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Committee on Trade in Financial Services

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COMMUNICATION FROM THE EUROPEAN COMMUNITIES

Transitional Review Mechanism in connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China

The attached communication has been received from the delegation of the European Communities (the EC hereinafter) with the request that it be distributed to Members of the Committee on Trade in Financial Services.

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1. The EC is transmitting comments and questions in advance of the December meeting of the Committee on Trade in Financial Services, in order for Chinese authorities to have sufficient time to provide complete replies.

2. Once the information to be provided by China in accordance with paragraph 8 and paragraph IV.3 (a) of Annex 1A of its Accession Protocol has been received, the EC might come back with additional questions.

I. INSURANCE

3. The EC welcomes the release in July 2003 by the China Insurance Regulatory Commission of draft Regulations on Administration of Foreign-Funded Insurance Companies, in particular in relation to minimum capital requirements.

4. In this context, could China please specify whether the contemplated reduction in minimum capital requirements would also apply to reinsurance branches ?

5. Besides, it appears that, for life insurance, joint-ventures with a foreign partner in China have had to apply for further branch licenses on a “one application for one city” basis, while domestic companies have been able to receive several branch licenses at one time.

6. Could China please confirm that, in line with WTO commitments, foreign life operations can receive several branch licenses at one time ?

II. BANKING

7. Minimum working capital requirements for direct branches of foreign banks remain extremely high, ranging from RMB 100 million to RMB 600 million per branch depending on the business scope. These requirements limit market access for foreign banks, are much higher than minimum capital requirements in most other countries, and could potentially be analysed as a means of avoiding its commitments, in the sense of paragraph 2.(a) of the GATS Annex on Financial Services.

8. In light of the above and of the proposed reduction of minimum capital requirements in the insurance sector, could China please indicate whether it intends to reduce minimum capital requirements in banking ?

9. Moreover, minimum working capital is required for each direct branch in China from the same bank, irrespective of the number of branches, and capital adequacy ratios have to be met for each individual branch, in isolation from the other branches. This seems all the more excessive as Chinese authorities require that the head office abroad of the foreign bank guarantees all liabilities of its branches in China.

10. Could China please indicate whether it intends to apply these requirements to the overall commercial presence of a bank in China, and not for each of its branches?

11. Chinese authorities released in November 2002 a draft regulation that would limit inter-bank financing to 40% of RMB liabilities of a bank. The adoption of such a ratio would hurt the business development in Renminbi of foreign banks and would raise serious concerns as to its compatibility with China's WTO commitments.

12. Could China please inform whether the adoption of such a ratio is still contemplated, and provide possible details ?

13. It is required that 30% of the working capital of foreign branches at any time be deposited at a local bank on a list defined by Chinese authorities or, in case of Renminbi, alternatively be used to buy Government bonds.

14. Could China please explain how the impossibility to lodge those funds with foreign banks established in China fit with its national treatment commitment ? Moreover, could China please provide the justification for such a large proportion of working capital to be deposited with another bank ?

15. Foreign banks are limited to opening only one new branch per year. This constitutes a very significant barrier to market access, which has not been scheduled by China in its WTO commitments. China argued in the TRM of last year that this limitation was justified on prudential grounds, but it seems that it is not applied to Chinese banks.

16. Could China please confirm that this limitation is not applied to Chinese banks ? If so, could China please explain how a so-called "prudential" rule would be different for foreign and Chinese banks ?

III. SECURITIES SERVICES

17. Securities fund management companies, both domestic and joint-ventures with a foreign partner, are limited to manage assets of retail investors and are not allowed to manage assets of institutional investors.

18. As no such limitation is contained in China's Schedule of specific commitments on securities services, could China please explain how it fits with its commitments, and whether it intends to review it ?

19. Only domestic securities, fund management or investment trust companies may hold the highest capital contribution, thus limiting the choice of partners for foreign investors in joint ventures providing fund management or other securities services.

20. Could China please explain how this limitation is compatible with the commitment undertaken by China in paragraph 314 the Working Party Report, providing for the free choice of the Chinese joint-venture partner, including outside the sector of operation of the joint-venture ?

IV. CAR FINANCING

21. The EC welcomes China finally adopting the relevant regulation to open motor vehicle financing to foreign non-bank financial institutions. However, the Administrative Rules Governing Auto-financing Companies promulgated on 3 October 2003 by China Banking Regulatory Commission raise a number of issues:

(a) direct branching from abroad is not allowed (article 5);

(b) a shareholder of an auto-finance company must have total assets above RMB 4 billion, annual business revenue above RMB 2 billion, a registered capital above RMB 300 million and be profitable for the last three years (article 5);

(c) the minimum capital requirement is extremely high, at RMB 500 million (article 7);

(d) auto-finance companies are not allowed to set up internal branches or subsidiaries (article 14);

(e) deposit-taking from local car manufacturers does not seem to be allowed (article 18);

(f) activities of an auto-finance company may be stopped if it loses in one year more than 50% of the capital or accumulates losses over three years representing more than 10% of the capital (article 29).

22. Could China please explain for each of these conditions how they fit with China's market access and national treatment commitments on motor vehicle financing, which both read "none" in mode 3 ?

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