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Committee on Trade in Financial Services

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COMMUNICATION FROM THE UNITED STATES

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

The following communication, dated 24 November 2008, 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

I. INSURANCE SERVICES

1. The United States remains concerned that the China Insurance Regulatory Commission (CIRC) in practice does not consistently meet its own regulatory deadlines for reviewing and approving internal branch applications that it receives from foreign companies, including for applications for consecutive (i.e., one at a time) branches. The United States is also concerned that foreign life and non-life insurance subsidiaries established in China may not 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 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 any such delays or different 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 both in regard to consecutive or concurrent branch applications?

2. CIRC's Gazette No. 75 of 17 September 2008 imposes a moratorium on the approval of sales offices of insurance companies. The United States understands that the moratorium relates to CIRC's perceived need to strengthen the supervision of these sales offices, and that the moratorium will be imposed on all companies (i.e., domestic and foreign) on a temporary basis. Could China please confirm that CIRC will lift the moratorium as quickly as possible and will ensure that any replacement regulations do not discriminate against foreign companies?

3. 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 political risk insurance?

4. The United States seeks the following clarifications from China regarding the operations of China Post as a provider or distributor of insurance services and its anticipated treatment under Chinese law in comparison with other suppliers of insurance services.

(a) The United States understands that China Post has been approved by CIRC to set up a life insurance entity that will be known as China Post Life Insurance Company Limited. Is that correct?

(b) The United States understands that CIRC is the primary regulator of the new China Post insurance entity. Is that correct? Will China's State Postal Bureau or any other body have any additional regulatory oversight for the new entity?

(c) Can China confirm that its regulatory authorities will apply the same regulatory requirements to the new China Post insurance entity as to any other supplier of insurance?

(d) The United States understands that the new China Post insurance entity would mainly target farmers and low-income urban residents as customers. Is that correct?

(e) The United States understands that the new China Post insurance entity has invited private companies (including possibly foreign companies) to distribute their products through the China Post insurance network. Can China please confirm this understanding? What procedures should a private company follow if it is interested in this distribution possibility?

5. The United States appreciates that the National People's Congress is in the process of reviewing a draft of the Insurance Law and, in September 2008, made the draft law available on its website for public comment. The United States notes that several insurance trade associations have provided detailed comments on the draft law, including on issues of disclosure, foreign insurance institutions, bankruptcy and insolvency, scope of supervisory discretion, the insurance association of China, insurance group companies and certain technical issues.

(a) Can China confirm that CIRC is willing to work closely with appropriate NPC committees to ensure that the industry comments are given due consideration?

(b) The United States understands that the draft law is intended to ensure that China does not impose restrictions on reinsurance companies located in China that seek to source reinsurance from companies located outside of China. In order to avoid any lack of clarity, could China consider undertaking any drafting necessary to clarify that discriminatory provisions in CIRC's 2005 *Regulations on the Administration of Insurance Business* have been superseded?

6. Article 18 of CIRC's *Measures on Administration of Chinese Representative Offices of Foreign Insurance Institutions* imposes a number of onerous requirements on general and chief representatives of foreign insurers. 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 are needed for prudential reasons?

7. The United States understands that CIRC has recently released an "executive training rule" that would require senior executives of insurance companies, including those based in other countries, to spend weeks in training that does not seem to have any bearing on their professional

responsibilities. What is the rationale for this rule? Will China consider more flexible procedures, including credit for professional experience or certification?

8. 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.

II. BANKING AND RELATED SERVICES

9. In the GATS Schedule accompanying its Protocol of Accession, China committed to eliminate national treatment and market access limitations, including geographical, client and scope of business limitations, for foreign financial institutions providing banking services within five years after China's accession, or by 11 December 2006, regardless of whether these institutions operated as branches or subsidiaries. However, China appears to apply more restrictive requirements to foreign banks that operate in China through branches rather than subsidiaries.

(a) The United States understands that, under the *Regulations on the Administration of Foreign-funded Banks*, branches of foreign banks in China may only accept retail deposits in excess of RMB 1 million. China did not provide a detailed answer to the following U.S. question from last year's transitional review before this Committee: As China develops its deposit insurance system, is China considering adjusting this threshold to the level being considered for coverage by deposit insurance? The United States asks that China respond to this question in connection with this year's transitional review.

(b) China also did not provide a detailed answer to the following U.S. question from last year's transitional review before this Committee: 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. The United States asks that China respond to this question in connection with this year's transitional review.

10. 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. 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 must 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 there is no restriction on the equity of foreign investment in a Chinese banking institution and the 25 percent cap was not a cap on foreign share but rather a criterion to determine the nature of a financial institution (i.e., whether a "Chinese bank" or a " joint venture bank"). China went on to claim that foreign investment in Chinese-funded institutions did not relate to China's specific commitments.

(a) Can China confirm that its policy has been changed and that foreign investment in a listed or non-listed Chinese bank can exceed 25 percent?

(b) If not, what actions will China take regarding the above-described equity limitations to ensure its policy is in conformity with its GATS commitments?

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

11. At last year's transitional review before this Committee, on the issue of capital requirements for foreign bank branches, China noted that it imposes different operating capital requirements based on that branch's form of organization and business scope and the status of China's supervision and regulation. The United States takes note of China's reduction of capital requirements for bank branches but 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) What is the status of the review of these capital requirements by CBRC?

12. 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." During recent transitional reviews before this Committee, China seemed to suggest that electronic payment services and related services were "settlement and clearing services for financial assets" and noted that China did not have GATS commitments in this area. China will be aware that other Members, based on their general understanding of the definitions contained in the GATS Annex on Financial Services, do not share China's view of the relevance of "settlement and clearing services for financial assets," which relate to issues such as securities settlement, to Members' concerns relating to China's policies regarding electronic payment services.

(a) 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

13. The United States notes that in the past year the China Securities Regulatory Commission (CSRC) issued regulations lifting its moratorium on sales of existing state-owned securities companies to foreign entities and on providing new securities licenses, including for foreign joint ventures. However, the United States remains concerned that China has moved very slowly to restore this access in practice. Can China provide an update on how many new foreign firms have been granted licenses since the lifting of the moratorium?

IV. PENSIONS

14. The United States is concerned that China's licensing system for "enterprise annuities" services, overseen by the Ministry of Human Resources and Social Services (MOHRSS), is closed. The United States urges China to re-open its enterprise annuities licensing system and to remove quotas to enable all qualified firms to obtain licenses to provide enterprise annuities services.

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

(b) Please confirm that review by functional regulators (i.e., CIRC, CBRC and CSRC) will not hold up an application under MOHRSS licensing procedures.

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

V. TRANSPARENCY

15. The United States appreciates China's recent decision to publish in advance for public comment, subject to specified exceptions, all trade and economic-related administrative regulations and departmental rules that are proposed for adoption and provide a public comment period of not less than 30 days from the date of publication. China indicated that it would publish these proposed measures on a single Chinese Government website maintained by the Legislative Affairs Office of the State Council. Can China explain how this new system is operating in practice with regard to proposed measures that relate to financial services, including proposed measures from each of the following agencies: CIRC, CBRC, CSRC and MOHRSS?

16. Please describe CSRC's policy with regard to circulating proposed measures and providing opportunities for public comment. Some recent proposed measures have only allowed periods as short as 7 or 14 days (rather than 30 days) for comment, which is insufficient to allow interested parties to thoroughly review and comment. Please also explain how CSRC coordinates with other Chinese agencies when proposed measures involve more than one regulatory agency.