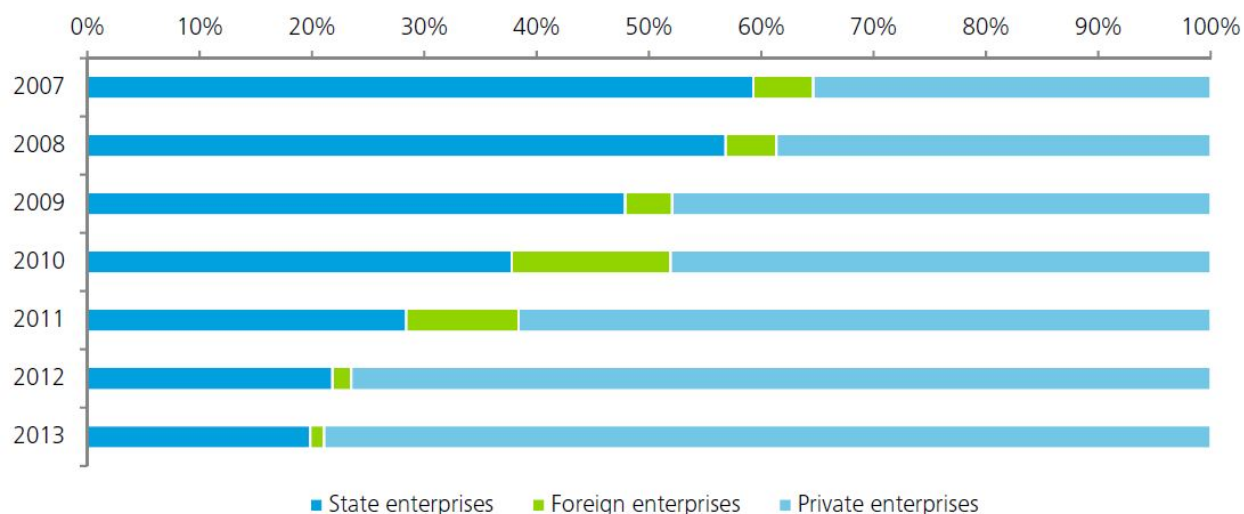


Source: Deloitte and the Development and Research Center of the State Postal Bureau.



China's domestic EDS industry comprises a large state-owned enterprise (SOE), a few large domestic firms, and thousands of small businesses that largely handle intra-city deliveries. Until the 1990s, the China Post Administration, a government agency, was the sole postal service provider in China.<sup>43</sup> Operating as an SOE since 2009, China Post's EDS subsidiary, China Postal Express and Logistics, now dominates the domestic EDS market.<sup>44</sup> In the 1990s, the economic development of the Yangtze and Pearl River delta regions gave birth to some of China's largest private EDS companies, including SF Express and Shentong Express.<sup>45</sup> In addition, an estimated 35,000 small EDS companies handle a large portion of China's intra-city and intra-region express deliveries.<sup>46</sup> Although these small businesses offer very competitive pricing, uneven quality of service has enticed some customers to shift to more recognizable brand names. Nonetheless, established foreign firms—namely FedEx, UPS, and DHL (the EDS arm of Deutsche Post)—have achieved only a small market share in China. As shown in Figure 6, market share of foreign-owned EDS firms has dwindled to a mere 2 percent in 2013. This could be a result of DHL's decision to exit the highly competitive domestic delivery market in 2012, combined with the adverse effects of the 2009 reform of the Postal Law on FedEx and UPS's operations.

Figure 6: Business Volume Structure by Ownership Type



Data source: Related contents on SPB website

Source: Deloitte and the Development and Research Center of the State Postal Bureau.

As its EDS market grows, China has taken steps to ensure Chinese EDS firms have an unfair advantage over foreign competitors, particularly in the higher-growth domestic delivery market. The most egregious of these efforts was the revision of China's Postal Law in 2009. Upon its WTO accession in 2001, China committed to allowing wholly foreign-owned subsidiaries of EDS companies to operate in China after four years, with an exception for courier services "currently specifically reserved to Chinese postal authorities by law."<sup>47</sup> Following this market opening, foreign EDS firms—including FedEx and UPS—began to expand their presence in China; by 2009, FedEx had 58 Chinese branches and UPS had 33.<sup>48</sup>

In 2009, China passed a revision of its Postal Law that split China's postal authority into separate regulatory and operational functions—with SPB charged with regulatory authority—while a new SOE, China Post, would operate the postal system.<sup>49</sup> The revised law also stipulated that private courier businesses, both foreign and domestic, must obtain new licenses from the SPB to provide their services. It also explicitly banned foreign firms from

providing domestic “correspondence” delivery services, which was interpreted to mean domestic delivery of documents.<sup>50</sup>

Although the new license rule applied to all private EDS firms, the application approval process for foreign firms was notoriously slow.<sup>51</sup> In addition, licenses were required for international and domestic services as well as for each individual branch in China. In the case of FedEx, SPB approved its licenses for international service in 2010, but did not approve some of the company’s previous domestic licenses until 2012. Moreover, SPB only licensed FedEx to operate domestic service from eight of its 58 branches. In 2013, SPB approved another 29 licenses for FedEx; in August 2014, it finally approved the remaining 21, which included key urban markets such as Beijing and Wuhan.<sup>52</sup> In sum, it took SPB five years to issue licenses that would enable FedEx to return to its pre-2009 operating level. According to FedEx, during those five years Chinese firms were being approved for “hundreds of permits” and enjoying “much gentler treatment” from the SPB.<sup>53</sup> Corruption and bribery often have been de facto prerequisites for firms to obtain operating licenses in China in a timely manner, and unwillingness to engage in corrupt practices has resulted in longer wait times for foreign EDS firms.<sup>54</sup>

Meanwhile, the domestic document delivery ban on foreign businesses still applies. During China’s 2010 Trade Policy Review at the WTO, the United States and EC questioned China about the ban, signaling that the policy appeared inconsistent with China’s obligations.<sup>55</sup> There is no public record of China’s response to those questions, nor is there record of any further consultations with China on the issue. As noted above, the only exception to national treatment granted to China in courier services was for services “currently” (i.e., in 2001) reserved to “postal authorities.”<sup>56</sup> The ban on domestic document delivery did not exist in 2001 and was, therefore, not “current” at the time. Furthermore, it is unclear that China Post’s EDS subsidiary qualifies as a “postal authority.” In addition, given that both China Post and other private Chinese firms engage in domestic document delivery, the ban appears to violate China’s WTO obligations to grant equal treatment to foreign firms.

Although UPS and FedEx’s operations in China are now back to their pre-2009 levels, they continue to face market access challenges. Any attempt to establish new branches in China will require that the companies endure the lengthy license application process again. In addition, the companies are still constrained by the domestic document delivery ban, which puts them at a distinct disadvantage vis-à-vis Chinese competitors.

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- <sup>1</sup> U.S.-China Business Council, "USCBC Report: Competition Policy and Enforcement in China," September 3, 2014. <http://www.uschina.org/media/press/uscbc-report-competition-policy-and-enforcement-china>.
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