

COMMUNICATION FROM THE UNITED STATES

Transitional Review Mechanism Pursuant to Section 18 of the
Protocol on the Accession of the People's Republic of China

Questions from the United States to China concerning Financial Services

The attached paper has been received from the delegation of the United States with the request that it be circulated to Members of the Committee on Trade in Financial Services.

I. INSURANCE

On December 5, 2001, the State Council adopted the *Administrative Regulations for the Administration of Foreign-Invested Insurance Companies*, which went into effect on February 1, 2002.

1. The *Regulations* are difficult to decipher because they must be read in conjunction with other laws, regulations and measures that are not clearly identified. It is unclear what measure takes precedence, and whether such measures conform to China's WTO commitments in this sector. China Insurance Regulatory Commission (CIRC) officials have stated that China would issue new implementing rules that would lay out in more detail how firms should comply with the *Regulations*.

- (a) Please describe the anticipated time frame for the issuance of the new implementing rules.
- (b) Please confirm that CIRC will provide an opportunity for all interested WTO Members and foreign firms to comment on the new implementing rules prior to their implementation, in accordance with the commitment made by China in its Protocol of Accession at Part I, Section 2(C)2).

2. In paragraph 308 of China's Working Party Report, China committed to prevent licensing procedures and conditions from acting as barriers to market access and that such procedures and conditions would not be more trade restrictive than necessary, that applicants would not need to be invited to apply for a license, and that the application process would be transparent with opportunities to cure deficiencies and reapply if necessary. Articles 8-12 of the *Regulations*, however, continue to maintain a multi-tiered application process that invites uncertainty and delay, and in practice there appears to be a continued need for an invitation to apply from CIRC. Please explain what steps China will take to bring these provisions into compliance with China's commitments?

3. In its Services Schedule, China committed to allow non-life firms to establish as a branch and allow internal branching in accordance with the lifting of China's geographic restrictions. In addition,

in paragraph 313 of the Working Party Report, China agreed that it would not apply the qualifications for foreign insurers applying for a license to enter China's market to foreign insurers already established in China merely seeking authorization to establish branches or sub-branches. Notwithstanding these clear commitments, CIRC stated in a February 2002 meeting with U.S. Government officials that non-life firms already established in China, wishing to open branches, cannot do so unless they first establish as a subsidiary. Please confirm that China will permit internal branching by foreign non-life firms, consistent with the phase-out of China's geographic restrictions and in accordance with China's WTO commitments.

4. Article 7 of the *Regulations* states that the minimum registered capital for a joint venture or a wholly foreign-owned insurance company is RMB 200 million. However, in the February 2002 meeting between CIRC and U.S. Government officials, the CIRC stated that, in addition to the RMB 200 million for the initial operation, foreign-invested insurers must have an additional RMB 100 million in registered capital for each subsequent branch, not to exceed RMB 500 million (pursuant to Article 7 of CIRC's *Insurance Company Administrative Measures*). If the insurers wish to expand beyond the initial four operations, then the companies are required to have an additional RMB 50 million in registered capital per branch up to a total of RMB 1.5 billion, for a "national license" (pursuant to Article 13 of the *Insurance Company Administrative Measures*).

- (a) Please confirm that the above description includes all capital requirements required to establish branches in China.
- (b) China's solvency requirements are unusually high, even by international norms. While the GATS permits WTO Members to take necessary regulatory action (including measures for prudential reasons), these measures should also be reasonable. Under the GATS Annex on Financial Services, prudential measures shall not be used as a means of avoiding a Member's GATS commitments. Please explain the justification for such high capitalization requirements, given the size and scope of China's insurance market.
- (c) Please define regional and national licenses. How will the requirements associated with these licenses be applied to foreign-invested insurance companies, especially in the light of China's Services Schedule commitments relating to geographic coverage and branching?
- (d) Please confirm that China's capitalization and licensing requirements apply to both foreign and domestic insurers.
- (e) Can both foreign-invested and domestic insurers receive national licenses?

5. CIRC, a relatively small agency, faces the substantial task of expanding insurance regulation to a nationwide system, with increasing participation by foreign companies. Please describe ways in which interested WTO Members or the private sector can assist CIRC through technical assistance or capacity building, especially in the area of licensing.

II. MOTOR VEHICLE FINANCING

6. China, through the People's Bank of China, has released for comment draft *Management Rules for Auto Loan Institutions* necessary to implement its commitment on motor vehicle financing by non-bank financial institutions. The United States has serious concerns about the consistency of these draft rules with China's services commitments, and it has previously raised those concerns with China.

- (a) Please provide an update on the status of this matter.

- (b) China committed to permit market access in this sector upon its accession to the WTO. Please provide an indication of when China anticipates issuing these rules in final form.

III. LICENSING

7. Paragraphs 307 and 322 of the Working Party Report require China to publish all of its licensing procedures and conditions. Please identify each services sector for which this information has been published, and indicate where this information has been published.

IV. TRANSLATIONS OF MEASURES

8. In paragraph 334 of China's Working Party Report, China committed that it "would make available to WTO Members translations into one or more of the official languages of the WTO all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex, and to the maximum extent possible would make these laws, regulations and other measures available before they were implemented or enforced, but in no case later than 90 days after they were implemented or enforced." To date, China has not provided translations of several measures pertaining to trade in services, including those listed below, most of which were implemented more than 90 days ago:

- (a) Measures on Administration of Representative Offices of Foreign Financial Institutions;
- (b) Measures on Administration of Business Networks in Same City Set Up by Commercial Banks;
- (c) Implementing Rules on Administration of Foreign Exchange Purchases by Domestic Residents;
- (d) Administrative Measures on International Telecommunications Entry/Exit Stations;
- (e) Regulation on Foreign Investment in Civil Aviation Industry;
- (f) Interim Regulation on Establishment of Foreign-Invested Printing Companies;
- (g) Provisional Regulation on the Administration of Internet Publishing;
- (h) State Council Decision on the Revision of the Regulations on the Administration of Travel Agencies; and
- (i) Regulation on the Administration of Overseas Intermediary Employment Agencies.

9. Please provide translations of these measures in advance of the October 21-25, 2002 meeting at which the Council for Trade in Services and the Committee on Trade in Financial Services will be reviewing the implementation by China of the WTO Agreement and the relevant provisions of China's Protocol of Accession.
