

# WORLD TRADE ORGANIZATION

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## Committee on Trade in Financial Services

### REPORT OF THE MEETING HELD ON 12 NOVEMBER 2007

#### Note by the Secretariat<sup>1</sup>

1. The Committee on Trade in Financial Services held a meeting on 12 November 2007. The agenda is contained in Airgram WTO/AIR/3109.

A. ADOPTION OF THE ANNUAL REPORT TO THE COUNCIL FOR TRADE IN SERVICES

2. The Chairperson drew Members' attention to document S/FIN/W/63, containing a draft report of the Committee's activities in the past year.

3. The Committee adopted the annual report with an amendment to paragraph 2 proposed by the representative of the Philippines.

B. ACCEPTANCE OF THE FIFTH PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES EMBODYING THE RESULTS OF THE FINANCIAL SERVICES NEGOTIATIONS

4. The Chairman recalled that three WTO Members had yet to accept the Fifth Protocol: Brazil, Jamaica, and the Philippines. He invited these three Members to provide information on the status of their domestic processes.

5. The representative of Brazil said that the Fifth Protocol had passed the first reading in both Houses of the Brazilian Congress. The constitutional procedures for the full adoption of the Fifth Protocol were not yet over, but were near completion.

6. The representative of the Philippines said that consideration of the Fifth Protocol was pending at the Philippines' Senate. He reassured Members that this was a priority for the Philippines' Executive Branch.

7. The Chairman thanked these two delegations for their updates, and encouraged the three Members concerned to accelerate their internal procedures for the acceptance of the Protocol.

8. The Committee took note of the statements made and decided to revert to this agenda item at the next meeting.

C. TECHNICAL ISSUES

9. The Chairperson recalled that there had been no discussion under this agenda item at the last meeting. He remained convinced that the Committee could have a role in supporting the Doha market access negotiations that were underway, primarily through a better exploration of technical issues and by providing an appropriate forum for dialogue between the trade community and the regulatory

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<sup>1</sup> This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

community. He said that, as Members were aware, he had held informal consultations with representative groups of Members with a view to identifying suitable issues for further discussion at the Committee or in a more informal setting. Those consultations had been held in a very positive and encouraging atmosphere and he intended to continue them in the coming weeks.

10. The representative of Brazil expressed his support for the Chair's consultations. He thought that this could be a valuable exercise in order to clarify some of the technical aspects involved in financial services trade. He reiterated his interest in exploring further the Basel II capital accord. In particular it would be interesting to analyze how different Members would implement this accord, and how it might affect the delivery of financial services. He stressed that Brazil remained supportive of – and engaged in – the Chair's consultations.

11. The Committee took note of the statements made and decided to revert to this agenda item at the next meeting.

#### D. RECENT DEVELOPMENTS IN FINANCIAL SERVICES TRADE

12. The Chairman said that, as requested by some Members, and taking into account that many delegations had not been able to attend the Expert Meeting on Trade and Development Implications of Financial Services held in UNCTAD on 20 and 21 September due to conflicting services meetings at the WTO, UNCTAD kindly agreed to present the outcome of that meeting. The presentation was delivered by Ms. Elisabeth Tuerk, from the Trade Negotiations and Commercial Diplomacy Branch at UNCTAD's Division on International Trade in Goods and Services and Commodities.

13. The representative of UNCTAD said at the outset that the Expert Meeting focused on the development aspects of trade in financial services. The meeting, which took place on 20 and 21 September 2007, was an outcome of the São Paulo consensus –one of the key texts adopted at UNCTAD XI. The background note for the meeting was contained in UNCTAD's document TD/B/COM.1/EM. 33/3, dated 3 August 2007.

14. The Expert Meeting took a multi-stakeholder approach, involving policy makers, regulators, central bankers, financial services firms, research institutions, civil society representatives, and inter-governmental organizations. The views expressed, as well as the suggestions made, at the meeting were contained in the meeting's report. She clarified in that sense that such a report was not an agreed conclusion, but rather a chairman's summary. The meeting was divided into four sessions dealing with global market trends in financial services; the role of financial services in economic development; the role of regulatory frameworks and international regulatory standards; and regional and multilateral trade negotiations and their development implications.

15. In describing global market trends, she said that world financial services exports grew at an average annual rate of 14 percent between 2000 and 2005, reaching US\$ 200 billion in 2005. Developed countries accounted for 90 percent of all exports. Among developing countries, who accounted for 10 percent of all exports, Hong Kong China, Singapore, Brazil, South Africa and India stood out as financial services exporters. Combined exports of financial services from the top 10 developing countries accounted for 95 percent of total developing country financial services exports.

16. Ten global market trends had been identified: privatization and liberalization; integration and consolidation; growth of equity markets; proliferation of financial products; expanding opportunities in emerging markets; offshoring and outsourcing; regulatory developments (e.g. international standard-setting, and harmonization); technology and security concerns; the emergence of Islamic finance; and the expansion of microfinance. The aspects that attracted particular attention at the meeting included the increasing diversity and volume of international trade in financial

services; the concentration of world financial services markets; the emergence of south-south banking; the novel ways of delivering financial services, including Islamic finance and microfinance, and their development potential; and the fragility of world markets, that called for better regulation.

17. The session on financial services and development was the core of the meeting. It was recognized that well-functioning financial systems could help economic development by, for example, improving productivity; facilitating transactions; making credit available; attracting foreign direct investment, and enhancing overall economic efficiency. It was also acknowledged that liberalization of financial services and enhanced competition could help by, for example, increasing efficiency, encouraging transfer of technology, and helping re-capitalize failing domestic firms. Some concerns with liberalization were mentioned, such as cream skimming or cherry picking by foreign firms; capital-flight; difficulties for local banks to face competition; weaknesses of domestic regulatory frameworks; infant industry concerns; and the cost of financial crises.

18. In the context of financial services and development, the meeting participants also discussed national financial sector reform experiences in Afghanistan, Argentina, Egypt, Iran, Kenya, Malaysia, and Russia. Lessons learned from those experiences included the following: a) that market forces could bring benefits, but complex international financial transactions require strong supervisory institutions; b) that liberalization needed to be complemented by efforts to prevent contagion, and by policies to ensure competition and the enforcement of prudential measures; and c) that proper timing, pacing and sequencing between regulatory and institutional development on the one hand, and financial services liberalization on the other, was crucial.

19. The issue of financial crisis received special attention. Lessons learned from current and previous crises included the following: a) that unrestrained and unregulated private financial sectors could bring financial instability, and thus affect the rest of the economy; b) that more and better regulation was needed, both at the national and international levels; c) that developing countries should build stronger linkages between banks, financial institutions and central banks, ensuring that the latter maintain their role as lenders of last resort; d) that responses to crises should avoid ad-hoc actions; and e) that monitoring could help prevent crises.

20. The third session of the meeting addressed regulatory issues. Participants coincided that in order to create pro-development outcomes, financial sector reform and liberalization needed to be supported by appropriately designed policies (macroeconomic, prudential, regulatory, and supervisory policies). The trend toward international approaches in the field of regulation was also highlighted. However, some warned about the challenges faced by developing countries regarding the effective participation in international standard setting, and the existence of standards that might not be in line with their needs.

21. The meeting also looked at the different roles of financial services regulation (ensuring financial stability, reducing social and economic costs of systemic risk, protecting lenders and borrowers) and the different types of regulation (e.g. principles-based or rules-based). The challenges faced in the field of regulation, particularly by developing countries, included the choice between a single regulator or multiple regulators, the management of shared responsibilities between home and host country regulators and supervisors, the proliferation of regulation at the international level, and the need for enhancing institutional capabilities.

22. In its last session, the meeting addressed trade liberalization both at the multilateral and regional levels. Recognizing that financial services was a priority sector in trade negotiations, participants discussed some important issues, such as the approach to be taken to schedule commitments in financial services, the relationship between the prudential carve-out and enhanced commitments, the relationship between the said carve-out and future disciplines on domestic

regulation, and the GATS provisions on payments and capital transfers. The meeting also considered regional initiatives for the liberalization of financial services.

23. Suggestions were also made for UNCTAD's future work. In that regard, it was pointed out that UNCTAD expertise could be useful in strengthening financial sectors and supply capacity in developing countries; in assisting developing countries undertaking financial sector policy reviews; in supporting developing countries in institution building, developing regulatory frameworks and participating in international standard-setting; in assisting developing countries in reaping the benefits from the international trading system and trade negotiations; and in supporting developing countries in harnessing regionalism for development.

24. The representative of Pakistan asked what concrete measures were proposed during the meeting to prevent risks arising in one market from spreading into others; and what advantages the existence of single regulators brought.

25. The representative of UNCTAD said that many concerns were indeed expressed at the Expert Meeting about the existence of new financial products and the potential risks that they could generate. It was not only a matter of toughening the current regulations. In fact, since some of these products were not yet regulated, the need arose in many cases to build the appropriate regulatory framework. Turning to the other question, she said that the emergence of financial institutions combining different services (e.g. banking and insurance) gradually led to the idea of having a single financial regulator. One of the main challenges raised by such a single regulator was how to combine different regulatory objectives for different financial sectors into a single regulatory authority. Developing countries faced additional challenges, such as the lack of human resources. Interestingly, the meeting benefited from the experience of Egypt, which was just about to implement such a regulatory approach.

26. The representative of Brazil drew attention to paragraph 8(e) of UNCTAD's background note for the Experts Meeting, which stated that foreign financial services providers were more likely to invest domestic savings abroad rather than in the local economy, and in so doing might exacerbate difficulties regarding domestic savings. He asked UNCTAD whether there was any evidence in that regard.

27. The representative of India made reference to Figure 3 in UNCTAD's background note, and asked how financial services were defined. In particular, he wanted to know whether they included IT and back office services that were provided by developing countries to financial institutions across the border.

28. Turning to Brazil's questions, the representative of UNCTAD said that the organization had not done any primary empirical research itself. The concerns referred to in the background note had been drawn from different analyses. One such analysis was actually mentioned in footnote 4 to the note. Regarding the question raised by India, she said that the definition used included both banking, insurance and securities services, but excluded back office activities.

29. The Committee took note of the statements made and decided to revert to this agenda item at the next meeting.

E. TRANSITIONAL REVIEW UNDER SECTION 18 OF THE PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

30. The Chairperson recalled that the Committee was mandated to conduct this review pursuant to section 18 of the Protocol on the Accession of the People's Republic of China. For this year's review, written communications had been received in advance from the following Members: Chinese Taipei (S/FIN/W/57); Japan (S/FIN/W/58); the European Communities (S/FIN/W/59); Australia

(S/FIN/W/60); the United States (S/FIN/W/61); and Canada (S/FIN/W/62). He also drew Members' attention to the communication by the People's Republic of China in document S/C/W/290, which contained information required by Annex 1A of the Protocol on the Accession of the People's Republic of China, including relevant information on financial services.

31. Before replying to the questions raised by Members, the representative of China took the opportunity to provide information about the regulations adopted since the last review, and about the increasing participation of foreign financial service suppliers. The Chinese government adopted the following rules covering banking, insurance and securities: *Rules for Implementing the Regulations on Foreign-funded Banks, Rules on Information Disclosure of Commercial Banks, Rules Governing Trust Companies, Rules Governing Financial Leasing Companies, Administrative Measures for Insurance Licenses and Measures concerning Foreign Stock Exchanges' Representative Offices in China.*

32. After the completion of transitional periods in China's schedule of specific commitments, she said that the banking and insurance sectors in China were almost fully opened, while foreign companies could also hold as much as 49 percent equity shares in the securities sector. Foreign services providers had seen their access to China's financial market significantly improved.

33. In the banking sector, by the end of September 2007, 25 foreign banks had been incorporated in China and had opened 95 branches. Foreign banks had also established 133 direct branches in China. A large number of them came from the United States, the European Communities and Japan. In the case of the United States, apart from 8 direct branches, there were also two subsidiary banks that had opened 10 branches. In the case of the European Communities, in addition to 46 direct branches, there were 4 subsidiary banks with 27 local branches in China. As to Japan, 9 direct branches and 2 subsidiary banks (with 11 local branches) were set up in China. In terms of assets, by the end of December 2006, the total assets of foreign banks in China added up to around US\$ 118 billion, an increase of 34.17 percent over the previous year.

34. In insurance, by the end of May 2007, there were 46 foreign insurance companies in China, which had opened 130 operational branches. In addition, about 200 representative offices had been set up by 135 foreign insurance institutions. Foreign insurance companies reaped an insurance premium income of RMB 14.21 billion, which was 4.24 times higher than at the time of China's accession.

35. She said that the securities sector was still in its infancy, with a history of only 15 years. By the end of September 2007, China had approved 8 joint-venture securities companies and 28 joint venture fund management companies. Both Shanghai and Shenzhen Stock Exchanges had 4 special foreign members, and 39 and 19 overseas securities institutions directly conducted B share business. These figures were a testimony to China's faithful implementation of its accession commitments. She expressed the hope that other Members might follow China's example and provide market access to Chinese financial services suppliers by applying reasonable regulatory requirements and streamlining approval procedures. In that regard, she expressed her country's appreciation to the United States for having granted a licence to a Chinese bank on 8 November 2007. This became the first Chinese bank to get approval to open a branch in the United States in 16 years since 1991.

36. She then turned to the questions submitted by Members prior to the meeting. The questions had been grouped under six categories: transparency, banking and related services, securities and related services, insurance, financial information services, and pensions.

*Transparency*

37. Regarding the publication of trade-related measures in "China Foreign Trade and Economic Cooperation Gazette", she denied the assertion by some Members that "only trade-related measures issued by MOFCOM, either on its own or jointly with other ministries or agencies, were published in the MOFCOM Gazette; [while] trade-related measures issued by other ministries and agencies were not published in the MOFCOM Gazette." In March 2006, the General Office of the State Council issued the "Circular of the General Office of the State Council of China on Bringing to Further Success the Work Related to the Implementation of Transparency Provisions in the Protocol on China's Accession to the World Trade Organization." That circular clearly stipulated that both central and local government agencies should send relevant copies of all laws, regulations and other measures, as well as the drafts for which public comment was solicited, to MOFCOM for immediate publication in the "Gazette". From 1 October 2002 to end-October 2007, 2,733 pieces of economic and trade-related laws, regulations and other measures were published in the "Gazette". Out of those, 1,706 pieces of laws, regulations and measures (equivalent to 63 percent of the total publication) came from other ministries and agencies as well as local governments. The "Gazette" was published regularly and the contents were readily available on MOFCOM's website ([www.mofcom.gov.cn](http://www.mofcom.gov.cn)). Free electronic version by e-mail was provided to nearly 8,000 domestic and foreign consumers.

38. On the provision of a reasonable period for public comment, she replied that in 2006, China had promulgated and modified 4 laws or regulations pertaining to or affecting trade in financial services. At least one month was provided for public comment before implementation. Specifically, the *Regulation on Compulsory Traffic Accident Liability Insurance for Motor Vehicles* was issued on 21 March 2006, and came into effect on 1 July 2006. The period for public comment was 3 months plus 10 days. The *Law on Anti-money Laundering* was promulgated on 31 October 2006 and took effect on 1 January 2007. The period for public comment was 2 months. The *Regulation on the Administration of Foreign Funded Banks* was published on 11 November 2006 and entered into force on 11 December 2006. The period for public comment was one month. The *Law on Regulation of and Supervision over the Banking Industry* was issued on 31 October 2006 and became effective on 1 January 2007. The period for public comment was 2 months.

39. She then turned to the questions raised regarding the advance period for public comment on laws, regulations and measures formulated by China Securities Regulatory Commission (CSRC). She explained that CSRC usually held various meetings to introduce the background and content of the proposed regulations in order to pool opinions from all related parties before publishing the final draft with the invitation to comment. Therefore, before the proposed regulation was published for public comment on official websites or newspapers, much communication had already been conducted with relevant industries, interested parties, and the public, and opportunities had been given for them to voice their opinions. If the proposed measures involved more than one regulator, CSRC would solicit comments from all the relevant regulators in the process.

*Banking and related services*

40. With regard to the conditions required for foreign-funded banks conducting local currency business, Article 34 of the *Regulation on the Administration of Foreign-Funded Banks* stipulated that an operative branch of a foreign bank conducting local currency business should meet some requirements, inter alia "having operated in China for more than 3 years before the application" and "having been making profits for 2 consecutive years." These requirements were of a prudential nature. Besides, there were additional conditions specifically listed in China's schedule of commitments.

41. She said that the possibility of giving more flexibility on long-term borrowing quotas to foreign invested banks was irrelevant to China's commitments.

42. With regard to the issue of whether China permitted foreign-funded banks to use the same structure of "second-tier" branches and sub-branches that was used by state-owned commercial banks, she said that according to the *Regulation on the Administration of Foreign-funded Banks* and the *Implementation Measure*, foreign banks could establish wholly-foreign-owned banks, Chinese-foreign joint venture banks and their branches in China. The first two kinds of banks could establish branches in China. The three forms of banks were authorized to establish sub-branches in the same city according to the provisions of the *Administration of Establishing Service Outlets by Commercial Banks within one City*. There was no difference in the approval requirements for establishing sub-branches in the same city for both Chinese and foreign banks.

43. She also said that according to Article 85 of the *Implementation Measures for the Regulation on the Administration of Foreign-funded Banks*, 30 percent of the operating capital of a foreign bank's branch must be maintained in the form of interest-bearing assets and be held at no more than three Chinese commercial banks within the territory of China that were recognized for sound performance and strong financial conditions.

44. Regarding the limitations on foreign ownership in a Chinese bank, she replied that China allowed foreign-funded banks to establish representative offices, branches, joint ventures and wholly-foreign owned banks (percentage of equity ranged from 25% to 100%). According to the Procedures for the *Administration of Equity Investment of Overseas Financial Institutions in Chinese-funded Financial Institutions*, the percentage of equity investment in a Chinese financial institution by an individual overseas financial institution was raised from 15% to 20%, while the aggregate percentage of foreign investment could reach 25%. Such a financial institution was still supervised and regulated as a Chinese-funded bank. If the aggregate percentage of equity investment of multiple overseas financial institutions in a non-listed Chinese-funded financial institution reached or exceeded 25% , such a non-listed Chinese-funded financial institution must be regulated as a foreign-funded financial institution. In China's view then, there was no restriction on the equity of foreign investment in a Chinese banking institution. The 25% threshold was not a cap on foreign share; it was only a criterion to determine the nature of a financial institution (whether a Chinese bank or a joint venture bank). For foreign joint venture banks, 25% was the threshold for the participation of foreign equity, which was in compliance with Chinese horizontal commitment, i.e. "the proportion of foreign investment in an equity joint venture shall be no less than 25% of the registered capital of the joint venture". Through this *Administration*, China allowed foreign equity below 25% to enter into the financial sectors, and that was a voluntary opening measure by China. Having said that, she finally considered that foreign investment in Chinese-funded financial institutions did not relate to China's specific commitments.

45. The minimum working capital requirements for direct branches of foreign banks were established taking consideration of their forms of organization, the risks of their business scope, and the status of China's supervision and regulation. China believed that the current requirement was reasonable. With the changes of the factors mentioned above, China had reduced the minimum working capital requirements for branches twice, and streamlined its grades. The newly revised *Regulation* and *Implementation Measures* further streamlined the requirements into two grades, i.e., those conducting foreign currency business shall have a working capital of no less than RMB 200 million or equal convertible currency, while for those conducting institutional business in foreign currency and RMB, the minimum working capital shall be no less than RMB 300 million or equal convertible currency. Those requirements were in line with the principle of prudential regulation.

46. Commenting on some Members' statement that "China's minimum working capital requirements are higher than in most other countries", she said that countries were independent to set their own requirements for regulation based on different conditions in different periods. China was different from other Members in terms of its banking sector's structure, risk, market condition and regulatory framework, so it was improper to judge China with the criteria of other Members.

47. Based on the above-mentioned reasons, she confirmed that China did not intend to further reduce the minimum capital requirements for branches.

48. She said that one-branch cap was in line with the principle of prudential supervision and regulation. When transformed into a subsidiary, a foreign bank could still keep a branch to conduct large wholesale business. She added that it was not necessary to establish more branches besides the subsidiary.

49. She explained that the restriction on retail RMB business faced by foreign banks' branches was a prudential requirement that took into consideration the risks involved and that did not conflict with China's commitments.

50. According to the *Regulations*, both foreign subsidiaries and branches in China were allowed to engage in local currency business. In China's view, compared with a locally registered subsidiary, a branch of a foreign bank was more risky due to the following reasons:

- (a) Firstly, many foreign banks in China were multinationals, and the Chinese government was unable to supervise and control the risk arising from the parent bank of a foreign branch, and was unable to isolate that risk from its branch in China. In 1991, without any prior risk notification to the Chinese regulatory authorities, the Bank of Commerce and Credit International (BCCI) went bankrupt and its branch in China was suddenly closed down. The Chinese regulatory authorities drew lessons from this accident and paid more attention to risk isolation.
- (b) Secondly, the laws on liquidation of many WTO Members favoured domestic depositors, and the deposit insurance system in many Members only allowed the participation of legal entities, including subsidiaries, while branches were excluded. Therefore, the deposits of Chinese citizens might suffer more risk in a branch of a foreign bank than in a subsidiary registered in China.

51. She added that it was a global trend now to strengthen the supervision of retail business conducted by foreign branches. Besides, WTO did not encourage trade liberalization at the expense of financial stability. If a foreign bank wished to engage in more RMB local currency business, it could transform its branches in China into subsidiaries.

52. She then turned to the questions on payments and clearing services. She said that China's specific commitments on payment services were reflected in "Banking and Other Financial Services" under "Financial Services" in Annex 9 of the Accession Protocol. The classifications concerning payments and clearing services were contained in items d) and j). The commitments were based on the definitions contained in document (MTN.GNS/W/120 ) and the Annex on Financial Services. China did not commit itself on item j), i.e. settlement and clearing services for financial assets. The financial assets covered by item j) included but were not limited to securities, derivatives and other transferable instruments. Therefore, China was independent in determining the opening up, and the degree of the opening up, of settlement and clearing services.

53. Approval permitting, a foreign invested bank was allowed to provide internal clearing and settlement services for their clients. However, payments services involving inter-bank clearing and settlement could only be provided by the central bank, i.e. the People's Bank of China (PBOC). Non-financial institutions established with the approval of PBOC were allowed to provide clearing services within their authorized business scope.



54. With the permission of Chinese laws and regulations, the foreign invested banks could decide by themselves whether to entrust the financial data processing and transfer services related to their internal clearing and settlement to other suppliers of financial services.

55. The representative of China said that the opening up of electronic payments and relevant services should be in line with the overall opening-up arrangements of China's payments services market. Generally, the policies and regulations related to the opening-up of the payments services market applied differently to different types of foreign legal entities.

56. According to China's accession commitments, foreign banking financial institutions could provide "all kinds of payments and money transmission services, including credit cards, charge cards, debit cards, traveller's checks and bank drafts" on condition that they were licensed by China's banking regulatory bodies and that they provided payments services within the authorized business scope. All these services activities shall be in compliance with Chinese relevant laws and regulations such as *the Regulation on the Administration of Foreign-invested Banks*. China did not make any commitment regarding the supply of payments and clearing services by foreign non-financial institutions. China's relevant regulatory authorities had the right to establish and adjust measures applicable to the provision of such services by foreign non-financial institutions.

57. She added that currently, payment cards issued by overseas banking financial institutions outside China could be used within the territory of China. Payment cards issued by domestic banks in the territory of China, including local currency cards and foreign currency cards, could also be used abroad.

58. At present, RMB payment cards issued by banking financial institutions in the territory of China shall comply with the Chinese technical standards for payment cards. As regards the foreign currency cards, the issuing banks could decide by themselves whether or not to adopt the Chinese technical standards for payment cards.

#### *Securities and related services*

59. She then turned to questions regarding the equity participation limits on foreign credit rating agencies. China's Schedule of Specific Commitments included "Securities" under "Financial services". The commitments on credit reference and analysis only applied to items (a)-(k) under financial services, i.e. banking and other financial services. They did not apply to securities services. According to the *Interim Measures for the Administration of the Credit Rating Business Regarding the Securities Market* that took effect on 1 September 2007, credit rating business in the securities market undertaken by credit rating agencies shall follow the provisions of *the Measures* and those agencies shall submit their applications to CSRC for business approval.

60. Turning to issues related to mergers & acquisitions (M&A), she explained that CSRC reviewed M&A applications by foreign firms according to China's commitments and the opening-up policy for the sector. At the same time, in line with the *Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors*, relevant ministries such as MOFCOM also reviewed such applications.

61. Turning to another question, she denied that the CSRC had submitted draft rules to the State Council which would limit foreign investment in publicly traded brokerages and cap foreign ownership at 20 percent.

62. She then referred to the suspension of licences for securities companies. Since its accession to the WTO, China had licensed five joint venture securities companies with foreign equity in accordance with the *Rules for the Establishment of Foreign-shared Securities Companies*. In the

second half of 2004, CSRC began a comprehensive rectification program of securities companies. In order to implement this program, China suspended the licensing of newly established securities companies, including joint venture securities companies. Such a policy was of a prudential nature and was applicable to the licensing of all newly established securities companies. It was in line with the relevant principles of the WTO. Since the program was completed in August 2007, China would resume the licensing of newly established securities companies, including joint venture securities companies, before the end of this year.

#### *Insurance services*

63. Regarding the questions on reinsurance, she explained that the requirements on ceding offers neither changed the conditions of competition in the supply of reinsurance services, nor exerted any negative effects on foreign reinsurance services or foreign reinsurance service providers, including the marketing of such a service. China was of the view that the requirements were consistent with Article XVII of the GATS concerning national treatment.

64. She also said that Article 22 of the *Administration of Reinsurance Business Regulations* was based on the principle of prudential regulation, as per the requirement of the International Association of Insurance Supervisors (IAIS). According to the relevant rules and regulations, foreign insurers were allowed to engage in reinsurance business with their affiliates once their applications got approved.

65. She then turned to the issue of minimum capital requirements. She said that prudential regulation was one of the most important principles in financial regulation, to which financial regulatory authorities in various countries and regions attached great importance. Currently, there was no unified international standard for the set-up capital requirement of insurance companies. Besides, the China Insurance Regulatory Commission (CIRC) was imposing the same capital requirements on both domestic insurers and foreign insurers when they establish insurance companies in China.

66. Referring to the questions on the equal treatment between domestic and foreign insurers with regard to branch/sub-branch licensing and geographic expansion, China Protocol on the Accession of the People's Republic of China had honoured all its accession commitments, and vigorously expanded the opening-up of the market. Foreign insurance companies were regulated under the same rules and regulations as their Chinese counterparts when it came to branch/sub-branch licensing. It was not the case that foreign insurers were treated in a discriminatory manner vis-à-vis domestic insurers.

#### *Financial Information Services*

67. The representative of China said that Article 22 of the *Measures for Administering the Release of News and Information in China by Foreign News Agencies* 2006 clearly provided that this *Measures* shall go into effect as of the date of promulgation.

68. She then clarified that the "designated agent system" provided by the *Measures* was aimed at allowing China's designated agencies to provide good services for foreign news agencies and help them and Chinese domestic users better comply with Chinese laws and regulations in the field of industry, commerce, and taxation. In other words, the "agent system" was a prescribed procedure which, instead of hampering the business activities of foreign news agencies, would only make them more compliant with laws and regulations.

69. With regard to the specific forms of the agent system, explicit provisions could be found in the standard text of the *Agency Agreement* based upon the *Measures*. Foreign news agencies could authorize the designated agency of China Economic Information Service (CEIS) to act as their general

agent, or find new clients jointly with the designated agency and sign tripartite agreements. They could also engage in direct negotiations and sign agreements with the users after signing agency agreements with the designated agency. To sum up, as long as foreign news agencies concluded agency agreements with the designated agency, they could provide direct services to users within the territory of China. Therefore it was not a question of restricting the mass media.

70. She then turned to the questions on the separation of the regulatory authority of Xinhua News Agency from its commercial operations. She said in that regard that that Xinhua was responsible for regulating the release of news and information in China by foreign news agencies. While performing this duty, Xinhua was not allowed to seek benefits for itself. Xinhua's Foreign Information Administration Centre was the specific body directly in charge of the regulation. It was strictly separated from other departments of Xinhua in terms of personnel, business and finance. Its expenditures were covered by the government through its budget. As a matter of fact, it was a regulatory body with no involvement in any business operations. She added that the designated agency of China Economic Information Service (CEIS) was mandated to turn in all the revenues gained through acting as the agent for foreign news agencies to the fiscal departments, according to relevant regulations or international practices. The income and expenses were run in a parallel manner. That arrangement ensured that regulation and commercial operations were separated.

71. Of course, as being both a national and an international news agency, Xinhua competed with other news agencies worldwide. While competing and cooperating with foreign news agencies, Xinhua always abided by the basic principles of mutual respect, equal-footed consultation, mutual benefits, long-term perspective, and mutual trust, which were the consensus among foreign news agencies like Reuters, Associated Press and France Press. Xinhua would by no means seek to boost its own competitiveness by harming the interests of third parties.

72. The administrative target of the *Measures* was "news agencies", or other news and information releasing news-agency-like institutes gathering, editing, publishing and providing news and information for newspapers, radio stations, TV stations, Internet websites, government agencies and other users.

73. Upon its accession to the WTO, China did not take commitments on "news agency services". Although some foreign news agencies were providing "financial information services" for their Chinese users and claimed themselves to be "financial information providers" or "financial services companies", their identities as "news agencies" remained unchanged in that they provided news packages, in which financial information was included but was difficult to be viewed separately. Therefore, the foreign news agencies releasing news and information in the territory of China shall comply with the *Measures*.

74. The information available did not show that the quality and timeliness of financial information provided by the foreign news agencies had been affected as a result of regulation governing Xinhua News Agency. Subscriber in the territory of China, including financial institutions and enterprises, could receive the financial information released by foreign news agencies in real time.

75. So far, 12 foreign news agencies had obtained approval for the issuance of news and information in the territory of China pursuant to the 2006 Measures.

76. She also said that to ensure the confidentiality of commercial information and protection of trade secrets and intellectual property, Xinhua had always strictly kept the business secrets of the foreign news agencies under regulation. Except for the staff of the Foreign Information Administration Centre, nobody could refer to the documents, news and information released daily by foreign news agencies. Besides, Xinhua protected the intellectual property rights of foreign news

agencies in earnest compliance with the relevant provisions in the *Measure*, which was also one of the goals of its implementation.

77. Finally, she said that there were no statistics available for the moment on the number of branches of foreign institutions established in China.

#### *Pensions*

78. Referring to the application process for enterprise annuities licenses, she said that China had been encouraging and supporting the participation of foreign investment in the Chinese pension market so as to learn from the management experiences of foreign companies coming from mature pension markets abroad, and to improve the level and efficiency of Chinese pension management. With regard to the application and approval processes, a financial institution could apply for relevant qualifications as long as it was registered in the territory of China and approved by the financial regulatory authorities. China maintained a level playing field among domestic and foreign banks, securities firms, asset management companies, and insurers. In 2007, 82 institutions (26 with foreign participation) submitted their applications.

79. Turning to the review by functional regulators (CIRC, CBRC, CSRC) during the application and approval process, according to the Trial Measures for the Management of Enterprise Annuities Fund and the Interim Measures for the Qualification Accreditation of Enterprise Annuity Fund Management Institutions, financial institutions applying for the qualification of corporative depository, trustee or investment manager shall first get the approval of relevant financial regulatory authorities. The Ministry of Labour and Social Security (MOLSS) had no authority for examination and approval, it could only make accreditations for market access of enterprises annuities. The review made by functional regulators (CBRC, CSRC and CIRC) could strengthen the risk control of institutions engaged in enterprise annuities fund, promote prudential operation and self-discipline, and safeguard the welfare of the beneficiary.

80. She confirmed that MOLSS licensing procedures enabled enable foreign and domestic companies to apply and be approved for such a licence covering an integrated package of enterprise annuities services. For instance, certain institutions could provide simultaneously trustee, account management and investment management services; different corporate bodies under the same financial group could also provide simultaneously trustee, account management, banking trusteeship, and investment management services at the same time.

81. The representative of the European Communities said that they still had questions and remarks. Firstly, regarding branch licences in insurance, China explained that there was no difference in the treatment granted to foreign and domestic insurers. However, according to the European industry, foreign companies experienced much more difficulties than Chinese institutions. Secondly, according to China, the waiting periods for establishment were motivated on prudential reasons. However, he questioned whether these requirements were prudential in all instance since these waiting periods applied to different kinds of institutions that had been operating in China for a long time. To the European Communities, these seemed to be additional transition periods that China had not scheduled. Thirdly, he sought further information on whether any foreign bank had received licences for sub-branching. Fourthly, he sought further clarification on whether foreign bank subsidiaries could actually accept these 30 percent capital deposits referred to in the written questions.

82. Fifthly, he disagreed with China's statement that the issue of the 20-25 percent caps on foreign equity was not related to China's commitments. In his view, these equity caps were indeed related to China's commitments. Sixthly, the representative of China said that the one-branch limit was also of a prudential nature, and that more branches were not necessary. The representative of the European Communities could not understand however the prudential rationale for this measure. In his

view, it looked more like an economic needs test. Finally, regarding financial information services, he noted China's response that it had made no commitments on news agencies services. However, in his view, that was not the point, since the questions raised by the European Communities and others related to commitments on financial information services (one of the subsectors under Financial Services). He encouraged China to provide more detailed replies to the questions raised by the European Communities.

83. The representative of the United States said that her country placed great importance on the Transitional Review Mechanism for China, which gave Members an opportunity to assess the progress made by China in complying with its WTO obligations. The United States had a number of follow-up questions on areas that were not sufficiently addressed in China's initial statement.

84. Regarding transparency, she asked how many of the measures published in the MOFCOM gazette pertained to financial services. Secondly, she asked whether the trend to seek public comment on draft measures could be made a more regular aspect of China's regulatory framework. The United States was expecting a more uniform method for seeking public comment on draft regulations. For example, as noted in one of the questions previously raised by the United States, although CSRC had a system of advance notice and comment, the short period foreseen for comments – 7 days – made it really difficult for interested persons to review such drafts and provide comments that might be useful to CSRC.

85. She then turned to insurance services. With regard to China's regulation on internal branching for life and non-life insurance companies, she said that even though China had reported that it applied national treatment to internal branching, the United States still had some concerns that in fact foreign subsidiaries, whether in the life or non-life segments of the market, did not enjoy the same rights in practice as Chinese domestic companies regarding their ability to branch internally. She explained that foreign companies did not have any assurances that they would be able to submit approval requests either on a consecutive or on a concurrent basis to obtain multiple approvals for internal branching. In fact, at least for life insurance, China had two separate sets of regulation, one applying to Chinese domestic companies and another one applying to foreign companies; and the latter did have different and much a longer timeframes in different provisions. She asked the following: If China's intention was to apply national treatment to foreign companies in this area, why would it be necessary to have separate regulations? The United States would also appreciate if China could answer another question contained in its submission regarding the minimum capital requirements that would apply for each internal branch. In other words, she asked why it was necessary to impose additional minimum capital requirements for internal branches given that the subsidiaries themselves must already post very high levels of minimum capital.

86. The representative of the United States also sought further information on an issue not touched upon in China's statement – the regulation of suppliers of political risk insurance. This insurance was a part of the non-life lines of business. It was the United States' understanding that under the current regime, China only allowed one company, a Chinese state-owned company, to supply political risk insurance. The United States would appreciate information on how China planned to modify its regime to allow competition in this very important sector of insurance, and on how China would fully meet its GATS obligations in this area.

87. Regarding reinsurance, while noting China's comment that foreign insurance companies were able to engage in reinsurance transactions with their affiliates, the United States sought a more detailed reply to its questions. She explained that in last year's transitional review, China had mentioned that under the 2005 reinsurance regulations, it did not impose a requirement for direct insurers to source only with companies that were established in China; however, China also talked about a right of first bid foreseen in those regulations. The United States sought more information on how this right of first bid operated in practice and whether it would require foreign insurance

companies to offer reinsurance contracts to reinsurance companies located in China before seeking a cross border supplier of reinsurance.

88. She said that China's statement did not address the questions regarding the management of assets by insurance companies located in China. The United States had two questions in that regard. Firstly, under CIRC's 2004 regulations for insurance asset management companies, China maintained a one-year prior experience requirement for insurance companies to establish an insurance asset management company. The United States encouraged China to take into account global insurance international operating experience to fulfil such requirements and would also seek assurance from China that it would not prevent insurance companies from directly manage their own assets. Secondly, under CIRC's provisional measures issued in 2004, China maintained a high threshold for foreign insurance companies to be able to invest their foreign exchange in overseas equities or other holdings. At last year's review, China explained that this requirement was in place to avoid excessive overseas investment. However, since only the largest companies in China - for the most part domestic Chinese companies - had this right, the United States asked how such regulations would fulfil China's policy objectives. She also encouraged China to take into account the assets of the foreign insurer's parent company to fulfil such asset threshold requirements.

89. As part of its submission, the United States had a number of questions regarding the possible structure and operation of China Post as an insurance supplier, and its anticipated treatment under Chinese law in comparison with other suppliers of insurance services. However, having heard nothing from China on this issue, she asked whether China could provide such information at today's meeting. The United States had also a number of questions regarding the legal structure, product offering, geographic scope, and regulatory oversight of this potential new entity.

90. The United States also sought an update on the status of China's revision to its overall insurance law.

91. She then turned to banking and related services. She supported the comment made by the European Communities regarding Chinese policies that would limit the equity shareholdings in Chinese invested banks. She had understood China to say that any such limitation did not relate to China's GATS commitments, whereas the United States was of the view that any such limitation definitely did relate to China's GATS commitments. She urged China to reflect on this issue further. She also asked whether there had been any instances in which those equity restrictions might have been exceeded, in other words, whether any particular company had been allowed to hold more than 20 percent or whether the equity share of total foreign investment had been allowed to go beyond 25 percent in any instance.

92. Regarding the operation of foreign bank branches, while acknowledging the information provided by China on the limitations applying to deposit-taking activities, she sought further information on whether China was considering adjusting the current RMB 1 million threshold to the level that was being considered for its deposit insurance - that is, lowering the level to the one considered for deposit insurance. She also said that China had not provided any information on lending activities, that is, what rights foreign bank branches had regarding retail lending. The United States asked for further information in that regard, and on how China intended to bring the scope of any such business limitations into conformity with its GATS commitments.

93. Regarding payment and money transmissions services, the United States was of the view that China should establish a concrete plan to fully liberalize these services. China had mentioned in today's session that banks and financial providers would be able to issue credit cards and debit cards, including for domestic currency transactions. However, the United States believed that it was just as important that China liberalized associated services so that banks and other financial institutions

could provide the underlying electronic payments and related auxiliary services needed for use of such credit and debit cards. She asked for further information on this matter.

94. She then turned to securities and related services. She noted that China had spoken on the issue of credit rating agencies and mentioned that there were regulations enacted on 1 September 2007. She asked however whether those regulations would apply any equity cap on companies that seek to supply foreign credit rating agency services. Since such services fell under the generally understood definition of auxiliary financial services, and since China had no limitations on such services in its schedule, the United States asked China to give careful consideration to this issue.

95. China also mentioned that it imposed a suspension for new licences in the securities sector although it finished that programme in August 2007, and had since been considering some relaxation before the end of this year. The United States was very concerned by the fact that foreign companies were currently facing these limitations on their ability to conduct business in the securities sector, whether it pertained to acquisition of existing state-owned securities companies or to the establishment of new securities companies. The United States would welcome quick action by China to fully meet its commitments in this area.

96. Regarding financial information services, she noted that China had talked about regulations that applied to foreign news agencies services. However, the United States' concern was that any such regulations were also affecting foreign providers of financial information services, i.e., the Xinhua measures of 2006 would preclude foreign providers of such financial information services from contracting directly with, or providing financial information services directly to, Chinese clients. These new restrictions did not apply to domestic providers and they also contrasted with rights enjoyed by foreign providers well before China's accession to the WTO. The United States sought confirmation from China that it was not intending to put in place any measure that would diminish the access that had been enjoyed by foreign suppliers of financial information services.

97. Also with regard to financial information services, she noted that China's GATS commitments required the creation of an independent regulator for this sector. However it was her understanding that China currently allowed Xinhua to be involved in regulation. That was very worrying, she added, since Xinhua was both a major market competitor and the regulator of foreign financial information services in China. The United States asked when would China implement its commitments to create a truly independent regulator for this sector.

98. Finally, turning to the issue of pensions and enterprise annuities, she noted that there were a number of regulators involved in regulating this sector. She was aware that the functional regulators from CBRC, CSRC, and CIRC were involved, as well as the ministry of Labour itself. But the United States would appreciate further information from the Chinese delegation about the nature of the regulatory review conducted by the functional regulators. The United States was of the view that any such regulatory oversight and review should be completed quickly in according to transparent criteria. However, she was concerned that the current regime in China was not fully respecting these ideas.

99. The representative of Japan said that, with regard to reinsurance, Chinese officials had been reported as stating that China suspended the Administration of Reinsurance Regulations which required direct insurance companies to solicit reinsurance offers amounting to more than 50 percent from locally established companies. Japan would like to know whether that decision had been already implemented and whether it was applied on an MFN basis. Secondly, it had also been reported that China intended to liberalize dealings in futures of financial products under certain conditions. Japan sought confirmation of that news and whether the new measures would be applied on an MFN basis.

100. The representative of Canada noted that the existing regulatory framework in China did not seem to fully meet the spirit and intent of China's commitments. In particular, he underlined that

while China's commitments permitted branch expansion of insurance firms consistent with the phase-out of geographic restrictions, the last of which were removed in 2004, it appeared that new branch approvals for domestic insurance firms were still proceeding more expeditiously than those of domestic insurers. Canada also sought further information on China's requirements for insurance firms seeking to set up asset management companies. In particular, Canada sought a better understanding of the motivation behind the introduction of regulations on the establishment of insurance asset management companies that seemingly placed foreign insurers at a disadvantage vis-à-vis domestic insurers. Regarding the provision and transfer of financial information, Canada sought to obtain a better sense of how the measure issued by Xinhua over the past year contributed to ensuring that foreign financial information service providers received national treatment on par with Chinese firms.

101. Finally, although not part of Canada's formal submission, he sought further information on the most recently published guidelines with respect to foreign investment. Canada's particular interest lied in the guidelines applying to the financial services industry.

102. The representative of China expressed her surprise to hear that her statement had raised so many questions because, as indicated in her initial remarks, the questions had been received very late and, since Chinese is not a working language in the WTO, her delegation had first to translate all the questions into Chinese, and then translate the answers from Chinese into English. It was therefore quite natural that some of the questions had not been addressed in the initial statement.

103. She said that the follow-up questions on insurance, on reinsurance, on the waiting period for establishment in the banking sector, on the issue of sub-branching, on the 30 percent limitation for capital deposits, on the equity cap of 20 and 25 percent, on the measures concerning the operations of news agencies in China, on the minimum capital requirements, and on securities services had been, in her view, already covered in the initial statement. With regard to transparency, she explained that no statistics were available on how many financial services-related decisions were sent to MOFCOM for publication. She added that it was beyond her team's authority to provide responses to the questions on the timeframes provided for obtaining public comment on draft measures and regulations.

104. She added that since the MFN-related questions raised by Japan had not been included in Japan's submission, the Chinese delegation had not prepared appropriate replies. She also said that she was not aware of new guidelines on foreign investment being issued, as stated by Canada. She was therefore not able to provide any specific information in that regard. She finally asked Members to submit their questions in writing so that they could be forwarded to the relevant regulatory authorities in China.

105. By way of conclusion, the Chairperson invited the Committee to take note of all the statements made. Secondly, he requested the Secretariat to prepare a report, to be presented to the Council for Trade in Services. It would be a factual report, stating basically that:

- (a) pursuant to section 18 of the Protocol on the Accession of the People's Republic of China, the Committee had conducted a review of the implementation by China of the WTO Agreement and of related provisions of the said Protocol, in the meeting held on 12 November 2007;
- (b) written communications had been received from six Members, namely Australia, Canada, Chinese Taipei, the European Communities, Japan, and the United States; and
- (c) the details of the discussion, including all the interventions made at the meeting, would be found in the meeting report, to be issued as document S/FIN/M/55.



106. The Committee so decided.

F. DATE OF THE NEXT MEETING

107. The Committee agreed to hold its next meeting together with other services subsidiary bodies. The exact date would be announced in due course.

G. OTHER BUSINESS

108. There was no issue raised under this agenda item.

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