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Committee on Trade in Financial Services

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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 19 August 2005, 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. Currently, the most important issue for many established and operating foreign insurers in China is the ability to grow their business geographically through branch and sub-branch expansion. Key questions and concerns include the number of branches that a company can apply for at any one time and whether approvals will be on a consecutive or concurrent basis, how and by whom will sub-branch approvals be handled and whether approvals of sub-branches in a province will be on a consecutive or concurrent basis once an initial provincial branch has been established, and whether China will permit Property and Casualty insurers to adopt the internationally accepted branch/sub-branch structure. In connection with last year's TRM meeting for this Committee, the United States asked several questions relating to branch and sub-branch establishment and approvals, particularly in connection with the issuance of the *Regulations on the Administration of Insurance Companies* and the *Implementing Rules for the Regulation on the Administration of Foreign-Invested Insurance Companies* by China's Insurance Regulatory Commission (CIRC) on 13 May 2004. China provided informative responses to many of these questions. At this time, the United States seeks clarifications with regard to the responses to some of its earlier questions.

(a) The United States understands 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. Is that correct? If not, please explain.

(b) The United States understands that 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. Is that correct? Are there any limitations on this right? Please explain.

(c) In practice, it continues to appear that branch approvals for foreign insurers are being granted consecutively (meaning one at a time) rather than concurrently (meaning more than one at a time), while established and start-up Chinese insurers are able to receive concurrent approvals to open multiple branches. The practice of refusing to approve multiple branch applications on a concurrent basis is contrary to international practice, impedes competition and therefore impairs consumer welfare, and is unfair to new market entrants. Please explain how China continues to justify this differential treatment in light of China’s WTO national treatment commitments.

(d) 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.

(e) 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.

2. In December 2004, CIRC allowed foreign companies the opportunity to provide comments on the Insurance Law that was under revision. Please explain the status of China’s review of the draft Insurance Law and the plans for implementation of any revisions to this draft.

3. In the Services Schedule accompanying its Protocol of Accession, China committed to open its group life, health, pension and annuity market to international participation by 11 December 2004. Please indicate when CIRC will issue implementing guidelines for foreign insurers interested in providing group life coverage. Will these guidelines specify what entities are covered under group life “master contract coverage”? Will these guidelines describe how and under what circumstances insurers may qualify to provide group “master contract coverage”?

4. At present, is CIRC reviewing, or planning to review, its regulations to determine whether to allow a portion of insurance companies' assets to be invested abroad? If so, please describe the review and indicate whether input will be sought from foreign insurance companies.

5. CIRC’s *Provisional Measures on the Administration of the Overseas Utilization of Insurance Foreign Exchange Funds*, issued on 9 August 2004, establish a 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. Even though this limitation applies to both domestic and foreign insurers, 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. 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 1 June 2004, only insurers that have held licenses for more than eight 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 eight years, which would exclude all foreign insurers entering China’s market since China’s WTO accession on 11 December 2001. China has previously stated that this limitation applies to both domestic and foreign insurers. Nevertheless, given the disproportionate impact of this limitation on foreign insurers, please justify this differential treatment in light of China’s WTO national treatment commitments.

B. BANKING

7. 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 1 February 2002), China imposes minimum capital requirements for foreign banks, on a branch-by-branch basis, that remain extremely high by international standards. Previously, China has explained that, with the improvement of the risk management system of foreign banks and the development of China's regulatory framework, the China Banking Regulatory Commission (CBRC) would relax the minimum capital requirements for foreign banks accordingly.

(a) What progress has CBRC made in introducing a risk-based management system, which could permit CBRC to change the rules on capital requirements (and limitations on product scope) for better capitalized domestic or foreign-invested firms with proven risk management systems?

(b) What is the current status of CBRC's overall review of the capital requirements for foreign banks?

8. Under banking services in the Services Schedule accompanying its Protocol of Accession, China agreed that qualified foreign financial institutions were permitted to establish Chinese-foreign joint banks, and China did not schedule any limitation on the percentage of foreign ownership in these banks. China also made a "horizontal" commitment in which it accepted that "[t]he proportion of foreign investment in an equity joint venture shall be no less than 25 percent of the registered capital of the joint venture." Previously, China explained that, in line with the development of China's banking sector, China was gradually relaxing the restriction on the foreign equity share in existing domestic banks. China further explained that, at the end of 2003, it had increased the equity share of a single foreign investor to 20 percent, provided that the equity share of the total foreign investment in a financial institution was lower than 25 percent.

(a) In light of the banking sector commitment that China made in its Services Schedule, please justify China's limitation on foreign ownership in Chinese-foreign joint banks.

(b) In light of the "horizontal" commitment that China made in its Services Schedule, please justify China's limitation on foreign ownership in Chinese-foreign joint banks.

C. SECURITIES

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

10. How many foreign securities institutions have signed up as 33 percent joint-venture partners "to engage (without Chinese intermediary) in underwriting A shares and in underwriting and trading of B and H shares as well as government and corporate debts, launching of funds" since China's accession to the WTO? Of those joint ventures licensed, how much capital did the foreign securities institutions bring into the joint-venture? What kind of business have the joint ventures been able to participate in? For example, can they effectively underwrite A shares without trading them?

11. Do the Chinese regulatory authorities intend to allow foreign-invested securities firm to engage in the full range of securities services in the future? If so, how will these reforms be introduced?

D. PENSIONS

12. The application and approval processes for China's "enterprise annuity" program seem to be cumbersome. Please explain the application and approval process for enterprise annuities.

13. In order to offer pension annuities services, banks, securities firms, asset management companies and insurers must apply with their appropriate sectoral regulator (CSRC, CBRC and CIRC) as well as with the Ministry of Labor and Social Security (MOLSS). Please describe how China will maintain a level playing field among banks, securities firms, asset management companies and insurers in the application and approval process, given that an applicant must first secure approval from its appropriate financial services regulatory body before securing approval from the Ministry of Labor and Social Security.

14. Please report on the current licensing of companies to offer enterprise annuities services, including numbers of domestic and foreign companies applying and licensed to offer these services.

15. MOLSS has reportedly stopped accepting applications for enterprise pension funds. Although MOLSS has indicated that there will be future application tranches, it has not identified the date when applications will again be accepted, nor has it explained how long a window there will be for submitting applications.

(a) Please identify the dates when applications for enterprise pension funds will again be accepted by MOLSS.

(b) Has China considered instituting a rolling application process? Please explain.

E. FINANCIAL INFORMATION

16. In paragraph 309 of the Working Party Report accompanying its Protocol of Accession, China committed that "for the services included in China's Schedule of Specific Commitments, relevant regulatory authorities would be separate from, and not accountable to, any service suppliers they regulated, except for courier and railway transportation services." One of the services addressed in the Services Schedule accompanying China's Protocol of Accession is the "provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services." Nevertheless, Xinhua is both a major market competitor of, and the regulator of, foreign financial information service providers in China.

(a) When will China implement this commitment and create an independent regulator in the financial information services sector?

(b) Has China considered modeling an independent regulator in this sector after CIRC, CBRC or CSRC?

(c) Does China intend to circulate for public comment proposed regulations creating an independent regulator in the financial information services sector?

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