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**COMMUNICATION FROM THE UNITED STATES**

Transitional Review Mechanism Pursuant to Paragraph 18 of
the Protocol of Accession of the People's Republic of China ("China")

The following communication dated 26 October 2007, from the delegation of the United States, is being circulated to the Members of the Committee on Trade in Financial Services.

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Questions from the United States to China
concerning Financial Services

## I. INSURANCE SERVICES

1. Under the terms of China's accession to the WTO, foreign insurance companies operating in China at the time of China's WTO accession have the right to continue to operate under the conditions and approvals existing at that time. Can China confirm that these companies are not required to comply with more recently issued regulations, implementing rules and other measures, including with regard to form of establishment, operations, financial structure and capital, to the extent that these measures would alter the conditions and approvals under which these companies have been operating? If not, please explain how this treatment is consistent with China's WTO obligations.

2. The United States remains concerned that China in practice does not allow foreign life and non-life insurance subsidiaries established in China to apply for and receive multiple, concurrent approvals to expand through internal branches. Under current practice, foreign life and non-life insurance subsidiaries may only apply for and obtain consecutive (i.e., one at a time) approvals. This practice is inconsistent with China's own regulations, which allow for multiple, concurrent applications and approvals. In contrast, established and start-up Chinese insurers may apply for and do receive multiple, concurrent approvals to establish internal branches.

(a) Please explain how China justifies this treatment in light of China's WTO national treatment commitments.

(b) Can China confirm that it will fully implement its own regulations regarding internal branching and will permit foreign subsidiaries to apply for and receive multiple, concurrent approvals for internal branches?

3. China requires life and non-life insurance companies to deposit RMB 200 million registered capital for an initial establishment as a subsidiary. China also requires these insurance companies to deposit an additional RMB 20 million in registered capital for the establishment of each additional

location (or branch) until total registered capital for a company reaches RMB 500 million. What is China's prudential justification for this additional capital requirement?

4. U.S. non-life insurance companies have not been able to obtain approval to supply political risk insurance. Can China confirm that CIRC will meet China's WTO commitments by approving applications from non-life insurance companies to supply such insurance?

5. With regard to the reinsurance sector, the United States is concerned that the *Regulations on the Administration of Insurance Business* issued by the China Insurance Regulatory Commission (CIRC) in 2005 may require insurance companies that are seeking reinsurance to provide right of first refusal to reinsurance companies established in China. These regulations also may result in limitations on the ability of a foreign direct insurer to cede reinsurance to a parent or affiliate company. The United States notes that China agreed as part of its WTO accession commitments to phase out limitations applying to the reinsurance sector. In last year's transitional review before this Committee, China stated that these regulations do not impose a mandatory requirement on insurance companies to source reinsurance from reinsurance companies established in China. However, China also explained that insurers are required to comply with a provision of these regulations specifying that insurers should offer a "right of first bid" to reinsurance companies established in China.

(a) Could China provide further detail regarding how this "right of first bid" works in practice? Could China please confirm that this element of these regulations does not require foreign insurance companies to offer reinsurance contracts to reinsurance companies established in China before seeking supply of reinsurance on a cross-border basis?

(b) Could China also clarify its reference to "relevant laws and regulations" that apply to cross-border transactions of reinsurance?

(c) Please explain how China plans to ensure that these regulations do not result in any inconsistencies with China's GATS obligations.

6. CIRC's *Provisional Measures on the Administration of the Overseas Utilization of Insurance Foreign Exchange Funds*, issued in August 2004, establish qualifying thresholds (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 threshold applies to all companies, in practice, only the very largest insurers, in most cases Chinese-owned companies, will have the level of assets necessary to qualify for such treatment unless CIRC recognizes the assets of the parent of the foreign insurer when determining the asset level of a foreign-invested insurer. Is China willing to take into account the assets of the parent of a foreign insurer to fulfil China's asset threshold requirements?

7. 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 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. China has previously stated that this limitation applies to both domestic and foreign insurers. Nevertheless, this limitation has a disproportionate impact on foreign insurers. We note that during last year's transitional review before this Committee, China expressed concerns about protecting the safety of assets under management. Is China willing to take into account global insurers' international operating experience to fulfil China's prior experience requirements? If not, why not?

8. Could China please clarify its views on whether foreign insurance companies would in any circumstances not be allowed to directly manage their own assets but be required to engage a separate

Insurance Asset Management Company to provide such services? If such a requirement exists, on what basis would China justify such requirements and how would that be consistent with China's WTO obligations?

9. The United States appreciates this initial opportunity to learn more about the possible structure and operations of China Post as an insurance supplier and its anticipated treatment under Chinese law in comparison with other suppliers of insurance services.

(a) The United States understands that the new China Post insurance entity would be established as a separate entity. Is this correct?

(b) Will a government authority or a private entity control the China Post insurance entity? If so, what government authority or private entity will exercise control?

(c) The United States understands that CIRC would be the primary regulator of this new entity. Is that correct? Would any other Chinese authorities be involved in the regulation of the new entity? If so, how would the regulatory responsibilities be shared?

(d) Can China confirm that it would apply the same regulatory requirements to the new China Post insurance entity as to any other supplier of insurance?

(e) The United States understands that the new China Post insurance entity would sell life insurance products. Is that correct? Has China Post received a license to supply life insurance services?

(f) Are there plans for the China Post insurance entity to sell any products other than life insurance?

(g) In which regions of China would the China Post insurance entity provide insurance?

(h) Can China confirm that private sector companies (including foreign companies) would be allowed to distribute their products through any new China Post insurance network?

10. In December 2004, CIRC allowed foreign companies to provide comments on the proposed revisions to the Insurance Law. Please provide an update on the status of the revision that was submitted to the State Council for review.

11. CIRC issued the *Measures on Administration of Chinese Representative Offices of Foreign Insurance Institutions*. Article 18 of that measure imposes a number of onerous requirements on general and chief representatives. These representatives are required to be principally stationed at their offices, to spend a minimum of 240 days in China, not to absent themselves from China for more than 30 days at a time, and to submit a report to CIRC and designate a substitute whenever they are absent for more than 14 days. Can China further clarify why these requirements would be needed for prudential reasons?

## II. BANKING AND RELATED SERVICES

12. In the GATS Schedule accompanying its Protocol of Accession, China committed to phase out geographical, client (including for local currency business) and scope of business limitations for foreign financial institutions providing banking services within five years after its accession, or by 11 December 2006.

(a) At last year's transitional review before the Committee, the Chinese representative confirmed that foreign-funded banks will only be "allowed to conduct local currency business for all kinds of clients after incorporation in China", that is, they will not be allowed to engage in local currency business as branches. Please explain how China intends to bring this limitation on scope of business due to juridical form into conformity with its GATS commitments.

(b) The United States understands that under the *Regulations on the Administration of Foreign-funded Banks*, issued by the China Banking Regulatory Commission (CBRC) on 8 November 2006 and effective on 11 December 2006, branches of foreign banks in China may only accept retail deposits in excess of RMB 1 million. As China develops its deposit insurance system, is China considering adjusting this threshold to the level being considered for coverage by deposit insurance?

(c) Please also clarify how CBRC's regulations would affect retail lending from foreign branches and how that would be consistent with China's GATS Schedule after 11 December 2006, given that China was required to phase out any limitations on scope of business.

13. At the 2005 transitional review before this Committee, China stated "that in general there was no limitation on the share of foreign banks in financial institutions". However, China currently maintains a policy limiting the equity share of a single foreign investor in an existing Chinese-invested bank to 20 percent, with the proviso that the equity share of total foreign investment be lower than 25 percent. Moreover, China further limits this type of investment to no more than two existing Chinese-invested banks for any given foreign investor. During last year's transitional review before this Committee, China claimed that the issue of foreign equity participation was related to mergers and acquisitions and therefore outside the scope of its GATS commitments. However, China's GATS Schedule provides that "foreign financial institutions who meet the following conditions are permitted to establish a Chinese-foreign joint bank or a Chinese-foreign joint finance company in China: total assets of more than US $10 billion at the end of the year prior to filing the application". There is no inclusion of a limitation on the equity share allowed to a foreign investor or on the number of banks in which a foreign investor can invest.

(a) Is the United States' understanding of China's policy correct? Please explain.

(b) Please provide the basis under Chinese law for this policy.

(c) When will China remove the above-described equity restrictions to bring its policy into conformity with its GATS commitments?

(d) Have there been any transactions in which the above-described equity restrictions have been exceeded? If so, please describe them.

14. At last year's transitional review before the Committee, on the issue of capital requirements for commercial banks, China noted that it imposes different operating capital requirements for each bank branch based on that branch's business scope and clients. The United States continues to be concerned that additional capital requirements on internal branches are high and imposed in a non-transparent manner.

(a) Are the criteria for calculating branch capital requirements the same for domestic and foreign-affiliated institutions? Please explain.

(b) Are the criteria for capital requirements promulgated in a public manner? Please explain.

(c) What is the status of the review of these capital requirements by CBRC?

15. In the GATS Schedule accompanying its Protocol of Accession, China committed to allow unrestricted market access and national treatment for "payments and money transmission services, including credit, charge, and debit cards", with this commitment becoming effective with regard to the RMB business of retail clients no later than 11 December 2006. China also committed to allow unrestricted market access and national treatment for "advisory, intermediation, and other auxiliary financial services" for other financial services listed in its schedule, including payments. China’s GATS Schedule further provides for open market access for the "provision and transfer of financial information, and financial data processing by supplier[s] of other financial services". At last year’s transitional review before this Committee, China seemed to suggest that the services under discussion were "settlement and clearing services for financial assets" and noted that China did not have GATS commitments in this area. The view that electronic payment and related services are a form of securities settlement, however, runs counter to the general understanding of the definitions contained in the GATS Annex on Financial Services.

(a) Please explain the steps that China is taking to ensure that all its commitments in the electronic payments and related sectors are met. How will China ensure that foreign electronic payment providers can process electronic payment transactions in China?

(b) How will China ensure that foreign financial institutions can issue the payment cards of their choice (whether Chinese-, foreign- or co-branded) for domestic transactions?

## III. SECURITIES AND RELATED SERVICES

16. The United States remains concerned that China may be planning to impose an equity cap on foreign credit rating agencies. At last year’s transitional review before this Committee, China stated that it does not have GATS commitments for credit reference and analysis, investment and portfolio research and advice agencies. However, the United States notes that China made commitments in the GATS Schedule accompanying its Protocol of Accession with regard to advisory, intermediation and other auxiliary financial services without scheduling any limitations on foreign ownership. Taking into account that the general understanding of what such commitments cover includes credit reference and analysis, investment and portfolio research and advice, and advice on acquisitions and on corporate restructuring and strategy, please confirm that China does not plan either formally or informally to impose any equity limitations for credit rating services.

17. The China Securities Regulatory Commission (CSRC) has imposed a moratorium on sales of existing state-owned securities companies to foreign entities and on providing new securities licenses, including for foreign joint ventures. The U.S. notes that China made certain commitments in the GATS Schedule accompanying its Protocol of Accession with regard to securities services. Please explain how China justifies such restrictions in light of its commitments under the GATS and China’s plans for ending such moratorium.

18. Please describe CSRC’s policy with regard to circulating proposed measures and providing opportunities for public comment. Recent rules have only allowed a period of 7 days for comment, which is insufficient to allow interested parties to thoroughly review and comment. Please also explain how CSRC coordinates with other Chinese regulators when proposed measures involve more than one regulator.

19. China’s rules governing mergers and acquisitions (M&A) provide some much needed clarity on the procedures to be followed when foreign firms enter into M&A transactions. However, these rules have also raised concerns. For example, there are broad review criteria, such as national economic security and potential loss of control over local brand names, which can be used to decide whether a merger or acquisition should be approved. Can China explain how these new review criteria will be used in the financial services sector?

## IV. FINANCIAL INFORMATION SERVICES

20. As the United States explained in questions that it submitted in connection with last year’s transitional review before this Committee, 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. The United States re-submits the following questions, to which China did not respond at last year’s transitional review before this Committee:

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

(b) Has China considered modelling an independent regulator in this sector after agencies such as the China Banking Regulatory Commission or the China Securities Regulatory Commission?

21. On 10 September 2006, Xinhua issued the *Administrative Measures on News and Information Release by Foreign News Agencies within China*. This measure abolished the *Measures for Administering the Release of Economic Information in China by Foreign News Agencies and Their Information Subsidiaries*, which had been issued on 15 April 1996. Among other things, under the 2006 measure, Xinhua precludes foreign providers of financial information services from contracting directly with or providing financial information services directly to domestic Chinese clients. Instead, the 2006 measure directs foreign financial information service providers to operate through a Xinhua-designated agent. The one agent designated to date is a Xinhua affiliate. These new restrictions do not apply to domestic financial information service providers and, in addition, contrast with the rights previously enjoyed by foreign information service providers since the issuance of the 1996 measure, well before China’s accession to the WTO on 11 December 2001. Under the 1996 measure, foreign information service providers had the right to contract directly with and provide financial information services directly to domestic Chinese clients, subject to an application and approval process administered by Xinhua.

22. In connection with last year’s transitional review before this Committee, the United States asked several questions about the WTO-consistency of the 2006 measure. However, China only responded summarily that the 2006 measure was WTO-consistent. The United States asks that China respond in connection with this year’s transitional review to the specific questions raised below.

(a) Is China currently enforcing the 2006 measure? If not, has Xinhua nevertheless imposed any of the requirements of the 2006 measure through other means? Please explain.

(b) Please explain how China justifies the 2006 measure’s restrictions on the market access of foreign financial information service providers in light of China’s commitment to remove market access limitations relating to the "provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services" upon China’s accession to the WTO.

(c) Please explain how China justifies the 2006 measure’s imposition of restrictions on the market access of foreign but not domestic financial information service providers in light of China’s commitment to remove national treatment limitations relating to the "provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services" upon China’s accession to the WTO.

(d) Please explain how China justifies the 2006 measure’s new restrictions on market access and national treatment in light pf the horizontal "acquired rights" commitment that China made in the GATS Schedule accompanying its Protocol of Accession.

## V. PENSIONS

23. The United States seeks further clarification regarding the application and approval processes for providers of “enterprise annuities” services. In this regard, the United States understands that the Ministry of Labour and Social Security (MOLSS) recently re-opened its application process for enterprise annuities licenses.

(a) Please describe how China will maintain a level playing field among domestic and foreign banks, securities firms, asset management companies and insurers in the application and approval process.

(b) Please confirm that that review by functional regulators (CIRC, CBRC, CSRC) will not hold up application under MOLSS licensing procedures.

(c) Please confirm that MOLSS licensing procedures will enable foreign and domestic companies to apply and be approved for a license covering an integrated package of enterprise annuities services.

## VI. TRANSPARENCY

24. In China’s Protocol of Accession and accompanying Working Party Report, Members recognized the overriding importance of transparency through a host of provisions. Since China’s WTO accession, China has made notable improvements in the transparency of its trade regime, particularly through the many notifications that it has made to the WTO’s councils and committees as well as through its use of numerous official journals, other publications and the Internet to publicize new or modified trade-related laws, regulations and other measures. Nevertheless, there remains much to be done to further improve transparency in China, as China itself has acknowledged. Transparency is a critically important area, both from a governmental perspective and from a business perspective.

In Section 2 (c) of its Protocol of Accession, China specifically committed to establish or designate an official journal dedicated to the publication of all trade related measures, including, *inter alia,* "all laws, regulations and other measures pertaining to or affecting trade in services". The term "laws, regulations and other measures" is defined broadly as "laws, regulations and other measures of the central government as well as local regulations, rules and other measures issued or applied at the sub-national level".

25. During past transitional reviews, China has stated that its official journal was the "China Foreign Trade and Economic Cooperation Gazette", now published by the Ministry of Commerce (MOFCOM) and known as the MOFCOM Gazette. Until March 2006, however, only trade-related measures issued by MOFCOM, either on its own or jointly with other ministries or agencies, were published in the MOFCOM Gazette; trade-related measures issued by other ministries and agencies were not published in the MOFCOM Gazette. In March 2006, China's State Council issued a notice directing all central, provincial and local government entities to begin sending copies of all of their trade related measures to MOFCOM for immediate publication in its Gazette.

(a) During last year's transitional review before this Committee, China did not report on this issue as had been requested. Please provide an update on the progress being made by central, provincial and local government entities in fulfilling the State Council's directive to send measures pertaining to or affecting trade in financial services to MOFCOM for publication in the MOFCOM Gazette. As part of that update, please identify the government entities that regularly send their services measures to MOFCOM for publication in the MOFCOM Gazette. Please also describe the types of financial services measures (e.g., laws, regulations, rules, measures, notices, decisions, etc.) regularly being sent to MOFCOM for publication in the MOFCOM Gazette.

(b) With regard to measures pertaining to or affecting trade in financial services, please describe any progress that China has made during the past year in implementing the commitment that it made in Section 2 (c) of its Protocol of Accession to provide a reasonable period for public comment on new or modified measures before implementing them, except in certain specified instances.

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