WORLD TRADE ORGANIZATION

RESTRICTED

S/FIN/W/40
8 November 2004

(04-4723)

Committee on Trade in Financial Services

Original: English

COMMUNICATION FROM THE UNITED STATES

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

The following communication, dated 5 November 2004, from the delegation of the United States is being circulated to the Members of the Committee on Trade in Financial Services.

Questions from the United States to China concerning Financial Services

A. INSURANCE

1. Prior to China's WTO accession, China's regulatory authorities allowed a number of foreign non-life insurers to establish operations in China. China's regulatory authorities requested that all of these insurers incorporate as operational branches rather than as subsidiaries. Since issuing the Regulations on the Administration of Insurance Companies and the Implementing Rules for the Regulation on the Administration of Foreign-Invested Insurance Companies on May 13, 2004, China's Insurance Regulatory Commission (CIRC) has encouraged foreign non-life insurers to convert existing branch operations to subsidiaries. The recently issued CIRC regulations and implementing rules, however, do not appear to address the treatment of branches already established in China.

(a) Please confirm that existing branches and other existing non-life insurer operations may, but are not required to, continue to operate under the conditions existing, and pursuant to the approvals granted, prior to the recently issued regulations and implementing rules, including with regard to operations, financial structure, capital and mode of establishment.

(b) Please clarify whether China will allow non-life insurers already established in China (whether as a branch or otherwise) to open branches and sub-branches even if they do not first establish as a subsidiary. The United States notes that, in paragraph 313 of the Working Party Report, China agreed that it would not apply the qualifications for foreign insurers applying for a license to enter China's market to foreign insurers already established in China merely seeking authorization to establish branches or sub-branches. In addition, in the Services Schedule accompanying its Protocol of Accession, China specifically committed to allow non-life firms to establish as a branch and allow internal branching in accordance with the lifting of China' s geographic restrictions.

2. The recently issued regulations and implementing rules do not specify the number of branches foreign insurers may apply for at one time. They also do not specify whether branch approvals will be granted consecutively (meaning one at a time) or concurrently (meaning more than one at a time).

(a) Please confirm that foreign insurers may be granted simultaneous approvals for multiple branches as part of a single license application.

(b) At present, it appears that, in practice, established Chinese insurers are able to receive concurrent approvals to open multiple branches. The most recent example is Xin Hua Life (New China Life). In stark contrast, foreign insurers have only received consecutive approvals to open single branches. Please justify this differential treatment in light of China's WTO national treatment commitments.

3. The recently issued regulations and implementing rules do not identify the types of geographic licenses available to foreign insurers.

(a) Please confirm the ability, or make changes allowing, foreign insurers to obtain licenses for province-wide operations.

(b) Does China apply the same rule to domestic insurers? If not, please justify this differential treatment in light of China's WTO national treatment commitments.

4. In the recently issued regulations and implementing rules, China established certain capital requirements, with RMB 200 million being set for initial establishment, whether as a subsidiary or a branch, and RMB 20 million for each additional branch. However, these regulations and implementing rules do not appear to directly address the internationally accepted branch/sub-branch operating structure. Unlike subsidiaries, branches and sub-branches are legally part of the parent foreign insurer itself, meaning that all liabilities of the branches and sub-branches are backed by the full asset base of the parent corporation.

(a) Please confirm that the RMB 200 million capital requirement for initial establishment, whether as a subsidiary or a branch, includes the right to establish sub-branches without limitation on numbers and without having to satisfy any additional capital requirements.

(b) Please explain the rationale for requiring additional capital of RMB 20 million for each additional branch, particularly in light of the fact that any additional branches would still be backed by the full asset base of the parent foreign insurer.

5. Pursuant to CIRC's Provisional Measures on the Administration of the Overseas Utilization of Insurance Foreign Exchange Funds, issued on August 9, 2004, the qualifying threshold (e.g. total assets of RMB 5 billion) for insurers to be able to invest their foreign exchange funds in overseas funds or equities is extremely high. In practice, only the very largest insurers, i.e. domestic companies, will have the level of assets necessary to qualify for this access to overseas funds or equities. Foreign-invested insurers invariably will not qualify unless CIRC recognizes the assets of the parent foreign insurer when determining the asset level of a foreign-invested insurer.

(a) Please explain the rationale for this limitation.

(b) Given the disproportionate impact of this limitation on foreign-invested insurers, please justify this differential treatment in light of China's WTO national treatment commitments.

6. Pursuant to Article 8 of CIRC's Interim Regulations for Insurance Assets Management Companies, which became effective on June 1, 2004, only insurers that have held licenses for more than 8 years are permitted to apply to establish an insurance asset management company. It appears that this provision applies only to insurers that have been operating in China for those 8 years, which would exclude all foreign insurers entering China's market since China's WTO accession on December 11, 2001.

(a) Please explain the rationale for this limitation from a prudential perspective.

(b) Given the disproportionate impact of this limitation on foreign insurers, please justify this differential treatment in light of China's WTO national treatment commitments.

7. While China has made some progress in liberalizing the types of investment that insurance companies may hold, under the Administrative Regulations on Insurance Companies, issued by CIRC on May 13, 2004, insurance companies in China are mostly restricted to investments in the form of bank deposits, Chinese treasury bonds, government agency bonds issued by the central bank or quasi-sovereign policy banks of the Chinese government, qualified domestic securities investment funds and other vehicles approved by the State Council, such as bonds of specified large state-owned enterprises. Is CIRC reviewing, or planning on reviewing, these regulations to determine whether to allow a portion of assets to be invested abroad? Will this review be conducted in a transparent manner, with input sought from foreign insurance companies?

B. FINANCIAL HOLDING COMPANIES

8. CIRC has yet to issue regulations on financial holding companies, a structure under which one corporate entity may provide a combination of insurance, banking and securities services through separate operating companies. U.S. industry reports, however, that CIRC has already granted approvals to its Chinese competitors allowing them to establish financial holding companies. Please confirm the right of foreign companies to establish financial holding companies and how such companies will be regulated.

C. BANKING

9. Pursuant to the Regulations on the Administration of Foreign-Invested Financial Institutions and the Detailed Implementing Rules for the Regulations on the Administration of Foreign-Invested Financial Institutions, issued by the People's Bank of China (effective February 1, 2002), China imposes minimum capital requirements for foreign banks, on a branch-by-branch basis, that remain extremely high by international standards. At the transitional review held last year, the United States and other WTO Members asked China whether it was reviewing these high capital requirements to determine whether they are necessary and not overly burdensome for foreign banks. China responded that, with the improvement of the risk management system of foreign banks and the development of China's regulatory framework, CBRC would relax the minimum capital requirements for foreign banks accordingly. What is the current status of CBRC's review of these capital requirements?

D. SECURITIES

10. Under rules issued by the China Securities Regulatory Commission (CSRC) addressing joint venture asset management companies, foreign firms must have at least RMB 300 million of capital to qualify as a joint venture partner. This amount is significantly higher than in any other country, as other countries recognize that asset management firms do not need capital reserves to protect investors. This high capital requirement impedes market access for foreign firms.

(a) Please explain China's rationale for this high capital requirement.

(b) Is China considering modifications to these rules? If so, when does CSRC plan on circulating a draft of the revised rules for public comment?

E. PENSIONS

11. In the Services Schedule accompanying its Protocol of Accession, China committed to open its pension market to international participation by December 11, 2004.

(a) Please explain China's plans for implementing this commitment.

(b) When will China issue draft regulations implementing this commitment for public comment?