

# WORLD TRADE ORGANIZATION

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Committee on Trade in Financial Services

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## COMMUNICATION FROM CANADA

### TRM China – Financial Services

#### Canada's Questions to The People's Republic of China

The attached communication has been received from the delegation of Canada with the request that it be distributed to Members of the Committee on Trade in Financial Services.

#### I. PREAMBLE

1. In conjunction with its accession to the WTO, China has embarked upon an ambitious program of financial sector regulatory development, and we are aware of China's concerted effort in the past year to implement its WTO commitments for financial services. New regulations for the banking, insurance and the securities industries have increased transparency and helped to facilitate increased foreign investment and competition.

2. The main focus of Canada's inquiry relates to seeking clarification of the prudential reasoning behind certain regulations. In addition, Canada is also interested in how certain specific measures are consistent with China's commitments in its Schedule of Specific Commitments or the Working Party Report on China's Accession. Finally, the promotion of a transparent regulatory regime is very important to Canada, and some questions address this issue.

3. Canada requests that China provide a written response to these questions in advance of the October 21, 2002 meeting of the WTO Committee on Trade in Financial Services in order to facilitate a more fruitful exchange at that time.

#### *Questions*

##### A. BANKING

4. Article 38 of the "Detailed Implementing Rules for the Administrative Regulations on Foreign-Invested Financial Institutions" [promulgated by the PBOC] requires that for a given branch to be eligible to receive initial approval to provide local currency services or to receive approval to increase the scope of such services, this branch must have been in operation for more than three years and have been profitable for the two consecutive years prior to application. Further, these requirements will be assessed on a branch-by-branch basis. Could China please explain why the PBOC has adopted these requirements on a branch-by-branch basis? In light of the fact that these requirements present a significant impediment to the expansion of local currency services by foreign-invested banks, would it not be better to address any prudential concerns by simply applying these

requirements to the aggregate operations of a foreign-invested bank in China rather than on a branch-by-branch basis?

5. Article 14 of the "Detailed Implementing Rules for the Administrative Regulations on Foreign-Invested Financial Institutions" [promulgated by the PBOC] stipulates that foreign banks must wait one year between receiving approval for a given branch and submission to the PBOC of an application to open another branch. This appears to be inconsistent with China's commitment in its Schedule of Specific Commitments to only retain prudential restrictions in its licensing regime for banking. Could China please explain the details of the prudential rationale for this stipulation?

6. Article 30 of the "Administrative Regulations on Foreign-Invested Financial Institutions" requires that the value of a foreign bank's foreign currency deposits received within China shall not exceed 70% of the value of its foreign currency assets within China. This limits the ability of foreign banks to lend foreign currency without borrowing from Chinese banks or bringing in foreign currency from abroad. Could China please explain the prudential rationale for this requirement? Please explain how this requirement is consistent with China's Market Access commitments under Article XVI of the GATS?

7. The PBOC has confirmed that regulations have been drafted and are being reviewed by the State Council that would cap the amount of RMB that banks can borrow on the interbank market to fund their lending business to 40% of RMB deposits. This could put foreign banks at an extreme disadvantage – especially those who are not planning to establish large RMB deposit bases – because it will artificially limit the amount of lending they can do. Could China please explain how the regulations are consistent with its National Treatment obligations in its Schedule of Specific Commitments? As well, we note that Article XVI 2(b) of the GATS states there should be no limitation on "...the total value of service transactions or assets..." of service suppliers. Could China please explain how these regulations are consistent with this obligation?

8. Canada has previously informed the PBOC of its view that the minimum capital requirements for banks are abnormally high by international standards. Although some foreign institutions have decided to comply with these onerous requirements, they may dissuade smaller banks, banks seeking to specialize, or banks seeking to be active in smaller markets. What is China's prudential concern/justification for establishing such high and inflexible capital requirements?

#### B. INSURANCE

9. In addition to banking, Canada wishes to indicate that minimum capital requirements for insurance companies are very high by international standards. Could China please explain the prudential methodology used in arriving at the capital adequacy levels?

10. China bound Mode 4 commitments to allow temporary entry for natural persons who are senior employees of a foreign financial institution. However, Article 15 of "Provisions of the Insurance Company Administrative Measures" [promulgated by CIRC, March 1, 2000] states that an insurance company establishing a branch office "shall have senior management personnel for the branch office who meet the qualifications of their posts specified by CIRC". In practice, one of these "qualifications" is that senior management personnel must be able to speak Chinese. This requirement is not listed in China's Schedule of Specific Commitments. Could China please explain how this CIRC rule complies with its commitment to allow temporary entry of senior ex-patriot staff?

#### C. FUND MANAGEMENT

11. Could China please provide the rationale for why Chinese mutual fund companies are not permitted to be the lead partner in a new Sino-foreign mutual funds joint venture company?

## II. GENERAL

12. China's licensing requirements for foreign participation in the banking, insurance, and fund management sectors all have a complex multi-stage approval processes for establishment. These processes may contradict the spirit of Paragraph 308 of the Working Party Report, namely that "China's licensing procedures and conditions would not act as trade barriers to market access and would not be more trade restrictive than necessary." Could China please explain how the complex, multi-stage approval processes outlined in the "Administrative Regulations on Foreign-Invested Financial Institutions", the "Administrative Regulations on Foreign-Invested Insurance Companies", and the "Administrative Regulations on Foreign Participation in the Establishment of Investment Funds" comply with China's commitments in the WTO Working Party Report?

13. We note that there were no opportunities for public comment on China's new banking and insurance regulations (e.g. "Administrative Regulations on Foreign-Invested Financial Institutions", "Detailed Implementing Rules for the Administrative Regulations on Foreign-Invested Financial Institutions" and "Administrative Regulations on Foreign-Invested Insurance Companies"). As well, draft regulations released by the CSRC in December 2001 allowed only five days for public comment. Finally, we note that section 2(C), paragraph 2 of the Protocol on the Accession the People's Republic of China requires a "...reasonable period for comment to the appropriate authorities before such measures are implemented...". Could China please explain why it was unable to allow a period for comment in the case of the aforementioned regulations? Have any efforts been made to make information about draft regulations on financial services more transparent or accessible?

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