



January 20, 2010

The President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

The members of the US-China Business Council strongly support your efforts to stimulate US and global economic recovery and job growth here at home. We believe that a reenergized US Bilateral Investment Treaty (BIT) program is critical to accomplishing those objectives, and we look forward to working closely with you and your Administration to achieve that result.

Our goal is to have a strong BIT with China. Given that BIT negotiations with China have already begun, we would like to encourage you to keep several key principals in mind during your Administration's review of the Model BIT:

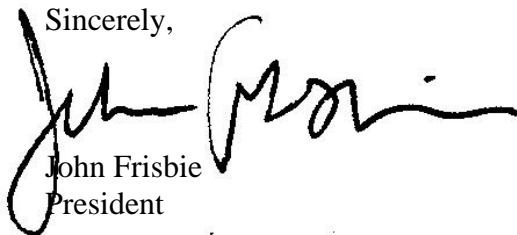
- Any BIT that the US enters should be based on a negative-list approach – that is, a list that explicitly and transparently singles out only those sectors where foreign companies are NOT allowed to invest, rather than attempting to detail every area where foreign companies are allowed to participate fully in another country's market. This is of particular importance in China, where investment restrictions at the national, provincial and local levels are oftentimes opaque.
- BITs should improve US access to overseas market and reduce measures that either discriminate against US investors or deny them market access. The US Model BIT, as updated most recently with the US-Rwanda agreement, provides essential provisions that would make a US-China BIT valuable to US companies:
 - core investment protections, including fair and equitable treatment, full protection and security, compensation for expropriation, free transfer of capital, and disciplines on performance requirements;
 - national treatment and most-favored nation treatment for both existing investments and new investments across all sectors (known as pre- and post-establishment); and
 - access to investor-state dispute settlement for breaches of the agreement and existing and future investment agreements with US investors.

- It is also vital that the US Model BIT ensures competitive practices and treatment across all sectors, particularly in the case of China, which has a significant state-owned sector. However, we believe the US Model BIT already includes effective provisions to address SOE issues. In particular:
 - State-owned enterprises (SOEs) would be covered by the Model BIT just like any other company. In the case of China, the PRC government would be barred from providing preferential treatment to SOEs but not to foreign companies as part of the BIT's national treatment and fair and equitable treatment standards.
 - In addition, the Model BIT covers SOEs that have regulatory authority and bar them from discriminating against foreign companies (Article 2.2 of the US Model BIT).
 - Potential SOE advantages not covered by the Model BIT can be addressed in other appropriate ways. For example, subsidies provided to SOEs are already covered by the WTO under its subsidies agreement. But an SOE acting in its commercial capacity – as a company operating in China – receiving more favorable treatment from China's government and policies than a foreign company received would be covered by the BIT's national treatment or fair and equitable treatment commitments.

We believe that the negative list approach and pre-establishment protections are significantly more important to a meaningful BIT with China than any SOE issues not covered by the current Model BIT. As a consequence, we should not sideline BIT negotiations with China over additional, new SOE provisions, since the broader benefits to US companies doing business in China under the current Model BIT would exceed any incremental benefits that such provisions would gain.

We stand ready to work with you and your Administration to ensure that the US BIT program can and will promote our shared goals of increasing US exports and American competitiveness abroad in order to grow US jobs and promote global economic growth.

Sincerely,



John Frisbie
President