

**CHINA – CERTAIN MEASURES AFFECTING  
ELECTRONIC PAYMENT SERVICES**

***Report of the Panel***

**Addendum**

This *addendum* contains Annexes A to H to the Final Report of the Panel to be found in document WT/DS413/R.

---



## **LIST OF ANNEXES**

### **ANNEX A**

#### **EXECUTIVE SUMMARIES OF THE FIRST WRITTEN SUBMISSIONS OF THE PARTIES**

<b>Contents</b>		<b>Page</b>
Annex A-1	Executive summary of the first written submission of the United States	A-2
Annex A-2	Executive summary of the first written submission of China	A-11

### **ANNEX B**

#### **ORAL STATEMENTS OR EXECUTIVE SUMMARIES THEREOF, OF THE PARTIES AT THE FIRST SUBSTANTIVE MEETING**

Annex B-1	Executive summary of the opening oral statement of the United States at the first substantive meeting	B-2
Annex B-2	Closing oral statement of the United States at the first substantive meeting	B-6
Annex B-3	Executive summary of the oral statement of China at the first substantive meeting	B-7

### **ANNEX C**

#### **WRITTEN SUBMISSIONS AND ORAL STATEMENTS, OR INTEGRATED SUMMARIES THEREOF, OF THE THIRD PARTIES**

Annex C-1	Integrated executive summary of the third party written submission and oral statement of Australia	C-2
Annex C-2	Third party oral statement of Ecuador at the first substantive meeting	C-7
Annex C-3	Integrated executive summary of the third party written submission and oral statement of the European Union	C-10
Annex C-4	Integrated executive summary of the third party written submission and oral statement of Japan	C-13
Annex C-5	Integrated executive summary of the third party written submission and oral statement of the Republic of Korea	C-19

**ANNEX D****EXECUTIVE SUMMARIES OF THE SECOND WRITTEN  
SUBMISSIONS OF THE PARTIES**

Annex D-1	Executive summary of the second written submission of the United States	D-2
Annex D-2	Executive summary of the second written submission of China	D-11

**ANNEX E****ORAL STATEMENTS OR EXECUTIVE SUMMARIES THEREOF, OF  
THE PARTIES AT THE SECOND SUBSTANTIVE MEETING**

Annex E-1	Executive summary of the oral statement of the United States at the second substantive meeting	E-2
Annex E-2	Executive summary of the oral statement of China at the second substantive meeting	E-7

**ANNEX F****REQUEST FOR A PRELIMINARY RULING**

Annex F-1	Executive summary of China's request for a preliminary ruling	F-2
Annex F-2	Executive summary of the United States' submissions in response to China's request for a preliminary ruling	F-3
Annex F-3	Executive summary of China's comments on the United States' submissions in response to China's request for a preliminary ruling	F-12

**ANNEX G****EXCERPT OF CHINA'S SCHEDULE**

Annex G-1	The People's Republic of China - Schedule of Specific Commitments, GATS/SC/135 - excerpt	G-2
-----------	--	-----

**ANNEX H****TABLE OF TRANSLATIONS OF LEGAL MEASURES  
AND OTHER INSTRUMENTS**

Annex H-1	Table of translations of legal measures and other instruments referred to by the parties	H-2
-----------	--	-----

**ANNEX A-1**

**EXECUTIVE SUMMARIES OF THE  
FIRST WRITTEN SUBMISSIONS OF THE PARTIES**

<b>Contents</b>		<b>Page</b>
Annex A-1	Executive summary of the first written submission of the United States	A-2
Annex A-2	Executive summary of the first written submission of China	A-11

## ANNEX A-1

### EXECUTIVE SUMMARY OF THE FIRST WRITTEN SUBMISSION OF THE UNITED STATES

#### I. INTRODUCTION

1. Operating from a protected home market monopoly position, China UnionPay, Co. Ltd. ("CUP") has thrived since its creation nearly a decade ago. With competitors shut out of China, CUP has solidified its complete domestic market dominance. CUP has also experienced explosive growth abroad. While serving as China's domestic champion, CUP, has been expanding its payment card issuance and acceptance internationally and enjoys full and unencumbered access to the domestic payment card market in a growing number of foreign countries in which it has chosen to operate (now numbering more than 110).

2. Back in 2001, China made important commitments with respect to electronic payment services ("EPS") for payment card transactions when it joined the World Trade Organization ("WTO"). EPS enable, facilitate, and manage the transfer of funds between cardholders and merchants and are essential to processing the several hundred million card-based electronic payment transactions that occur daily around the world. In the financial services sector, as set out in China's Schedule of Specific Commitments on Services, China undertook to provide by December 2006 both market access and national treatment for "all payment and money transmission services, including credit, charge and debit cards."

3. Yet, at the same time as CUP expands aggressively abroad, China maintains a government-mandated domestic monopoly, enabling only CUP to provide these services in China. China refuses to allow foreign suppliers of EPS to process payment card transactions in China denominated and paid in China's domestic currency, renminbi ("RMB"). China has also enacted and maintains numerous barriers to prevent foreign suppliers of EPS from establishing the processing infrastructure, network, rules, and procedures that are essential to the processing of card-based electronic payment transactions in China. In addition, China maintains measures that also impact the other key entities in payment card transactions, including the institutions that issue payment cards ("issuing institutions"), acquiring institutions (those that seek to "acquire" transactions using payment cards and that have relationships with merchants), and merchants in terms of requirements pertaining to payment card-processing equipment and point-of-sale ("POS") terminals.

4. These measures have entrenched CUP's monopoly position in China and accord less favorable treatment to foreign suppliers of EPS.

#### II. PROCEDURAL HISTORY

5. On September 15, 2010, the United States requested consultations with China pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), and Article XXII of the *General Agreement on Trade in Services* ("GATS") with respect to certain restrictions and requirements maintained by China pertaining to electronic payment services for payment card transactions and the suppliers of those services. The United States and China held consultations on October 27 and 28, 2010, but those consultations did not resolve the dispute. The United States submitted its request for the establishment of a panel on February 11, 2011, the Dispute Settlement Body ("DSB") established a panel on March 25, 2011, and the Panel was composed on July 4, 2011.

6. On July 5, 2011 China filed a request for a preliminary ruling on the consistency of the U.S. panel request with DSU Article 6.2. On July 29, 2011, the United States filed a submission in response to China's request for a preliminary ruling ("U.S. July 29, 2011 Response"). (The U.S. July 29, 2011 Response, in its entirety and including all of the exhibits attached thereto, was subsequently incorporated by express reference into the U.S. First Written Submission, dated September 13, 2011.) On September 7, 2011, the Panel issued its preliminary ruling in which it rejected all of China's claims that the U.S. panel request failed to satisfy the requirements of Article 6.2 of the DSU.

### **III. FACTUAL BACKGROUND**

#### **A. ELECTRONIC PAYMENT SERVICES FOR PAYMENT CARD TRANSACTIONS**

7. Card-based electronic payments take many forms, including credit cards, charge cards, debit cards, deferred debit cards, ATM cards, prepaid cards, private label cards and other types of general-purpose and limited-use payment cards. A supplier of EPS enables cardholders' banks to pay merchants' banks the amount they are owed. Suppliers of electronic payment services supply, directly or indirectly, a system that typically includes the following:

- the processing infrastructure, network, and rules and procedures that facilitate, manage, and enable the transmission of transaction information and payments, and which provide system integrity, stability and financial risk reduction;
- the process and coordination of approving or declining a transaction, with approval generally permitting a purchase to be finalized or cash to be disbursed or exchanged;
- the delivery and transmission of transaction information among participating entities;
- the calculation, determination, and reporting of the net financial position of relevant institutions for all transactions that have been authorized in a given period; and
- the facilitation, management and/or other participation in the transfer of net payments owed among participating institutions.

8. Electronic payment services provide an efficient, timely and reliable means to facilitate the transmission of funds from the holders of payment cards who purchase goods or services to the individuals or businesses that supply them. The network, rules and procedures, and operating system that are part of the EPS architecture that allow payment card transactions to be processed to enable merchants to be paid promptly the amounts they are owed, and to ensure that customers pay what they owe. EPS suppliers receive, check and transmit the information that the parties need to conduct the transactions, and manage, facilitate, and enable the transmission of funds between participating entities. The rules and procedures established by the EPS supplier give the payment system stability and integrity, and enable it to efficiently handle net flows of money among the institutions involved in card payments. EPS suppliers also provide their customers with certain guarantees to ensure the integrity of the electronic payment services, including, for example, instances where customers fail to honor payment cards or where issuers or acquirers fail to fund obligations.

9. EPS, whether provided in connection with open-loop (four-party) systems or closed-loop (three party) systems, encompass both (1) "front-end processing" (which determines whether a payment card user has sufficient funds or is otherwise authorized to make a purchase and provides that information to the merchant or ATM owner), and (2) "back-end processing" (which, among other things, determines, calculates, and instructs banks regarding net payments owed among participating institutions).

B. THE EVOLUTION OF CHINA'S PAYMENT CARD SYSTEM AND THE CREATION OF CUP

10. China's payment card system was inefficient and fragmented, and limited to local regional transactions. Chinese banks' independent and uncoordinated efforts undermined the efficacy of payment card use. Bank cards were inconvenient for individual consumers to use because they were not widely accepted by merchants, and the networks' ad hoc development resulted in some merchants having multiple terminals and others having none. Additionally, consumers could access cash and purchase items only from the POS terminals bearing their respective bank's logo. Incompatibility between the various bank networks also prevented cross-bank or inter-bank transactions at the national level.

11. Instead of allowing these market inefficiencies to be remedied with the opening of its market to competition, including from foreign suppliers of EPS consistent with its WTO commitments, the Chinese government took steps to consolidate the industry under a domestic champion. First, in January 2001, the PBOC issued a series of measures that standardized bank cards and mandated the use of the "UnionPay" logo. Second, in March 2002, the PBOC approved and authorized the establishment of CUP, a private limited liability corporation whose shares were primarily held by four of China's state-owned commercial banks.

12. From its inception, CUP was envisioned not only as a means to create a uniform national platform for electronic payment services for card-based electronic transactions, but also as a homegrown company championing a national brand. The Chinese government has taken a deep interest in the development and progress of CUP, and the corporation has hired as its top executives key former PBOC officials.

13. With China's accession to the WTO in 2001, the Chinese government worked to build CUP's core capabilities and to prepare it for the arrival of China's deadline to complete liberalization of the financial sector in 2006. The Chinese government's efforts to strengthen CUP coincided with measures that resulted in the systematic exclusion of foreign suppliers of EPS from the market.

14. By 2010, CUP had grown its network outside of China, and CUP cards could be used in well over 100 countries, including in Australia, Canada, Malaysia, Singapore, the United Arab Emirates, and the United States. In the years since its inception in 2002, CUP has emerged as a dominant domestic and international player in the EPS market. CUP controls the merchant services network and owns half of the POS terminals in China. In 2007, just five years after CUP was created, PBOC reported on the company's explosive growth and its mammoth transaction volume (placing it then fourth within the world). Because of its success, CUP briefly considered an initial public offering ("IPO") in 2008, with President Xu Luode stating that he remained open to considering an IPO again if the conditions were right. China continues to sustain CUP's growth and to maintain a regulatory environment that has entrenched CUP's hold over the Chinese payment card market.

C. CHINA'S MEASURES THAT MAINTAIN CUP'S MONOPOLY ON THE SUPPLY OF EPS AND THAT AFFECT THE SUPPLY OF EPS BY FOREIGN SUPPLIERS

15. China maintains the following measures:

- ***Requirements that mandate the use of CUP and/or establish CUP as the sole supplier of EPS for all domestic transactions denominated and paid in RMB.*** China requires that all transactions denominated and paid in RMB in China be processed and cleared in RMB through CUP, and that where there is a choice, all domestic transactions on dual currency cards be routed in RMB through CUP. See U.S. July 29, 2011 Response, sections V.B, V.C, V.D



- ***Requirements that RMB denominated payment cards issued in China bear the CUP logo.*** China requires that any bank cards issued in China for RMB purchases in China, including dual currency payment cards issued in China, must bear the CUP logo. This means that issuers – the institutions that issue payment cards to consumers – must have access to the CUP system, and must pay CUP for that access. *See* U.S. July 29, 2011 Response, sections V.B, V.C, V.E.
- ***Requirements that all automated teller machines ("ATM"), merchant card processing equipment, and POS terminals in China accept CUP cards.*** China requires that all ATMs, merchant card processing equipment, and POS terminals in China be capable of accepting CUP cards. There are no equivalent requirements for non-CUP cards. *See* U.S. July 29, 2011 Response, sections V.B, V.C, V.F.
- ***Requirements on acquiring institutions to post the CUP logo and be capable of accepting all payment cards bearing the CUP logo.*** China requires that all acquiring institutions – the institutions that sign up merchants to accept payment cards – in China post the CUP logo and be capable of accepting all payment cards bearing the CUP logo. An acquiring institution, often a bank, provides POS terminal and processing equipment to merchants so it can process payment cards, maintains the merchant's account, handles relations with the merchant, and ensures that payments are properly credited to the merchant. *See* U.S. July 29, 2011 Response, sections V.B, V.C, V.G.
- ***Broad prohibitions on the use of non-CUP cards.*** China prohibits the use of domestically issued non-CUP payment cards where the issuing bank and acquiring bank are different. China also requires that all inter-bank transactions for all bank cards be handled through CUP. *See* U.S. July 29, 2011 Response, sections V.B, V.C, V.H.
- ***Requirements pertaining to card-based electronic transactions in China, Macao and Hong Kong.*** China requires that CUP be used to handle all RMB transactions in Macao or Hong Kong using bank cards issued in China. China also requires that CUP be used to handle any RMB transactions in China using RMB cards issued in Hong Kong or Macao. *See* U.S. July 29, 2011 Response, sections V.B, V.C, V.I.

#### IV. CHINA'S SPECIFIC COMMITMENTS IN ITS GATS SCHEDULE

A. CHINA'S SCHEDULE OF GATS COMMITMENTS COVERS "ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS..." (ITEM D)

16. In Sector 7B, under the Banking and Other Financial Services heading of China's Services Schedule, the services listed include:

- (d) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts (including import and export settlement).

17. China undertook market access and national treatment commitments with respect to "[a]ll payment and money transmission services," which includes the electronic payment services supplied in connection with "credit, charge and debit cards," and other payment card transactions.

**B. EPS FALL WITHIN THE ORDINARY MEANING OF "ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS..." (ITEM D)**

18. China's commitments pertain to "*all* payment and money transmission services, including credit, charge and debit cards," indicating that the scope of the commitment covers any service that is essential to "payment and money transmission" including "credit, charge, and debit cards" payment transactions. EPS suppliers are at the heart of this service.

19. EPS are at the center of all payment card transactions and without these services the transactions could not occur. EPS fall within the ordinary meaning of payment and money transmission services, within item (d) of China's Schedule. The language of item (d) itself makes this abundantly clear.

20. First, EPS involve the services through which transactions involving payment cards are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated. EPS clearly fall within the ordinary meaning of "payment and money transmission services" as one type of "*all*" such services.

21. Second, the phrase "all payment and money transmission services" is modified with an illustrative list that explicitly provides that it "include[s] credit, charge and debit cards." This explicit reference is in line with the recognition that EPS are integral to the processing of credit, charge, debit and other payment card-based electronic payment transactions, and without these services, payment card transactions could not occur. EPS suppliers such as Visa, MasterCard, and American Express are names recognized around the world as credit cards and charge cards. The reference to debit cards covers suppliers of EPS for debit card transactions like Visa, MasterCard, Discover, First Data, Pulse, NYCE, STAR, and PLUS.

**V. CHINA'S MEASURES SHOULD BE CONSIDERED BOTH INDIVIDUALLY AND IN CONJUNCTION WITH OTHER MEASURES**

22. China maintains a monopoly structure that ensures that CUP is the sole entity that can provide EPS for RMB transactions in China – the vast majority of all transactions in China. Chinese measures that provide for the monopoly structure and restrict the supply of EPS by foreign suppliers affect every aspect of a payment card transaction and all of the key participants in such transactions.

23. As the Panel confirmed in its preliminary ruling, the United States has challenged measures that establish or maintain requirements that fall within six categories. The United States requests the Panel to analyze China's measures both individually and in conjunction with one another as indicated by the United States.

**VI. CHINA'S MEASURES ESTABLISHING AND SUPPORTING CHINA UNIONPAY'S MONOPOLY ON THE SUPPLY OF EPS ARE INCONSISTENT WITH ARTICLE XVI OF THE GATS**

**A. GATS ARTICLE XVI (MARKET ACCESS)**

24. The measures imposed by China on the supply of electronic payment services are inconsistent with Article XVI of the GATS because they limit the number of suppliers of EPS for RMB-denominated transactions that are paid in RMB.

25. Article XVI:2(a) provides that where a Member has made a market access commitment in its Services Schedule, that Member is prohibited from imposing limitations on the number of service suppliers, including through the use of monopolies, quotas, and exclusive service suppliers, unless the

Member has included that limitation in its Schedule. Thus, in order to show that a measure is inconsistent with Article XVI:2, it is necessary first to demonstrate that a Member has undertaken a market access commitment and then establish that the measure in question imposes the type of limitation prohibited by Article XVI:2.

B. CHINA MADE EXTENSIVE MARKET ACCESS COMMITMENTS COVERING THE SUPPLY OF ELECTRONIC PAYMENT SERVICES

26. China made mode (1) and mode (3) market access commitments with respect to "All payment and money transmission services, including credit, charge and debit cards...", a category that encompasses electronic payment services for payment card transactions.

27. China's own pronouncements confirm its recognition that its WTO accession commitments included providing market access for foreign suppliers of EPS and that any purported limitations on such access were to be eliminated by 2006:

By 2006, the RMB bank card operation shall be opened to the outside world in an all-around manner, and accordingly the bank card industry of our country is facing a comparatively big challenge and we should make use of the limited time to enhance the international competitiveness of our industries.

C. CHINA'S MEASURES RELATED TO CHINA UNIONPAY AND THE USE OF CUP PAYMENT CARDS OPERATE TO LIMIT THE NUMBER OF FOREIGN SUPPLIERS OF EPS

28. First, China imposes requirements that mandate the use of CUP and/or establish CUP as the sole supplier of EPS for all domestic transactions denominated and paid in RMB. These measures require that all transactions denominated and paid in RMB in China must be processed and cleared in RMB through CUP, and where there is a choice, all domestic transactions on dual currency cards must be routed in RMB through CUP.

29. Second, China imposes requirements on issuers of payment cards that any payment cards issued in China must bear the CUP logo. No other payment card logo benefits from such a mandate. Any dual currency card issued in China also must bear the CUP logo. This means that issuers must have access to the CUP system, and pay CUP for that access.

30. Third, China requires that all ATM, merchant card processing devices, and POS terminals in China post the CUP logo and be capable of accepting CUP cards. These requirements extend to all such processing equipment and POS terminals in China and there is no equivalent requirement mandating acceptance for any other card.

31. Fourth, China imposes requirements on acquiring institutions that they post the CUP logo and be capable of accepting all bankcards bearing the CUP logo.

32. Fifth, China imposes broad prohibitions on the use of non-CUP cards for cross-region or inter-bank (or cross-bank) transactions. China also requires that all inter-bank (or cross-bank) transactions for all bankcards be handled through CUP.

33. Finally, China requires that CUP be used to handle all RMB transactions in Macao or Hong Kong using bankcards issued in China. China also requires that CUP be used to handle any RMB transactions in China using RMB cards issued in Hong Kong or Macao.

**VII. CHINA'S MEASURES ESTABLISHING AND SUPPORTING CHINA UNIONPAY'S MONOPOLY ON THE SUPPLY OF EPS ARE INCONSISTENT WITH ARTICLE XVII OF THE GATS BECAUSE THEY ACCORD LESS FAVORABLE TREATMENT TO FOREIGN EPS SUPPLIERS**

**A. GATS ARTICLE XVII (NATIONAL TREATMENT)**

34. The measures imposed by China affecting foreign suppliers of electronic payment services are also inconsistent with Article XVII of the GATS. A national treatment commitment under Article XVII of the GATS obligates a WTO Member to accord services and service suppliers of other Members "treatment no less favorable than that it accords to its own like services and services suppliers." Article XVII:2 specifies that a Member may accord foreign services or suppliers different treatment to achieve this objective. Article XVII:3 defines treatment as "less favorable" if it "modifies the conditions of competition in favour of services or service suppliers of the Member."

**B. CHINA MADE NATIONAL TREATMENT COMMITMENTS REGARDING THE SUPPLY OF ELECTRONIC PAYMENT SERVICES**

35. China made mode (1) and mode (3) national treatment commitments with respect to "All payment and money transmission services, including credit, charge and debit cards..." which clearly encompass the electronic payment services at issue here. China thereby committed to provide national treatment within the meaning of Article XVII to foreign suppliers of EPS.

**C. CHINA'S MEASURES AFFECT THE SUPPLY OF ELECTRONIC PAYMENT SERVICES**

36. China maintains numerous measures affecting the supply of electronic payment services under modes (1) and (3). The measures operate to prevent market access irrespective of the mode. The terms "affecting" and "supply of services" have been construed broadly by the Appellate Body.

37. The measures at issue affect the supply of services in two principal ways.

38. First, there are measures that impose a limitation such that CUP is the sole entity that can process certain transactions, such as domestic RMB transactions. This of course means that foreign suppliers of EPS are prevented from supplying the service at all.

39. Second, there are measures that promote CUP's position in the marketplace such as by imposing certain requirements on every key player in a card-based electronic payment transaction, including issuers (all cards issued in China for domestic RMB transactions must bear the CUP logo), merchants (all merchant card processing equipment and POS terminals must accept CUP cards), and acquiring institutions (which must post CUP logo and accept CUP cards).

40. The following measures affect every aspect of a card-based electronic payment transaction and the key players – issuers, acquiring institutions, merchants, and EPS suppliers – involved in such transactions.

- China's measures ensure that CUP is the sole supplier of certain transactions such as interbank transaction, transactions denominated and paid in RMB, and transactions in certain border areas such as Hong Kong and Macau. These provisions discriminate against foreign suppliers of EPS by either categorically precluding their participation in the market, and/or by adversely modifying the conditions of competition among the key participants – issuers, acquiring institutions, merchants, and the EPS supplier – in card-based electronic payment transactions.

- China's measures requiring that any payment cards used only for RMB purchases in China, as well as any dual currency cards issued in China, bear the CUP logo. No other EPS provider is afforded such a privilege. Since any issuer of payment cards in China is required to have access to the CUP system (and to pay for that privilege), the issuer has no reason to seek an alternative supplier of EPS. The requirement also means that even if a card was issued for a foreign EPS supplier, CUP would also gain as the CUP logo would be on the card as well.
- China's measures requiring all automatic teller machines, merchant card processing equipment and point of service terminals accept CUP cards. No foreign EPS supplier is afforded a similar privilege. To the extent a foreign supplier of EPS was to create or secure access to a POS, then CUP would also gain as well because of this requirement.
- China's measures requiring that all acquiring institutions in China post the CUP logo and to accept all bankcards bearing that logo. No foreign EPS supplier is afforded a similar privilege.

41. These measures affect the supply of electronic payment services within the meaning of Article XVII because they directly regulate the terms on which they may be provided in China.

D. CHINA'S MEASURES TREAT SUPPLIERS OF ELECTRONIC PAYMENT SERVICES OF OTHER MEMBERS LESS FAVORABLY THAN CUP, CHINA'S LIKE SUPPLIER OF EPS

42. The measures at issue provide disparate treatment solely according to the identity of the EPS supplier: CUP or not CUP. The Panel in *China - Publications and Audiovisual Products* found that:

When origin is the only factor on which a measure bases a difference of treatment between domestic service suppliers and foreign suppliers, the "like service suppliers" requirement is met, provided there will, or can, be domestic and foreign suppliers that under the measure are the same in all material respects except for origin. We note that similar conclusions have been reached by previous panels. We observe that in cases where a difference of treatment is not exclusively linked to the origin of service suppliers, but to other factors, a more detailed analysis would probably be required to determine whether suppliers on either side of the dividing line are, or are not, "like."

43. Here, it is self-evident from China's own documents that China was concerned about the potential competition its domestic supplier of EPS faced from foreign suppliers of EPS and was determined to enhance its industry's position because, as the Chinese Government stated, it was "facing a comparatively big challenge and we should make use of the limited time to enhance the international competitiveness of our industries."

44. Therefore, it is unsurprising that the measures at issue here are meant to favor the domestic Chinese entity and accordingly discriminate on that basis.

45. Outside of China, with the ability to operate from its protected home market, CUP has become a significant and increasingly active participant in this competition and EPS suppliers describe CUP as a competitor. CUP's Articles of Association are explicit that the company is "to provide advanced electronic payment technologies and specialized services in connection with the inter-bank bank card information switching." CUP itself recently noted the global reach of its "payment services" around the world.

46. It is clear that CUP provides services for payment card transactions "like" those provided by foreign suppliers of EPS for payment card transactions and that the basis for the differential treatment

by China in its measures is ultimately one of origin, and the "like service suppliers" requirement of Article XVII is therefore satisfied.

47. The Panel in *China – Publications and Audiovisual Products* explained:

a measure that prohibits foreign service suppliers from supplying a range of services that may, subject to satisfying certain conditions, be supplied by the like domestic supplier cannot constitute treatment 'no less favourable,' since it deprives the foreign service supplier of any opportunity to compete with like domestic suppliers. In terms of paragraph 3 of Article XVII, such treatment modifies conditions of competition in the most radical way, by eliminating all competition by the foreign service supplier with respect to the service at issue.

48. On their face, many of the measures at issue explicitly prohibit any entity other than CUP from supplying services in the Chinese market. China's measures thus categorically exclude foreign suppliers of EPS from providing EPS on RMB and interbank transactions. Because these measures categorically prohibit foreign EPS suppliers from participating in certain transactions, their treatment is less favorable than that afforded CUP, a Chinese entity, and therefore inconsistent with China's obligations under GATS Article XVII.

49. China's measures include those that prevent competition against CUP altogether in regards to certain transactions. Other measures, however, while not *per se* banning competition modify the conditions of competition to disfavor foreign suppliers of EPS as opposed to CUP. These measures include:

- requirements on issuers that payment cards issued in China bear the CUP logo;
- requirements that all ATM and POS Terminals in China Accept CUP cards;
- requirements on acquiring institutions to post the CUP logo; and
- broad prohibitions on the use of non-CUP cards.

50. These measures are inconsistent with Article XVII of the GATS because they accord less favorable treatment to foreign suppliers of EPS than to CUP.

## VIII. CONCLUSION

51. The United States respectfully requests that the Panel find that China's measures, as set out above, are inconsistent with China's obligations under Article XVI:1 and XVI:2(a) and Article XVII of the GATS. The United States further requests, pursuant to Article 19.1 of the DSU, that the Panel recommend that China bring its measures into conformity with its WTO obligations.

## ANNEX A-2

### EXECUTIVE SUMMARY OF THE FIRST WRITTEN SUBMISSION OF CHINA

#### I. INTRODUCTION AND OVERVIEW

1. The Panel should dismiss the U.S. claims in their entirety, because the United States has failed to prove that China undertook relevant market access and national treatment commitments in the cross-border and commercial presence modes of supply for the services at issue in this dispute.

2. The services at issue are those services that fall within the U.S. definition of what it has described as "electronic payment services", and that are actually affected by the measures at issue. As China will demonstrate, the services at issue in this dispute are those services that operators of interbank payment card networks supply to financial institutions, including clearing and settlement services.

3. Once the services at issue have been identified, the task before the Panel is to classify those services in relation to China's Schedule and identify the commitments, if any, that China made in respect of those services. The U.S. claims fail completely at this juncture, because the United States has failed to prove its assertion that the services at issue in this dispute are encompassed by subsector (d), "all payment and money transmission services", and because the United States has failed to prove that China undertook relevant commitments in subsector (d) for Modes 1 and 3.

4. In the absence of any relevant commitments, there is no legal basis for the Panel to proceed to what would otherwise be the next task before it, namely, determining whether the measures at issue are inconsistent with the specific commitments that China actually made. China will, however, conclude this submission by demonstrating that the U.S. national treatment claims under Article XVII do nothing more than repeat the "monopoly" allegations that are the basis of its market access claims under Article XVI. This approach is inconsistent with the fact that Article XVI provides the sole basis for evaluating measures of the types listed in Article XVI:2(a)-(f), including monopolies under Article XVI:2(a). Thus, in all events, there is no legal basis for the U.S. national treatment claims in this dispute.

#### II. BACKGROUND

##### A. PAYMENT CARDS AND INTERBANK PAYMENT CARD NETWORKS

5. The measures and services at issue in this dispute, and the alleged "monopoly" that is the centrepiece of the U.S. claims, relate to *interbank* payment card transactions. Interbank payment card transactions are based on what is commonly referred to as the "four-party" (or "open loop") model. The defining characteristic of the four-party model is that there is more than one financial institution involved in the payment card transaction. This means that the financial institutions participating in the payment card transactions (the "participating financial institutions") must have some method of *authorizing* the transactions, *clearing* transaction data, and *settling* their financial claims in respect of each other.

6. In most cases, financial institutions authorize, clear, and settle interbank payment card transactions by obtaining these services from the operators of interbank payment card networks. An interbank payment card network is a telecommunications and data processing infrastructure through which the network operator provides certain authorization, clearing, and settlement services to participating financial institutions. Throughout this dispute, China will refer to operators of interbank

payment card networks as "network operators", and will refer to the services that network operators provide to financial institutions as "network services". This terminology is consistent with how governments and antitrust authorities have referred to these services, as well as service suppliers like Visa, MasterCard, and American Express. Moreover, unlike the term "electronic payment services", the terms "network operator" and "network services" are objectively based on prior usage, were not invented for the purpose of this dispute, and are not designed to prejudge either the number of distinct services at issue or their classification in relation to China's Schedule.

7. The market for network services is distinct from the market in which financial institutions issue payment cards and acquire payment card transactions. This has been the consistent finding of antitrust authorities and other government regulators. The two markets also differ in terms of the nature and identity of the relevant service suppliers. Suppliers of network services are not financial institutions and are not regulated as such. They are, as one observer notes, "primarily technology-based processing companies". Issuers and acquirers, on the other hand, are almost always banks or other types of regulated financial institutions. Most issuers and acquirers provide these payment services as part of an array of other banking services. In short, these two markets are the polar opposites of each other, from the standpoint of economics, regulation, and the identity of the service suppliers.

#### B. THE MEASURES AT ISSUE

8. The measures at issue in this dispute establish a national interbank network for clearing and settling RMB-denominated payment card transactions. In addition to establishing this domestic network, the measures require interbank payment cards issued in China, as well as POS terminals, to adhere to certain technical standards and to bear a common logo indicating their ability to be used for domestic interbank transactions.

9. As the United States has summarized, the challenged measures emerged from a period in which Chinese commercial banks were issuing proprietary, three-party payment cards bearing their own logos. Merchants that wanted to accept more than one type of payment card had to maintain a separate POS terminal for each type of card. Consumers who wanted the convenience of payment cards often carried different payment cards from different banks, in order to increase the likelihood that any given merchant would accept one of their cards.

10. Beginning in 1993, the People's Bank of China ("PBOC") began a series of efforts to develop a functional interbank payment card network. In March 2002, the project was transferred to China Union Pay ("CUP"), a legal entity established to run this network. Today, CUP operates China's interbank payment card network under the direct supervision and regulation of the PBOC.

11. Some of the measures that gave rise to China's interbank payment card network are among the measures that the United States has challenged in this dispute. Document No. 37, for example, established uniform technical standards for interbank payment cards and for POS terminals that accept interbank payment cards, and established the "Yin Lian" logo as the common logo for interbank payment cards and POS terminals that conform to these standards. Document No. 57 requires payment cards issued for domestic interbank use to bear the Yin Lian logo, and requires commercial banks that issue and acquire interbank payment cards to adhere to the Business Specifications for Bankcard Interoperability in Document No. 76. These and other measures finally allowed China to realize the network effects of a genuine interbank payment card system, and, as demonstrated below, are entirely consistent with its WTO commitments.



### **III. THE SERVICES AT ISSUE ARE NETWORK SERVICES SUPPLIED BY OPERATORS OF INTERBANK PAYMENT CARD NETWORKS**

12. The services at issue in this dispute are determined by two factors: (1) the U.S. definition of the services at issue, as set forth in its panel request; and (2) the scope and effect of the challenged measures. The services at issue cannot be broader than the services that the United States has described in its panel request, and cannot be broader than the services that are actually affected by the challenged measures.

13. The panel request describes the services at issue as "the services through which transactions involving payment cards ... are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated." The next sentence describes "a system" that "[s]uppliers of electronic payment services supply, directly or indirectly". This "system," according to the United States, "typically includes" what appear to be five distinct elements, which the United States separates with semicolons. These are: (1) "the processing infrastructure, network, and rules and procedures that facilitate, manage, and enable transaction information and payment flows and which provide system integrity, stability and financial risk reduction;" (2) "the process and coordination of approving or declining a transaction, with approval generally permitting a purchase to be finalized or cash to be disbursed or exchanged;" (3) "the delivery of transaction information among participating entities;" (4) "the calculation, determination, and reporting of the net financial position of relevant institutions for all transactions that have been authorized;" and, (5) "the facilitation, management and/or other participation in the transfer of net payments owed among participating institutions."

14. There are several noteworthy features of this description. First, it does not encompass the issuance of payment cards or the acquisition of payment card transactions. That is, it does not encompass payment card services that are typically provided by banks or other types of financial institutions. Second, the description seems to relate exclusively to four-party payment card models, since it contemplates the participation of more than one financial institution in the "system" (e.g., in its references to "participating institutions"). Finally, at least three of the five elements of the "system" that it describes relate to the clearing and settlement of interbank payment card transactions – the third and fourth elements relate to clearing, while the fifth element relates to settlement.

15. Turning to the scope and effect of the challenged measures, the measures at issue in this dispute establish a national network for clearing and settling RMB-denominated interbank payment card transactions. These measures affect the ability of other network operators to provide network services to financial institutions in China for the purpose of authorizing, clearing, and settling RMB-denominated interbank payment card transactions. The measures do *not* affect the ability of financial institutions to enter and compete in the market for issuing payment cards and acquiring payment card transactions, and do not affect their ability to provide proprietary (three-party) payment card services. Nor do the challenged measures affect the ability of companies to enter and compete in the market for issuer processing or merchant processing services.

16. Based on the description of the services at issue in the panel request and the scope of the challenged measures, China concludes that the services at issue in this dispute are the network services that China has described above. Fundamentally, these services relate to the operation of a telecommunications and data processing infrastructure through which network operators supply authorization, clearing, and settlement services to banks and other financial institutions.

17. As China noted above, a minimum of three of the five elements of the "system" described by the United States in its panel request relate to clearing and settlement. However many other services might be at issue in this dispute, clearing and settlement services are plainly among them. Thus, while the United States makes heroic efforts to avoid using the terms "clearing" and "settlement" in

the narrative of its submissions, China believes it should be undisputed that the services at issue include clearing and settlement services. Moreover, as the United States acknowledges, these clearing and settlement services are "central" to what it calls "electronic payment services".

**IV. THE UNITED STATES HAS FAILED TO DEMONSTRATE THAT CHINA MADE MARKET ACCESS AND NATIONAL TREATMENT COMMITMENTS IN RESPECT OF THE SERVICES AT ISSUE IN THIS DISPUTE**

**A. THE CLEARING AND SETTLEMENT SERVICES AT ISSUE IN THIS DISPUTE ARE CLASSIFIABLE UNDER ITEM (XIV) OF THE ANNEX ON FINANCIAL SERVICES, WHICH IS UNBOUND IN CHINA'S SCHEDULE**

18. Given the "central" importance of clearing and settlement services to the services at issue in this dispute, China will begin with the classification of these services in relation to China's Schedule. As China will proceed to demonstrate, China made no market access or national treatment commitments in respect of clearing and settlement services. The Panel must therefore reject the U.S. claims as they relate to these services.

19. Section 5 of the *Annex on Financial Services* lists 16 distinct types of financial services that fall within the definition of a "financial service." China made no market access or national treatment commitments in respect of item (xiv) in the *Annex*, "settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments". Had China made a commitment in respect of this service, it would have been subsector (j) in China's Schedule. China's Schedule skips over this subsector in its sequence of commitments, jumping from subsector (f) to subsector (k), and not elsewhere referring to "settlement and clearing services for financial assets".

20. The term "financial assets", as used in item (xiv) in the *Annex*, refers broadly to cash or any sort of monetary claim. Looking at the words "financial" and "assets" separately, the ordinary meaning of the term "financial" is "[o]f or pertaining to revenue or money matters", while an "asset" is "a thing or person of use or value". Putting these two definitions together, a "financial asset" can be understood as any revenue or monetary item ("financial") that has value to its possessor ("asset"). The same ordinary meaning is supported by referring to sources that define "financial assets" as a single term. The *Oxford Dictionary of Economics*, for example, defines "financial assets" as "[m]oney and claims, as distinct from physical assets such as land, buildings, or equipment." This definition includes cash and any right to receive cash.

21. Interbank payment card transactions involve the clearing and settlement of cash or contractual rights to receive cash, and therefore involve the clearing and settlement of financial assets within the ordinary meaning of item (xiv). An interbank payment card transaction gives rise to a claim by the acquiring bank against the issuing bank in the amount of the transaction, to be paid in cash. Operators of interbank payment card networks provide clearing and settlement services for these cash claims and positions. Whether one views these clearing and settlement services as relating to cash or rights to receive cash, in either event these services are encompassed by item (xiv) because they involve the clearing and settlement of financial assets.

22. Because clearing and settlement services for payment card transactions are encompassed by item (xiv), it is unnecessary for the Panel to examine the U.S. assertion that these clearing and settlement services are encompassed by subsector (d). It is a well-established rule of classification that the heading or subsector that provides the most specific description shall be preferred to more general headings or subsectors that might otherwise encompass the good or service at issue. As compared to subsector (d), item (xiv) would clearly provide the more specific description of the clearing and settlement services at issue in this dispute, even if there were otherwise a basis to

interpret subsector (d) as encompassing clearing and settlement services – which, as China will proceed to demonstrate, there is not.

B. THE UNITED STATES HAS NOT MET ITS BURDEN OF PROVING THAT SUBSECTOR (D) ENCOMPASSES THE SERVICES AT ISSUE

23. The United States has staked its entire case on the proposition that *all* of the services at issue in this dispute should be classified under subsector (d), "all payment and money transmission services". Because the United States agrees that the sectors and subsectors in a Member's Schedule are mutually exclusive, it follows that, in the United States' view, none of the services at issue in this dispute can be classified under another sector or subsector. That is the case that the United States has decided to present.

24. China has just demonstrated that the *clearing and settlement* services at issue in this dispute are encompassed by a subsector that China left unbound. Accordingly, these services are *not* classifiable under subsector (d), and the U.S. claims in respect of these services must fail. Nevertheless, the United States has failed to prove that *any* of the services at issue in this dispute – much less *all* of the services that might be at issue – are encompassed by subsector (d). Subsector (d) encompasses payment services that banks and other financial institutions provide to their cardholder and merchant customers. The United States argues, in effect, that subsector (d) encompasses not only card issuance and acquisition services provided *by banks*, but also services provided *to* banks by *non-bank* service suppliers. This interpretation is in error.

25. Subsector (d) is one of six subsectors listed in China's Schedule under the heading of "banking services". The ordinary meaning of "banking services" is services provided by banks. Consistent with this ordinary meaning, all of the services listed under the heading of "banking services" are services that are typically provided by banks, finance companies, and other types of financial institutions.

26. Properly interpreted in this context, the "payment services" referred to in subsector (d) encompass the issuance and acceptance by financial institutions of payment instruments other than cash. These are characteristically "banking services" because they involve banks acting as payment intermediaries. At some point in the transactional chain, the banks are in possession of the relevant funds and are paying these funds to another party. The banks are making a *payment* within the ordinary meaning of that term, *i.e.*, they are engaging in "[a]n act, or the action or process, of *paying* ... ."

27. China believes the United States would agree with the conclusion that issuance and acquisition are banking services encompassed by subsector (d). However, issuance and acquisition are not among the services at issue in this dispute, among other reasons because these services are not within the U.S. description of the services at issue. Instead, the cornerstone of the U.S. interpretation of subsector (d) is that the term "payment and money transmission services" includes any service that could be said to "manage" or "facilitate" a payment card transaction, or that relates to the "processing" of a payment card transaction. The U.S. interpretation is untenable as a matter of treaty interpretation.

28. To begin with, as discussed above, the ordinary meaning and context of subsector (d) support the conclusion that a "payment service" is a banking service in which the service supplier (*i.e.*, the bank or other financial institution) becomes a party to the payment transaction, having rights and obligations of payment in relation to the payer and payee (or their respective financial institutions). A service supplier that is merely "managing" or "facilitating" the supply of this type of payment service, or "processing" payment transactions, is not itself a party to the payment transaction. It is neither issuing nor accepting the payment instrument and is never in possession of the funds to be paid. It is

not "paying" anyone, and is not providing a "payment service" within the ordinary meaning of that term.

29. More generally, services that "manage" or "facilitate" the supply of a service, or that relate to the "processing" of another service transaction, are not necessarily classifiable *as that other service*. The Members have expressly affirmed that services that help to "manage" or "facilitate" the supply of another service, or that relate to its "processing", must be classified separately to the extent that they are distinct and separately identifiable services. In this regard, the 2001 Scheduling Guidelines state that "[i]t is understood that market access and national treatment commitments apply only to the sectors or sub-sectors inscribed in the schedule. *They do not imply a right for the supplier of a committed service to supply uncommitted services which are inputs to the committed service.*"

30. Equally untenable is the proposition that any service that relates to the "processing" of a service transaction (such as a payment card transaction) is necessarily the same as the service to which the processing relates. Different types of processing services are recognized as distinct services throughout China's Schedule, and throughout the taxonomy of W/120 generally. For example, item (xv) in the *Annex* list of financial services, corresponding to subsector (k) in China's financial services commitments, refers to "financial data processing and related software by suppliers of other financial services". Subsector 2.C.n in the Services Sectoral Classification List refers to "on-line information and/or data processing (*incl. transaction processing*)". These processing services are clearly distinct from any other service that they happen to support (*e.g.*, the "other financial service" referred to in subsector (k) or the "transaction" referred to in subsector 2.C.n). The contention that services relating to the "processing" of payment card transactions are necessarily "payment services" under subsector (d) would obliterate these distinctions.

31. For all of these reasons, the Panel must reject the U.S. assertion that subsector (d) encompasses all services that "manage", "facilitate", or "process" payment card transactions. As this assertion is the foundation of the U.S. position that all of the services at issue in this dispute are classifiable under subsector (d), the U.S. claims that are based on this interpretation must fail.

#### C. CONCLUSION TO SECTION IV

32. The failure of the United States to meet its burden of proof in respect of the classification of the services at issue brings this matter to an end. Because the United States has failed to prove its proposed classification of the services at issue, there is no legal basis for the Panel to proceed to an evaluation of whether the challenged measures are inconsistent with relevant specific commitments. The remainder of this submission is advanced entirely on an *arguendo* basis, accepting the erroneous premise that some or all of the services at issue are classifiable under subsector (d). As the next two sections will demonstrate, the Panel would still need to reject the entirety of the U.S. claims, even under this erroneous premise.

#### V. **EVEN IF SOME OR ALL OF THE SERVICES AT ISSUE WERE COVERED BY SUBSECTOR (D), THE UNITED STATES HAS FAILED TO ESTABLISH RELEVANT MARKET ACCESS AND NATIONAL TREATMENT COMMITMENTS IN MODE 1 AND MODE 3**

33. The United States has staked its case on the proposition that all of the services at issue in this dispute are encompassed by subsector (d), a proposition that the United States has failed to prove. But even if some or all of the services at issue in this dispute *were* classifiable under subsector (d), the United States has failed to prove that China made relevant market access and national treatment commitments under this subsector in the cross-border and commercial presence modes of supply. This is a separate and independent reason why the Panel must reject all of the U.S. claims in this dispute.

A. CHINA'S MODE 1 MARKET ACCESS ENTRY FOR SUBSECTOR (D) IS UNBOUND

34. China's entry in the market access column for subsectors (a) through (f) states that the cross-border mode of supply is "unbound except for the following". The entry then repeats, verbatim, the descriptions of subsectors (k) and (l), which appear in China's Schedule under the heading of "[o]ther financial services".

35. The meaning of this portion of China's Schedule could not be clearer: China undertook no market access commitments under Mode 1 with respect to subsectors (a) through (f), including subsector (d). Notwithstanding the fact that subsector (d) is unbound in Mode 1, the United States makes no effort whatsoever to explain the logical or legal basis for its Mode 1 claims in this dispute. The failure of the United States to make this showing means that it has failed to establish a *prima facie* case of violation in respect of its Mode 1 claims, and the Panel must reject these claims in their entirety.

B. CHINA'S MODE 3 MARKET ACCESS AND NATIONAL TREATMENT COMMITMENTS FOR SUBSECTOR (D) ARE LIMITED TO FOREIGN FINANCIAL INSTITUTIONS

36. The U.S. claims under Mode 3 are based on a single premise: that all of the market access and national treatment limitations inscribed in China's Schedule for subsector (d), Mode 3, "were to be eliminated within five years after China's accession." The United States has provided no interpretative support for this conclusion whatsoever – it is sheer assertion, wholly unsupported by the actual text of China's Mode 3 market access and national treatment commitments.

37. For example, under the heading of "Clients", China's market access inscription for subsectors (a) through (f) states that "[w]ithin five years after accession, foreign financial institutions will be permitted to provide services to all Chinese clients." This is an express limitation on China's market access commitment: the only types of entities that "will be permitted" to provide the services under subsectors (a) through (f) are "foreign financial institutions". It follows that China made no market access commitment under subsectors (a) through (f) in respect of entities that are not "foreign financial institutions".

38. By its express terms, this limitation on market access applied after the five-year phase-in period, and continues to apply to this day. China committed to allow "foreign financial institutions" to "provide services to all Chinese clients" on a commercial presence basis no later than 11 December 2006. Contrary to the implicit U.S. suggestion that this limitation *expired* on 11 December 2006, in fact that is the date on which the commitment became *effective*. As of that date – and going forward thereafter – "foreign financial institutions" would "be permitted" to provide the services under subsectors (a) through (f) "to all Chinese clients." China made no commitment to permit entities that are *not* foreign financial institutions to provide these services, at any point in time.

39. The ordinary meaning of the term "financial institution" is "[a] regulated organization that provides a range of banking and investment services". It is "[a]ny organization, such as a bank, building society, or finance house, that collects funds from individuals, other organizations, or government agencies and invests these funds or lends them on to borrowers." As these definitions reflect, the essential attributes of a financial institution are (1) that it collects funds from the public (whether as deposits or investments), and (2) that it is subject to some type of prudential regulation or supervision. These are the types of entities to which China has opened its market for the services listed in subsectors (a) through (f), in accordance with China's commitments.

40. China has fully adhered to the commitments that it actually made under subsector (d). With regard to payment card acquisition services, China allowed foreign financial institutions to engage in this business even before it acceded to the WTO. With regard to the issuance of payment cards,

China promulgated a number of measures that allowed foreign financial institutions to enter this market in line with China's commitments. Foreign financial institutions in China issue payment cards and acquire payment card transactions, and do so on an equal footing with Chinese financial institutions. The United States has not alleged otherwise in this dispute.

41. Nor has the United States made any effort to demonstrate that what it calls "electronic payment services suppliers" are foreign financial institutions – either in general, or in the case of the specific service suppliers that it has identified by name in its submissions. Presumably, this is because it has erroneously concluded that the limitations on market access and national treatment inscribed in China's Schedule for Mode 3 expired five years after accession.

42. Having failed to demonstrate that "electronic payment services suppliers" are foreign financial institutions, the United States has necessarily failed to demonstrate that China's commitments in Mode 3 are relevant to the services and service suppliers at issue in this dispute and do not preclude the rights of market access and national treatment to which it claims to be entitled. The Panel must therefore reject the U.S. claims of violation under Articles XVI and XVII of the GATS, even accepting the erroneous proposition that subsector (d) encompasses the network services at issue in this dispute.

**VI. IN ALL EVENTS, THE U.S. NATIONAL TREATMENT CLAIMS MUST FAIL BECAUSE THE UNITED STATES RELIES UPON THE SAME ASPECTS OF THE SAME MEASURES THAT IT RELIES UPON IN SUPPORT OF ITS MARKET ACCESS CLAIMS**

43. This section accepts, *arguendo*, that some or all of the services at issue in this dispute are classifiable under subsector (d), *and* that China made relevant market access and national treatment commitments in the cross-border and commercial presence modes of supply. Even if both of these assumptions were true, the U.S. national treatment claims must still fail, because the United States improperly bases its national treatment claims on the same aspects of the same measures that are the foundation of its market access claims.

44. Article XVI:2 of the GATS lays out the six types of measures that a Member may not maintain or adopt in any sector in which it has undertaken a market access commitment, unless that measure is identified in its Schedule. These measures, identified in Article XVI:2(a)-(f), can be either discriminatory or non-discriminatory. The United States claims that the same aspects of the measures that allegedly confer a monopoly on CUP in violation of China's market access commitments also violate China's national treatment commitments under Article XVII of the GATS, which governs the imposition of discriminatory measures.

45. Even accepting the faulty U.S. argument that the provision of a monopoly is discriminatory, the text of the GATS plainly requires that monopolies be addressed under Article XVI:2(a), and not Article XVII. Article XX:2 of the GATS explains that "[m]easures inconsistent with both Articles XVI and XVII shall be inscribed in the column relating to Article XVI", in which case the measure "will be considered to provide a condition or qualification to Article XVII as well." By virtue of this provision, the inscription in the market access column of a discriminatory limitation on market access will also be considered a limitation on national treatment. This would include any respect in which the existence of a monopoly could be considered "discriminatory".

46. According to the Scheduling Guidelines, a Member's entry of "unbound" in its Schedule means that the Member is "free in a given sector and mode of supply to introduce or maintain measures inconsistent with market access or national treatment", as the case may be. Because Article XX:2 provides that measures inconsistent with both Article XVI and Article XVII are to be inscribed in the market access column, an entry of "unbound" in the market access column means that

a Member is free to introduce measures of the types specified in Article XVI:2, without regard to whether those measures are discriminatory or non-discriminatory. What the United States is doing in this dispute – invoking the same aspects of the same measures to establish *both* a market access and national treatment violation – would render *inutile* a Member's entry of "unbound" in the market access column.

47. The current dispute presents a perfect example of the flaw in the U.S. approach. China's market access entry in Mode 1 for subsector (d) is "unbound", with a cross-reference to subsectors (k) and (l). By inscribing "unbound" in Mode 1, China elected not to undertake market access commitments with respect to the cross-border supply of the services in subsectors (a)-(f). Therefore, for the supply of those services in Mode 1, China reserved the right to maintain and introduce measures of the types listed in Article XVI:2, including a monopoly under Article XVI:2(a).

48. China's national treatment commitment for the cross-border supply of the services under subsectors (a) through (f) is "none". The United States claims that the same aspects of the measures that allegedly confer a monopoly upon CUP also violate China's national treatment commitments. This contention, if accepted, would entirely defeat the choice that China made by leaving market access unbound in Mode 1. China reserved the right to introduce market access limitations for this subsector and mode of supply, including limitations under Article XVI:2 that might be seen as discriminatory, and its right to introduce such measures cannot be taken away by a finding that the exact same aspects of the measures are inconsistent with Article XVII.

49. The essence of the U.S. claim in this dispute is that China is maintaining a monopoly in the supply of network services, which it erroneously believes to be inconsistent with China's market access commitments. The United States has presented no evidence or legal argument that *other* aspects of the challenged measures are inconsistent with China's national treatment commitments. Accordingly, the Panel must reject the U.S. national treatment claims in this dispute, without regard to its disposition of any other issue before it.

## VII. CONCLUSION

50. For the reasons set forth in this submission, China respectfully requests that the Panel reject the U.S. claims in this dispute in their entirety.

---





**ANNEX B**

**ORAL STATEMENTS, OR EXECUTIVE SUMMARIES THEREOF, OF THE PARTIES  
AT THE FIRST SUBSTANTIVE MEETING**

<b>Contents</b>		<b>Page</b>
Annex B-1	Executive summary of the opening oral statement of the United States at the first substantive meeting	B-2
Annex B-2	Closing oral statement of the United States at the first substantive meeting	B-6
Annex B-3	Executive summary of the oral statement of China at the first substantive meeting	B-7

## ANNEX B-1

### EXECUTIVE SUMMARY OF THE OPENING ORAL STATEMENT OF THE UNITED STATES AT THE FIRST SUBSTANTIVE MEETING

#### I. INTRODUCTION

1. When China joined the World Trade Organization ("WTO") in 2001, it made important commitments with respect to electronic payment services ("EPS") for payment card transactions. China explicitly acknowledged its commitments in 2005 and recognized that by 2006 its payment card market would be "opened to the outside world in an all-around manner." Simply put, China has not honored its WTO commitments.

2. Under the terms of China's Schedule of Specific Commitments on Services, China committed to provide both market access and national treatment for "all payment and money transmission services, including credit, charge and debit cards" for domestic currency transactions. Yet, despite these commitments, China continues to maintain a government-mandated domestic monopoly, enabling only its national champion, China UnionPay, Co. Ltd. ("CUP"), to provide these services, thereby blocking foreign service suppliers. The measures at issue establish a monopoly and systematically discriminate against and restrict foreign EPS suppliers while favoring China's own supplier of EPS.

#### II. EPS FOR PAYMENT CARD TRANSACTIONS FALL WITHIN THE ORDINARY MEANING OF "ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS..." (SUBSECTOR (D))

3. EPS is the service through which transactions involving credit, charge, debit and other payment cards are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated. China's commitments pertain to "*all* payment and money transmission services, including credit, charge and debit cards," indicating that the scope of the commitment covers the service that is essential to payment card transactions. EPS suppliers are at the heart of this service. Without EPS, these payment card transactions could not occur.

4. First, EPS clearly falls within the ordinary meaning of "payment and money transmission services" as one type of "*all*" such services. Second, the phrase "all payment and money transmission services" is modified with an illustrative list that explicitly provides that it "include[s] credit, charge and debit cards." This explicit reference is in line with the recognition that EPS is integral to the processing of credit, charge, debit and other card-based electronic payment transactions, and without this service, payment card transactions could not occur.

#### III. CHINA'S MODE 1 AND MODE 3 COMMITMENTS FOR "ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS..."

5. China argues that its mode 3 commitments in subsector (d) apply only to services supplied *by* banks because subsector (d) falls under the heading of "banking services." The term "banking services" is not limited in this manner. As even China has recognized, major U.S. EPS suppliers, as well as CUP, were formally operated as associations of banks – and from their inception they were clearly performing "banking services." The nature of the service that an entity supplies does not change merely because that entity assumes a new corporate form. In analyzing a service for purposes of a GATS commitment, one must look at the characteristics and nature of the service to classify that service.

6. It is also evident from China's Schedule itself that the term "banking services" listed in China's Schedule, including those listed in subsector (d) are not limited to those provided by banks as China claims. In addition to the explicit reference to "non-bank financial institutions" in China's Schedule, there are references to "foreign finance companies" in the market access column and to "foreign financial leasing corporations" in the additional commitments column. Moreover, the definition of "financial service supplier" in the Annex on Financial Services to the GATS covers not only banks but other suppliers of financial services, which supply or wish to supply financial services within the meaning of the Annex.

7. For similar reasons, China's argument that its mode 3 market access and national treatment commitments for subsector (d) are limited to foreign financial institutions, and that EPS suppliers do not qualify, must also fail. Although China includes certain limitations with respect to foreign financial institutions, this does not mean that its commitments are limited to foreign financial institutions. Such a limitation would have needed to be imposed explicitly. China's the Schedule states that "[c]riteria for authorization to deal in China's financial services sector are solely prudential." Thus, under China's Schedule, the only limitations China may impose are prudential restrictions and the explicitly listed limitations – defunct restrictions on geographic scope and use of domestic currency, and ongoing requirements applicable to banks. Finally, the definition of "financial institution" offered by China is far too narrow. There are many definitions that are much broader, and some explicitly include "an operator of a credit card system."

8. It is also plain from the text that China has taken mode 1 commitments for "all payment and money transmission services, including credit, charge and debit cards..." The word "Unbound" is followed by the qualifying phrase "except for the following," which in turn is further elaborated by two sentences that describe elements of the services within subsector (d) for which China has taken mode 1 commitments. A fundamental tenet of treaty interpretation requires that the qualifying phrase "except for the following" and the further specific elaboration following the word "Unbound" should be given meaning. China focuses solely on the term "Unbound." If China wished to in fact be fully "Unbound," that is, not to have any commitments, it would have left the word "Unbound" unqualified. However, as the Schedule reflects, China did not do so.

9. Much of the activity involved in the supply of EPS for payment card transactions entails the transfer of financial information and financial data processing, and much of this occurs on a cross-border basis. It is therefore not surprising that China made cross-border commitments for subsector (d) for EPS for payment card transactions to the extent that the activities entail the provision and transfer of financial information and financial data processing.

#### **IV. THE SERVICE AT ISSUE IS NOT "SETTLEMENT AND CLEARING SERVICES FOR FINANCIAL ASSETS, INCLUDING SECURITIES, DERIVATIVE PRODUCTS, AND OTHER NEGOTIABLE INSTRUMENTS"**

10. In classifying EPS for payment card transactions under item (xiv), China ignores the ordinary meaning of the provision, the scope of which is limited to investment instruments, such as securities, derivatives, and other negotiable instruments. The context-specific nature of these terms is evident from the international institutional framework that establishes separate regimes for payment systems and securities settlement systems. The Committee on Payment and Settlement Systems ("CPSS"), a part of the Bank for International Settlements ("BIS"), is charged with developing the multilateral framework that governs payment systems, on the one hand, and securities settlement systems, on the other hand – two very distinct systems.

11. The CPSS provides guidance concerning payment systems (which include suppliers of EPS for payment card transactions) and securities settlement systems. The CPSS "glossary of terms used in payments and settlement systems" clearly illustrates that the terms "clearing" and "settlement" each

have different meanings in the respective payment and securities contexts. The definitions relating to payments systems, including EPS for payment card transactions, are drawn from different source documents than those for securities settlement systems.

12. It is clear that "settlement and clearing services for financial assets," as explicitly qualified in item (xiv) of the GATS are clearing and settlement services for assets like derivative products, stocks, or bonds. In contrast, EPS for payment card transactions are used to clear and settle payments associated with the transfer of goods and services, not financial assets. This is also entirely consistent with the explicit reference to "credit, charge and debit card" payment transactions in item (viii) ("all payment and money transmission services...") and the lack of any similar reference to card transactions in item (xiv).

**V. CHINA'S MEASURES ESTABLISHING AND SUPPORTING CHINA UNIONPAY'S MONOPOLY ON THE SUPPLY OF EPS ARE INCONSISTENT WITH ARTICLE XVI OF THE GATS**

13. The measures imposed by China on the supply of EPS are inconsistent with Article XVI of the GATS because they limit the number of suppliers of EPS for RMB-denominated payment card transactions in China. China maintains numerous measures that ensure CUP's privileged position by explicitly and effectively limiting the number of foreign EPS suppliers. China's State Council and the People's Bank of China ("PBOC") approved and authorized only one entity, CUP, to process inter-bank card-based payment transactions.

14. The terms of certain measures are explicit in their requirements or prohibitions that establish CUP as the exclusive supplier of EPS for RMB denominated domestic payment card transactions in China. Other measures establish requirements or prohibitions that effectively preclude foreign EPS suppliers from being in the market. China's measures that create the monopoly structure and restrict the supply of EPS by foreign suppliers affect every element of the electronic payment system and all of the key participants (issuers, acquiring institutions, merchants, and EPS suppliers themselves) and card-based electronic payment transactions. China has chosen not to offer substantive rebuttal to U.S. claims related to the challenged measures or to the CUP monopoly.

**VI. CHINA'S MEASURES ESTABLISHING AND SUPPORTING CHINA UNIONPAY'S MONOPOLY ON THE SUPPLY OF EPS ARE INCONSISTENT WITH ARTICLE XVII OF THE GATS**

15. The measures at issue affect the supply of services in two principal ways. First, there are measures that impose a limitation such that CUP is the sole entity that can process certain transactions, such as domestic RMB transactions. This of course means that foreign suppliers of EPS are prevented from supplying the service at all. Second, there are measures that promote CUP's position in the marketplace such as by imposing certain requirements on every key player in a card-based electronic payment transaction, including issuers (all cards issued in China for domestic RMB transactions must bear the CUP logo), merchants (all merchant card processing equipment and POS terminals must accept CUP cards), and acquiring institutions (which must post the CUP logo and accept CUP cards).

16. It is important to note that the measures at issue provide disparate treatment solely according to the identity of the EPS supplier: CUP or not CUP. The EPS supplied is the same, and therefore is "like services."

17. China's own documents demonstrate China's concern about the potential competition its domestic supplier of EPS would face from foreign EPS suppliers:

By 2006, the RMB bank card operation shall be opened to the outside world in an all-around manner, and accordingly the bank card industry of our country is facing a comparatively big challenge and we should make use of the limited time to enhance the international competitiveness of our industries.

18. It is unsurprising that the measures at issue here are meant to favor the domestic Chinese entity and accordingly discriminate on that basis.

## **VII. CONCLUSION**

19. The United States respectfully requests that the Panel find that China's measures are inconsistent with China's obligations under Article XVI:1 and XVI:2(a) and Article XVII of the GATS.

## **ANNEX B-2**

### **CLOSING ORAL STATEMENT OF THE UNITED STATES AT THE FIRST SUBSTANTIVE MEETING**

1. The United States would first like to thank the Panel and the Secretariat staff assisting it. The United States would also like to thank China for its participation in this meeting. The United States found that the Panel's written and oral questions were very helpful in fostering a very focused discussion. We also found the third party session useful and consider the third party statements and our meeting confirm our concerns with China's measures.
2. The United States notes that China's defense rests entirely on a series of truly implausible arguments. For example:
3. China expects you to believe that there are no restrictions on foreign EPS suppliers handling RMB card transactions, but no foreign supplier has chosen to enter its market. Is that because foreign suppliers are not eager to enter the Chinese market? Or because the Chinese market is not lucrative enough?
4. China expects you to believe that it took commitments under subsector (d) for "credit, charge and debit cards" but took no commitments for the "payment and money transmission services" we all associate with the use of those cards and that are the heart of the service.
5. China expects you to believe that it restricted the supply of foreign services to "financial institutions" without having used language to indicate that, without any definition of that term, and despite stating in its Schedule that criteria for authorization are solely "prudential."
6. China expects you to believe that it included extensive language qualifying the word "Unbound" under mode 1 for subsector (d), but that those words are entirely redundant of other subsectors, (k) and (l), and that it does not even know why it included those words under mode 1.
7. In contrast, the United States has provided explanations grounded in the text of China's Schedule and the GATS and that are legally sound and fully consistent with the commercial reality of the way EPS for card transactions are supplied.
8. We look forward to further engaging in the process with you and again thank you for your service on the panel.

### **ANNEX B-3**

#### **EXECUTIVE SUMMARY OF THE ORAL STATEMENT OF CHINA AT THE FIRST SUBSTANTIVE MEETING**

##### **I. INTRODUCTION**

1. In the interest of moving expeditiously to the Panel's questions, and in order to avoid repeating the arguments laid out in China's first written submission, I will limit my opening remarks this afternoon to three key issues. These are: (1) the fact that China made no market access or national treatment commitments in respect of clearing and settlement services; (2) the contention by the United States that services that "manage" or "facilitate" the supply of a service, or that relate to the "processing" of another service transaction, are classifiable as that other service; and (3) China's limitation of its Mode 3 market access and national treatment commitments for subsector (d) to foreign financial institutions.

##### **II. CLEARING AND SETTLEMENT SERVICES**

2. Item (xiv) of the *Annex*, which would have been subsector (j) in China's Schedule had China made a commitment for this service, refers to "settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments". Pursuant to Article 31 of the Vienna Convention, any analysis of this provision must begin with the ordinary meaning of its terms.

3. There can be no question that "electronic payment service suppliers" like Visa and MasterCard provide clearing and settlement services. As China demonstrated in its first written submission, these clearing and settlement services are for "financial assets" within the ordinary meaning of that term. The *Oxford Dictionary of Economics*, for example, defines "financial assets" as "[m]oney and claims, as distinct from physical assets such as land, buildings, or equipment", a definition that includes cash and any right to receive cash. In its oral statement, the United States offered nothing to contradict this understanding. Because interbank payment card transactions involve the clearing and settlement of cash or rights to receive cash, these transactions necessarily involve the clearing and settlement of financial assets within the ordinary meaning of item (xiv).

4. The United States has taken the position that all of the services at issue in this dispute should be classified under subsector (d), "all payment and money transmission services". Furthermore, the United States has agreed that the sectors and subsectors in a Member's Schedule are mutually exclusive. Accordingly, the U.S. claims with respect to clearing and settlement services must fail, because these services cannot fall into a subsector that China left unbound and simultaneously fall into subsector (d).

##### **III. SERVICES THAT "MANAGE", "FACILITATE", OR RELATE TO THE "PROCESSING" OF A SERVICE**

5. The cornerstone of the U.S. interpretation of subsector (d) is that the term "payment and money transmission services" includes any service that could be said to "manage" or "facilitate" a payment card transaction, or that relates to the "processing" of a payment card transaction. But subsector (d), properly interpreted, only encompasses payment services that banks and other financial institutions provide to their cardholder and merchant customers. It does not encompass the U.S. notion of "electronic payment services", which are services provided *to* banks by *non-bank* service suppliers.

6. Subsector (d) falls under the heading of "banking services" in China's Schedule, and the ordinary meaning of "banking services" is services provided by banks. Consistent with this heading, China limited its commitments for subsectors (a) through (f) to banks and other types of financial institutions. Properly interpreted in this context, subsector (d) encompasses the issuance and acceptance by financial institutions of payment instruments other than cash.

7. The problem for the United States is that issuance and acquisition are not among the services at issue in this dispute, leaving the United States in the untenable position of having to argue that services which help "manage", "facilitate", or "process" the services actually covered by subsector (d) are likewise properly classified in the same subsector. Taken to its logical extreme, this interpretation would sweep into subsector (d) a large array of telecommunications, data processing, and clearing and settlement services – among other potential services – that are typically supplied to banks and other financial institutions by non-bank service suppliers.

8. The 2001 Scheduling Guidelines state, "[i]t is understood that market access and national treatment commitments apply only to the sectors or sub-sectors inscribed in the schedule. They do not imply a right for the supplier of a committed service to supply uncommitted services which are inputs to the committed service." In many cases, services that "manage" or "facilitate" the provision of another service or that relate to its "processing" could properly be seen as "inputs" to the provision of that service. But a Member's decision to make different commitments (or no commitments) for these "input" services must be given effect.

9. Because clearing and settlement services are properly classified in a subsector that China left uncommitted, and because the United States has failed to prove, in any event, that services that "manage", "facilitate", or "process" payment card transactions are properly classified in subsector (d), the U.S. claims fail at the threshold. However, even accepting the erroneous premise that some or all of the services at issue are classifiable under subsector (d), the U.S. argument with respect to China's commitments in this subsector would require the Panel to reject the U.S. claims in this dispute.

#### **IV. CHINA'S MODE 3 COMMITMENTS FOR SUBSECTOR (D)**

10. The United States claims that all of the market access and national treatment limitations inscribed in China's Schedule for subsector (d) in Mode 3 "were to be eliminated within five years after China's accession." Incredibly, however, the United States has failed to provide any textual support for this assertion in its first submission or its oral statement. What China's market access inscription for subsectors (a) through (f) *actually* says is that "[w]ithin five years after accession, foreign financial institutions will be permitted to provide services to all Chinese clients." The only plausible reading of China's commitments is that China agreed to allow "foreign financial institutions" to "provide services to all Chinese clients" on a commercial presence basis *no later than* December 11, 2006.

11. China can only imagine that the reason why the United States has now forgotten the obvious meaning of China's Mode 3 limitations is because the U.S. claims must fail unless the United States can convince the Panel that these restrictions have disappeared entirely. Per the clear terms of China's Mode 3 commitments, the only types of entities that "will be permitted" to provide the services under subsectors (a) through (f) are "foreign financial institutions". But the United States has not demonstrated that its "electronic payment services" suppliers are financial institutions. In fact, Visa and MasterCard, whose documents the U.S. cites frequently as relevant "industry sources", go out of their way to make clear that they are not financial institutions. As such, China's market access and national treatment commitments in subsector (d) would not extend to these entities, either before or after December 2006.



12. The absence of any relevant commitments brings this dispute to an end. As a final matter, however, China wishes to correct the U.S. mischaracterization of the measures at issue. The United States has failed to identify anything in the challenged measures that would require all interbank payment card transactions to be processed over the CUP network, or that would prevent other networks from processing interbank payment card transactions. Contrary to the U.S. assertion, there is nothing in the challenged measures that establishes any sort of "monopoly". The measures at issue ensure that every interbank payment card in China is capable, at a minimum, of being processed over the CUP network. But establishing a *common* network is not the same as establishing a *monopoly* network.

13. China reiterates, however, that there is neither a need nor a legal basis for the Panel to reach this issue. As prior panels have recognized, the first task before the Panel is to classify the services at issue and determine the extent of the commitments, if any, that China undertook in respect of those services. Because the United States has failed to demonstrate the existence of any such commitments, the U.S. claims fail at the threshold and must be dismissed in their entirety.

14. China thanks the Panel for its attention, and looks forward to answering its questions.

---



**ANNEX C**

**THIRD PARTY SUBMISSIONS**

<b>Contents</b>		<b>Page</b>
Annex C-1	Integrated executive summary of the third party written submission and oral statement of Australia	C-2
Annex C-2	Third party oral statement of Ecuador at the first substantive meeting	C-7
Annex C-3	Integrated executive summary of the third party written submission and oral statement of the European Union	C-10
Annex C-4	Integrated executive summary of the third party written submission and oral statement of Japan	C-13
Annex C-5	Integrated executive summary of the third party written submission and oral statement of the Republic of Korea	C-19

## ANNEX C-1

### INTEGRATED EXECUTIVE SUMMARY OF THE THIRD PARTY WRITTEN SUBMISSION AND ORAL STATEMENT OF AUSTRALIA

#### I. INTRODUCTION

1. These proceedings, initiated by the United States, present Members with an important opportunity to consider the interpretation of Members' obligations under the Schedule of Specific Commitments under the General Agreement on Trade in Services (GATS).
2. Australia has identified the following key matters, which raise issues of legal importance:
  - a. The meaning of the words "all payment and money transmission services" in subsector 7B(d) of China's Schedule of Specific Commitments under the GATS (China's Schedule);<sup>1</sup>
  - b. The scope of China's GATS commitments under subsector 7B(d); and
  - c. Interpretation of the sectoral classifications used by Members in their GATS Schedules.

#### II. THE GENERAL AGREEMENT ON TRADE IN SERVICES

##### A. THE MEANING OF "ALL PAYMENT AND MONEY TRANSMISSION SERVICES"

3. A material issue in this matter is the meaning of the words "all payment and money transmission services" in subsector 7B(d) of China's Schedule, and whether the services at dispute are captured by this provision.
4. The United States contends that subsector 7B(d) of China's Schedule captures "electronic payment services" (as defined by the United States in its Request for Establishment of a Panel).<sup>2</sup> China submits that the services at dispute are correctly characterised as "network operator" and "network services".<sup>3</sup> China's view is that these services are classified under an alternative subsector, which China has left unbound in its Schedule – namely, "settlement and clearing services for financial assets" as set out in sub-paragraph 5(a)(xiv) of the *Annex on Financial Services* (Annex).<sup>4</sup>
5. Australia submits that, having regard to the ordinary meaning of the terms, the phrase "all payment and money transmission services" should be interpreted broadly to encompass services which are integral to payment and money transmission services, including services which manage and facilitate credit card based payments.
6. Australia therefore submits that the services described by both the United States and China in their submissions may be correctly classified under subsector 7B(d) of China's Schedule. In particular, the services that the United States refers to as "electronic payment services", involve services through

---

<sup>1</sup> Section II, 7 (Financial Services), B (Banking and Other Financial Services) of China's Schedule (circulated in WT/ACC/CHN/49/Add.2 and WT/MIN(01)/3/Add.2), item (d).

<sup>2</sup> See page 1 and note 2 of *China – Certain Measures Affecting Electronic Payment Services*, WT/DS413, U.S. Request for the Establishment of a Panel, February 11, 2011.

<sup>3</sup> See para 24 of *China – Certain Measures Affecting Electronic Payment Services*, WT/DS413, First Submission of China, October 11 2011 (China 11 October First Submission).

<sup>4</sup> See para 11 of China 11 October First Submission.

which transactions involving payment cards are processed, and through which transfers of funds between institutions participating in the transaction are managed and facilitated.<sup>5</sup> By managing and facilitating the transfer of money or payment from one person or place to another, Australia agrees that credit card based payment service suppliers engage in both "payment and money transmission services" and thus fall under subsector 7B(d).

7. Similarly, Australia submits that the meaning of "all payment and transmission services" correctly captures the services described by China. That is, the services described by China, including clearing and settlement services as they relate to credit card based payments, are fundamental components of card based transactions. Indeed, without the processing infrastructure, network and rules and procedures, which China refers to as "telecommunications and data processing infrastructure",<sup>6</sup> card based payment transactions could not occur. These services are fundamental to the transmission of funds in a card based transaction.

8. The Appellate Body has found that under Article 31 of the Vienna Convention on the Law of Treaties (1969) (Vienna Convention), the ordinary meaning of treaty terms may be ascertained only in their context, and in light of the object and purpose of the treaty.<sup>7</sup> The Appellate Body has accepted that Members may therefore refer inter alia to a Member's GATS Schedule, provisions of the GATS, and the GATS Schedules of other Members as relevant context in determining the meaning of a scheduled commitment.<sup>8</sup>

9. To this end, Australia notes that China has included the words "including credit, charge and debit cards, travellers cheques and bankers drafts (including import and export settlement)" in its Schedule, as examples of activities envisaged under "all payment and money transmission services". The inclusion of these additional words in "all payment and money transmission services", further supports the view that subsector 7B(d) was at least intended to cover the services under dispute. In particular, inclusion of these words makes it clear that services which manage and facilitate the transmission and processing of money and payment transactions, such as through the use of payment cards (i.e. credit and debit cards), fall within the confines of China's market access and national treatment commitments.

10. In addition, Australia submits that reference to the provisions of the GATS provides further relevant context for interpretation of subsector 7B(d) of China's Schedule. Paragraph 5(a) of the Annex sets out a detailed list of activities falling under the meaning of financial services, which evidences the intention of the negotiators to cover comprehensively the activities of the financial sector. In particular, sub-paragraph 5(a)(viii) of the Annex refers to "credit, charge or debit cards" as examples of activities envisaged under "all payment and money transmission services". This clarifies that members intended that credit card and debit card transmission services are categories of financial services, for which Members may choose to make commitments.

11. Reference to the other categories under paragraph 5(a) of the Annex also provides additional context informing the meaning of "all payment and transmission services". China submits that the services relating to card based transactions at dispute, including clearing and settlement services, more appropriately fall under sub-paragraph 5(a)(xiv) of the Annex, which relates to "settlement and

---

<sup>5</sup> See para 155 of *China – Certain Measures Affecting Electronic Payment Services*, WT/DS413, Submission of the United States of America in Response to China's Request for a Preliminary Ruling, July 29, 2011 (including Exhibits US-1 - US-62) (U. S. July 29 Response) sections V.B, V.C, V.D.

<sup>6</sup> See para 72 of China 11 October First Submission.

<sup>7</sup> See para 348 of *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/AB/R (*China – Publications and Audiovisual Products*), citing article 31, *Vienna Convention on the Law of Treaties*, 1969.

<sup>8</sup> *Ibid*, at para. 358.

clearing services for financial assets". Australia submits that this subsector concerns settlement and clearing services for financial assets, other than card based transactions. Australia notes that sub-paragraph 5(a)(xiv) includes the words "securities, derivative products and other negotiable instruments", as examples of the subject of the transactions envisaged by "settlement and clearing services for financial assets". The distinguishing quality of sub-paragraph 5(a)(xiv) is that it concerns services relating to financial assets.

12. In addition, unlike sub-paragraph 5(a)(viii), sub-paragraph 5(a)(xiv) does not make specific reference to "credit, charge and debit cards". Australia submits that inclusion of the words "credit, charge or debit cards" under "all payment and money transmission services" in sub-paragraph 5(a)(viii), further supports the view that credit and debit card transactions, including clearing and settlement services in so far as they are integral to card based transactions, more appropriately fall under sub-paragraph 5(a)(viii) of the Annex, rather than sub-paragraph 5(a)(xiv).

13. Article 32 of the Vienna Convention provides that recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion in order to confirm the meaning resulting from the application of Article 31.<sup>9</sup> In the US-Gambling dispute, the Appellate Body noted that the Services Sectoral Classification List (MTN.GNS/W/120, 10 July 1991) "constitutes supplementary means of interpretation, including the preparatory work of the treaty."<sup>10</sup> W/120 appears to have been the starting point for China's Schedule, which sets out its categories and entries, under the heading of "B. Banking and Other Financial Services (excluding insurance and securities)", by using similar entries, including numbering and letters, as those contained in the "Banking and other Financial Services (EXCL. insurance)" section of W/120. Importantly, subsector 7(B)(d) of W/120 only refers to "all payment and money transmission services", such that China's inclusion of the additional words "including credit, charge and debit cards, travellers cheques and bankers drafts" clarifies that services which facilitate the transmission of money and payment transactions, such as through the use of payment cards (i.e. credit and debit cards), fall within subsector 7B(d) in China's Schedule.

14. It therefore follows that the services at dispute, described by the United States and China respectively as "electronic payment services" and/or "network services", are correctly classifiable under subsector 7B(d) of China's Schedule.

#### B. CHINA'S GATS COMMITMENTS ON FINANCIAL SERVICES

15. Another important matter in this dispute is the interpretation of China's scheduled services commitments under subsector 7B(d). Australia notes that this is a complex area, not least because not all Members have followed the scheduling Guidelines in all instances.

16. Australia notes the WTO Secretariat takes the view that all commitments in a Member's Schedule are bound unless otherwise specified.<sup>11</sup> If a member wishes to remain free in a given sector and/or mode of supply (i.e. where it wishes to retain the flexibility to introduce or maintain limitations on market access or national treatment) the Member will enter the term "unbound" in its Schedule of Specific Commitments. Conversely, where a Member wishes to bind itself to a market access and/or national treatment commitment, for which it maintains no limitations, it will enter "none" with respect

---

<sup>9</sup> See paras 404 and 405 of Appellate Body Report, *China – Publications and Audiovisual Products*.

<sup>10</sup> See para 196 of Appellate Body Report in *United States – Measures Affecting the Cross Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, adopted 20 April 2005, DSR 2005:XII, 5663 (Corr.1, DSR 2006:XII, 5475)

<sup>11</sup> See WTO's "Guide to reading the GATS schedules of specific commitments and the list of article II (MFN) exemptions" at [http://www.wto.org/english/tratop\\_e/serv\\_e/guide1\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/guide1_e.htm)

to the relevant sector or mode. A Member may also make a commitment with limitations by providing specific explanation in the text of the Schedule.

17. In addition, Australia recognises the point made by the European Union in its submission, that Article I:2(c) of the GATS defines mode 3 services as the supply of a service "by a service supplier of one member, through commercial presence in another Member".<sup>12</sup> Importantly, if a Member wishes to limit the service suppliers that are permitted to provide a particular service, then it must explicitly inscribe such a limitation in its schedule of commitments.

18. Australia is of the view that a proper interpretation of China's commitments with regard to subsector 7B(d) is as follows. Under the "market access" column for subsector 7B(d), China has inscribed neither "Unbound" nor "None" with respect to mode 3. Australia submits that other than the prudential licensing limitations on foreign financial entities, China's Schedule should be interpreted as "otherwise, none" as to any further limitations relating to subsector 7B(d). Similarly, given the expiry of the geographic and client restrictions in 2006, there are no limitations relating to China's national treatment commitments. This is confirmed by the inclusion of the words "otherwise, none" under "national treatment".

19. It is therefore Australia's view that the commitments made by China with respect to subsector 7B(d) are not limited to foreign financial institutions, as claimed by China, as no such limitation has been inscribed in its Schedule. Australia submits that although China has inscribed certain limitations and clarifications under "market access" and "national treatment", which relate to foreign financial institutions, this does not mean that its commitments are limited to foreign financial institutions. If this were the case, China would have included the words "unbound except" or "otherwise unbound" in its Schedule, as indeed it has with respect to mode 1.

#### C. INTERPRETATION OF THE SECTORAL CLASSIFICATION USED IN GATS SCHEDULES

20. In its submission, China highlights the importance of interpreting GATS Schedules in line with the 2001 Scheduling Guidelines. Australia agrees with China's position that the system of classifying services would "collapse" if distinct and separately identifiable services could be classified under another sector or subsector, simply because they manage or facilitate or relate to the processing of that service. Australia acknowledges that sectors and subsectors in a Member's Schedule are mutually exclusive, and agrees that preserving this reading of the architecture of the Schedules is fundamental to a meaningful interpretation of Members' commitments.

21. Australia remains of the view, however, that "electronic payment services" or "network services" are a fundamental component of credit card based payment services, and should properly be included under the definition of "all payment and money transmission services". To this end, Australia reiterates that, based on the application of Article 31 of the Vienna Convention, "all payment and money transmission services" should be interpreted to encompass services that are integral to payment and money transmission services, including services which manage and facilitate credit card based payments.

### III. CONCLUSION

22. Central to this dispute are a number of important systemic issues concerning the interpretation of Members' GATS Schedules. As set out above, Australia submits that subsector 7B(d) "all payment and money transmission services, including credit, charge and debit cards, travellers cheques and

---

<sup>12</sup> See para 34 of *China – Certain Measures Affecting Electronic Payment Services*, WT/DS413, Third Party Submission of the European Union, October 18 2011.

bankers drafts (including import and export settlement)" should be interpreted broadly, so as to include services essential to card based payment services, including services which manage and facilitate credit card based payments, and clearing and settlement services insofar as they relate to card transactions. Further, Australia has offered some views on how China's GATS Schedule should be interpreted, noting the importance of interpreting GATS Schedules consistently with the 2001 Scheduling Guidelines.



## ANNEX C-2

### THIRD PARTY ORAL STATEMENT OF ECUADOR AT THE FIRST SUBSTANTIVE MEETING

#### I. INTRODUCTION

1. Members of the Panel: The Government of Ecuador thanks the Panel and the Parties for this opportunity to present its views on certain issues involved in this dispute. Ecuador is participating in this case given its systemic concerns with regard to the correct interpretation of the Schedules of specific commitments in services undertaken by Members and, hence, the correct legal interpretation of the General Agreement on Trade in Services (GATS).

2. In this oral submission, the Government of Ecuador will focus on briefly highlighting two legal aspects relating to: (i) specific guidelines for interpreting commitments under the General Agreement on Trade in Services (GATS); and (ii) the scope of the obligations under Articles XVI and XVII of the GATS in relation to monopolies.

#### II. GUIDELINES FOR INTERPRETING GATS COMMITMENTS

##### A. COMMITMENTS IN SERVICES ARE THE RESULT OF POSITIVE LIST NEGOTIATIONS

3. A reading of the GATS reveals that Members decided that their services commitments were contingent upon public policy spaces in the area concerned that they had chosen to protect. Parallel to this, in their positive lists, they established independently the level and scope of and restrictions on those spaces. The fourth recital of the preamble to the GATS confirms the importance attached by Members to the link between public policies and specific commitments by recognizing the right of Members to "... regulate, and to introduce new regulations on, the supply of services within their territories in order to meet national policy objectives".

4. It is evident from a review of a number of GATS provisions, for example Articles XVI, XVII, XVIII, XIX and XX, that Members have decided to grant market access and non-discriminatory treatment to foreign services suppliers *solely and exclusively* in the sectors or subsectors included in their schedules of specific commitments. Members may, in full compliance with GATS rules, undertake, amend or eliminate commitments, notably on market access and non-discrimination, on the basis of public policies the definition of which corresponds to each individual Member. In short, as far as trade in services is concerned, market access and non-discrimination are restricted to the level of the commitments that Members agreed to undertake.

5. As a result, there is no room for interpretation as regards the scope of specific services commitments in the schedules of original commitments when, in spite of the complexity of the issue, these commitments have been clearly specified by a Member. To seek to broaden the scope to cover other sectors by means of an expansive interpretation of the schedule of specific commitments would constitute an unacceptable impairment of Members' right to define its scope and content.

6. The interpretation of specific commitments should take into account the context and the object and purpose of the GATS, which indicate that specific commitments are established solely on the basis of the positive list of commitments, and thereby avoid attempts, by means of interpretation, to broaden the range of these commitments to cover sectors that are not included.

B. IN THE EVENT OF THE EXISTENCE OF TWO SPECIFIC COMMITMENTS ON THE SAME SERVICE, THE MORE SPECIFIC COMMITMENT TAKES PRECEDENCE

7. A general legal principle is that a special law prevails over a general law. This principle is applied, *mutatis mutandis*, to the disciplines of the various covered agreements set forth in Appendix 1 to the Understanding on Rules and Procedures Governing the Settlement of Disputes. In the context of the interpretation of specific services commitments, there is no reason why this general legal principle should not apply to the legal relationship between the specific commitments that a Member has undertaken in respect of the other Members of this Organization, all the more so since the rules on the classification of services state that the most specific description of the sectors or subsectors that could correspond to a services commitment shall prevail over a more general description.<sup>1</sup> The criterion of the primacy of the special law over the general law forms a constituent part of legal hermeneutics, which cannot be left unaddressed in the review of the scope of specific GATS commitments.

C. THE TERMS OF COMMITMENTS MUST BE INTERPRETED *STRICTO SENSU*

8. The **specific** commitments undertaken by Members are based *ab initio* on a number of **specific** trade concessions which **facilitate** market access or **reduce** or **eliminate** discrimination between domestic and foreign suppliers in relation **only** to committed sectors of trade in services. This involves the voluntary imposition of self-restraint with regard to the power to implement national policies relating to these sectors or subsectors, through the regulation of the supply of services or the establishment of new regulations.

9. In light of the above, a broad and unrestricted interpretation of the specific services commitments undertaken by Members could lead, in practice, to Members disregarding the specificities that characterize the supply of services of a different nature. This would not only weaken the predictability of the multilateral trading system but would undermine Members' power to regulate trade in services on the basis of the self-restraint imposed, where this exists.

10. An excessively broad interpretation of, for example, the descriptors established in the classification of the schedules of specific commitments could therefore open the way for attempts to include commitments where they do not exist, which means covering more than what it was voluntary agreed upon to liberalize.

11. For instance, the term "payment" is defined as the "handover of money or kind that is owed".<sup>2</sup> This term is clear in its common usage and should therefore be interpreted *stricto sensu* with regard to the effective transfer of resources, which means excluding from its coverage any step or action that facilitates or administers a "payment", even if it is a related service.

D. THE CHARACTERIZATION OF A SERVICE BY THE INDUSTRY DOES NOT NECESSARILY DETERMINE THE NATURE OF THE SERVICE

12. In Ecuador's view, the industry's characterization of a service does not determine the nature of that service. It is clear that when negotiating their schedules of specific commitments Members established the scope of the specific sectors or subsectors that they were prepared to liberalize, i.e. they defined the types of services for which they would open up markets and grant national treatment. It is therefore up to the Members to define what is meant by a specific service.

---

<sup>1</sup> United Nations Provisional Central Product Classification (CPC), Rule of interpretation 1(a).

<sup>2</sup> *Diccionario de la Lengua Española*, 22<sup>nd</sup> edition, volume 2, p. 1647.

13. The fact that one or several companies decide to describe the services they supply as "payment services" does not necessarily confer that character upon them. In defining what they do internally, companies may be guided by categories or definitions that will not necessarily coincide with Members' understanding as established and assumed in the schedules of specific commitments. Moreover, these categories or definitions may vary from company to company, sector to sector, or even country to country.

14. In order to determine the nature of services, an assessment should be made of the objective characteristics of the facts, and of the services provided by the service supplier and their customers or consumers. If, for example, the services offered by a service supplier consist of data transmission, digital trade facilitation or data storage, it is difficult to argue that they can be characterized as "payment services".

15. The legal value of the characterization of a service in the light of the opinion of its suppliers is therefore questionable, as not only would subjective criteria and private interests be privileged, but there would also be a risk of impairing rights which the Members are responsible for defining.

### **III. SCOPE OF THE OBLIGATIONS UNDER ARTICLES XVI AND XVII OF THE GATS IN RELATION TO MONOPOLIES**

#### **A. SERVICES PROVIDED BY A MEMBER'S MONOPOLIES AND EXCLUSIVE SERVICE SUPPLIERS ARE ONLY LIMITED BY THE SPECIFIC COMMITMENTS UNDERTAKEN BY THAT MEMBER**

16. In Ecuador's view, it is important to note that the services provided by a Member's monopolies and exclusive service suppliers will only be limited by the level of the specific commitments that this Member has included in its schedule of commitments. In this respect, the provisions of Articles VIII, XVI and XVII converge in specifying that the monopolies and exclusive service suppliers of a Member may operate without any restriction unless market access commitments are undertaken in the sectors in which they operate and/or where national treatment has been granted "in the sectors inscribed in its Schedule [in that of the Member], and subject to any conditions and qualifications set out therein ...".

17. In conclusion, it should be noted that if a Member has not undertaken any commitment in its schedules of commitments, i.e. if it has entered the term "unbound" for the sector, or left the sector blank, it will be taken to mean that there is no commitment in favour of either foreign suppliers (market access) or domestic suppliers (national treatment) and that, as a result, both types of supplier will be equally impeded from supplying the services that Members have reserved for designated monopolies or exclusive service suppliers.

### ANNEX C-3

#### INTEGRATED EXECUTIVE SUMMARY OF THE THIRD PARTY WRITTEN SUBMISSION AND ORAL STATEMENT OF THE EUROPEAN UNION

##### **I. THE MEASURES AT ISSUE**

1. The EU agrees with the US that measures can be subject to challenge individually as well as collectively and that, when this is necessary to assist the DSB in discharging its duties, the panel should review both.

2. When provisions of certain individual measures together and collectively amount to a general scheme and that scheme nullifies or impairs the benefit of a Member, such a scheme can be construed as a measure. The scheme as a whole is therefore susceptible to review, provided it can be defined with sufficient precision in the panel request.

##### **II. WHETHER CHINA'S SPECIFIC COMMITMENTS IN ITS GATS SCHEDULE INCLUDE ELECTRONIC PAYMENT SERVICES FOR PAYMENT CARD TRANSACTIONS**

3. China argues in favour of a narrow reading of its scheduled commitment for "all payment and money transmission services" and a broad reading of a sector as defined in the *Annex on Financial Services* to the GATS, with respect to which it did not schedule any commitments; namely "settlement and clearing services for financial assets".

4. In the view of the EU the ordinary meaning of China's commitments relating to "all payment and money transmission services" does not support the narrow reading advanced by China and consequently does not warrant the conclusion that the services at issue are excluded from its commitments.

5. Firstly, China's Schedule uses the term "banking services" not "services of banks". Explicit terminology used by China in its Schedule fully supports the view that China's commitments under "Banking services" are not solely and exclusively related to banks, but also "suppliers of other financial services" (Section II.7.B, Subsector (d), second column, Mode 1, first indent) and "foreign financial institutions" (Section II.7.B, Subsector (d), second column, Mode 3, points B and C ).

6. Secondly, China has undertaken specific commitments with respect to a category of "services", as opposed to a category of "service providers". This is clear from the text of the individual commitment under Section II.7.B, Subsector (d), as well as its heading and subheading. Nothing in the text of China's Schedule of Specific Commitments supports China's argument that the supply of "payment and money transmission services" pursuant to China's GATS Schedule is limited to certain entities. It may therefore be concluded that these services can be offered by any financial service supplier. In fact, Article 5(b) of the GATS *Annex on Financial Services* makes it clear that the Annex introduces a very wide definition of financial service suppliers. Furthermore, in order to be a financial service supplier under the GATS the natural or judicial person does not, in principle, need to be previously or solely engaged in the supply of financial services.

7. Thirdly, the Panel may consider and examine the differences in meaning between subparagraphs (viii) and (xiv) of Paragraph 5 of the GATS *Annex on Financial Services*.

8. In the opinion of the EU, "payment and money transmission services" cannot take place without the actual transfer of money between one party and another. This would necessarily entail a process of "clearing" and "settlement", or basically the removal or debiting of funds from the accounts of one person or entity, in order to pay or credit the accounts of another person or entity. This process is an essential part of the operations of any credit, charge or debit card system, and without this transfer of funds the system simply will not work.

9. The EU is of the opinion that the term "electronic payment services", the services at issue in this dispute, falls within the meaning of sub-paragraph (viii) of paragraph 5 of the GATS *Annex on Financial Services* and within paragraph (d) listed in China's GATS Schedule of Specific Commitments. The meaning of "all payment and money transmissions services" is wide enough to include "electronic payment services" that the US refers to. Moreover, the fact that this phrase is then followed by the words "including credit, charge and debit cards", also clearly indicates that the term "electronic payment services" would also fall under this definition.

10. The term "clearing and settlement for financial assets", does not relate to "credit, charge and debit cards", which clearly and specifically fall under the definition of paragraph 5 (viii) of the GATS *Annex on Financial Services*. Moreover, paragraph 5 (xiv) gives examples of the "financial assets" which could fall within its definition, namely "securities, derivative products and other negotiable instruments". Credit cards, debit cards or charge cards which are the subject of this present dispute are very distinct from the "financial assets" that paragraph 5(xiv) is referring to. The "clearing and settlement services" involved in the trading (buying and selling) of "securities, derivative products and other negotiable instruments", are separate and distinct from the "payment and money transmission services" which take place when there is a transfer of funds between different persons or entities, in order to settle "credit, charge or debit card" transactions.

### **III. WHETHER CHINA'S MEASURES ARE INCONSISTENT WITH ARTICLE XVI OF THE GATS**

11. Article XVI of the GATS sets forth the obligations on market access, which apply where a WTO Member has taken specific commitments in a given service sector. In its second paragraph it inter alia prohibits WTO Members from maintaining or adopting "limitations on the number of service suppliers", unless appropriate reservations have been made in their Schedule of Specific Commitments.

12. It is clear from China's Schedule of Specific Commitments that China made market access commitments with respect to Section II.7.B, Subsector (d) of its Schedule. It is also evident from the text of the commitment that certain limitations exist (or existed) with respect to Mode 1 and Mode 3.

13. The parties disagree on the exact scope of the commitments. In the view of the EU, anything that is not explicitly included in the scheduled limitation falls under China's commitment to provide market access. Nothing in the text of the reservations previously mentioned provides for a limitation on the number of service suppliers scheduled by China; not in general terms, nor specifically in favour of China Union Pay. China did not argue otherwise in its First Written Submission. Furthermore, the EU notes that China does not seem to dispute the fact that the measures at issue in this dispute result in a privileged position for China Union Pay (China's First Written Submission, paras 36-46, 54-57). It is therefore clear that in the absence of a scheduled limitation, China is subject to the obligations under Article XVI.

#### **IV. WHETHER CHINA'S MEASURES ARE INCONSISTENT WITH ARTICLE XVII OF THE GATS**

14. In order to review a claim under Article XVII of the GATS, one must assess: Firstly, whether China's Schedule of Specific commitments includes national treatment commitments on electronic payment services. Secondly, whether there are "like" services/suppliers. And thirdly, whether maintaining such measures amounts to less favourable treatment than that granted to domestic services and suppliers; that is (a) whether the measure modifies the conditions of competition and (b) whether this modification is in favour of domestic services and suppliers.

15. In the few cases in which the term "like" as it appears in the GATS has been interpreted so far, the services and suppliers at issue were found to be "like". This was done essentially by looking at the similarity of the activity performed and of the result of such activity (that is the service itself).

16. The EU agrees with the reasoning of the panel in China – Publications and Audiovisual Products, also referred to by the US in its First Written Submission. In that case the panel took the view that when origin is the only factor on which a measure bases a difference of treatment between domestic service suppliers and foreign suppliers, the "like service suppliers" requirement is met, provided there will, or can, be domestic and foreign suppliers that under the measure are the same in all material respects except for origin. On the basis of the information presently before it, the EU observes that the measures at issue in this dispute appear to differentiate solely on the basis of the identity of the service supplier.

#### **V. RELATIONSHIP BETWEEN ARTICLES XVI AND XVII OF THE GATS AGREEMENT**

17. In the absence of scheduled limitations, Article XVII GATS prohibits any form of discrimination, de facto or de iure, against foreign services and foreign service suppliers. As this provision applies to all measures affecting service supply, it also covers any discriminatory measure of the types mentioned under Article XVI:2 GATS. In that respect it overlaps with Article XVI. More specifically, any measure that falls under Article XVI:2(a)-(d) that restricts market access and that is discriminatory, and all discriminatory restrictions concerning legal entity or foreign equity participation that fall under Article XVI:2(e)-(f), would then be covered by the Articles XVI and XVII.

18. The text of Article XX:2 GATS confirms that there is a potential overlap between Articles XVI and XVII GATS and provides guidance on avoiding problems and unintentional commitments when scheduling limitations. Following Article XX:2, Members that have scheduled as limitations in their market access column any of the measures listed under Article XVI:2, do not need to schedule such limitations twice. But in order to exempt themselves from obligations under Article XVII, they would still have to schedule in the national treatment column any discriminatory measure that does not fall under the categories set out in Article XVI:2.

19. Article XX:2 establishes a hierarchy with respect to the scheduling of limitations to specific commitments under Articles XVI and XVII GATS. However, it does not establish a hierarchy as to the substance of those provisions.

## ANNEX C-4

### INTEGRATED EXECUTIVE SUMMARY OF THE THIRD PARTY WRITTEN SUBMISSION AND ORAL STATEMENT OF JAPAN

#### I. THE SERVICES AT ISSUE

1. The United States describes the services at issue as "electronic payment services" ("EPS") supplied either on a cross-border (Mode 1) or commercial presence (Mode 3) basis. In its panel request, the United States indicates that EPS involve "[...] the services through which transactions involving payment cards [...] are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated."<sup>1</sup>

2. In response, China contends in its First Written Submission ("FWS") that the services at issue must be determined by taking into account the overlap of two factors: (1) the United States' definition of the services at issue, as set out in the panel request; and (2) the scope and effect of the challenged measures.<sup>2</sup> Thus, China concludes that the services at issue are limited to what China describes as "network services".<sup>3</sup> Since the definition of the services at issue can influence all issues related to the application of the GATS, Japan would request the Panel to carefully examine the definition of the service at issue.

#### II. CHINA'S GATS COMMITMENTS

##### A. THE RELEVANT SECTOR OR SECTORS

3. The United States claims that the EPS it has identified are covered by sub-sector 7.B(d) of China's GATS Schedule.<sup>4</sup> In response, China contends that there is no specific commitment in its Schedule which is relevant to the services at issue, and rather that they are classifiable under item (xiv) of the Annex on Financial Services which is unbound in China's Schedule.

4. Although what the relevant service sub-sector or sectors are in this dispute is still not definitive, Japan would recall that, as the Appellate Body in *US-Gambling* made clear, the meaning of a GATS Schedule of a Member must be determined according to the rules contained in Article 31 of the Vienna Convention on the Law of Treaties ("Vienna Convention") and, if necessary, Article 32.<sup>5</sup>

##### 1. Sub-sector 7.B(d) of China's GATS Schedule

5. Two parties have drawn different conclusions regarding the meaning and scope of its commitments in sub-sector 7.B(d) of China's Schedule. The main point of contention is whether the phrase "All payment and money transmission services" only covers services which actually involve

---

<sup>1</sup> See footnote 1 of U.S. Request for the Establishment of a Panel, *China – Certain Measures Affecting Electronic Payment Services*, WT/DS413/2, February 11, 2011.

<sup>2</sup> First Submission of China, October 11, 2011 (China FWS), para. 61.

<sup>3</sup> *Ibid.*, paras. 63-65.

<sup>4</sup> Sub-sector 7.B(d) of China's GATS Schedule provides that "All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts (including import and export settlement)".

<sup>5</sup> Appellate Body Report in *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, para. 160.

making a payment or transmitting money, or whether the commitment also extends to any services which are "essential" to the execution of those services.<sup>6</sup>

6. In this regard, Japan notes that item (xiv) of the Annex on Financial Services concerning "settlement and clearing services for financial assets" is one source of relevant context. The question is whether the service at issue involves "settlement" and/or "clearing services" within the meaning of item (xiv) which is unbound in China's Schedule.

## **2. China's all or nothing proposition**

7. In its FWS, the United States argues that all of the services at issue fall within the scope of sub-sector 7.B(d). Further, the United States recalls that, as the Appellate Body stated in US-Gambling, a specific service cannot fall within the two different sectors or sub-sectors since they are "mutually exclusive".<sup>7</sup> In response, China argues that the Panel must refuse to find that any of the services at issue fall within the scope of sub-sector 7.B(d) if it agrees that three of the five services cited by the United States in its panel request fall within "settlement" and/or "clearing" services within the meaning of item (xiv) of the Annex on Financial Services.<sup>8</sup>

8. To the extent that any of the services do fall within the scope of "settlement and clearing services", it must be determined which service sector or sub-sector (or sectors) is applicable to the remaining services. In Japan's view, no Vienna Convention principle would permit the Panel to find that the remaining services also fall within the scope of item (xiv) solely on the basis that the "majority" of the other services challenged fall within the scope of that provision. Moreover, along the same lines, if the Panel finds that any of the services at issue are classifiable under sub-sector 7.B(d) of China's Schedule, the mere fact that the United States claims that all such services fall within the scope of China's commitment cannot preclude the Panel from analyzing the United States' claims with respect to any services which do fall within the scope of that sub-sector.

## **3. Limitations on China's "payment and money transmission services" commitment**

9. If the EPS which the United States describes in its panel request fully or partially fall within the scope of sub-sector 7.B(d) of China's GATS Schedule, a further issue is whether China has inscribed market access and national treatment limitations on the services at issue.

10. The United States has clarified that it is pursuing claims in relation to both Mode 1 and Mode 3 services for both Article XVI and Article XVII claims. Furthermore, it has also frequently stated that China imposes no relevant limitations on both Mode 1 and 3 services in sub-sector 7.B(d) of its Schedule.<sup>9</sup> In response, China claims that it has no relevant commitment in sub-sector 7.B(d). As regards Mode 1, it states that it has inscribed "unbound" in the market access column for those services. As regards Mode 3, China argues that its commitments only apply with respect to financial institutions.

11. In relation to Mode 1, Japan requests the Panel to carefully consider the precise scope of China's sub-sector 7.B(d) commitment. For Mode 3, Japan specifically requests the Panel to consider whether the interpretation by China is consistent with entries in other parts of its Schedule, especially those concerning "All Insurance and Insurance-Related Services" and "Securities" which are also contained in Sector 7 on Financial Services. The question is whether any entity that provides a

---

<sup>6</sup> First Submission of the United States, September 13, 2011 (US FWS), para. 22.

<sup>7</sup> US FWS, para. 24.

<sup>8</sup> China FWS, paras. 89-93.

<sup>9</sup> See, e.g., US FWS, paras. 41,77.



financial service covered by those commitments is necessarily included in the concept of "financial institution" under China's commitments.

### III. ARTICLE XVI OF THE GATS

12. The United States considers that the measures imposed by China on the supply of EPS are inconsistent with Article XVI:2(a) of the GATS because they limit the number of suppliers of EPS for renminbi ("RMB")-denominated transactions that are paid in RMB.<sup>10</sup>

13. China does not contend that the measures at issue would not violate Article XVI:2(a) of the GATS, even if the relevant measures are bound by its market-access commitments. Nevertheless, should the Panel determine that Article XVI is applicable to the measures in question, it needs to be specifically considered whether the United States has demonstrated a prima facie case.<sup>11</sup> Thus, if the services which the United States complains about are only partially covered by China's commitments, the Panel should ensure that the United States has demonstrated that the relevant measure (or set of measures) affects the supply of the covered service and otherwise has the Article XVI:2(a) impact which the United States claims (e.g. a monopoly) with respect to the covered service.

### IV. ARTICLE XVII OF THE GATS

14. China contends that the Article XVII national treatment claims of the United States must fail on the basis that (1) they are the same measures that are the foundation of its market access claims; and (2) Articles XVI and Article XVII are mutually exclusive.<sup>12</sup> In other words, China seems to claim that any measure which violates Article XVI cannot constitute the violation of Article XVII.

15. To support its view that Articles XVI and XVII are mutually exclusive, China points to Article XX:2 of the GATS. In China's view, finding that measures which confer a monopoly contrary to Article XVI are also discriminatory under Article XVII would be directly contrary to this order of precedence established by Article XX:2. China also notes that, if a monopoly could be discriminatory under Article XVII, separate and apart from the effect that it has on market access under Article XVI, a Member would need to schedule the "discriminatory" aspects of a monopoly in its national treatment column, even if it had left market access unbound and thereby reserved the right to maintain exactly the same monopoly.<sup>13</sup>

16. In Japan's view, the Chinese claim that Articles XVI and XVII are mutually-exclusive needs to be examined by taking into account Article XX:2 of the GATS and paragraph 18 of the 2001 Scheduling Guidelines(S/L/92).<sup>14</sup> Japan also ask the Panel to take into account the following: (1) whether the scope of the measures challenged by the United States under both Article XVI and Article XVII in fact overlap; and (2) whether the possibility for a measure to violate both Article XVI and Article XVII may depend on the way of committing market access and limitations applicable to the measure at issue.

---

<sup>10</sup> US FWS, para. 37.

<sup>11</sup> See Appellate Body Report, *US-Gambling*, paras. 140-141.

<sup>12</sup> China FWS, paras. 148, 154-156.

<sup>13</sup> China FWS, para. 155.

<sup>14</sup> *Ibid.*, paras. 155, 157.

<sup>14</sup> Guidelines for the Scheduling of Specific Commitments Under the General Agreement on Trade in Services(GATS), adopted by the Council for Trade in Services on 23 March 2001, S/L/92, 28 March 2001.

## V. ORAL STATEMENT

### A. INTRODUCTION

17. Mr. Chairman, members of the Panel: Thank you for the opportunity to present the views of Japan in this third party session. Today, Japan will focus on one point: namely, the extent of China's Mode 3 commitments for "All payment and money transmission services".

18. If the Panel finds that all or part of the services at issue fall within the scope of "All payment and money transmission services", as contained in sub-sector 7.B(d) of China's GATS Schedule, China takes the view that the Panel should dismiss all of the United States' claims related to Mode 3 on the basis that its Mode 3 commitments are limited to "financial institutions".<sup>15</sup> Japan will address whether China has in fact limited its Mode 3 "All payment and money transmission services" commitments to "financial institutions".

19. It is worth noting, before arguing this issue in detail, that the China's argument is without merit if the term "financial institution" in China's Schedule refers to all entities which supply financial services within the meaning of China's sector 7.B "[...] Financial Services" commitments on a "Mode 3" basis.<sup>16</sup> In that case, it is, thus, unnecessary for the Panel to examine whether China has limited its Mode 3 commitments on "All payment and money transmission" only to "financial institutions".

### B. WHETHER CHINA'S "ALL PAYMENT AND MONEY TRANSMISSION SERVICES" COMMITMENTS ARE LIMITED TO SERVICES SUPPLIED BY "FINANCIAL INSTITUTIONS"

20. Regarding the existence of a "financial institution" limitation, Japan understands China to argue that it has limited its "All payment and money transmission" Mode 3 commitments to a particular type of "service supplier" of a WTO Member, namely those which are "financial institutions".

21. In Japan's view, there is nothing in the GATS which would prohibit China from limiting the scope of its Mode 3 "All payment and money transmission services" commitment to services supplied by "financial institutions". The important question is whether China has in fact done this in its Schedule. In *US-Gambling*, the Appellate Body recognized that the 1993 Scheduling Guidelines<sup>17</sup> serve to assist parties in reviewing offers made by other Members and, moreover, that they constitute a supplementary source of interpretation within the meaning of Article 32 of the Vienna Convention on the Law of Treaties.<sup>18</sup> Likewise, in Japan's view, the 2001 Scheduling Guidelines constitute a supplementary source of interpretation.<sup>19</sup>

22. Japan notes that the 2001 Scheduling Guidelines set out the principle that GATS schedules should contain clear descriptions of limitations. Thus, paragraph 3 of those Guidelines states that a

---

<sup>15</sup> China FWS, para. 132.

<sup>16</sup> One reason for this is that "financial institution" is not defined. Absent a definition or any other commonly understood meaning, it seems that the term could be interpreted in a number of ways and, moreover, if China's suggested understandings are accepted, the scope of China's commitment could change over time depending on the evolving regulatory systems of other WTO Members. Japan doubts that China would have wanted to formulate its commitments in such a manner.

<sup>17</sup> 1993 Guidelines for the Scheduling of Specific Commitments under the GATS (Document MTN.GNS/W/164) (hereinafter "1993 Scheduling Guidelines").

<sup>18</sup> See Appellate Body Report, *US-Gambling*, paras. 196 and 204.

<sup>19</sup> 2001 Guidelines for the Scheduling of Specific Commitments under the GATS (Document S/L/92), (hereinafter "2001 Scheduling Guidelines").

schedule contains, inter alia, a clear description of limitations to market access and to national treatment. Furthermore, paragraph 22 explains that since "[s]chedules record, for each sector, the legally enforceable commitments of each Member", "[i]t is therefore vital that schedules be clear, precise and based on a common format and terminology."<sup>20</sup> Moreover, Japan notes that the Guidelines seem to specifically contemplate the precise situation where a Member only wants to bind its commitments with respect to a certain category of suppliers for a particular mode. In this circumstance, the Guidelines state that this "may be achieved through an indication [...] such as 'Unbound except for measures affecting [the category of suppliers which the Member wishes to exclude]'"'.<sup>21</sup>

23. In scheduling its GATS commitments, there can be little doubt that China applied the principles set out in the 2001 Scheduling Guidelines and that other WTO Members assessed China's offers in light of the Guidelines. Therefore, in Japan's view, these Guidelines are an important source for interpreting China's GATS Schedule, i.e. for determining what China meant to schedule and what other Member's understood China's Schedule to mean. In this regard, Japan recalls that the task of ascertaining the meaning of a Schedule involves identifying the "common intention" of Members which is to be achieved by the customary rules of interpretation of public international law codified in the Vienna Convention.<sup>22</sup>

24. Following this guidance, therefore, one would expect some part of China's Schedule to state that its Mode 3 commitments for "All payment and money transmission services" are "unbound" to the extent that any measures affect service suppliers which are not "financial institutions". China's Schedule does not contain this or any similar language. Japan therefore agrees with Australia and the European Union that the absence of any "unbound except" or similar language strongly indicates that China's commitments are not limited to "financial institutions", as China contends<sup>23</sup>

25. In this regard, Japan notes that China did use such language in other parts of its Schedule to effectuate limitations on the type of service suppliers covered by a commitment. For example, in the horizontal section of its Schedule, for Mode 4 China explicitly inscribed "Unbound except for measures concerning the entry and temporary stay of natural persons who fall into one of the following categories [...]" In Japan's view, this fact can also be "context" that strongly suggests that China's "All payment and money transmission services" Mode 3 commitments are not limited to "financial institutions", as China contends.

26. Although the use of "unbound except for" language would seem to be the expected means for limiting the scope of a commitment to a particular type of supplier, Japan would not exclude that China could have limited its Mode 3 commitments to suppliers which are "financial institutions" in another manner. However, in order to respect the "common" intention of the Members, any such limitation would need to be "clear" as the 2001 Scheduling Guidelines require. In Japan's view, China did not do so by any means. Thus, for example, if China had wanted to limit its commitments to "financial institutions", China could have stated – as it did when noting limitations on forms of commercial presence in other parts of its Schedule – that its commitments were "only for service suppliers which are financial institutions".<sup>24</sup> China did not. Moreover, it seems that China could have

---

<sup>20</sup> In light of this fundamental need, the Guidelines are therefore devoted to clarifying not only what items should be scheduled, but also how they should be scheduled.

<sup>21</sup> 2001 Scheduling Guidelines, para. 45.

<sup>22</sup> See Appellate Body Report, *EB- Computer Equipment*, para. 84; Appellate Body Report, *US-Gambling*, para. 159.

<sup>23</sup> See EU TPS, paras. 35-36; Australia TPS, para. 24 (see also paras. 25-26 of Australia's TPS).

<sup>24</sup> For example, in numerous parts of its Schedule and with respect to Mode 3 commitments, China often inserted the sentence that "Only in the form of joint ventures, with foreign majority ownership permitted" (emphasis added).

made a distinct category for such a limitation as it did with respect to "geographic coverage" and "clients", for example. Again, China did not.

27. Therefore, Japan submits that China's Schedule cannot be interpreted, as China claims, as limiting its commitments only to a particular type of service supplier, namely "financial institutions", and that China has no limitations on "All payment and money transmission" Mode 3 commitments with respect to entities which are not "financial institutions".

## ANNEX C-5

### INTEGRATED EXECUTIVE SUMMARY OF THE THIRD PARTY WRITTEN SUBMISSION AND ORAL STATEMENT OF THE REPUBLIC OF KOREA

1. This dispute raises an important issue regarding the proper meaning of the entries contained in the Schedules of Specific Commitments that China submitted at the time of its accession to the WTO in 2001. It also raises a critical issue regarding how the terms contained in the *Annex on Financial Services* of the GATS should be interpreted in terms of credit card or debit card transactions, which are indispensable to modern daily commercial activities.

2. The measure challenged by the complainant is China's requirement that all Electronic Payment Services ("EPS"), such as transactions using credit cards or debit cards, denominated in RMB should go through a designated bank - China UnionPay, Co. Ltd. ("CUP"). The complainant alleges that the respondent's measure constitutes discriminatory treatment of foreign electronic payment services providers in terms of both market access and national treatment in a way that deviates from China's obligations under its Schedules of Specific Commitments. These measures are therefore inconsistent with China's obligations under Articles XVI:1, XVI:2 and XVII of the GATS.

3. In its third party submission, Korea offers its views on two issues: (i) the interpretation of the term "settlement and clearing services for financial assets" as it appears in Item (xiv) of the *Annex on Financial Services* and (ii) identification of a measure at the WTO panel proceeding when multiple measures exert a single effect, both individually and collectively.

4. *First*, Korea discusses interpretation of key terms raised in this dispute. Korea notes that the parties present two completely different interpretations of the terms. The difference between the positions of the two parties hinges upon whether the EPS should be categorized as "payment and money transmission services" under Item (d) of China's schedule (which is also identical with Item (viii) of the Financial Services Annex of the GATS) or instead "settlement and clearing services for financial assets" under Item (xiv) of the *Annex on Financial Services*. The United States supports the former view while China does the latter one.

5. More specifically, China argues that the EPS at issue in this dispute constitute one form of clearing and settlement services for financial assets and thus should be classified under Item (xiv) of the *Annex on Financial Services*. In Korea's view, China's point warrants a careful scrutiny from the Panel. Korea submits, however, that the ordinary meaning of the relevant terms in Item (d) and Item (xiv) together with their context apparently lead to a different conclusion than the one China presents. In a nutshell, it seems that Item (xiv) of the *Annex on Financial Services* addresses mainly paper-based financial asset transactions which, in and of themselves, represent or carry designated monetary value and which always require settlement and clearing process to complete the transactions. To the contrary, Item (d) apparently addresses payments through the utilization of credit cards or debit cards. Item (xiv) is about "clearing" while Item (d) is about "payment." Korea believes credit card and debit card are more directly related to "payment." Thus, in Korea's view the U.S. interpretation seems more persuasive and reasonable under the general usage of the terms as they are used in daily commercial activities.

6. The term "financial assets" in Item (xiv) should mean something of a financial value when we follow the ordinary meaning of the term. To borrow the definition of the term proposed by China, it means "any revenue or monetary item that has value to its possessor." In other words, it refers to an object or instrument that contains or represents some sort of monetary value to the owner. It is not clear whether EPS such as "credit card transactions or debit card transactions" fall under this category. Most notably, credit card transactions or debit card transactions, in and of themselves, do not contain

or represent some sort of monetary value in them. More properly understood, these are simply "payment" methods – a type of delayed payment depending on the credit of the card-holders, where the card-holders purchase products first, and the actual payments are made afterwards.

7. This conclusion is also supported when we consider the interpretation suggested by China. As noted above, China interprets the term "financial asset" as any revenue or monetary item ("financial") that has value to its possessor ("asset"). But, again, it is difficult to accept that a credit card transaction constitutes revenue or monetary item that has value to the merchant. If anything, revenue or monetary gain is only provided when the payment is actually made, either through cash or credit card payment; thus a credit card transaction is one method of such commercial payment.

8. In addition, Korea draws the Panel's attention to the examples that immediately follow the term "financial assets" in Item (xiv) of the *Annex on Financial Services*: they are securities, derivative products and other negotiable instruments. Obviously, as noted above, they all constitute financial assets. At the same time, they all share one important commonality, in that they are all written documents that signify or carry some sort of monetary value. At the same time, all of them can change hands, from one person to another (thus "negotiable"). But, again, the credit card or credit card transaction does not fall under this category: it does not carry any instrument that signifies the entitlement to cash payment afterwards. The credit card or credit card transaction itself does not signify or carry some sort of monetary value: the monetary value lies in the product that the card-holder purchases with the credit card. Nor does the credit card transaction involve "changing hands" as other examples do in Item (xiv). Thus, Korea sees a significant difference between the two.

9. As the EPS should be covered by Item (d) of the China's schedule, China is under the obligation to comply with the terms and conditions set out in its schedule regarding the market access and national treatment.

10. Korea's second point concerns the identification of a measure in this dispute. The United States presents a series of legal instruments that, individually and collectively, indicate China's policy that all transactions denominated and paid in RMB in China must be processed and cleared in RMB through CUP.

11. If individual measures are inter-related and complement and supplement each other in a way that introduces one general scheme, Korea submits that both individual measures and collective measures should constitute the challenged measures, respectively.

12. This approach is also supported by the Appellate Body precedents. In *U.S.-Zeroing (EC)* (21.5), the Appellate Body explicitly upheld the nexus based approach while rejecting a "formalistic reliance on the date of issuance of the [individual measures]." Although the Appellate Body in that dispute discussed this matter in terms of an implementation dispute, such an analysis should equally apply to original disputes where, as here, all individual measures individually and collectively constitute one single scheme of CUP-only EPS system. Arguably, there seems to exist a sufficient close nexus among the individual measures identified in the U.S. First Written Submission.

13. Also, in a recent dispute, a WTO panel adopted a similar approach. The panel in *U.S.-Tuna II* stated in recent finding that it "must therefore consider whether these various instruments taken together may be described as constituting the measures before us." The panel also stated that the question it must consider "is whether it is appropriate to consider these measures jointly in our analysis of Mexico's claims, and make findings based on their combined operation, rather than on the basis of each individual measure separately." The same rationale should be equally applicable to the present dispute.

14. In conclusion, Korea respectfully submits that in reaching its decision in this important dispute, the Panel should ensure that the provisions of the GATS are construed in their proper context, which will give effect to the ordinary meaning of the terms consistently with the context, object and purpose of the agreements as a whole.

---





**ANNEX D**

**EXECUTIVE SUMMARIES OF THE SECOND WRITTEN SUBMISSIONS  
OF THE PARTIES**

<b>Contents</b>		<b>Page</b>
Annex D-1	Executive summary of the second written submission of the United States	D-2
Annex D-2	Executive summary of the second written submission of China	D-11

## ANNEX D-1

### EXECUTIVE SUMMARY OF THE SECOND WRITTEN SUBMISSION OF THE UNITED STATES

#### I. INTRODUCTION

1. China created and maintains a monopoly for China UnionPay, Co. Ltd. ("CUP") to supply the service necessary for credit, charge, debit and other payment card transactions to occur in China for all transactions where the card is issued in China and used in China. Such transactions, whether RMB-payment card transactions or transactions using foreign currency denominated payment cards issued in China, constitute the overwhelming number of all payment card transactions in China.

2. The evidence and arguments advanced by the United States also establish that the service at issue is a single, integrated service falling within subsector (d) of China Schedule of Specific Commitments: "All payment and money transmission services, including credit, charge and debit cards..." China undertook both mode 1 (cross-border) and mode 3 (commercial presence) commitments with respect to subsector (d). Finally, China's measures are inconsistent with China's obligations under Articles XVI:1 and XVI:2 of the General Agreement on Trade in Services ("GATS") not to adopt or maintain measures of the types listed in Article XVI:2, and with China's obligations under GATS Article XVII to accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers, in respect of all measures affecting the supply of services.

#### II. EPS FOR PAYMENT CARD TRANSACTIONS IS A SINGLE, INTEGRATED SERVICE THAT FALLS WITHIN THE ORDINARY MEANING OF SUBSECTOR (D) OF CHINA'S SCHEDULE ("ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS...")

3. As the United States has demonstrated, EPS for payment card transactions is a single, integrated service – one that is supplied and consumed as such. The extensive evidence provided by the United States demonstrates that EPS is at the center of all payment card transactions and without this service the transactions could not occur. EPS fall within the ordinary meaning of payment and money transmission services, within subsector (d) of China's Schedule. The language of subsector (d) itself makes this abundantly clear. EPS clearly fall within the ordinary meaning of "payment and money transmission services" as one type of "all" such services. In addition, the phrase "all payment and money transmission services" is modified with an illustrative list that explicitly provides that it "include[s] credit, charge and debit cards." The explicit reference to these types of cards is in line with the recognition that EPS is integral to the processing of credit, charge, debit and other payment card-based electronic payment transactions, and without EPS, payment card transactions could not occur.

4. China tries to delink and disaggregate certain components of EPS that are central to payment card transactions. China combines its disaggregation strategy with an exceedingly narrow interpretation of its commitments, arguing that only issuing and acquiring services are covered by subsector (d). Indeed, China has declined even to provide a response to the question of where – even under its flawed disaggregation theory – remaining elements of EPS should be classified, underscoring the difficulty of its position. Simply, China's arguments cannot be reconciled with the text of its commitments or how the service at issue operates in practice.

5. Contrary to China's assertions, EPS for payment card transactions constitutes one integral service. The service is supplied as coherent whole. A supplier of EPS enables cardholders' banks to

pay merchants' banks the amount they are owed. EPS suppliers provide an efficient, timely and reliable means to facilitate the transmission of funds from the holders of payment cards who purchase goods or services to the individuals or businesses that supply them. The network, rules and procedures, and operating system that are part of the EPS architecture allow merchants to be paid the amounts they are owed and ensure that cardholders pay what they owe. EPS suppliers receive, check and transmit the information that the parties need to conduct the transactions, and manage, facilitate, and enable the transmission of funds between participating entities. The rules and procedures established by the EPS supplier give the payment system stability and integrity, and enable it efficiently to handle net flows of money among the institutions involved in card payments. Each component is critical to effectuate the payment card transaction and EPS suppliers provide the entire package of services to their customers, the institutions that are participating in the payment card transactions.

6. Regarding China's assertion that the approach described by the United States (and endorsed by several third parties) would somehow undermine the GATS and the principle of mutual exclusivity, this argument is also misplaced. To the contrary, if China's position were accepted – that a service must first be disaggregated into subcomponents and each subcomponent separately classified – it would render Members' concessions meaningless for a wide range of services.

**III. EPS FOR PAYMENT CARD TRANSACTIONS DOES NOT FALL WITHIN ITEM (XIV) ("SETTLEMENT AND CLEARING SERVICES FOR FINANCIAL ASSETS, INCLUDING SECURITIES, DERIVATIVE PRODUCTS AND OTHER NEGOTIABLE INSTRUMENTS")**

7. China relies on an exceedingly narrow reading of subsector (d) that essentially reads the qualifying word "all" out of the sectoral description of "all payment and money transmission services, including credit, charge, and debit cards..." and on arguments that fail to account for the fact that EPS are at the heart of credit, charge and debit card transactions. Moreover, China's exceedingly narrow reading of subsector (d) stands in stark contrast to China's exceedingly broad interpretation of item (xiv) of the Annex. China's broad reading is combined with an incorrect understanding of the services in item (xiv) that places China's interpretation at odds with fundamental, recognized differences in the operation and risk profile of financial services under item (xiv) and services related to retail payment processing, such as EPS for payment card transactions.

8. The same rules of treaty interpretation that compel the conclusion that EPS for payment card transactions fall within subsector (d) also compel the conclusion that EPS for payment card transactions do not fall within item (xiv). In this regard, Article 31(1) of the Vienna Convention requires that the terms "settlement and clearing services for financial assets, including securities, derivatives and other negotiable instruments" be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." Various commentaries on the Vienna Convention point out that "ordinary meaning" cannot be analyzed independently from the other interpretive elements described in Article 31, including "context."

9. China's position is inconsistent with the ordinary meaning of "settlement and clearing services for financial assets" and also fails to recognize that item (xiv) is a substantially different financial service than EPS for payment card transactions, which is a type of retail payment service. The BIS CPSS has explained that "[r]etail payments are generally classified as cash payments or non-cash payments," which are subclassified into "cheque payments, direct funds transfers and card payments." Indeed, there are many practical differences between the systems used to settle and clear investment instruments of the kind referenced in item (xiv) and the systems used to settle and clear retail payment instruments, like payment cards. These differences relate to: (1) the financial instruments involved and the value of typical transactions, (2) the market participants involved in the transaction and

related processing; (3) the infrastructure needs for such processes to occur safely and efficiently; and (4) regulatory oversight and the relative risks presented to the financial system as a whole.

10. China's position also fails to interpret the term "financial asset" within its immediate context, i.e., the full sentence in item (xiv). An examination of each of the items in the illustrative list demonstrate that retail receipts, such as a claim on a payment card, are not of the same type of financial assets as the items included in the illustrative list – "securities, derivative products and other negotiable instruments." This further supports the conclusion that they are not within the scope of "financial assets" referenced in the provision.

11. A "security" is generally defined as "an instrument that signifies an ownership position in a corporation (a stock), a creditor relationship with a corporation or government body (a bond) or rights to ownership..." Securities are, in short, ownership and investment instruments. Credit and debit cards are not similar to securities. Payment cards are retail payment instruments. They provide a non-cash alternative for consumers to use when making purchases. A payment card does not provide a pledge of property to secure a loan, it is not an investment instrument, and it is not tradeable on money markets or capital markets.

12. Derivatives are also investment instruments. A derivative is "a financial contract the value of which depends on the value of one or more underlying reference assets, rates or indices" such as futures contracts and options. A payment card is not a contract whose value is dependent of the performance of some other asset or investment. It is simply an instrument for making retail purchases.

13. Payment cards and the sales slips generated from payment card transactions do not meet the internationally accepted criteria for a negotiable instrument. A payment card transaction does not involve a written promise or order to pay that satisfies the definition above and, thus, does not involve a negotiable instrument. Some payment card transactions are processed entirely electronically, without the cardholder signing a sales slip and, thus, do not result in the creation of any writing, signed by the cardholder, either promising to pay or ordering the payment of an amount to the merchant. Other payment card transactions require the cardholder to sign a sales slip instructing the bank that issued the payment card to pay the merchant for the transaction, but the sales slips created in connection with such transactions are not payable to bearer, but rather, are payable only to the identified merchant. Finally, payment cards are not similar to the types of negotiable instruments referenced in Item (xiv), such as commercial paper, which a type of investment instrument that is processed through settlement and clearing. As noted, in context, the types of negotiable instruments referenced in item (xiv) are tradeable assets, and do not include instruments that are used for retail payments.

#### **IV. CHINA'S MODE 1 AND MODE 3 COMMITMENTS FOR SUBSECTOR (D) "ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE, AND DEBIT CARDS..."**

##### **A. CHINA'S MODE 1 COMMITMENTS FOR "ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS..."**

14. It is plain from the text that China has taken mode 1 commitments for "all payment and money transmission services, including credit, charge and debit cards..." The word "Unbound" is followed by the qualifying phrase "except for the following," which in turn is further elaborated by two sentences that describe elements of the services within subsector (d) for which China has taken mode 1 commitments. Proper treaty interpretation requires that the qualifying phrase "except for the following" and the further specific elaboration following the word "Unbound" should be given meaning. In response to the Panel's questions, the United States prepared a chart in which it identified

several aspects of EPS that are covered by the mode 1 market access commitment undertaken by China.

15. China's responses to the Panel's questions regarding the meaning of the extensive language qualifying the term "Unbound..." essentially reduces to the single point that all of the extensive language qualifying the term "Unbound" in its market commitments was provided simply to confirm language already existing elsewhere. In short, according to China, that the additional wording should be given no meaning. This is not credible. If China wished to in fact be fully "Unbound," that is, not to have any commitments, it would have left the word "Unbound" unqualified. However, as the Schedule reflects, China did not do so. It is not credible to argue that this language is merely for greater certainty to repeat China's commitments in subsectors (k) and (l). Such an argument fails to give meaning to this treaty language.

16. The services defined by the sector and subsector descriptions cannot be altered by the commitments made in the market access or national treatment columns. While a WTO Member may place limitations on the scope of its commitment with respect to a given sector, limitations inscribed in the market access and national treatment columns cannot change the scope of the sector description itself.

17. Elements of CUP's own activities are described in terms similar to the "excepted" elements that are set out in China's mode 1 market access commitments. The Chinese regulatory system similarly describes a primary activity of CUP as exchanging information among financial institutions. This is all of course consistent with the recognition that the ability to "transfer financial information" and supply "advisory, intermediation and other auxiliary financial services" cross-border with respect to an integrated service (when the service supplier is located in a particular country) is often necessary for corporate risk management purposes and typically occurs in the ordinary course of business.

18. Finally, the concept that a service may include elements of "provision and transfer of financial information, and financial data processing" was recognized, for example, in paragraph 8 of the Uruguay Round Understanding on Commitments in Financial Services. The provision and transfer of financial information and data processing is central to the supply of many different financial services, and, according to the Understanding, signatory WTO Members cannot frustrate their commitments by, for example, blocking the ability to communicate and process information.

**B. CHINA'S MODE 3 COMMITMENTS FOR "ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS..."**

19. China has mode 3 market access and national treatment commitments for subsector (d). The presence of the term "financial institution" in China's schedule does not create a separate and independent limitation. There is nothing in China's Schedule that indicates it may condition the supply of a service on the criteria listed in column 2 and in addition require that another Member's supplier meet additional (and unspecified) criteria to be recognized as a "foreign financial institution." The Schedule states that "[c]riteria for authorization to deal in China's financial services sector are solely prudential." Thus, under China's Schedule, the only limitations China may impose are in connection with legitimate prudential regulation and the limitations explicitly listed in China's Schedule – the now defunct restrictions on geographic scope and use of domestic currency, and ongoing requirements applicable to banks. The additional references to the term "financial institution" in the paragraphs that follow the explicit statement that the criteria are "solely prudential" does not alter that unequivocal statement as to the sole criteria for authorization to deal in China's financial services sector.

20. The fact that subsector (d) falls under the heading of "banking services" does not operate to limit China's commitments to "banks" or other "regulated financial institutions" as China argues. The

"banking services" heading does not operate in this manner. The characteristics and nature of the service control the classification of that service.

21. It is also evident from China's Schedule itself that the term "banking services" listed in China's Schedule, including those listed in subsector (d) are not limited to those provided by banks as China claims. The definition of "financial service supplier" in the Annex on Financial Services provides additional support in this regard: "A financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term 'financial service supplier' does not include a public entity." This definition covers not only banks but other suppliers of financial services, which supply or wish to supply financial services within the meaning of the Annex.

22. China also argues that its mode 3 market access and national treatment commitments for subsector (d) are limited to foreign financial institutions. Although China includes certain limitations with respect to foreign financial institutions, this does not mean that its commitments are limited to foreign financial institutions. Such a limitation would have needed to be imposed explicitly, and China did not do so. Finally, even if it were the case that the term "financial institution" somehow served as a limitation in China's Schedule (and it is clear from the above that it does not), the definition of "financial institution" offered by China is far too narrow. Many definitions are much broader, and some explicitly include "an operator of a credit card system."

**V. CHINA'S MEASURES ESTABLISHING AND SUPPORTING CHINA UNIONPAY'S MONOPOLY ON THE SUPPLY OF EPS ARE INCONSISTENT WITH ARTICLE XVI OF THE GATS**

23. The measures imposed by China on the supply of EPS are inconsistent with Article XVI:2 of the GATS because they limit the number of suppliers of EPS for RMB-denominated transactions that are paid in RMB. The evidence provided by the United States demonstrates that China's measures limit the number of suppliers of EPS for payment card transactions. China requires that all RMB-denominated payment card transactions in China be processed by CUP, and that CUP process all foreign currency denominated card transactions where the card is issued in China. In short, China requires that CUP process all payment card transactions where the card is issued in China and used in China.

24. During the Panel's first meeting with the Parties, China asserted several times that the United States had failed to demonstrate that foreign EPS suppliers could not supply EPS for payment card transactions in China. The Panel has now asked China Question 22(b) from the Panel to China:

25. Could China confirm that operators other than China UnionPay could be authorised to establish their own network and process domestic RMB-denominated payment card transactions independently from China UnionPay's network? If relevant, please identify legal instruments and provisions that address this.

26. China did not answer the Panel's question. This is not surprising because, as the United States has demonstrated, in fact and as China's measures mandate, EPS suppliers other than China UnionPay cannot process domestic RMB-denominated payment card transactions in China. EPS suppliers other than CUP cannot process any payment card transactions in China where the card is issued in China and used in China.

27. Requirements that mandate the use of CUP and/or establish CUP as the sole supplier of EPS for all domestic transactions denominated and paid in RMB.

28. Even without considering Documents Nos. 94, 272 and 66, which China argues have either been repealed or replaced, the remaining instruments establish and maintain the CUP monopoly in

essentially three ways. First, certain instruments explicitly state that CUP must be used to process specific types of transactions. Second, certain instruments establish and/or require the use of business specifications and technical standards which mandate the use of CUP. Finally, certain instruments implicitly recognize that CUP is the sole supplier of EPS services for RMB denominated transactions.

29. Several instruments independently designate CUP as a sole supplier. Document No. 53 (Exhibit US-51) is a primary example. Article V.2 of Document 53 states that "[d]omestic card transactions inside China shall be settled in RMB through domestic clearing channels . . . ." CUP is the only "domestic clearing channel" and, therefore, the only entity that can settle domestic card transactions. Article V.3 sets forth procedures for correcting the erroneous processing of such transactions through an international bank card organization. Moreover, Article VII.3 then states that "[d]omestic RMB card clearing organizations shall do a good job in the RMB clearing of domestic transactions of home-foreign currency cards." These are foreign denominated currency payment cards that are issued in China.

30. Document No. 16 (Exhibit US-44) states that, with respect to Hong Kong, "[m]atters in relation to individual RMB bank card clearing shall be organized and handled by the clearance banks and China UnionPay Joint Stock Co., Ltd." Document No. 254 (Exhibit US-48) requires that CUP process RMB transactions involving RMB cards issued in China and used in Hong Kong or Macao, or involved RMB cards issued in Hong Kong or Macao and used in China. Document No. 8 (Exhibit US-46) requires that CUP be used to clear RMB denominated transactions in Macao. China does not deny that CUP has a monopoly over such services. Section 1.2 of Document 153 (Exhibit US-49) appears to explicitly recognize that "China UnionPay is the domestic clearance organization which specializes in the RMB bank inter-bank information routing and exchange" (emphasis supplied). Other provisions of Document No. 153 appear to confirm the designation of CUP as the sole supplier.

31. Section 2.2 of Document No. 37 (Exhibit US-40) states that cards that do not comply with "the unified requirements and the CUP logo usage requirements" must be replaced and that, "[s]tarting in 2004, all bank cards not bearing a CUP logo will not be used for cross-region or inter-bank transactions." Article 6 of Document 57 (Exhibit US-41) requires that all "regional bank card interoperability logos produced and designed regionally shall be gradually abolished." Also, Article 6 of Document 153 (Exhibit US-49) states that, in any country where dual currency cards are used, "the Chinese issuing banks should support routing through the CUP network and open RMB accounts related transactions and settlements to the CUP network." Document 149 (Exhibit US-50) states that "acquiring organizations may not allow the non-CUP and non-PBOC 2.0 pre-payment cards to be accepted at any POS terminals." Document No. 219, Article III, prohibits processing of payment card transactions by third-parties, mandating that "no merchant shall... authorize a third party to handle Renminbi card business or transfer such business to a third party."

32. In addition, certain instruments establish and/or require the use of business specifications and technical standards which mandate the use of CUP. Document No. 76 (Exhibit US-56/US-63) includes the "Notice of People's Bank of China in Relation to Issuance of Business Practices for the Interoperable Services of Bank Cards," and an accompanying Appendix, which includes the "Business Practices for the Interoperable Services of Bank Cards" ("Business Practices Appendix"). The Business Practices Appendix requires that all domestic transactions on domestically issued cards be processed over the network that was to become CUP. Several of the 19 instruments explicitly require the use of uniform business specifications and technical standards, including: Document No. 37 (Exhibit US-40); Document 57 (Exhibit US-41); Document 153 (Exhibit US-49); Document 129 (Exhibit US-53); Document 142, (Exhibit US-55); Document 49 (Exhibit US-62); Document 17 (Exhibit US-52); and Document 103 (Exhibit US-1)

33. Another category of instruments recognizes that CUP is the sole supplier of EPS services for transactions on cards issued and used in China. These measures include, for example, measures related to fraud protection and similar regulation which is explicitly directed only to CUP.

34. Logo requirements on issuing institutions, requirements related to POS terminals and ATMs, requirements on acquiring institutions, prohibitions on the use of non-CUP cards and non-CUP EPS suppliers, and requirements for certain transactions involving RMB denominated cards issued and/or used in Macau and Hong Kong

35. The collective effect of these measures is to establish CUP as the sole entity able to provide EPS for payment card transactions in China where the card is issued in China and used in China. Banks in China must use CUP's network in order to issue or acquire bank card transactions. Only CUP cards can be issued as RMB denominated cards. The logo and interoperability requirements mean that all banks that wish to acquire merchant transactions or operate ATMs and all merchants who wish to accept bank cards must join CUP and process transactions in accordance with CUP's rules and procedures as set out in Document No. 76 (Exhibit US-56/US-63). These requirements gave CUP automatic and universal acceptance of its RMB payment card products by banks and merchants in China and permitted and supported CUP becoming the sole supplier of EPS in China. These measures have entrenched CUP's monopoly position. Suppliers of EPS must ordinarily invest heavily and incur substantial expense to build acceptance of their payment card products by merchants, often in vigorous competition with other suppliers of EPS. All transactions that take place involving cards issued in China and used for transactions in China must be processed over CUP's network as well as transactions involving RMB denominated cards issued and/or used in Macau and Hong Kong.

## **VI. CHINA'S MEASURES ACCORD LESS FAVORABLE TREATMENT TO FOREIGN EPS SUPPLIERS**

36. A national treatment commitment under Article XVII of the GATS obligates a WTO Member to accord services and service suppliers of other Members "treatment no less favorable than that it accords to its own like services and services suppliers." Article XVII:2 specifies that a Member may meet this requirement in instances in which it accords foreign services or suppliers formally different treatment. Article XVII:3 defines treatment as "less favorable" if it "modifies the conditions of competition in favour of services or service suppliers of the Member."

37. The measures at issue affect the supply of services in two principal ways. First, there are measures that impose a limitation such that CUP is the sole entity that can process certain transactions, such as domestic RMB transactions. This of course means that foreign suppliers of EPS are prevented from supplying the service at all. Second, there are measures that promote CUP's position in the marketplace such as by imposing certain requirements on every key player in a card-based electronic payment transaction, including issuers (all cards issued in China for domestic RMB transactions must bear the CUP logo), merchants (all merchant card processing equipment and POS terminals must accept CUP cards), and acquiring institutions (which must post CUP logo and accept CUP cards).

38. The United States has explained how China's measures affect every aspect of a card-based electronic payment transaction and the key players – issuers, acquiring institutions, merchants, and EPS suppliers – involved in such transactions.

39. China's measures ensure that CUP is the sole supplier of EPS for payment card transactions in China where the card is issued in China and used in China, and for certain payment card transactions involving Hong Kong and Macau. The description of the scope of CUP's business in CUP's Articles of Association, CUP's "Notification of Business License Approval and Issuance," and PBOC's reply



with respect to the establishment of CUP clearly establish that CUP is to be the single nationwide inter-bank card network. Additional provisions prohibit processing of transactions by third-parties (i.e., any network other than CUP). China's measures discriminate against foreign suppliers of EPS by either categorically precluding their participation in the market, or by modifying the conditions of competition among the key participants – issuers, acquiring institutions, merchants, and the EPS supplier – in card-based electronic payment transactions.

40. China's measures require that any payment cards used only for RMB purchases in China, as well as any dual currency cards issued in China, bear the CUP logo. No other EPS provider is afforded such a privilege. Any issuer of payment cards in China is required to have access to the CUP system (and to pay for that privilege) and, as a result, issuers have no reason to seek alternative suppliers of EPS. The logo requirements also operate such that even if a card was issued with the logo of a foreign EPS supplier, CUP would also obtain an advantage as the CUP logo would have to appear on the card as well.

41. Similarly, China's measures require all ATMs, POS terminals, and merchant card processing equipment accept CUP cards. Once again, no foreign EPS supplier is afforded a similar privilege. Moreover, even were a foreign supplier of EPS able to create or secure access to a POS terminal, then China's measures would still provide CUP with an advantage because of the requirement that all ATMs, POS terminals, and merchant card processing equipment accept CUP cards.

42. For the same reasons, China's measures requiring that all acquiring institutions in China post the CUP logo and accept all cards bearing that logo distort the competitive relationship between CUP and foreign suppliers. No foreign EPS supplier is afforded a similar privilege. Acquiring institutions have important relationships with merchants, often providing POS terminal and processing equipment to merchants so it can process payment cards. Acquiring institutions also maintain the merchant's account, handle relations with the merchant, and ensures that payments are properly credited to the merchant.

43. The broad prohibitions on the use of non-CUP cards and that prevent foreign suppliers of EPS have similar adverse effects on competition and operate to accord less favorable treatment to foreign EPS suppliers. China requires that all inter-bank transactions for all bank cards be handled through CUP.

44. Finally, the requirements pertaining to card-based electronic transactions in China, Macao and Hong Kong also modify the conditions of competition and operate to accord less favorable treatment to foreign EPS suppliers. China requires that CUP be used to handle all RMB transactions in Macao or Hong Kong using bank cards issued in China. China also requires that CUP be used to handle any RMB transactions in China using RMB cards issued in Hong Kong or Macao.

45. These measures affect the conditions of competition in the supply of EPS within the meaning of Article XVII because they directly regulate the terms on which they may be provided. The measures at issue provide different treatment solely according to the identity of the EPS supplier: CUP or not CUP

46. The effect of these measures is to completely distort competition in China's market for EPS for payment card transactions. These measures establish and maintain CUP the sole entity able to provide the full range of EPS for payment card transactions in China where the card is issued in China and used in China. Banks in China must join CUP in order to issue or acquire bank card transactions. Only CUP cards can be issued as RMB denominated cards. The logo and interoperability requirements mean that all banks that wish to acquire merchant transactions or operate ATMs and all merchants who wish to accept bank cards must join CUP and process transactions in accordance with CUP's rules and procedures as set out in Document No. 76 (Exhibit US-56/US-63). These

requirements gave CUP automatic and universal acceptance of its RMB payment card products by banks and merchants in China and permitted and supported CUP becoming the sole supplier of EPS in China. No foreign EPS supplier enjoys any of these advantages and CUP is not constrained in the ways in which foreign EPS suppliers are constrained.

47. The measures at issue were meant to favor the domestic Chinese entity and accordingly discriminate on that basis. They have been effective in this regard and outside of China, with the ability to operate from its protected home market, CUP has become a significant and increasingly active competitor. CUP's Articles of Association are explicit that the company is "to provide advanced electronic payment technologies and specialized services in connection with the inter-bank bank card information switching" and CUP's success in the global market for card-based electronic payment transactions reflects and is in accord with the "purpose of the company," which is to foster "and promote the rapid development of China's bank card industry."

48. Finally, it is clear that CUP provides services for payment card transactions "like" those provided by foreign suppliers of EPS for payment card transactions and that the basis for the differential treatment by China in its measures is ultimately one of origin, and the "like service suppliers" requirement of Article XVII is therefore satisfied.

## **VII. CONCLUSION**

49. The United States respectfully requests that the Panel find that China's measures are inconsistent with China's obligations under Article XVI:1 and XVI:2(a) and Article XVII of the GATS. The United States further requests, pursuant to Article 19.1 of the DSU, that the Panel recommend that China bring its measures into conformity with its WTO obligations.

## ANNEX D-2

### EXECUTIVE SUMMARY OF THE SECOND WRITTEN SUBMISSION OF CHINA

#### **I. THE UNITED STATES HAS FAILED TO MEET ITS BURDEN OF PROOF IN RESPECT OF THE CLASSIFICATION OF THE SERVICES AT ISSUE**

##### **A. THE CLEARING AND SETTLEMENT SERVICES AT ISSUE IN THIS DISPUTE ARE CLASSIFIABLE UNDER ITEM (XIV) OF THE ANNEX LIST**

1. Item (xiv) of the Annex list encompasses "settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments". The United States acknowledges that clearing and settlement services are "central" to the services at issue in this dispute, and that these clearing and settlement services relate to interbank claims for payment. The only interpretative issue that remains is whether these clearing and settlement services are "for financial assets" within the ordinary meaning of that term, in its context and in light of the object and purpose of the agreement.

##### **1. Ordinary meaning**

2. It is axiomatic that "the words of the treaty form the foundation for the interpretive process". "The meaning of a treaty provision, properly construed, is rooted in the ordinary meaning of the terms used". As China demonstrated in its first written submission, every definition of the term "financial assets" points to the same conclusion: it refers to "money and claims", including cash and any right to receive cash.

3. The United States has offered nothing that is relevant under Article 31 of the Vienna Convention that would contradict the ordinary meaning of the term "financial assets" that China has put forward. The *only* definition of the term "financial assets" to which the United States refers is the definition of this term in Article 8 of the U.S. Uniform Commercial Code ("UCC"). But the United States fails to explain how the municipal law of a single Member is relevant to the process of treaty interpretation under Article 31 of the Vienna Convention.

4. The inability of the United States to identify a coherent understanding of the term "financial assets" becomes most evident in its response to Question 38(b) from the Panel, concerning asset-backed securities. The United States acknowledges, as common sense dictates, that the "assets" in "asset-backed securities" are claims that an issuing bank has against cardholders. It then asserts, however, that "[t]he contractual obligation to pay is only with respect to the issuing bank", and, for this reason, "only the issuing bank can securitize receivables." According to the United States, it is only when credit card receivables are securitised that they "could be deemed a financial asset."

5. The United States seems to be suggesting that issuing banks have no obligation to pay acquiring banks. Obviously, this is incorrect – in the four-party model, the acquiring bank has a valid claim against the issuing bank, just as the issuing bank has a valid claim against the cardholder. The U.S. solution to this flaw in its reasoning is to assert that the claim to payment only becomes a financial asset once it is bundled into an asset-backed security. Again, this makes no sense – it is the fact that the claim to payment is *already* a financial asset that allows it to be bundled into an "asset-backed" security.

6. The last refuge for the United States is to assert that interbank claims for payment "are not transferable". The notion that "transferability" is relevant to the interpretation of the term "financial

assets" is connected to the U.S. assertion that item (xiv) is limited to instruments that "settle and clear like securities and derivative products", an assertion that China rebuts below. But in any event, the assertion that an acquiring bank's claim against an issuing bank is not transferable is just that – an assertion. The United States presents no evidence to support this claim.

7. For these reasons, China considers that the ordinary meaning of the term "financial assets" is uncontested in this dispute. The ordinary meaning of this term includes cash and any right to receive payment. The services at issue in this dispute include clearing and settlement services "for financial assets".

## **2. Context**

8. Lacking any support for its interpretation of item (xiv) in the ordinary meaning of the term "financial assets", the United States insists that its interpretation is supported by the illustrative list of financial assets that appears in item (xiv): "securities, derivative products, and other negotiable instruments". Even though the parties agree that these are merely three examples of what constitutes a "financial asset", the United States tries to work backwards from these examples to limit the ordinary meaning of the term "financial assets" to what it calls "tradeable financial instruments" or, alternatively, "tradeable investment instruments".

9. As China has previously explained, the reference to "negotiable instruments" in item (xiv) unambiguously includes retail payment instruments such as cheques and traveller's cheques. Like securities and derivatives, these are "financial assets" within the ordinary meaning of that term because they give rise to claims for payment. As context, the illustrative list of examples therefore confirms that the drafters of item (xiv) intended to use the term "financial assets" according to its common and ordinary meaning. Moreover, because item (viii) of the *Annex* list provides examples of negotiable instruments as types of "payment services", the drafters understood that the clearing and settlement of these instruments under item (xiv) was distinct from the issuance and acceptance of these instruments under item (viii).

10. Faced with these circumstances, the United States had only one option: to deny the ordinary meaning of the term "negotiable instruments". In response to the Panel's questions, the United States takes the extraordinary position that "[i]tem (xiv) only indicates that there are negotiable instruments that settle and clear like securities and derivative products ... [and] to the extent a negotiable instrument appears in item (viii), it is not a negotiable instrument referred to in item (xiv)."

11. The objections to this line of reasoning are obvious. First, why is the test whether a particular instrument is "settled and cleared like securities and derivative products"? Securities and derivative products are two of the three examples provided in the illustrative list: why do these two examples govern the meaning of the third example? The relevant question is what these three examples have *in common* that makes them non-exhaustive examples of the term "financial assets". What they have in common, of course, is that they all give rise to claims for payment that need to be cleared and settled – not that they are "investment instruments".

12. Second, and relatedly, what does it even mean for a particular type of financial asset to be "settled and cleared like securities and derivative products"? It is undisputed that cheques and other types of negotiable instruments need to be cleared and settled. While the United States insists that clearing and settlement services for securities and derivatives "differ in crucial ways", it offers no explanation of why these alleged differences are relevant to the interpretation of the term "financial assets" or somehow change the ordinary meaning of the term "negotiable instruments".

13. Finally, why would the drafters of the *Annex* list refer to certain types of negotiable instruments in item (viii), but then not intend to have these instruments covered by the reference to

negotiable instruments in item (xiv)? The United States asks the Panel to believe that the drafters drew an arbitrary distinction between different types of negotiable instruments – a distinction that is nowhere evident in the text. Among other absurdities, the U.S. theory leads to the result that clearing and settlement services for certain types of negotiable instruments are expressly covered by item (xiv), while clearing and settlement services for other types of negotiable instruments are somehow implied by "necessity" in item (viii).

14. In sum, the overall U.S. interpretation of item (xiv) is unmoored from any objective understanding of the ordinary meaning of terms and from the context in which those terms are used. According to the United States, the term "financial assets" does not mean "financial assets" as that term is commonly understood, and neither does the term "negotiable instruments". The United States purports to use the context of the illustrative list to inform its interpretation of the term "financial assets", but then gives the terms in the illustrative list their own special (and erroneous) understanding. As a result, the U.S. interpretation becomes hopelessly circular: the term "financial assets" is limited to "investment instruments", which is demonstrated by interpreting the term "negotiable instruments" to be limited to "investment instruments". Neither term means anything other than what the United States wants it to mean.

### **3. Object and purpose**

15. It is well established that "the security and predictability of Members' specific commitments" is an important object and purpose of the GATS. The interpretative approach taken by the United States is neither "secure" nor "predictable". It is arbitrary, illogical, and completely *unpredictable*. The U.S. approach leads to an interpretation of China's Schedule and the *Annex* list in which nothing means what it says, services are not clearly defined, and, as a result, it is impossible to schedule and interpret specific commitments with any degree of security or predictability. This approach is manifestly contrary to the object and purpose of the GATS, and must be rejected.

### **4. Conclusion to Part A**

16. In China's view, the inability of the United States to rebut China's interpretation of item (xiv) should bring this dispute to an end. China will nonetheless proceed to discuss the U.S. interpretation of subsector (d) on its own terms. As China will demonstrate, the U.S. interpretation of subsector (d) has effectively collapsed. This confirms that the United States has failed to meet its burden of proof in respect of the classification of the services at issue.

#### **B. THE UNITED STATES HAS FAILED TO ESTABLISH THAT THE SERVICES AT ISSUE ARE CLASSIFIABLE UNDER SUBSECTOR (D)**

17. It is hard to know what is left of the U.S. interpretation of subsector (d) following its answers to the Panel's questions. In an effort to jam all of the services at issue into the exception to China's unbound Mode 1 inscription for subsector (d), the United States now takes the position that all five of the "components" of what it calls "electronic payment services" match the descriptions of subsectors (k) and (l). The question that naturally arises is this: what is left of subsector (d)? The United States continues to insist that the services described by subsectors (k) and (l) are "embedded in the core 'payment and money transmission' services", but there does not appear to be any "core" left.

18. As best as China can understand the U.S. theory, the United States believes that the services described by any given subsector can become "embedded" in another subsector if they are "central" to the provision of services under that other subsector. That is, any service that is "central" to the provision of another service (or "necessary", "essential", "at the heart of", etc.) ceases to exist as an independent subsector and merges into the other subsector. The U.S. theory would apply not only to

subsectors (k) and (l), but to any subsector within the taxonomy of services that could be seen as "essential" or "central" to the provision of some other service.

19. It is absurd for the United States to contend that this theory of "embedded" services is consistent with the principle of mutual exclusivity. Its theory leads directly and inevitably to the collapsing of distinct subsectors into an indiscriminate mass of services. Consider the reference in subsector (k) to "financial data processing and related software by suppliers of other financial services". As the United States acknowledges, this subsector "applies only to suppliers who provide 'other financial services.'" It is, by its express terms, a subsector that supports the provision of services that are covered by other subsectors, and applies only in cases where the same service supplier is providing both sets of services. Yet under the U.S. theory, subsector (k) automatically collapses into other subsectors whenever the services that subsector (k) describes are "integral" or "necessary" to the provision of another financial service. Under what circumstances would that *not* be the case? When would subsector (k) ever apply as a distinct subsector? The same problem would arise for countless other sectors and subsectors across the entire taxonomy of services that have relationships of "necessity" to each other.

20. It is *solely* on the basis of this "embedding" theory that the United States finds any of the services at issue in this dispute to be classifiable under subsector (d). As discussed above, the United States fails to identify any service at issue in this dispute that is *actually* a "payment and money transmission service", as opposed to what it alleges to be an "aspect" of subsector (k) or (l) that is "embedded" in "payment and money transmission services". The United States has therefore failed to satisfy its burden of proving that the services at issue in this dispute are classifiable under subsector (d).

#### C. CONCLUSION TO SECTION I

21. "[T]he absence of any relevant commitment ... would suffice to dismiss this case." That is the situation before the Panel. China considers that there is no legal basis for the Panel to proceed to an evaluation of any other issue in this dispute. For this reason, China sets forth the remainder of this submission on an *arguendo* basis, accepting the U.S. position that the services at issue in this dispute are classifiable under subsector (d).

## II. THE UNITED STATES HAS FAILED TO ESTABLISH THE EXISTENCE OF RELEVANT MARKET ACCESS AND NATIONAL TREATMENT COMMITMENTS FOR MODE 1 AND MODE 3 OF SUBSECTOR (D)

### A. MODE 1

22. In its response to Question 7 from the Panel, the United States has revealed its true agenda in this dispute: to make it possible for companies like Visa and MasterCard to provide network services in China *entirely* on a cross-border basis. The United States asserts, unabashedly, that "[t]he U.S. EPS supplier would have no or a very limited physical presence in China". It then provides a lengthy description of how every aspect of what it calls "electronic payment services" would be provided on a cross-border basis. In stark contrast, in response to Question 8 from the Panel, the United States offers a single perfunctory sentence about services that might be provided on a commercial presence basis in China.

23. To suggest that the United States is trying to have it both ways would be an understatement. The United States wants to prove its central assertion that all of the services at issue in this dispute are classifiable under subsector (d). At the same time, it wants to establish an unfettered right of market access for these services in the cross-border mode of supply. The small wrinkle in the U.S. plan is that China's Mode 1 market access entry for subsector (d) is unbound, except for the description of

subsectors (k) and (l). Therefore, the United States needs the services at issue to be in two places at once: in subsector (d), and in subsector (k) or (l). This is the genesis of its "embedded services" theory, discussed above.

24. The absurd consequences of this theory could hardly be more evident than in the case of China's Mode 1 market access entry for subsector (d). In order to give effect to China's unbound market access entry for subsectors (a) through (f), it is critically important to be able to distinguish between those activities that are unbound in Mode 1 and those activities that meet the exception.

25. As China described above, the United States associates all five of the "components" of what it calls "electronic payment services" with the descriptions of subsectors (k) and (l). As a result, there appears to be nothing left in subsector (d). It is understandable why the United States does not want to identify the "core" services that, in its view, make subsector (d) the linchpin of this dispute – the necessary implication would be that China has no Mode 1 market access commitment in respect of those services. But for subsector (d) to be relevant at all, there must be something in subsector (d) to begin with.

26. In sum, the United States cannot have it both ways – the services cannot be in subsector (d), and also in subsectors (k) and (l). If the services at issue are so "integral" or "essential" to subsector (d) that they become "embedded" in subsector (d) under the U.S. theory, then it follows that they are among the services that are unbound in China's Schedule in the cross-border mode of supply.

#### B. MODE 3

27. China's market access and national treatment commitments in Mode 3 of subsector (d) are limited to foreign financial institutions. Thus, even if the United States were to prove that the services at issue in this dispute are classifiable under subsector (d) – the premise of this entire section – it would still need to demonstrate that the terms, limitations, and conditions inscribed in China's Schedule for Mode 3 do not preclude the U.S. claims in this dispute.

28. The United States appears to have three conflicting theories in respect of China's Mode 3 commitments for subsector (d): (1) that network operators like Visa and MasterCard are "foreign financial institutions" within the ordinary meaning of that term, and are entitled to market access under Mode 3 according to the same terms, limitations, and conditions that apply to other foreign financial institutions; (2) that network operators like Visa and MasterCard are not "foreign financial institutions" and are not subject to *any* of the terms, limitations or conditions on market access inscribed in China's Mode 3 entry; or, (3) that network operators like Visa and MasterCard are not "foreign financial institutions", but are subject to the terms, limitations, and conditions on market access in Mode 3 as if the term "foreign financial institution" were synonymous with the term "financial service supplier". China will begin with the theory that network operators like Visa and MasterCard are financial institutions.

29. As China discussed in response to Question 61 from the Panel, network operators like Visa and MasterCard are not "financial institutions" within any understanding of this term. Nor is CUP a "financial institution" under Chinese law. But even if one were to accept the proposition that network operators are "financial institutions", or the equally erroneous proposition that the term "financial institution" is synonymous with the term "financial service supplier", the United States would still need to demonstrate that its claims in this dispute are consistent with the terms, limitations, and conditions inscribed in China's Schedule. The United States contends that "the only limitations China may impose are in connection with legitimate prudential regulation and the limitations explicitly listed in China's Schedule – the now defunct restrictions on geographic scope and use of domestic currency, *and ongoing requirements applicable to banks.*" Yet the United States never explains what it considers these "ongoing requirements" to be, and why they are only "applicable to banks."

30. China's Mode 3 market access entry for subsectors (a) through (f) clearly specifies the conditions that foreign financial institutions must satisfy in order to engage in local currency business under any of these subsectors. If the United States is correct that network operators like Visa and MasterCard are "financial institutions", or that the term "financial institution" is synonymous with the term "financial service supplier", then the licensing conditions inscribed in the market access column are applicable to these service suppliers. These conditions are applicable to "foreign financial institutions", not just "banks". Moreover, it is clear that the United States is claiming a right of market access to engage in "local currency business" under subsector (d).

31. Perhaps in recognition of the problems that it faces in Mode 3, it appears that the United States is trying to preserve the alternative theory that network operators like Visa and MasterCard are *not* "financial institutions" and, as a result, are not subject to *any* limitations or conditions on market access and national treatment. This theory leads to the absurd conclusion that entities that are not financial institutions have an unlimited right to enter the Chinese market for the purpose of supplying regulated banking services, while the types of financial institutions that actually supply these services are required to satisfy additional conditions on market access.

32. In sum, no matter what theory the United States ultimately adopts on Mode 3, it has no place to land. The correct answer is that network operators like Visa and MasterCard are not financial institutions of any sort, and therefore have no right of market access under China's Mode 3 commitments, even accepting the classification of the services at issue under subsector (d). But even if Visa and MasterCard were financial institutions, the United States would still need to demonstrate that "EPS suppliers" satisfy the conditions on market access and national treatment inscribed in China's Schedule for engaging in local currency business. This it cannot do.

#### C. CONCLUSION TO SECTION 0

33. Even if the United States were to establish that the services at issue in this dispute are classifiable under subsector (d), it has failed to prove that China undertook relevant market access and national treatment commitments in Mode 1 and Mode 3 in respect of these services. As China explained in its first written submission, this is the second juncture at which the U.S. claims in this dispute fail in their entirety.

### III. THE UNITED STATES HAS FAILED TO DEMONSTRATE A MONOPOLY BASED ON THE MEASURES AT ISSUE

#### A. THE U.S. "MONOPOLY" CLAIM UNDER ARTICLE XVI:2(A) MUST BE BASED ON MEASURES THAT ARE WITHIN THE TERMS OF REFERENCE

34. The United States is well aware that the specific legal instruments that it identified in the panel request do not support its "monopoly" claims in this dispute, and so it now contends that there are "measures" at issue in this dispute that exist *independently* of any particular legal instrument. Those "measures" are the six alleged "requirements" that it invented for the purpose of this dispute.

35. The situation before the Panel is highly reminiscent of the "total prohibition on the cross-border supply of gambling and betting services" that Antigua alleged to exist in *US – Gambling*. Like Antigua, the United States appears to be arguing that there are "measures" that the Panel can evaluate independently of the content of any particular law or regulation. Like the "total prohibition", the six "requirements" are meant to describe the *effect* of an *unknown and unspecified* set of laws and regulations, of which the instruments identified in the panel request are merely "illustrative".

36. In *US – Gambling*, the panel and Appellate Body flatly rejected this approach to identifying the measures at issue, and the Panel should do the same here. Among other considerations, the panel



in *US – Gambling* noted that "Article 6.2 of the DSU requires that measures be 'specifically' identified in a panel request", a standard that cannot be met where the complaining Member purports to challenge any conceivable law or regulation that might be construed as having a particular "effect".

37. While the analogy to *US – Gambling* seems more apt, one could also see the United States as alleging that the six "requirements" constitute *unwritten* "rules or norms of general and prospective application" that are capable of being challenged as independent measures on an "as such" basis. But in *US – Zeroing (EC)*, the Appellate Body held that a Member seeking to challenge an unwritten rule or norm "must clearly establish, through arguments and supporting evidence, at least that the alleged 'rule or norm' is attributable to the responding Member; its precise content; and indeed, that it does have general and prospective application." The Appellate Body considered that there is a "high threshold" for such claims. The United States has not even remotely met that high threshold. It has presented no evidence whatsoever that these alleged "requirements" exist independently of the identified instruments.

38. The six independent "measures" that the United States has invented are not "specific measures at issue" within the meaning of Article 6.2 of the DSU and are not within the Panel's terms of reference under Article 7 of the DSU. The Panel must therefore reject this attempt by the United States to base its claims on anything other than the legal instruments specifically identified in the panel request. It is on the basis of these measures that the U.S. claims must succeed or fail.

B. THE UNITED STATES HAS FAILED TO ESTABLISH A "MONOPOLY" ON THE BASIS OF MEASURES THAT ARE WITHIN THE TERMS OF REFERENCE

39. Turning to the measures that are within the terms of reference, the United States has failed to prove its claim under Article XVI of the GATS, even under its own theory of how to classify the services at issue and interpret China's commitments.

40. It is worth recalling the six "requirements" that the United States set out to prove in this dispute: (1) requirements that mandate the use of CUP and/or establish CUP as the sole supplier of EPS for all domestic transactions denominated and paid in RMB; (2) requirements on issuers that payment cards issued in China bear the CUP logo; (3) requirements that all ATM and POS terminals in China accept CUP cards; (4) requirements on acquiring institutions to post the CUP Logo and be capable of accepting all bank cards bearing the CUP logo; (5) broad prohibitions on the use of non-CUP cards; and, (6) requirements relating to China, Macao, and Hong Kong that mandate the use of CUP. Of these six alleged requirements, the United States has failed to demonstrate that four of them have anything to do with the maintenance or adoption of a limitation on market access "in the form of" a monopoly or exclusive service supplier arrangement.

41. Requirements 2, 3 and 4 relate to the use of the CUP logo and the ability of financial institutions to process transactions made with CUP cards. As China explained in its responses to questions from the Panel, these measures establish a common national network for processing domestic interbank payment card transactions by ensuring that all interbank payment cards and POS devices adhere to a common technical standard, and by requiring all banks that issue interbank payment cards to be members of a common network. Because the United States has failed to establish that these measures impose "quantitative, or 'quantitative-type'" limitations on market access, they are irrelevant to the U.S. claim under Article XVI:2(a).

42. With respect to the sixth alleged requirement, concerning Hong Kong and Macao, the United States has failed to establish how this requirement is relevant to China's market access commitments for subsector (d). Pursuant to Article XVI:2 of the GATS, a Member's market access commitments impose limitations on the measures that a Member may maintain or adopt "either *on the basis of a regional subdivision or on the basis of its entire territory*, unless otherwise specified in its Schedule".

In other words, a Member's Schedule implicates the provision of services *in the territory of that Member*. In the current dispute, this means that China's commitments relate only to the provision of services *in China*, and not to the supply of services in the territories of other Members. For this reason, there is no legal basis to find that the measures relating to Hong Kong and Macao contain "quantitative, or 'quantitative-type'" limitations on market access within the scope of Article XVI:2(a).

43. Having dispensed with requirements 2-4 and requirement 6, this leaves the first of the alleged requirements, *i.e.*, "requirements that mandate the use of CUP and/or establish CUP as the sole supplier of EPS for all domestic transactions denominated and paid in RMB", and the fifth of the alleged requirements, *i.e.*, the "broad prohibition on the use of non-CUP cards". China will address these two requirements collectively as measures that the United States believes to require the processing of domestic, RMB-denominated interbank payment card transactions over the CUP network.

44. Exhibit CHI-74 accompanying China's response to Question 22(a) from the Panel is a table that indicates all of the provisions of the measures: (1) that were in effect on the date of establishment of this Panel; and (2) that the United States has cited in support of its allegation that CUP has a "monopoly" on the processing of domestic interbank payment card transactions. In the last column of this table, China explains why each of the five provisions cited by the United States does not require domestic interbank payment card transactions to be processed over the CUP network.

45. Unable to demonstrate the existence of a "monopoly" on the face of the measures at issue, the United States resorts to creative juxtapositions and rewordings of different measures. For example, the United States interprets Article I.2 of Document No. 153 to state that "China Union Pay is *the* domestic clearance organization". Based on this misinterpretation, it concludes that "CUP is the *only* 'domestic clearance organization'", even though the word "only" is nowhere to be found in the text. In fact, Article I.2 states that "China Union Pay is *a* domestic clearance organization", not that it is "the" domestic clearance organization, let alone "the *only*" domestic clearance organization. But this does not stop the United States from carrying its misinterpretation over to a different document, Document No. 53, where it interprets the terms "domestic clearing channels" and "domestic RMB clearing organizations" to refer *exclusively* to CUP. Document No. 53 does not even refer to CUP by name, much less confer any sort of monopoly upon it.

46. The fact that the United States must resort to this sort of manipulation of the measures merely confirms that it is unable to prove its case under Article XVI:2(a). Not a single one of the provisions cited by the United States even remotely imposes a quantitative or quantitative-type limitation on market access "in the form of" a monopoly or exclusive service supplier arrangement. For these reasons, the Panel must reject the U.S. claim under Article XVI:2(a), even assuming that all of the services at issue are classifiable under subsector (d) and that the United States has established the existence of relevant market access commitments.

#### **IV. THERE IS NO BASIS FOR THE U.S. NATIONAL TREATMENT CLAIMS IN THIS DISPUTE**

47. The parties do not dispute that an entry of "unbound" in the market access column means that a Member has reserved the right to adopt or maintain any of the types of measures listed in Article XVI:2. Nor do the parties dispute that the types of measures listed under Article XVI:2 can be either discriminatory or non-discriminatory (except for Article XVI:2(f), which is inherently discriminatory). It follows that a Member that has left a particular subsector and mode of supply unbound is free to adopt or maintain measures under Article XVI:2, including measures that are discriminatory, and that any such measure cannot simultaneously be the subject of a claim under Article XVII. Allowing such a claim would be contrary to the meaning of the term "unbound", and

contrary to the intention, reflected in Article XX:2, to leave measures of the type listed under Article XVI:2 governed exclusively by the entry in the market access column.

48. The United States does not have a meaningful response to this conclusion. In response to Question 69(b) from the Panel, it asserts that "[i]f a Member had no commitments with regard to Article XVI, but a full commitment with regard to Article XVII, that Member could not retain a market access restriction that was simultaneously inconsistent with national treatment." It claims that, in these circumstances, the "Member could come into ... compliance with its obligations by removing the national treatment inconsistency, while leaving the market access limitation in place."

49. The "solution" proposed by the United States merely begs the question of how to evaluate limitations on market access that are also discriminatory. Consider, for example, limitations on the participation of foreign capital under Article XVI:2(f). This is a limitation on market access that is inherently discriminatory, and one that a Member is allowed to adopt or maintain if its market access entry is unbound. Given its inherently discriminatory nature, how could a Member "remov[e] the national treatment inconsistency, while leaving the market access limitation in place"? The discrimination *is* the market access limitation; it cannot be removed "while leaving the market access limitation in place".

50. The impossibility of what the United States is proposing demonstrates that its interpretation of how Articles XVI and XVII relate to each other is in error. The agreed meaning of the term "unbound", as well as the clear intention behind Article XX:2, is to have measures of the type listed in Article XVI:2 governed by the entry in the market access column, including in any respect in which they might be seen as discriminatory.

## **V. CONCLUSION**

51. For the foregoing reasons, China respectfully requests that the Panel reject the U.S. claims in this dispute

---



**ANNEX E**

**ORAL STATEMENTS, OR EXECUTIVE SUMMARIES THEREOF, OF THE PARTIES  
AT THE SECOND SUBSTANTIVE MEETING**

<b>Contents</b>		<b>Page</b>
Annex E-1	Executive summary of the oral statement of the United States at the second substantive meeting	E-2
Annex E-2	Executive summary of the oral statement of China at the second substantive meeting	E-7

## ANNEX E-1

### EXECUTIVE SUMMARY OF THE ORAL STATEMENT OF THE UNITED STATES AT THE SECOND SUBSTANTIVE MEETING

#### I. INTRODUCTION

1. The United States has shown that China's measures prevent foreign suppliers from supplying the service that enables credit, charge, debit and other payment card transactions to occur in China for *all* transactions where the card is issued in China and used in China. These transactions constitute the overwhelming number of transactions in China, whether they be RMD-payment card transactions or transactions using foreign currency denominated payment cards issued in China. Instead, China has granted one Chinese domestic company, China UnionPay, Co. Ltd. ("CUP"), a monopoly to supply the service. China's written and oral submissions show nothing to the contrary. In fact, in its defense thus far, China has largely avoided substantive discussion of the challenged measures.

#### II. **EPS FOR PAYMENT CARD TRANSACTIONS IS A SINGLE, INTEGRATED SERVICE THAT FALLS WITHIN THE ORDINARY MEANING OF "ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS..." (SUBSECTOR (D))**

2. The United States has demonstrated that EPS for payment card transactions is a single, integrated service that is properly classified under subsector (d) in China's Schedule. EPS is supplied as coherent whole, and this service enables cardholders' banks to pay merchants' banks the amount they are owed. EPS suppliers provide an efficient, timely and reliable means to facilitate the transmission of funds from the holders of payment cards who purchase goods or services to the individuals or businesses that supply them. The network, rules and procedures, and operating system provided by an EPS supplier enable payment card transactions to occur. EPS suppliers receive, check and transmit information that the parties need to conduct the transactions, and enable the transmission of funds between participating entities. Each component of EPS is critical to effectuate payment card transactions. The customers of EPS suppliers – the entities that are participating in the payment card transactions – demand and rely on EPS as a complete, integrated, and unified service.

3. The clear language of subsector (d) compels the conclusion that EPS falls within the ordinary meaning of "payment and money transmission services" as one type of "all" such services. The illustrative list that explicitly provides that the services in subsector (d) "include[s] credit, charge and debit cards" underscores that EPS is integral to the processing of credit, charge, debit and other payment card transactions.

#### III. **THE SERVICE AT ISSUE IS NOT "SETTLEMENT AND CLEARING SERVICES FOR FINANCIAL ASSETS, INCLUDING SECURITIES, DERIVATIVE PRODUCTS, AND OTHER NEGOTIABLE INSTRUMENTS"**

4. China's arguments regarding subsector (d) are anchored to a flawed premise, cannot be reconciled with the text of its commitments, and are contrary to how the service at issue operates in practice. Moreover, China's position hinges on an exceedingly narrow reading of subsector (d). China's interpretation fails to give meaning to the word "all" in the sectoral description of "all payment and money transmission services, including credit, charge, and debit cards..." At the same time that it reads out the word "all" and pushes for an extremely narrow reading of subsector (d), however, China advocates an overly broad interpretation of "settlement and clearing services for financial assets" that is inconsistent with its proper context.

5. China continues to assert that certain elements of EPS for payment card transactions constitute separate services that are classified in a sector, item (xiv) of the GATS Annex on Financial Services, for which China has made no market access or national treatment commitments. China's overly broad reading is also combined with an incorrect understanding of the services in item (xiv) that fails to account for fundamental, recognized differences in the operation and risk profile of financial services under item (xiv) and services related to retail payment processing, such as EPS for payment card transactions.

6. The ordinary meaning of the services described in item (xiv) is evidenced by the words, the illustrative list in item (xiv), the additional context provided by paragraph 5 of the Annex on Financial Services, and other sources, including the United Nations, the OECD, the World Bank, International Monetary Fund ("IMF"), Bank for International Settlements ("BIS"), and BIS Committee on Payment and Settlement Systems ("CPSS"), which all confirm that the ordinary meaning of item (xiv) does not include EPS for payment card transactions. Moreover, even if one were to erroneously attempt to disaggregate the component parts of EPS, no element of EPS falls within item (xiv). In short, the same rules of treaty interpretation that compel the conclusion that EPS for payment card transactions fall within subsector (d) also compel the conclusion that EPS for payment card transactions do not fall within item (xiv).

7. The ordinary meaning of the term "financial assets" that China has put forward is incorrect and contradicted by several sources. The United States has cited to the IMF's explanation that "a financial asset is negotiable if it is actively or inactively traded in a secondary market." In addition, the United States identified the Uniform Commercial Code ("UCC") definition of "financial asset," which is in accord with the IMF's explanation. Similarly, the BIS CPSS "glossary of terms used in payments and settlement systems" clearly illustrates that the terms "clearing" and "settlement" each have different meanings in the respective payment and securities contexts, confirming that context is crucial and all the terms in item (xiv) must be taken into account in determining the ordinary meaning of "settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments."

8. The BIS CPSS glossary definitions relating to payments systems, including EPS for payment card transactions, are drawn from different source documents than those for securities settlement systems. China's interpretation of "financial asset" fails to account for the fact that "settlement and clearing services for financial assets" is a substantially different financial service than EPS for payment card transactions, which is a type of retail payment service. The CPSS has explained that "[r]etail payments are generally classified as cash payments or non-cash payments," which are subclassified into "cheque payments, direct funds transfers and card payments." The United States provided a detailed explanation of the many practical differences between the systems used to settle and clear investment instruments of the kind referenced in item (xiv) and the systems used to settle and clear retail payment instruments, like payment cards.

9. Because credit card receivables can be used to create asset-backed securities, China also argues that there is "no distinction whatsoever between the issuing bank's claim against the cardholder and the acquiring bank's claim against the issuing bank." China is wrong here too. The assets that are used to create credit card asset-backed securities are not the obligations between issuing and acquiring banks that are processed by EPS suppliers on a daily basis. The relevant assets are the loans that are extended from the issuing bank to the cardholder. EPS suppliers are not involved in the processing of such loans.

10. China cites the Basel Committee on Banking Supervision, Report on Special Purpose Entities (Exhibit CHI-76) ("Basel Report"), for the proposition that credit card receivables are financial assets. However, the Basel Report makes it clear that the "assets" are not the obligations between the issuing and acquiring banks, but instead are receivables that generate income or cash flow (that is, the loan).

Thus, this source actually supports the proposition that the "financial assets" are *the loans between the issuing bank and the cardholders*.

11. China's argument that clearing and settlement services for certain types of retail payment instruments such as checks are covered by item (xiv) is also flawed. Item (xiv) covers only those types of "negotiable instruments" that qualify as "financial assets," and instruments such as personal checks do not fall within that category. The System of National Accounts (SNA), an international standard system of national accounts, prepared jointly by the United Nations, the OECD, the World Bank, the IMF, and the European Commission, distinguishes between financial claims that are negotiable and those that are not, and according to the SNA the term "negotiable instrument" does not include retail payment instruments such as checks.

12. Finally, paragraph 5(a) of the Annex provides additional context that supports the U.S. interpretation. The terms "financial assets" and "negotiable instruments" also appear item (x) of the Annex, which covers, "Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise." As used in item (x), these terms refer to tradeable investment assets, rather than "interbank claims for payment." Thus, the context for item (xiv) indicates that "negotiable instruments" and "financial assets" are not retail payment vehicles like payment cards. Additional context is item (viii) of the Annex, which contains the most specific and accurate description of the service for purposes of classifying EPS for payment card transactions.

#### **IV. CHINA'S MODE 1 AND MODE 3 COMMITMENTS FOR "ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS..."**

13. It is plain from the text that China has taken mode 1 market access commitments for "all payment and money transmission services, including credit, charge and debit cards..." The word "Unbound" in the market access column of its Schedule is qualified. The phrase "except for the following" is further elaborated by two sentences that describe elements of the service within subsector (d) for which China has taken mode 1 commitments. The qualifying phrase and specific elaboration following the word "Unbound" must be given meaning.

14. Meanwhile, China's reaction to the U.S. response underscores its attempt to conflate the classification of a service in a particular subsector, on the one hand, with the interpretation of market access limitations, on the other. China states that "the United States needs the service at issue to be in two places at once: in subsector (d) and in subsectors (k) or (l)." Sequence is critical to a proper analysis. Step one is to classify the service: the service at issue is a single, integrated service that falls within subsector (d). Step two is to discern China's commitments for subsector (d), such as China's mode 1 commitments. This is a separate and distinct exercise from step one. Yet China continues to muddle the discussion of these separate steps.

15. China's arguments fail to give any meaning to the extensive language qualifying the term "Unbound" in its mode 1 commitments. They essentially reduce to the single point that all of the extensive language qualifying the term "Unbound" in its mode 1 market access commitments was provided simply to confirm language already existing elsewhere in China's Schedule. According to China the additional wording should be given no meaning whatsoever. If China wished to be fully "Unbound," that is, not to have *any* mode 1 commitments, it should not have qualified its commitments; rather it should have left the word "Unbound" unqualified. However, as its Schedule reflects, China did not do so. It is not credible to argue that the additional language is merely for greater certainty to repeat China's commitments in subsectors (k) and (l). Such an argument fails to give meaning to this treaty language. Perhaps knowing this, China implores the Panel to "imagine" instead different treaty language rather than the actual words in its Schedule.



16. Elements of CUP's own activities are described in terms similar to the "excepted" elements that are set out in China's mode 1 market access commitments, and China's regulatory system similarly describes a primary activity of CUP as exchanging information among financial institutions. Moreover, the concept that a service may include elements of "provision and transfer of financial information, and financial data processing" was recognized, for example, in paragraph 8 of the Uruguay Round Understanding on Commitments in Financial Services. The provision and transfer of financial information and data processing is central to the supply of many different financial services, and, according to the Understanding, signatory WTO Members cannot frustrate their commitments by, for example, blocking the ability to communicate and process information.

17. With respect to China's mode 3 market access commitments for subsector (d), the presence of the term "financial institution" in China's schedule does not create a separate and independent limitation. The Schedule states that "[c]riteria for authorization to deal in China's financial services sector are solely prudential." There is nothing in China's Schedule that indicates it may condition the supply of a service on the criteria listed in the market access commitment column and also require that another Member's supplier meet additional (and unspecified) criteria to be recognized as a "foreign financial institution." Such a limitation would have needed to be imposed explicitly in its Schedule, and China did not do so. Finally, even if it were the case that the term "financial institution" somehow served as a limitation in China's Schedule, the definition of "financial institution" offered by China is too narrow. Many definitions are much broader, and some explicitly include "an operator of a credit card system."

**V. CHINA'S MEASURES ESTABLISHING AND SUPPORTING CHINA UNIONPAY'S MONOPOLY ON THE SUPPLY OF EPS ARE INCONSISTENT WITH ARTICLE XVI OF THE GATS**

18. China's measures limit the number of suppliers of EPS. The United States identified 19 instruments in the U.S. panel request and is challenging each of them independently. The United States has also identified six separate categories of requirements that constitute six separate measures that are implemented through several instruments operating in conjunction:

- Requirements that mandate the use of CUP and/or establish CUP as the sole supplier of EPS;
- Requirements that RMB denominated payment cards issued in China bear the CUP logo;
- Requirements that all automated teller machines ("ATM"), merchant card processing equipment, and POS terminals in China accept CUP cards;
- Requirements on acquiring institutions to post the CUP logo and be capable of accepting all payment cards bearing the CUP logo;
- Broad prohibitions on the use of non-CUP cards; and
- Requirements pertaining to card-based transactions in China, Macao and Hong Kong.

19. These measures establish and maintain CUP's monopoly and limit the number of suppliers of EPS for payment card transactions and are inconsistent with China's obligations under Article XVI of the GATS.

## **VI. CHINA'S MEASURES ARE INCONSISTENT WITH ARTICLE XVII OF THE GATS**

20. The measures at issue affect the supply of services and accord less favorable treatment to foreign suppliers of EPS, and are inconsistent with China's obligations under Article XVII of the GATS. Some measures impose a limitation such that CUP is the sole entity that can process certain transactions, such as domestic RMB transactions. This of course means that foreign suppliers of EPS are prevented from supplying the service at all. Other measures promote CUP's position in the marketplace such as by imposing certain requirements on every key player in a card-based electronic payment transaction. The United States has explained how China's measures affect every aspect of a card-based electronic payment transaction and the key players, including issuers (all cards issued in China for domestic RMB transactions must bear the CUP logo), merchants (all merchant card processing equipment and POS terminals must accept CUP cards), and acquiring institutions (which must post CUP logo and accept CUP cards).

## **VII. CONCLUSION**

21. The United States respectfully requests that the Panel find that China's measures are inconsistent with China's obligations under Article XVI:1 and XVI:2(a) and Article XVII of the GATS. The United States again thanks the Panel for its continued service in this dispute and looks forward to responding to any questions the Panel may have.

## ANNEX E-2

### EXECUTIVE SUMMARY OF THE ORAL STATEMENT OF CHINA AT THE SECOND SUBSTANTIVE MEETING

#### I. INTRODUCTION

1. It is not my intention this morning to review China's arguments as they relate to all of the issues in this dispute. As a result of the questions posed by the Panel after the first meeting and the parties' subsequent submissions, the key issues in this dispute are now reasonably well defined. I intend to focus my remarks on those key issues and, in particular, on the positions that the United States has taken in respect of those issues.

#### II. CLASSIFICATION: ITEM (XIV) OF THE ANNEX LIST

2. The only issue that remains in dispute in respect of item (xiv) of the *Annex* list is whether interbank claims for payment are among the "financial assets" that are covered by item (xiv). China has definitively established that the ordinary meaning of the term "financial assets" includes cash and any right to receive cash. An acquiring bank's right to receive payment from an issuing bank is indisputably a "financial asset" within this ordinary meaning.

3. In its second submission, the United States continues to search for *some* definition or usage to support its position that the term "financial assets" is limited to what it calls "investment instruments". The United States cites only two "sources" in support of its interpretation: the Monetary and Financial Statistics Guide prepared by the IMF, and the definition of the term "financial assets" in Article 8 of the U.S. UCC. Neither one of these supports the U.S. position.

4. The United States cites a passage from the Monetary and Financial Statistics Guide that explains the types of financial assets that the IMF considers to be *negotiable* for statistical purposes. The United States fails to explain why this *statistical* definition of *negotiability* is relevant to the interpretation of the term "financial assets" in item (xiv). That omission aside, the more important point is that the IMF defines the term "financial assets" – the *operative* term in item (xiv) – to include "all financial claims". Moreover, the Monetary and Financial Statistics Guide cited by the United States, as well as the System of National Accounts maintained by the IMF, are expressly based on the International Financial Reporting Standards. As China has previously explained, those standards define the term "financial asset" to include "cash" and any "contractual right to receive cash".

5. As for Article 8 of the U.S. UCC, the United States has yet to explain why U.S. municipal law is relevant to the process of discerning the common intention of the Members with respect to the meaning of item (xiv). But setting aside its interpretative irrelevance, the United States neglects to point out that the subject matter of Article 8 is expressly limited to investment securities. Naturally, the definition of the term "financial assets" in Article 8 is tailored to the subject matter of that article. The limitation that the United States seeks to impose upon the ordinary meaning of the term "financial assets" is entirely arbitrary.

6. Lacking any support for its position in the ordinary meaning of the term "financial assets", the United States spends *eight pages* of its second submission describing alleged differences between the clearing and settlement of "investment instruments" and the clearing and settlement of retail payment instruments. What the United States never explains is why any of these alleged differences *matter* for the purpose of determining the ordinary meaning of the term "financial assets" in item (xiv).

7. The last refuge for the United States is its so-called "contextual" interpretation of the term "financial assets", based on the three examples provided in item (xiv). First, the United States asserts that because "payment cards" are "not similar" to securities or derivative products, and "are not negotiable instruments", they are not "of the same type of financial assets as the items included in the illustrative list" and therefore are not covered by item (xiv). The United States knows that this is not the issue in dispute. Network operators do not clear and settle "payment cards". They clear and settle interbank claims for payment that arise under four-party payment card models. Whether such *claims for payment* are financial assets within the meaning of item (xiv) is the only interpretative issue in this case. As China has shown, all legitimate interpretative tools demonstrate that interbank claims for payment are "financial assets" within the ordinary meaning of that term.

8. The second key point is that the U.S. "contextual" interpretation is based entirely on a misinterpretation of what that context means. The critical underpinning of the U.S. "contextual" approach is to deny that the term "negotiable instruments" in item (xiv) includes cheques and other types of retail payment instruments. It is understandable why the United States must take this position. To acknowledge the obvious fact that cheques are negotiable instruments would destroy not only the U.S. position that item (xiv) is limited to "investment instruments", but also its position that all clearing and settlement services relating to payment instruments are implied by interpretative necessity in item (viii).

9. The United States adds to the litany of contradictions in the very next section of its submission, when it points to item (x) of the *Annex* list as an "illustrative list" of what it considers to be the types of financial assets that are covered by item (xiv). Apparently overlooked by the United States is the fact that item (x)(A) of this list explicitly refers to "cheques" as among the "negotiable instruments" and "financial assets" that are included within this category. This fatally undermines the U.S. insistence that the drafters of the *Annex* list meant to exclude cheques from the ordinary meaning of the terms "financial assets" and "negotiable instruments".

10. One final point about the U.S. "contextual" argument deserves highlighting. In addition to all of its other flaws, the U.S. interpretation does not come to terms with the fact that the illustrative list in item (xiv) is a non-exhaustive list of "financial assets". The U.S. interpretation of item (xiv) not only misinterprets the meaning of the three examples that are provided, it then treats those three examples as if they were the *only types* of "financial assets" that are covered by item (xiv). As China has shown, this is not the role that illustrative lists play in the process of treaty interpretation.

### III. CLASSIFICATION: SUBSECTOR (D)

11. Like its interpretation of item (xiv), the U.S. interpretation of subsector (d) has become an exercise in how many inconsistencies and contradictions the United States can maintain simultaneously. The United States contends that all of the services at issue are in subsector (d), but then argues that the same services are actually described by subsectors (k) and (l). It agrees that the subsectors in a Member's Schedule are mutually exclusive, but then argues that subsectors can become "embedded" in other subsectors by "necessity". In its attempt to reconcile these inconsistent positions, the United States unwittingly creates oxymorons like "auxiliary central services" and "optional essential services".

12. In its second submission, the United States places significant emphasis on the proposition that the services at issue in this dispute "constitute one integral, indivisible service." As a factual matter, the United States is mistaken in its premise. In fact, it is common for the network infrastructure of a payment card system to be supplied separately from the clearing and settlement services that banks use to reconcile and discharge their obligations toward each other. For example:

- In Australia, most ATM and EFTPOS networks are owned by specific banks. As a result of interconnection agreements, these networks effectively operate as a single national network. ATM and EFTPOS transactions are not cleared and settled over this network. Instead, banks clear and settle payment card transactions on a bilateral basis, using a gross settlement system operated by the Australian Payments Clearing Association and the Reserve Bank of Australia.
- In Canada, the principal network for ATM and EFTPOS transactions is operated by Interac, a non-profit association owned primarily by Canadian banks. Interac provides the front-end authorization network for ATM and EFTPOS transactions. These transactions, however, are cleared and settled through the Automated Clearing and Settlement System (ACSS), a different system operated by the Canadian Payments Association. The ACSS clears and settles all types of interbank claims, including not only ATM and EFTPOS transactions, but also paper-based cheques.

13. France, Germany, Italy, Japan, the Netherlands, and Sweden are just a few other examples of countries where the network infrastructure is supplied separately from clearing and settlement services. The fact that Visa and MasterCard happen to bundle certain services into a single service offering does not mean that all network services are provided on this basis or that the bundling of these services is required as a matter of operational necessity.

14. In addition to its factual inaccuracy, the U.S. theory is based on the notion that any set of services that is supplied on a "bundled" basis *must* be classified as a single service, at least if *some* service suppliers happen to provide the services on this basis. But the manner in which a service supplier combines and prices services does not change their classification as distinct services. For example, a hotel might include a tour of the local sights as part of a package price, but this does not change the fact that it is providing both hotel services and tour services. Nor can it be the case that the same service takes on a *different* classification *only* in those cases where a particular service supplier happens to bundle it with another service. This would violate the principle of mutual exclusivity.

15. In sum, there is no reason, either as a matter of fact or as a matter of law, why the services at issue in this dispute can or should be classified into one and only one subsector. The clearing and settlement services at issue in this dispute, in particular, are plainly recognizable as a distinct and separately classifiable service under item (xiv) of the *Annex* list.

#### IV. COMMITMENTS: MODE 1

16. The U.S. position on how to classify the services at issue is now directly in conflict with its position that China made relevant Mode 1 commitments in respect of those services. In its second written submission, the United States has strongly reaffirmed its position that all of the services at issue in this dispute are classifiable under subsector (d). Yet at the same time, the United States maintains that *every aspect* of what it calls "electronic payment services" fits within the description of subsectors (k) and (l).

17. The U.S. theory that China undertook Mode 1 commitments in respect of the services at issue rests entirely on the proposition that the services described in one subsector can become "embedded" in another subsector to the extent that they are "integral" to the provision of the latter service. As China has explained, this theory is flatly inconsistent with the principle of mutual exclusivity, and the Panel must reject it for this reason alone.

18. The U.S. position, if accepted, would make a mockery of China's actual commitments for subsectors (a) through (f). Both the text and context of China's Schedule establish that the intention

behind these commitments was that the banking services listed in subsectors (a) through (f) would be supplied by foreign financial institutions operating in China on a commercial presence basis.

19. According to the United States, network operators like Visa and MasterCard could provide *all* of the services at issue in this dispute with "no or a very limited physical presence in China". Moreover, entities like Visa and MasterCard could provide these services in China even though they are not financial institutions. In other words, services that were meant to be supplied on a *commercial presence* basis by *financial institutions* would be supplied on a *cross-border* basis by service suppliers that are *not* financial institutions.

20. Other than in the case of subsector (d), the United States appears to understand the nature of China's commitments for these subsectors. In response to question 28 from the Panel, the United States provided examples of a financial institution that provides a core banking service in China on a commercial presence basis and, in conjunction with that service, provides certain other services on a cross-border basis that the United States considers to be within the description of subsectors (k) or (l). The United States would presumably agree that, in each instance, the core banking service is unbound in Mode 1. In the case of subsector (d), however, the United States has yet to identify any service at issue in this dispute that would be unbound in Mode 1. According to the United States, *all* of the services at issue fit within the exception and could be supplied on a cross-border basis. There is no "core" service to be supplied on a commercial presence basis – the services *are* the exception.

21. The exception to China's unbound market access entry for subsector (d) only becomes relevant if there is something in subsector (d) to begin with – that is, if there is some service that the service supplier is legitimately supplying in China on a commercial presence basis. If the United States believes that there *is* such a service, and is able to identify what it is, that service is necessarily unbound in Mode 1. Otherwise, the United States can no longer maintain that subsector (d) has any relevance to this dispute.

## **V. COMMITMENTS: MODE 3**

22. The United States still has not committed to a single, coherent theory of how China's commitments in Mode 3 relate to the services and service suppliers at issue in this dispute. There is one thing, however, that is reasonably clear: the United States *knows* that China's market access commitments for subsector (d) are limited to foreign financial institutions. This is the only plausible explanation for why the United States continues to insist that Visa and MasterCard are financial institutions, even though they are not financial institutions under any commonly understood definition of that term, and even though Visa and MasterCard routinely deny any such status.

23. The problem for the United States, however, is that Visa and MasterCard are *not* financial institutions. Once this is properly taken into account, the U.S. claims to market access under subsector (d) simply evaporate, in both Mode 3 *and* Mode 1. As I discussed earlier, China's commitments for subsectors (a) through (f) contemplate that foreign financial institutions will provide these services in China on a commercial presence basis. For the exception to China's unbound market access entry in Mode 1 even to be relevant, the service supplier at issue must be providing one or more of these services in China on a commercial presence basis. Because Visa and MasterCard are not financial institutions, they have no right of market access in Mode 3. It follows that they have no right of market access in Mode 1 that could even potentially be relevant to the services that they provide.

24. For these reasons, even if the services at issue were properly classifiable under subsector (d), which they are not, in no event do China's commitments in Mode 1 or Mode 3 extend to service suppliers that are not financial institutions.

## VI. CONCLUSION

25. It is easy to lose sight of the fact that there are at least three distinct layers to this dispute: classification, commitments, and the consistency of the measures at issue. For all of the reasons that China has set forth in its submissions, China considers that the United States has failed to meet its burden of proof in respect of the classification of the services at issue. China considers that the failure of the United States to meet its burden of proof in respect of classification should lead the Panel to dismiss the U.S. claims in their entirety.

26. Even if the Panel were to conclude that some or all of the services at issue in this dispute are classified under subsector (d), the Panel should find that the United States has failed to prove that China undertook relevant commitments in Mode 1 and Mode 3. This, too, would require the Panel to dismiss the U.S. claims in their entirety.

27. It is only if the Panel were to find that some or all of the services at issue are classified under subsector (d), *and* that China undertook relevant commitments in either or both modes of supply, that the Panel would need to evaluate the consistency of the measures at issues with those commitments. Here, too, the United States has failed to prove its case. As China detailed in its second written submission, the United States is now grasping at straws, arguing that the six alleged "requirements" are freestanding "measures" that the Panel can evaluate independently of any of the specific legal instruments identified in the panel request. The United States has been forced to take this approach – which it so strenuously opposed in *Gambling* – because the measures that are *actually* at issue in this dispute plainly do not support its claims. Thus, even in this scenario, the Panel would need to dismiss the U.S. claims in their entirety.

28. China respectfully submits that this is the order of analysis that the Panel should follow. At every juncture in this analysis, the end result is the same: the United States has failed to prove its claims in this dispute, and the Panel must therefore reject those claims in their entirety.

---





**ANNEX F**

**REQUEST FOR A PRELIMINARY RULING**

Annex F-1	Executive summary of China's request for a preliminary ruling	F-2
Annex F-2	Executive summary of the United States' submissions in response to China's request for a preliminary ruling	F-3
Annex F-3	Executive summary of China's comments on the United States' submissions in response to China's request for a preliminary ruling	F-12

## ANNEX F-1

### EXECUTIVE SUMMARY OF CHINA'S REQUEST FOR A PRELIMINARY RULING

#### **I. THE U.S. PANEL REQUEST DOES NOT PROVIDE A BRIEF SUMMARY OF THE LEGAL BASIS OF THE COMPLAINT SUFFICIENT TO PRESENT THE PROBLEM CLEARLY**

1. China hereby requests a preliminary ruling by the Panel with respect to the consistency of the U.S. panel request with Article 6.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"). Article 6.2 of the DSU provides, in relevant part, that "[t]he request for the establishment of a panel shall ... identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly."

2. The Appellate Body has held that "in order for a panel request to 'present the problem clearly', it must plainly connect the challenged measure(s) with the provision(s) of the covered agreements claimed to have been infringed, so that the respondent party is aware of the basis for the alleged nullification or impairment of the complaining party's benefits." The Appellate Body has further held that the sectors and subsectors set forth in a Member's schedule of specific commitments under the General Agreement on Trade in Services ("GATS") are mutually exclusive. Thus, by operation of law, any given service that is the subject of a claim under the GATS must fall into one, and only one, sector or subsector of the responding Member's schedule of specific commitments. It follows that, in order to "present the problem clearly" under Article 6.2 of the DSU, the panel request must identify the specific sector or subsector that allegedly encompasses the service at issue or, if there are multiple services at issue, plainly associate those services with the specific sector or subsector that allegedly encompasses each service.

3. The foundation of the U.S. panel request in this dispute is a lengthy definition of the services that it alleges to be at issue – what it calls "electronic payment services". This is a term of the United States' own making – it does not correspond to any of the service subsectors set forth in China's Schedule of Specific Commitments ("Schedule"). The lack of any such correspondence is evidenced by the fact that the United States cites three different and mutually exclusive subsectors in China's Schedule as the legal basis for its claims. These subsectors are, in brief: (1) "all payment and money transmission services"; (2) "provision and transfer of financial information, and financial data processing and related software by supplier of other financial services"; and (3) "advisory, intermediation and other auxiliary financial services".

4. The nature and extent of China's market access and national treatment obligations in the three subsectors identified in the panel request depend upon the particular subsector involved, as well as the mode of supply. Notwithstanding these differences in China's legal obligations, the U.S. panel request fails to explain, even concisely, how its definition of "electronic payment services" relates to China's specific commitments in any one of the three subsectors, and fails to provide any indication of which mode (or modes) of supply the United States considers to be at issue. In these critical respects, the U.S. panel request fails to connect the challenged measures to the provisions of the covered agreements that the United States relies upon as the legal basis for its claims.

5. In light of these deficiencies, the U.S. panel request has failed to "present the problem clearly" as required by Article 6.2 of the DSU. In order to address China's due process concerns, and in order to avoid prejudice to either party, China respectfully requests that the Panel issue a preliminary ruling at the earliest opportunity.

**ANNEX F-2****EXECUTIVE SUMMARY OF THE UNITED STATES' SUBMISSIONS IN  
RESPONSE TO CHINA'S REQUEST FOR A PRELIMINARY RULING****I. INTRODUCTION**

1. Each day around the world, credit, charge, debit, and other payment cards are used in hundreds of millions of transactions where cardholders purchase a vast array of goods and services, ranging from groceries, clothing, and gasoline, to airplane tickets, hotel accommodations, and dining at restaurants. In terms of both volume and value, the amount of goods and services subject to payment card transactions is staggering. The services that enable, facilitate, and manage the transfer of funds between cardholders and merchants – commonly known as electronic payment services ("EPS") – are essential to processing the several hundred million card-based electronic transactions that occur daily around the world. These services are vital to the operation of a modern economy.

2. When China joined the World Trade Organization ("WTO") in 2001, it made important commitments with respect to electronic payment services. In 2005, China explicitly recognized that "the RMB bank card operation shall be opened to the outside world in an all-around manner." In the financial services sector, as set out in China's Schedule of Specific Commitments on Services, China undertook both market access and national treatment commitments with respect to electronic payment services. Under the terms of its Schedule, China was required to fully implement these commitments as of December 2006. Yet, despite China's commitments to provide both market access and national treatment for "all payment and money transmission services, including credit, charge and debit cards" for domestic currency transactions, China continues to maintain a government-mandated domestic monopoly, enabling only its domestic champion, China UnionPay, Co. Ltd. ("CUP" or "China UnionPay"), to provide these services, thereby blocking participation by foreign suppliers.

3. China itself acknowledged in 2005 that "the bank card industry of our country is facing a comparatively big challenge" because its WTO commitments were to take effect in 2006. Yet despite the December 2006 deadline for the implementation of its WTO commitments, China failed to remove the measures that form the basis for CUP's monopoly on the supply of EPS for RMB payment card transactions (*e.g.*, those using credit card, charge card, and debit cards). Not only did China fail to eliminate the monopoly, it also adopted additional measures to lock in CUP's dominance. Statements from PBOC and CUP officials suggest that China did not dismantle CUP's monopoly because China wanted more time to establish and solidify CUP's presence overseas before it would eventually have to face competition from foreign EPS suppliers in China.

4. Since December 2006, China has steadfastly refused to allow foreign suppliers of electronic payment services to process RMB payment card transactions and has enacted numerous barriers to establishing the processing infrastructure, network, rules, and procedures that are essential to the supply of EPS, and hence necessary for foreign suppliers' processing of such card-based transactions in China. Meanwhile, operating from its protected home market monopoly position, CUP has been rapidly expanding its card acceptance and issuance internationally since 2003. Unlike foreign suppliers of electronic payment services in China, CUP is able to have full and unencumbered access to the domestic payment card market in a growing number of foreign countries in which it has chosen to operate (now numbering more than 110). In other words, foreign EPS suppliers in China do not have the same market access in China that CUP enjoys abroad.

5. China failed to open its market as required by its WTO obligations. The measures that provide for CUP's monopoly position remain in place, and China has introduced reinforcing measures to strengthen and entrench the CUP monopoly. This monopoly structure ensures that CUP is the sole

entity that can provide EPS for RMB transactions in China – the vast majority of all transactions in China.

6. The United States enumerated its concerns regarding China's measures in the U.S. panel request. Nonetheless, on July 5, 2011, China filed a request for a preliminary ruling with respect to the consistency of the U.S. panel request with Article 6.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). Yet the U.S. panel request is in writing, indicates that consultations were held, identifies the specific measures at issue, and provides a brief summary of the legal basis of the complaint sufficient to present the problem clearly. China's procedural challenge is baseless. The U.S. panel request is fully consistent with DSU Article 6.2.

## **II. PROCEDURAL HISTORY OF CHINA'S PRELIMINARY RULING REQUEST**

7. On July 5, 2011 China filed a request for a preliminary ruling on the consistency of the U.S. panel request with DSU Article 6.2. In its submission, China requested that the Panel adopt procedures and a timetable to provide for separate submissions, a hearing, and findings by the Panel on China's request before the United States had had an opportunity to provide its first submission. However, China failed to explain why it would suffer prejudice from receiving the U.S. response in the U.S. first submission, an approach consistent with the customary practice in responding to preliminary ruling requests. Nor did China explain how its request would avoid prejudice to the United States and its interest, as the complaining party, in presenting its case in a coherent manner. Rather, China's request would require the United States to address certain key aspects of its case in advance and separate from other key aspects. And China failed to address the delay in the Panel proceedings caused by its request, a delay that China itself had successfully argued to a prior panel as grounds for denying a similar request.

## **III. THE U.S. PANEL REQUEST SATISFIES THE REQUIREMENTS OF DSU ARTICLE 6.2**

### **A. THE REQUIREMENTS OF DSU ARTICLE 6.2**

8. Article 6.2 of the DSU provides in part as follows:

The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

9. The Appellate Body has described the requirements of DSU Article 6.2 as follows:

When parsed into its constituent parts, Article 6.2 may be seen to impose the following requirements. The request must: (i) be in writing; (ii) indicate whether consultations were held; (iii) identify the specific measures at issue; and (iv) provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

10. In analyzing whether a panel request complies with DSU Article 6.2, the Appellate Body has stated that "compliance with the requirements of Article 6.2 must be determined on the merits of each case, having considered the panel request as a whole, and in the light of attendant circumstances." Compliance with the requirements of DSU Article 6.2 must be determined by considering the panel request as a whole, and not simply on the basis of isolated portions of the panel request.

- B. THE U.S. PANEL REQUEST IS IN WRITING, INDICATES THAT CONSULTATIONS WERE HELD, IDENTIFIES THE SPECIFIC MEASURES AT ISSUE, AND PROVIDES A BRIEF SUMMARY OF THE LEGAL BASIS OF THE COMPLAINT SUFFICIENT TO PRESENT THE PROBLEM CLEARLY.

11. The U.S. panel request meets each of these requirements under Article 6.2 of the DSU. The panel request identifies the specific measures being challenged, the specific commitments at issue in China's schedule, and the specific obligations that are the subject of the U.S. complaint. In addition, the U.S. panel request specifies, with precision, the services at issue: "electronic payment services for payment card transactions." The United States also provides in its panel request a detailed narrative of the claims it is making as an additional basis for China to understand "the legal basis of the complaint." The U.S. panel request contains information "sufficient to present the problem clearly."

12. China's argument essentially reduces to the assertion that the United States needed to "explain how or why the United States considers the challenged measures to be inconsistent with China's specific commitments." China also states that "[t]he foundation of the U.S. panel request in this dispute is a lengthy definition of the services that it alleges to be at issue – what it calls 'electronic payment services'" and that "[t]his is a term of the United States' own making." China further argues that the term electronic payment services "does not correspond to any of the service subsectors set forth in China's Schedule of Specific Commitments."

13. As an initial matter, China is wrong factually. First, as explained in detail in this submission, the description of the sector at issue in this dispute that is set out in the U.S. panel request – "electronic payment services" for "payment card" transactions – is drawn from industry sources and reflects the broad and common understanding within this sector. Suppliers of the services at issue in this dispute who work within this sector are described as supplying, or characterize themselves as supplying, "electronic payment services" and as operating within the "global payments industry." The sector that services credit, charge, debit, and other payment card transactions characterizes itself as providing "electronic payment services." China simply cannot credibly assert that the use of this term is somehow confusing or prejudicial.

14. An analogous issue was addressed in the context of a challenge to a product description in a panel request and the purported lack of clarity in terms of tariff classification. The panel in *EC – Computer Equipment* rejected the EU's argument regarding the purported lack of clarity of the term "LAN equipment" and found the definition "is sufficiently specific for the purposes of our consideration of this dispute." The panel in *EC – Computer Equipment* also rejected the same type of argument advanced in connection with the term "PC's with multimedia capability." The EU appealed these panel findings in that dispute on the basis that that the purported lack of clarity violated the EU's due process rights. The Appellate Body upheld the panel's findings, rejected the EU's alleged due process claims.

15. China's assertion that the term "electronic payment services" does not correspond to any of the service subsectors set forth in China's GATS schedule is equally unavailing. EPS fall within the definition of "all payment and money transmission services, including credit, charge and debit cards..." The language of item (d) of China's Schedule itself makes this clear.

16. EPS are at the center of all payment card transactions and without these services the transactions could not occur. EPS fall within the ordinary meaning of payment and money transmission services, within item (d) of China's Schedule. As set forth in the U.S. panel request, and as detailed in this submission, EPS involve the services through which transactions involving payment cards are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated. EPS clearly fall within the ordinary meaning of "payment and money transmission service" as one type of "all" such services. Second, the phrase "all payment and money transmission services" is modified with an illustrative list that explicitly provides that it

"include[s] credit, charge and debit cards." Visa, MasterCard, Discover, and American Express are names recognized around the world as credit, debit and charge cards. The reference to debit cards covers suppliers of EPS for debit card transactions like First Data, Pulse, NYCE, STAR, and PLUS.

17. And China is wrong as a legal matter as well. The "explanation" that China seeks goes beyond what is required by Article 6.2 of the DSU and instead asks the United States to provide China the U.S. arguments as to "why" China's measures breach the identified obligations. Similarly, China's arguments that the services do not fall within the specified sectors is a defense by China to the claims – a defense it will be free to make in its first written submission. There is no failure to satisfy the requirements of Article 6.2. And China's arguments in this regard demonstrate that China does in fact understand the matter raised in the U.S. panel request.

18. Also without merit is China's argument that "the United States cites three different and mutually exclusive subsectors in China's Schedule as the legal basis for its claims." Whether a complainant can prevail on separate claims advanced under potentially mutually exclusive subsectors in a Member's GATS schedule is a substantive legal issue to be decided on the merits based on the evidence and legal arguments presented to the Panel. Identifying potentially mutually exclusive claims in the U.S. panel request is not a failure under Article 6.2 to provide a summary of the legal basis of the complaint. In the three subsectors identified in the U.S. panel request, China undertook both market access and national treatment commitments for modes (1) and (3) as specified in its Schedule. The U.S. panel request thus puts China on notice as to China's market access and national treatment commitments, including the modes of supply, that are before the Panel.

19. In its request, China appears to acknowledge the claims in the U.S. panel request, but then seeks more – China seeks a detailed explanation of the U.S. legal arguments as to exactly how China's measures put it in breach of these commitments. In other words, China concedes that specific commitments and claims are identified in the U.S. panel request, but asks for more than what is required by DSU Article 6.2. With its request for a preliminary ruling, China seeks to have specific legal arguments presented as to how the measures at issue breach commitments identified in the U.S. panel request. China is not entitled to see how the United States will present its legal arguments in advance of the U.S. first submission. Yet, that is precisely what China seeks with its preliminary ruling request.

20. The U.S. panel request identifies that China undertook both market access and national treatment commitments with respect to item (d) "All payment and money transmission services, including credit, charge and debit cards..." In addition, the U.S. panel request identifies the specific measures being challenged and the specific obligations that are the subject of the U.S. complaint. The United States also specifies with precision the service at issue: "electronic payment services for payment card transactions," and provides in its panel request a detailed narrative of the claims it is making in order to provide additional information for China to understand "the legal basis of the complaint." The U.S. panel request also indicates the following.

21. *China maintains requirements that mandate the use of CUP and/or establish CUP as the sole supplier of EPS for all domestic transactions denominated and paid in RMB.* China requires that all transactions denominated and paid in RMB in China be processed and cleared in RMB through CUP, and that where there is a choice, all domestic transactions on dual currency cards be routed in RMB through CUP.

22. *China maintains requirements that RMB denominated payment cards issued in China bear the CUP logo.* China requires that any bank cards issued in China for RMB purchases in China, including dual currency payment cards issued in China, must bear the CUP logo. This means that issuers – the institutions that issue payment cards to consumers – must have access to the CUP system, and must pay CUP for that access.

23. *China maintains requirements that all automated teller machines ("ATM"), merchant card processing equipment, and point of sale ("POS") terminals in China accept CUP cards.* China requires that all ATMs, merchant card processing equipment, and POS terminals in China be capable of accepting CUP cards. There are no equivalent requirements for non-CUP cards.

24. *China maintains requirements on acquiring institutions to post the CUP logo and be capable of accepting all bank cards bearing the CUP logo.* China requires that all acquiring institutions – the institutions that sign up merchants to accept payment cards – in China post the CUP logo and be capable of accepting all bank cards bearing the CUP logo. An acquiring institution, often a bank, provides POS terminal and processing equipment to merchants so it can process payment cards, maintains the merchant's account, handles relations with the merchant, and ensures that payments are properly credited to the merchant.

25. *China maintains broad prohibitions on the use of non-CUP cards.* China prohibits the use of domestically issued non-CUP payment cards where the issuing bank and acquiring bank are different. China also requires that all inter-bank transactions for all bank cards be handled through CUP.

26. *China maintains requirements pertaining to card-based electronic transactions in China, Macao and Hong Kong.* China requires that CUP be used to handle all RMB transactions in Macao or Hong Kong using bank cards issued in China. China also requires that CUP be used to handle any RMB transactions in China using RMB cards issued in Hong Kong or Macao.

27. The U.S. panel request also asserts that these measures are inconsistent with China's obligations under GATS Article XVI:1 and XVI:2 not to adopt or maintain measures of the types listed in Article XVI:2. The U.S. panel request also asserts that these measures are also inconsistent with China's obligations under GATS Article XVII to accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers, in respect of all measures affecting the supply of services. Accordingly, the U.S. panel request is fully consistent with DSU Article 6.2, China's request is without merit, and the Panel should reject China's request and decide this case on its merits.

#### **IV. THE U.S. PANEL REQUEST IDENTIFIES WITH PRECISION "ELECTRONIC PAYMENT SERVICES" FOR "PAYMENT CARD" TRANSACTIONS**

28. The U.S. panel request identifies the specific measures at issue and provides a brief summary of the legal basis of the complaint that presents the problem clearly. As part of that summary, the United States also described the nature of the services at issue – "electronic payment services for payment card transactions." The United States further provides in the U.S. panel request footnotes that set out a description of those services and an illustrative list of payment cards. As explained above, this is more than adequate to satisfy the requirements of DSU Article 6.2. We also note that the description "electronic payment services" is known and customarily used by market participants. The United States further highlights the clarity of its panel request by presenting extensive evidence regarding the use of these terms.

29. Contrary to China's assertion that the description of the service as set out in the U.S. panel request is "a term of the United States' own making" the description is drawn from industry sources and reflects the broad and common understanding within this sector. Suppliers of the services at issue in this dispute who work within this sector are described as supplying, or characterize themselves as supplying, "electronic payment services" and as operating within the "global payments industry." In this submission the United States provides extensive evidence in support of this description of the sector at issue in this dispute and as specifically set out in the U.S. panel request – "electronic payment services" for "payment card" transactions.

30. A supplier of EPS enables cardholders' banks to pay merchants' banks the amount they are owed. Suppliers of electronic payment services supply, directly or indirectly, a system that typically includes the following:

- the processing infrastructure, network, and rules and procedures that facilitate, manage, and enable the transmission of transaction information and payments, and which provide system integrity, stability and financial risk reduction;
- the process and coordination of approving or declining a transaction, with approval generally permitting a purchase to be finalized or cash to be disbursed or exchanged;
- the delivery and transmission of transaction information among participating entities;
- the calculation, determination, and reporting of the net financial position of relevant institutions for all transactions that have been authorized in a given period; and
- the facilitation, management and/or other participation in the transfer of net payments owed among participating institutions.

31. Electronic payment services provide an efficient, timely and reliable means to facilitate the transmission of funds from the holders of payment cards who purchase goods or services to the individuals or businesses that supply them. The network, rules and procedures, and operating system that are part of the EPS architecture that allow processors of payment card transactions to pay merchants promptly the amounts they are owed, and to ensure that customers pay what they owe. EPS suppliers receive, check and transmit the information that the parties need to conduct the transactions, and manage, facilitate, and enable the transmission of funds between participating entities. The rules and procedures established by the EPS supplier give the payment system stability and integrity, and enable it to efficiently handle net flows of money among the institutions involved in card payments.

32. The two principal types of networks used in card-based electronic payment transactions are often referred to as either "open-loop" (or sometimes referred to as "four party" networks) and "closed-loop" (sometimes referred to as "three party" networks). EPS suppliers also provide their customers with certain guarantees to ensure the integrity of the electronic payment services, including, for example, instances where customers fail to honor payment cards or where issuers or acquirers fail to fund obligations.

33. In addition to the EPS supplier, other entities play a role in a payment card transaction:

- ***The issuing institution (or issuer).*** Issuing institutions solicit cardholders, establish individual credit limits, fix terms such as interest rates and fees, and issue payment cards. Debit cards are linked to the card holders' checking or savings account with the issuer, while credit cards provide an unsecured personal line of credit from the issuing bank. An institution seeking to issue cards must itself be capable of supplying EPS or must use an EPS supplier. Issuing institutions agree to adhere to specified rules that allow the EPS supplier to process transactions that use the cards issued by the bank. The issuer administers the cardholder's account and handles relations with the cardholder. The issuer is responsible for ensuring that the cardholder is able to pay, charging the cardholder for each purchase, and the transmission of funds to the EPS's settlement bank for settlement of payment obligations incurred by its cardholders.
- ***The acquiring institution.*** Acquiring institutions seek to "acquire" transactions on payment cards. Acquiring institutions, often a bank, provide point-of-sale terminals or payment card



processing equipment (*e.g.* a card swiper) to merchants so they can process payment cards. As with issuers, an acquiring institution must itself be capable of supplying EPS or must use an EPS supplier. Acquiring institutions also must adhere to specific rules governing transactions processed on the payment card transactions it has acquired. Acquiring institutions maintain merchant accounts, handle relations with the merchant, and ensure that payments are properly credited to the merchant.

- ***The settlement bank.*** In an open-loop (four party) network, the EPS's settlement bank manages the flow of money between issues and acquirers. Typically, issuers will transfer funds to the EPS's settlement bank, and the EPS's settlement bank will transfer funds to acquirers.

34. Outside of China, the competition to provide services for card-based electronic payment transactions is intense. EPS suppliers explain that they compete "in the global payment marketplace against all forms of payment, including paper-based forms (principally cash and checks)" and "card-based payments (including credit, charge, debit, ATM, prepaid, private-label and other types of general purpose and limited use cards)."

35. CUP is a significant and increasingly active participant in this competition and EPS suppliers describe CUP as a competitor. CUP's Articles of Association are explicit that the company is "to provide advanced electronic payment technologies and specialized services in connection with the inter-bank bank card information switching." CUP itself recently noted the global reach of its "payment services" around the world:

As the bankcard association in China, China UnionPay operates the national inter-bank clearing and settlement system, develops the worldwide UnionPay Card acceptance network, promotes the issuance and usage of the UnionPay Card as well as other innovative payment solutions, so as to provide quality, efficient and safe payment services to cardholders. To date, the total number of the UnionPay Card issued both at home and abroad has exceeded 2.5 billion. The UnionPay network has been extended to all the cities and rural areas in China. In addition, China UnionPay has enabled the UnionPay Card acceptance over 110 countries and regions through extensive cooperation with about 400 financial institutions around the world.

36. As the discussion in above in section IV makes clear, the term "electronic payment services" as set out in the U.S. panel request is a commonly understood term for service supplied for payment card based electronic transactions, and, outside of China, there is intense global competition to provide these services, and CUP is an active competitor.

## V. THE U.S. PANEL REQUEST IDENTIFIES SPECIFIC MEASURES OF CHINA THAT MAINTAIN CUP'S MONOPOLY ON THE SUPPLY OF EPS AND THAT AFFECT THE SUPPLY OF EPS BY FOREIGN SUPPLIERS

37. In addition to the narrative description of China's measures that maintain CUP's monopoly on the supply of EPS and that affect the supply of EPS by foreign suppliers, the U.S. panel request enumerated separate instruments. The U.S. panel request identifies the following:

- ***Requirements that mandate the use of CUP and/or establish CUP as the sole supplier of EPS for all domestic transactions denominated and paid in RMB.*** China imposes requirements that all transactions denominated and paid in RMB in China be processed and cleared in RMB through CUP, and that where there is a choice, all domestic transactions on dual currency cards be routed in RMB through CUP.

- ***Requirements on issuers that payment cards issued in China bear the CUP logo.*** China imposes requirements that any bank cards issued in China for RMB purchases in China, as well as any dual currency cards issued in China, must bear the CUP logo. In practice, this means that issuers must pay CUP for access to the CUP system.
- ***Requirements that all ATM and POS terminals in China accept CUP cards.*** China requires that all ATM, merchant card processing equipment, and point-of-sale terminals in China be capable of accepting CUP cards. There is no equivalent requirement for other non-CUP cards.
- ***Requirements on acquiring institutions to post the CUP Logo and be capable of accepting all bank cards bearing the CUP logo.*** China requires that all acquiring institutions in China post the CUP logo and be capable of accepting all bank cards bearing the CUP logo.
- ***Broad prohibitions on the use of non-CUP cards.*** China maintains broad prohibitions on the use of non-CUP cards for cross-region or inter-bank (cross-bank) transactions. China also requires that all inter-bank transactions for all bank cards be handled through CUP.
- ***Requirements in China, Macao, and Hong Kong.*** China also requires that CUP be used to handle all RMB transactions in Macao or Hong Kong using bank cards issued in China. In addition, China also requires that CUP be used to handle any RMB transactions in China using RMB cards issued in Hong Kong or Macao.

**VI. THE U.S. PANEL REQUEST SPECIFIES THAT CHINA'S GATS SCHEDULE INCLUDES BOTH MARKET ACCESS AND NATIONAL TREATMENT COMMITMENTS WITH RESPECT TO "ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS..."**

38. The Appellate Body has confirmed that the customary rules of treaty interpretation reflected in Articles 31 and 32 of the Vienna Convention apply to the interpretation of specific commitments in a Member's GATS Schedule. Article 31(1) of the *Vienna Convention* requires a treaty to be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." The Appellate Body has stated that "the structure of the GATS necessarily implies two things. First, because the GATS covers *all* services except those supplied in the exercise of governmental authority, it follows that a Member may schedule a specific commitment in respect of *any* service. Second, because a Member's obligations regarding a particular service depend on the specific commitments that it has made with respect to the sector or subsector within which that service falls, a specific service cannot fall within two different sectors or subsectors. In other words, the sectors and subsectors in a Member's Schedule must be mutually exclusive."

39. EPS are at the center of all payment card transactions and without these services the transactions could not occur. EPS fall within the ordinary meaning of payment and money transmission services, within item (d) of China's Schedule. The language of item (d) itself makes this abundantly clear. First, as detailed extensively in this submission and described in greater detail below, EPS involve the services through which transactions involving payment cards are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated. EPS clearly fall within the ordinary meaning of "payment and money transmission services" as one type of "all" such services. Second, the phrase "all payment and money transmission services" is modified with an illustrative list that explicitly provides that it "include[s] credit, charge and debit cards." This explicit reference is in line with the recognition that EPS are integral to the processing of credit, charge, debit and other payment card-based electronic payment

transactions, and without these services, payment card transactions could not occur. EPS suppliers such as Visa, MasterCard, and American Express are names recognized around the world as credit cards and charge cards. The reference to debit cards covers suppliers of EPS for debit card transactions like Visa, MasterCard, Discover, First Data, Pulse, NYCE, STAR, and PLUS.

## **VII. THE U.S. PANEL REQUEST SPECIFIES THAT CHINA'S MEASURES ARE INCONSISTENT WITH CHINA'S GATS MARKET ACCESS AND NATIONAL TREATMENT COMMITMENTS**

40. In addition to identifying the service at issue, the specific measures at issue, and China's GATS commitments, the U.S. panel request specifies that China's measures that maintain CUP's monopoly on the supply of EPS and that affect the supply of EPS by foreign suppliers are inconsistent with China's obligations under GATS Article XVI:1 to accord services and services suppliers of any other Member treatment no less favorable than that provided for in China's Schedule and that China is maintaining or adopting measures set out in Article XVI:2. The U.S. panel request also states that these measures are inconsistent with China's obligations under GATS Article XVII to accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers.

## **VIII. CONCLUSION**

41. The U.S. panel request is fully consistent with DSU Article 6.2. The U.S. panel request is in writing, indicates that consultations were held, identifies the specific measures at issue, and provides a brief summary of the legal basis of the complaint sufficient to present the problem clearly. Accordingly, the United States requests that the Panel reject in its entirety China's request for preliminary ruling.

### **ANNEX F-3**

#### **EXECUTIVE SUMMARY OF CHINA'S COMMENTS ON THE UNITED STATES' SUBMISSIONS IN RESPONSE TO CHINA'S REQUEST FOR A PRELIMINARY RULING**

#### **I. THE U.S. RESPONSE CONFIRMS THE INCONSISTENCY OF THE PANEL REQUEST WITH ARTICLE 6.2 OF THE DSU**

1. The unprecedented scale of the U.S. response to China's request for a preliminary ruling – 64 pages of single-spaced text, with 62 accompanying exhibits – offers definitive proof that the U.S. panel request failed to "provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly", as required by Article 6.2 of the DSU.

2. As far as China can discern, there is no material disagreement between the parties concerning the requirements of Article 6.2 or its associated jurisprudence. Apparently, the United States hopes that by supplying explanations and connections that are nowhere evident in the panel request, the Panel will be willing to overlook the fact that the U.S. panel request is deficient on its face. It is "well established", however, "that compliance with the requirements of Article 6.2 must be determined on the face of the request for the establishment of the panel and that defects therein cannot be 'cured' in the subsequent submissions of the parties during the panel proceedings."

3. In its response, the United States could have acknowledged the failure of the panel request to indicate which modes of supply are at issue, and attempted to defend this omission as consistent with the requirements of Article 6.2. Instead, the United States pretends that the panel request actually did put China on notice as to which modes of supply were at issue, stating that "[w]ith respect to each of the subsectors identified in the U.S. panel request, China undertook both market access and national treatment commitments for modes (1) and (3) as specified in its Schedule [and] [t]he commitments for each mode of supply for items (d), (k), and (l) in China's Schedule are specified therein."

4. As China understands this statement, the United States appears to be saying: (1) that it considers its claims to arise under Modes 1 and 3; and (2) that because Modes 1 and 3 are among the four modes of supply, the panel request "put China on notice" as to which modes of supply were at issue. Yet the panel request makes no reference whatsoever to the modes of supply. The fact that Modes 1 and 3 are among the four possible modes of supply did not, by itself, put China on notice as to which modes of supply were at issue and provide a sufficient basis for China to begin preparing its defence.

5. Furthermore, despite the belated explanations from the United States, the U.S. panel request remains unclear as to the legal relevance of the three distinct and mutually exclusive subsectors identified in the panel request. The United States now asserts, categorically and unequivocally, that the entirety of what it calls "electronic payment services" is encompassed by subsector D, "all payment and money transmission services".

6. As with its belated indication of the modes of supply, the tone of the U.S. response is that it should have been self-evident to any reader of the panel request that the United States intended to encompass all of "electronic payment services" in subsector D. But taking two of the three subsectors off the table in a subsequent submission does not rectify the obvious lack of clarity in the panel request itself.

7. Indeed, the U.S. response only serves to deepen the confusion as to how the three subsectors relate to its claims in this dispute. Twice in its response, the United States implies that it intends to advance "separate claims" under each of the three subsectors identified in the panel request. If the United States intended to advance "separate claims" under three different and mutually exclusive

subsectors, the time for setting forth these "separate claims" was in the panel request. But the panel request merely lists the three subsectors and makes an undifferentiated set of claims that the challenged measures are inconsistent with China's market access and national treatment commitments.

8. In sum, what Article 6.2 requires, and what is still missing from even the "amended" U.S. panel request, is a concise explanation of how the identified services relate to China's specific commitments in the identified subsectors and modes of supply. The inability of the United States to provide this explanation is further proof that the U.S. panel request does not "present the problem clearly" as required by Article 6.2.

## **II. CONCLUSION**

9. There is now little doubt that the panel request provides an insufficient legal basis for this proceeding to continue. The course of action that is both prudent and required by Article 6.2 of the DSU is to require the United States to submit a revised panel request to the DSB.



**ANNEX G**

**EXCERPT OF CHINA'S SCHEDULE**

Annex G-1	The People's Republic of China – Schedule of Specific Commitments, GATS/SC/135 – excerpt	G-2
-----------	---	-----

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitation on national treatment	Additional commitments
<b>7. FINANCIAL SERVICES</b>			
A. All Insurance and Insurance-Related Services <sup>1</sup> [...]	[...]	[...]	
B. Banking and Other Financial Services (excluding insurance and securities)  Banking services as listed below:	(1) Unbound except for the following: - Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; - Advisory, intermediation and other auxiliary financial services on all activities listed in subparagraphs (a) through (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy. (2) None (3) A. <u>Geographic coverage</u> For foreign currency business, there will be no geographic restriction upon accession. For local currency business, the geographic restriction will be phased out as follows: Upon accession, Shanghai, Shenzhen, Tianjin and Dalian; Within one year after accession, Guangzhou, Zhuhai, Qingdao, Nanjing and Wuhan; within two years after accession, Jinan, Fuzhou, Chengdu and	(1) None  (2) None (3) Except for geographic restrictions and client limitations on local currency business (listed in the market access column), foreign financial institution may do business, without restrictions or need for case-by-case approval, with foreign invested enterprises, non-Chinese natural persons, Chinese natural persons and Chinese enterprises. Otherwise, none.	For financial leasing services, foreign financial leasing corporations will be permitted to provide financial leasing service at the same time as domestic corporations.
(a) Acceptance of deposits and other repayable funds from the public;			
(b) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;			
(c) Financial leasing;			
(d) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts(including import and export settlement);			
(e) Guarantees and commitments;			
(f) Trading for own account or for account of customers: foreign exchange.			

<sup>1</sup> Any further authorization provided to foreign insurers after accession under more favorable conditions than those contained in this schedule (including the extension of grandfathered investments through branching, sub-branching or any other legal form), will be made available to other foreign service suppliers which so requested.



Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitation on national treatment	Additional commitments
	<p>Chongqing; within three years after accession, Kunming, Beijing and Xiamen; Within four years after accession, Shantou, Ningbo, Shenyang and Xi'an. Within five years after accession, all geographic restrictions will be removed.</p> <p>B. <u>Clients</u>  For foreign currency business, foreign financial institutions will be permitted to provide services in China without restriction as to clients upon accession.  For local currency business, within two years after accession, foreign financial institutions will be permitted to provide services to Chinese enterprises. Within five years after accession, foreign financial institutions will be permitted to provide services to all Chinese clients. Foreign financial institutions licensed for local currency business in one region of China may service clients in any other region that has been opened for such business.</p> <p>C. <u>Licensing</u>  Criteria for authorization to deal in China's financial services sector are solely prudential (i.e., contain no economic needs test or quantitative limits on licenses). Within five years after accession, any existing non-prudential measures restricting ownership, operation, and juridical form of foreign financial</p>		

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitation on national treatment	Additional commitments
	institutions, including on internal branching and licenses, shall be eliminated.		
	<p>Foreign financial institutions who meet the following condition are permitted to establish a subsidiary of a foreign bank or a foreign finance company in China:</p> <ul style="list-style-type: none"> <li>- total assets of more than US \$10 billion at the end of the year prior to filing the application.</li> </ul> <p>Foreign financial institutions who meet the following condition are permitted to establish a branch of a foreign bank in China:</p> <ul style="list-style-type: none"> <li>- total assets of more than US \$20 billion at the end of the year prior to filing the application.</li> </ul> <p>Foreign financial institutions who meet the following condition are permitted to establish a Chinese-foreign joint bank or a Chinese-foreign joint finance company in China:</p> <ul style="list-style-type: none"> <li>- total assets of more than US \$10 billion at the end of the year prior to filing the application.</li> </ul> <p>Qualifications for foreign financial institutions to engage in local currency business are as follows:</p> <ul style="list-style-type: none"> <li>- three years business operation in China and being profitable for two consecutive years prior to the application, otherwise, none.</li> </ul>		
	(4) Unbound except as indicated in horizontal commitments.	(4) Unbound except as indicated in horizontal commitments.	

Modes of supply: (1) Cross-border supply (2) Consumption abroad

### (3) Commercial presence

(4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitation on national treatment	Additional commitments
- Motor vehicle financing by non-bank financial institutions	(1) Unbound except for the following: - Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; - Advisory, intermediation and other auxiliary financial services on all activities listed in subparagraphs (a) through (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy. (2) None (3) None (4) Unbound except as indicated in horizontal commitments.	(1) Unbound (2) None (3) None (4) Unbound except as indicated in horizontal commitments.	
- Other financial services as listed below: (k) Provision and transfer of financial information, and financial data processing and related software by supplier of other financial services; (l) Advisory, intermediation and other auxiliary financial services on all activities listed in subparagraphs (a) through (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.	(1) None (2) None (3) None (Criteria for authorization to deal in China's financial services sector are solely prudential (i.e., contain no economic needs test or quantitative limits on licenses). Branches of foreign institutions are permitted. (4) Unbound except as indicated in horizontal commitments.	(1) None (2) None (3) None (4) Unbound except as indicated in horizontal commitments.	
- Securities	(1) Unbound except for the following: - Foreign securities institutions may engage directly (without Chinese intermediary) in B share business.	(1) None	

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitation on national treatment	Additional commitments
	<p>(2) None</p> <p>(3) None</p> <p>(a) Unbound, except for the following:</p> <ul style="list-style-type: none"> <li>- Upon accession, representative offices in China of foreign securities institutions may become Special Members of all Chinese stock exchanges.</li> <li>- Upon accession, foreign service suppliers will be permitted to establish joint ventures with foreign investment up to 33 per cent to conduct domestic securities investment fund management business. Within three years after China's accession, foreign investment shall be increased to 49 per cent. Within three years after accession, foreign securities institutions will be permitted to establish joint ventures, with foreign minority ownership not exceeding 1/3, to engage (without Chinese intermediary) in underwriting A shares and in underwriting and trading of B and H shares as well as government and corporate debts, launching of funds.</li> </ul> <p>(b). Criteria for authorization to deal in China's financial industry are solely prudential (i.e., contain no economic needs test or quantitative limits on licenses).</p> <p>(4) Unbound except as indicated in horizontal commitments.</p>	<p>(2) None</p> <p>(3) None</p> <p>(4) Unbound except as indicated in horizontal commitments.</p>	

**ANNEX H**

**TABLE OF TRANSLATIONS OF LEGAL MEASURES  
AND OTHER INSTRUMENTS**

Annex H-1	Table of translations of legal measures and other instruments referred to by the parties	H-2
-----------	--	-----

TABLE OF TRANSLATIONS OF LEGAL MEASURES AND OTHER INSTRUMENTS REFERRED TO BY THE PARTIES<sup>1</sup>

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
CUP's Articles of Association Exhibit US-20	<p><u>Art. 11</u> The purpose of the Company: by adopting advanced and practical technical means and scientific and flexible operational and managerial methods, to set up and operate a unified, highly efficient and safe inter-bank bank card information exchange network across the country, ensure the inter-bank common use of bank cards and the joint development of bank card business, provide specialized services with regard to the inter-bank bank card information exchange, improve the environment for bank card use, and promote the rapid development of China's bank card industry.</p>	[No Chinese Exhibit]	[See the parties' translations]
	<p><u>Art. 12</u> Upon being registered according to law, the business scope of the Company is as follows: (1) to establish and operate a single nationwide inter-bank bank card information switching network; (2) to provide advanced electronic payment technologies and specialized services in connection with the inter-bank bank card information switching; (3) and to engage in bankcard technological innovation; (4) to manage and operate the brand of "UnionPay"; (5) to formulate the code and technical standards for inter-bank bank card transactions, and to mediate and arbitrate any business disputes arising out of inter-bank transactions; (6) to organize trainings for the industry, business seminars and international exchange programs; and (7) to conduct related researches and consulting services; and to conduct such other related businesses as may be approved by competent authorities.</p>	[No Chinese Exhibit]	[See the parties' translations]

<sup>1</sup> This annex is available in English only, as it specifically relates to Chinese-to-English translations.

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
<b>Notification of Approval of CUP's Business Licence</b> Exhibit US-29	<u>Business Scope</u> To establish and operate a single nationwide inter-bank bank card information switching network, to provide advanced electronic payment technologies and specialized services in connection with the inter-bank bank card information switching, and to engage in bankcard technological innovation; to manage and operate the brand of "UnionPay", to formulate the code and technical standards for inter-bank bank card transactions, to mediate and arbitrate any business disputes arising out of inter-bank transactions, to organize trainings for the industry, business seminars and international exchange programs, and to conduct related researches and consulting services; and to conduct such other related businesses as may be approved by the People's Bank of China.	[No Chinese Exhibit]	[See the parties' translations]
<b>Document No. 8</b> Exhibit US-46 Exhibit CHN-62	<u>Art. 6</u> Matters in relation to individual RMB bank card clearing shall be organized and handled by the clearance banks and ChinaUnionPay Joint Stock Co., Ltd. Mainland residents may use individual RMB bankcards issued by the domestic banks to pay for travelling expenses (such as shopping, meals, accommodation, transportation, and medical expenses) in Macao and to withdraw small-amounts of cash in Macao dollars from ATM machines in Macao but may not withdraw Renminbi cash. RMB bankcards issued to Macao individual residents by participating banks or their subsidiaries can be used to pay for individual expenses in Mainland China and to withdraw small amounts of RMB cash from ATM machines in Mainland China.	<u>Art. 6</u> Matters in relation to individual RMB bankcards are organized and handled by the Clearing Bank and China UnionPay Co., Ltd. A mainland resident may use an individual RMB bankcards issued by a mainland bank to make payments in respect of touring and consumption in Macao for shopping, catering, accommodation, traffic, medical care, etc., and may withdraw a small amount of MOP cash on ATMs in Macao, but may not withdraw RMB cash. A RMB bankcard issued by a Participating Bank or its subsidiary to a Macao resident may be used to make payments in respect of individual consumption in the mainland, and to withdraw a small amount of RMB cash on ATMs in the mainland.	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
<b>Document No. 16</b> Exhibit US-44 Exhibit CHN-60	<u>Art. 6</u> Matters in relation to individual RMB bank card clearing shall be organized and handled by the clearance banks and China UnionPay Joint Stock Co., Ltd. Mainland residents may use individual RMB bank cards issued by the domestic banks to pay for travelling expenses (such as shopping, meals and accommodation) in Hong Kong and to withdraw small amounts of cash in Hong Kong dollars from ATM machines in Hong Kong. RMB bankcards issued to Hong Kong individual residents by participating banks or their subsidiaries can be used to pay for individual expenses in Mainland China and to withdraw small amounts of RMB cash from ATM machines in Mainland China.	<u>Art. 6</u> Matters in relation to individual RMB bankcard clearing are organized and handled by the clearing banks and China UnionPay Co., Ltd. Mainland residents may use the individual RMB bankcards issued by mainland banks to make payments in respect of touring and consumption in Hong Kong for shopping, catering, lodging, etc., and may withdraw a small amount of HKD cash on ATMs in Hong Kong. The RMB bankcards issued by the participating banks or their subsidiaries to Hong Kong residents may be used in the mainland to make payments for individual consumption and withdraw a small amount of RMB cash on ATMs in the mainland.	<u>Art. 6 – UNOG translation:</u> The clearance of individual RMB bankcards will be organized and handled by the clearing banks and China UnionPay Co., Ltd. Mainland residents may use individual RMB bankcards issued by mainland banks to make payments in Hong Kong for such travelling expenses as shopping, meals and lodging, and may withdraw small amounts of cash in Hong Kong dollars from ATMs in Hong Kong. RMB bankcards issued to Hong Kong residents by participating banks or their subsidiaries may be used to make payments for individual expenses and to withdraw small amounts of cash in RMB from ATMs on the mainland.
<b>Document No. 17</b> Exhibit US-52 Exhibit CHN-53	<u>Art. 5</u> Bank cards are classified into credit cards and debit cards. Bank cards may be classified into RMB cards and foreign currency cards according to the currency type; entity cards (commercial card) and individual cards according to the target of issuance; and magnetic cards and integrated circuit (IC) cards according to the information carrier.	<u>Art. 5</u> Bankcards include credit cards and debit cards. Bankcards can be classified into RMB cards and foreign currency cards according to different currencies of the cards; entity cards (commercial cards) and individual cards according to different issue targets; and magnetic cards and integrated circuit (IC) cards according to different information carriers.	[See the parties' translations]
	<u>Art. 7</u> Debit cards may be classified into cards for transferring accounts (including savings cards, same as below), cards for special purposes and stored-value cards. Debit cards do not possess the overdrawing function.	<u>Art. 7</u> According to different functions, debit cards can be classified into account transferring cards (including stored value cards, similarly hereafter), special use cards and stored value cards. Debit cards do not have overdraw function.	[See the parties' translations]
	<u>Art. 8</u> The card for transferring accounts refers to the debit card which makes real-time deduction of accounts. It possesses such functions as transfer, settlement, depositing and withdrawing cash, and consumption.	<u>Art. 8</u> An account transferring card refers to a debit card which provides instant deduction service. It provides functions including account transferring and clearing, cash deposit and withdrawal, and consuming, etc..	[See the parties' translations]



DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	<u>Art. 9</u> The card for special purpose refers to the debit card which is for any special purpose and used in certain specially designated areas. It possesses such functions as transfer, settlement, depositing and withdrawing cash. Special purpose refers to a purpose other than those in the industries of general merchandise, catering, restaurant and entertainment.	<u>Art. 9</u> A special use card refers to a debit card used in specific areas for specific purposes. Its provides functions including account transferring and clearing, cash deposit and withdrawal, etc..  Special use means being used other than in the industries of general merchandise, catering, dining and entertainment.	[See the parties' translations]
	<u>Art. 10</u> Stored-value card refers to purse-style debit card which requires advance payment, and when the card-issuing bank transfers the money of the cardholder into this card upon the request of the cardholder and the money is deducted from the card when a transaction is made.	<u>Art. 10</u> A stored value card refers to prepaid wallet-style debit card which allows to transfer the cardholder's funds to the card for storage according to the cardholder's requirements and deduct money from this card directly when a transaction is made.	[See the parties' translations]
	<u>Art. 27</u> [See agreed translation]	<u>Art. 27</u> [See agreed translation]	<u>Art. 27 – Translation agreed by parties:</u> Commercial banks, when acting as agents for overseas bankcard acquiring services, shall charge a merchant settlement commission, which shall be no less than four percent of the transaction amount.
	<u>Art. 30</u> [See agreed translation]	<u>Art. 30</u> [See agreed translation]	<u>Art. 30 - Translation agreed by parties:</u> As for the account of a foreign currency entity card, funds shall be deposited by means of transferring from the foreign exchange account of the entity, and no cash in foreign currency may be deposited or withdrawn within the territory of China. The foreign exchange account of the entity shall satisfy the following conditions: (1) The account shall be opened according to relevant provisions issued by the People's Bank of China regarding the administration of foreign exchange accounts within the territory of China; (2) The specific items of payment shall be indicated accordingly within the scope of the revenue and expenditure of the foreign exchange account.

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	<u>Art. 48</u> [See agreed translation]	<u>Art. 48</u> [See agreed translation]	<u>Art. 48 - <i>Translation agreed by parties:</i></u> Where losses are still not fully recovered after taking measures listed under Article 47, the issuing bank shall apply the Administrative Measures on Reserves for Uncollectible Accounts, issued by the Ministry of Finance.
	<u>Art. 64</u> A commercial bank (or financial institution) within the borders of the People's Republic of China shall, when issuing any variety of bank card (except those with the mark of any international credit card organization), implement the technical standards prescribed by the state. As for an entity card, relief stamp of such characteristics as "DWK" shall be made at a proper place of the bottom left of the card. The following elements shall be indicated on the surface of a bank card: name of the primary legal person of the card-issuing bank, uniform brand name, brand mark (except the cards for special purposes), card number (except IC cards), points of attention for the cardholder, customer service telephone number, signature bar for the cardholder (except IC cards), etc.	<u>Art. 64</u> Any type of bankcard issued by a commercial bank (or financial institution) within the territory of the People's Republic of China shall follow the technical standards prescribed by the state, except for those bankcards affixed with logos of international credit card organizations. With regard to an entity card, a relief stamp of such characters as "DWK" shall be marked at a proper place at the lower left of the card. The following information shall be indicated on the surface of a bankcard: name of the card-issuing bank, brand name of the card, brand logo (except for cards with special purposes), card number (except IC cards), user attention, customer service telephone number, and signature bar for the cardholder (except IC cards), etc.	[See the parties' translations]
	<u>Art. 65</u> As for the domestic circulation and use of bank cards issued by other financial institutions and overseas institutions approved by the People's Bank of China as qualified for operating bank card business, these Measures shall apply.	<u>Art. 65</u> These measures are applicable to the circulation and use within the territory of the PRC of the bankcards issued by other financial institutions which have been approved by the People's Bank of China for operating bankcard business, or the bankcards issued by overseas institutions.	<u>Art. 65 – <i>UNOG translation:</i></u> [ <i>If overseas financial institutions are indeed subject to regulation by the domestic authorities</i> ]: These measures [shall] apply to the domestic circulation and use of bankcards issued by other financial and overseas institutions authorized by the People's Bank of China to conduct bankcard operations. [ <i>Or, if overseas financial institutions are NOT subject to regulation by the domestic authorities</i> ]: These measures [shall] apply to the domestic circulation and use of bankcards issued by other financial institutions authorized by the People's Bank of China to conduct bankcard operations, and to bankcards issued by overseas institutions.

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
<b>Document No. 37</b> Exhibit US-40 Exhibit CHN-54	<u>Art. 1.2(i)</u> By the end of this year, all commercial banks shall, in accordance with unified standards and specifications of bank cards, complete transformation of their bank card processing system, and make technical preparations for accepting bank cards bearing the CUP logo.	<u>Art. 1.2(i)</u> Before the end of this year, all Commercial Banks shall complete the transformation of their own bankcard business processing systems according to requirements of the uniform standards and specifications for bankcards and make technical preparation for accepting the cards bearing the "Yin Lian" logo.	<u>Art. 1.2(i) – UNOG translation:</u> All commercial banks shall complete the transformation of their internal bankcard business processing systems before the end of this year, in accordance with the requirements of the uniform standards and specifications for bankcards, and make technical preparations for accepting cards bearing the "Yin Lian/UnionPay" logo.
	<u>Art. 1.2(ii)</u> The head office of the National Bank Card Information Exchange and all city centers shall basically complete transformation of the exchange system by October 1 of this year and conduct various system joint adjustment work in cooperation with member banks to realize transaction information inter-bank transfer for bank cards bearing the CUP logo by the end of the year.	<u>Art. 1.2(ii)</u> The transformation of the switching system of the National Bankcard Information Center ("General Center") and the switching systems of the urban centers shall be completed basically before October 1 this year. Cooperate with the member banks in the collaborative adjustment of systems and realize the cross-bank transmission of transaction information for the cards bearing the "Yin Lian" logo before the end of the year.	[See the parties' translations]
	<u>Art. 1.2(iii)</u> All commercial banks and city centers which have adopted POS integrated management shall, in conjunction with progress made in their business processing system transformation, speed up the transformation of terminal equipments such as ATM, POS, etc., and strive to complete all transformation tasks by the end of 2002. Before the end of this year, transformation in all municipalities directly under the Central Government, provincial capitals and in Shenzhen, Dalian, Xiamen, Qingdao, Ningbo, etc. shall be basically completed. From the second quarter of this year, all terminal equipments such as ATM, POS etc. newly placed by all commercial banks (centers) shall comply with the requirements of unified standards and specifications, to avoid repetitive transformation.	<u>Art. 1.2(iii)</u> All commercial banks and the urban centers that apply the POS centralized management mode shall, according to the transformation progress of their own business processing system, hasten the transformation of the terminals, e.g. ATM and POS, and try to complete all transformation before the end of 2002. Before the end of this year, transformation shall basically be completed in the municipalities directly under the Central Government, the provincial capital cities and Shenzhen, Dalian, Xiamen, Qingdao and Ningbo, etc.. From the second quarter of this year, terminals, e.g. ATM and POS, which are newly launched by the commercial banks (centers), shall meet requirements of the uniform standards and specifications to obviate the need for further transformation.	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	<u>Art. 2.1(i)</u> Bank cards issued by all commercial banks with inter-bank usability in China must bear the CUP logo at the specified position on the front of the cards, and all RMB credit cards issued solely for domestic use must also bear the CUP special anti-counterfeiting logo at the specified position, provided that special cards issued solely for specific regions or for specific usage shall not use the CUP logo:	<u>Art. 2.1(i)</u> All the bankcards issued by Commercial Banks for domestic cross-bank use must bear the "Yin Lian" logo printed uniformly at the designated position on the front of the cards. The RMB credit card limited to domestic interoperable use shall also bear the special anti-counterfeiting mark of the "Yin Lian" at the designated position. However, the "Yin Lian" logo shall not be used on the special usage cards which are limited to use in a certain region or a particular purpose.	[See the parties' translations]
	<u>Art. 2.1(ii)</u> All terminals (such as ATM and POS) which join the nationwide bank card inter-bank processing network must be capable of accepting all bank cards bearing the CUP logo and must post the CUP logo; and	<u>Art. 2.1(ii)</u> The terminals, e.g. ATM and POS, which have joined the national bankcard cross-bank switching network, must be able to accept any type of bankcards with the "Yin Lian" logo, and must bear the "Yin Lian" logo.	[See the parties' translations]
	<u>Art. 2.1(iii)</u> All cards bearing the CUP logo must strictly abide by the unified technical specifications and all bank card issuers must provide corresponding cross-region and inter-bank services pursuant to the unified business specifications.	<u>Art. 2.1(iii)</u> All bankcards bearing the "Yin Lian" logo must be in strict compliance with uniform technical standards. Card issuing banks must provide corresponding cross-regional and cross-bank services as required by uniform business specifications.	[See the parties' translations]
	<u>Art. 2.2(i)</u> Starting this year, all commercial banks shall arrange the replacement of all bank cards which do not conform to the unified requirements and the CUP logo usage requirements and will basically complete the work by the end of 2003. Starting in 2004, all bank cards not bearing a CUP logo will not be used for cross-region or inter-bank transactions; and	<u>Art. 2.2(i)</u> From this year, all Commercial Banks shall make overall arrangements for the replacement of the bankcards that do not meet the uniform standards and the requirements for the use of the "Yin Lian" logo, and the replacement shall basically be completed before the end of 2003. From 2004, any bank's bankcards issued without the "Yin Lian" logo may not be used for cross-region or cross-bank transactions.	[See the parties' translations]
	<u>Art. 2.2(ii)</u> By the end of this year, all state-owned banks shall issue bank cards bearing the CUP logo in the five cities of Beijing, Shanghai, Guangzhou, Shenzhen and Hangzhou, and shall gradually issue these cards in other cities in consideration of their progress in terminal equipment transformation. Joint stock commercial banks, urban commercial banks and postal savings	<u>Art. 2.2(ii)</u> Before the end of this year, the State-owned commercial banks shall introduce bankcards bearing the "Yin Lian" logo in the five cities of Beijing, Shanghai, Guangzhou, Shenzhen and Hangzhou before gradually spreading the same into other cities according to the transformation progress of the terminal acceptance equipments of the banks. Joint-stock and urban commercial banks and	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	institutions shall endeavor to issue the bank cards bearing the CUP logo in the said cities this year.	postal saving institutions shall also strive to introduce the bankcards bearing the "Yin Lian" logo in the aforementioned cities within the year.	
	<u>Art. 3.1(i)</u> Commercial banks which have opened bank card business in China must join the nationwide bank card inter-bank exchange network, to complete the interoperability of its bank card business processing system and nationwide bank card inter-bank processing network.	<u>Art. 3.1(i)</u> The commercial banks that operate bankcard business within the territory of China must join the national bankcard cross-bank switching network in order to realize the interoperability between their own bankcard business processing systems and the national bankcard cross-bank switching network.	[See the parties' translations]
<b>Document No. 49</b> Exhibit US-62 Exhibit CHN-68	<u>Art. IV</u> [See agreed translation]	<u>Art. IV</u> [See agreed translation]	<u>Art. IV – Translation agreed by parties:</u> A wholly foreign-funded bank or Chinese-foreign equity joint bank which plans to issue bank cards shall abide by the bank card business and technical standards as formulated by the People's Bank of China and meet the general requirements regarding the network for bankcard interoperability.
<b>Document No. 53</b> Exhibit US-51 Exhibit CHN-71	<u>Art. V.2</u> Domestic card transactions inside China shall be settled in RMB through domestic clearing channels after subtracting the amount of cash in foreign currencies withdrawn over the counter. Any overdraft arising from domestic transactions shall be paid by the cardholder in RMB.	<u>Art. V.2</u> Transactions occurring within the territory of China with domestic cards shall, after the deduction of the amount of the cash in any foreign currency withdrawn over the counter, be cleared in RMB through domestic clearing channels. Any overdrawn amounts arising from domestic transactions shall be paid in RMB by the card holder.	[See the parties' translations]
	<u>Art. V.3</u> If, for any reason, the clearing of transactions made inside China with domestic cards is made through an international bank card organization, the card-issuing financial institution may, after clearing in foreign currency, purchase exchange with the RMB funds to make up the foreign exchange that has been used in the clearing. "Clearing through an international bank card organization" refers to two circumstances: the clearing of domestic transactions made with domestic foreign currency cards through a international bank card organization; and "wrong throw", in which the clearing is made through an international bank card organization	<u>Art. V.3</u> Where transactions occurring within the territory of China with domestic cards are cleared through an international bankcard organization for a particular reason, upon the completion of the clearing in foreign currencies, the card-issuing financial institutions may use the RMB repaid by the card holders to purchase foreign exchanges to reimburse for the foreign exchange paid in advance. A transaction might be cleared through an international bankcard organization under the following two circumstances: (1) Transactions occurring within the territory of China with domestic foreign currency cards are cleared through an international	<u>Art. V.3 - UNOG translation:</u> Where, under special circumstances, domestic-card transactions occurring within China are cleared through an international bankcard organization, the card-issuing financial institutions may, after completing the clearing in foreign currencies, purchase foreign exchange using the RMB repaid by the card holders to make up for the foreign exchange already advanced. Clearance through an international bankcard organization occurs under one of two circumstances: (1) where domestic foreign-currency card transactions occurring within China are cleared through an international bankcard organization; and (2) "wrong hand- off" transactions, in which

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	due to the merchant service institution's mistreating a domestic home-foreign currency card as a foreign currency card, which, when used within the territory of China, shall be regarded as a RMB card.	bankcard organization; (2) A "wrong throw" transaction, which refers to the circumstance where a transaction occurring within the territory of China with a domestic dual currency card, which should have been processed same as that of a RMB card, was mistakenly identified by an acquiring financial institution as a foreign currency card and thus processed through an international bankcard organization.	domestic dual-currency cards, which should be treated as RMB cards, are mistakenly identified by the acquiring financial institution as foreign-currency cards and thus handed off to an inter-national bankcard organization for clearance.
	<u>Art. VII.3</u> [See agreed translation]	<u>Art. VII.3</u> [See agreed translation]	<u>Art. VII.3 – Translation agreed by parties:</u> Domestic RMB card clearing organizations shall do a good job in the RMB clearing of domestic transactions of home-foreign currency cards. Card-issuing financial institutions must report the bank identification number of their cards to the domestic RMB card clearing organization for the acquiring financial institution to download. The merchant service financial institutions shall properly set up their bank card systems under which RMB cards precede others when being read.
<b>Document No. 57</b> Exhibit US-41 Exhibit CHN-55	<u>Art. 1</u> All bank cards issued by commercial banks solely for domestic interoperable use must bear the CUP logo at the specified position at the lower right corner on the front of the cards, and all RMB credit cards issued solely for domestic interoperable use must also bear the CUP holographic anti-counterfeiting logo at the specified position at the lower right corner on the front of the cards. Commercial banks have the discretion to decide whether to place the CUP holographic logo on their RMB debit cards issued solely for domestic interoperable use, but shall not use any anti-counterfeit logo other than the CUP holographic anti-counterfeit logo.	<u>Art. 1</u> The bankcards issued by the commercial banks only for domestic interoperable use must bear a uniform "Yin Lian" logo printed at the designated position on the lower right side of the card front. The RMB credit cards only for domestic interoperable use shall also bear the holographic anti-counterfeiting mark of the "Yin Lian" logo at the designated position on the lower right side of the card front. With respect to the RMB debit cards only for domestic interoperable use, the commercial banks may decide by themselves whether to use the holographic anti-counterfeiting mark thereon, but no anti-counterfeiting mark other than the holographic anti-counterfeiting mark of the "Yin Lian" logo may be used.	<u>Art. 1 - UNOG translation:</u> Bank cards issued by all commercial banks solely for domestic interoperable use must bear the uniform "Yin Lian/UnionPay" logo printed at the specified position at the lower right corner on the front of the cards, and the "Yin Lian/UnionPay" holographic anti-counterfeiting logo shall also be added at the specified position at the lower right corner on the front of RMB credit cards issued solely for domestic interoperable use. Commercial banks have the discretion to decide whether to place a holographic anti-counterfeiting logo on their RMB debit cards issued solely for domestic interoperable use, but shall not use any anti-counterfeit logo other than the "Yin Lian/ UnionPay" holographic anti-counterfeit logo.
	<u>Art. 2</u> All "dual account" bank cards issued by any commercial banks for both domestic and foreign interoperable use must bear the unified CUP logo at the specified position at the upper right corner on the front of the cards.	<u>Art. 2</u> The "dual-account" bankcards issued by the commercial banks for both domestic and foreign interoperable use must bear a uniform "Yin Lian" logo printed at the designated position on the upper right side of the card front.	<u>Art. 2 - UNOG translation:</u> "Dual-account" bankcards issued by all commercial banks for both domestic and foreign interoperable use must bear a uniform "Yin Lian/UnionPay" logo printed at the designated position on the upper right side of the card front.

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	<p><u>Art. 3</u> From the issuance date of this Circular, bank cards which are newly issued by commercial banks upon application with cross-region or inter-bank use function must comply with the unified 'Business Specifications for Interoperable Service of Bank Cards' and relevant technical standards. The commercial banks must submit to PBOC a card sample which complies with the use requirements of CUP logo in accordance with the requirements of this Circular.</p>	<p><u>Art. 3</u> From the date of issuing this Circular, all bankcards for cross-regional or cross-bank use that are newly issued by commercial banks upon their application, must comply with requirements of the "Business Specifications for Bankcard Interoperability" and other relevant technical standards, and, a sample card that complies with the requirements for the use of the "Yin Lian" logo must be submitted to the People's Bank of China according to requirements of this Circular.</p>	[See the parties' translations]
	<p><u>Art. 4</u> In order to effectively prevent risks to the bank card business from various counterfeiting activities, the CUP holographic anti-counterfeit logo is produced by designated agents and operated under special control. The Zhongchao Credit Card Plant under China Banknote Printing and Minting Company is responsible for unified production and sales. By July 1, 2001, China Banknote Printing and Minting Company shall complete various product designs and related production preparation for the CUP holographic anti-counterfeit logo. The National Bank card Office is responsible for the use of the CUP logo and for making specific management rules on printing, marketing, transportation and other management work of the CUP holographic anti-counterfeit logo and shall also be responsible for supervising the implementation of such rules.</p>	<p><u>Art. 4</u> To effectively prevent the risks to bankcard business arising from forgery, the holographic label for anti-counterfeiting of "Yin Lian" will be made and sold by the credit card factory under China Banknote Printing and Minting Corporation through fixed-point production and operation under special control. Before July 1, 2001, China Banknote Printing and Minting Corporation shall complete the product design and related production preparations for the holographic label for anti-counterfeiting of "Yin Lian". The National Bankcard Office is responsible for formulating specific management measures regarding the use of the "Yin Lian" logo and the printing, sales and transportation of the holographic label for anti-counterfeiting of "Yin Lian" and shall supervise the implementation thereof.</p>	[See the parties' translations]
	<p><u>Art. 5</u> All commercial banks shall take the job of promoting CUP logo use and acceptance seriously and gradually reduce the role of their own bank card brands in the market. Starting January 1 2004, all POS terminals and merchants in the bank card acceptance market must have the CUP logo posted.</p>	<p><u>Art. 5</u> All commercial banks shall carefully promote the use and acceptance of the "Yin Lian" logo, and gradually phase out the role of their own card brands on the acceptance market. From January 1, 2004, all terminals and merchants in the bankcards acceptance market must bear the "Yin Lian" logo.</p>	[See the parties' translations]
	<p><u>Art. 6</u> Regional bank card interoperability logos produced and designed regionally shall be gradually abolished. Starting January 1, 2002, no bank cards allowed to bear</p>	<p><u>Art. 6</u> Logos designed and produced by each region for its regional interoperability of bankcards shall be phased out gradually. From January 1, 2002, logos for regional</p>	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	any regional interoperability logo. Starting January 1, 2004, the specially engaged merchants of bank cards and terminal equipment such as ATM, POS, etc. shall not bear any regional card interoperability logo.	interoperability of bankcards shall not be used by bankcard merchants or on bankcard terminals such as ATM or POS.	
<b>Document No. 76</b> Exhibit US-56/ US-63 Exhibit CHN-56	<u>Paragraph 2 of the Notice</u> The Business Practices shall apply to all commercial banks, postal savings and remittance bureaus and rural credit cooperatives which are participating in bankcard service in China, all Interoperating Bank cards and relevant cross-bank business;	<u>Paragraph 2 of the Notice</u> The Specifications apply to all commercial banks, postal saving and remittance bureaus and rural credit cooperatives which operate bankcard business within the territory of China, as well as to all networked bankcards and relevant cross-bank business.	[See the parties' translations]
	<u>Paragraph 3 of the Notice</u> [See agreed translation]	<u>Paragraph 3 of the Notice</u> [See agreed translation]	<u>Paragraph 3 of the Notice – Translation agreed by parties:</u> From the date of implementation of the Business Practices to the end of Year 2001, all acquiring banks that have been participating in bank card acceptance business shall meet the relevant requirements of the Business Practices; the card- issuing Banks shall start compulsory businesses, and shall complete the bank card processing system reform in combination with the implementation of technical standards of various bank cards. All Bank Card Information Exchange Centers shall complete the system reform within a stipulated period of time, and shall carry out information switching and processing for relevant cross-bank service.
	<u>Paragraph 4 of the Notice</u> Before the establishment of a unified bank card industry organization, the State Bank Card Office shall be responsible for the interpretation of the Business Practices, and shall organize to amend the same according to business development needs.	<u>Paragraph 4 of the Notice</u> Before the establishment of the industrial organization for interoperability of bankcards, the National Bankcard Office ("NBCO") is responsible for interpreting the Specifications and organizing amendment thereof according to the business development.	[See the parties' translations]
	<u>Paragraph 5 of the Notice</u> [See agreed translation]	<u>Paragraph 5 of the Notice</u> [See agreed translation]	<u>Paragraph 5 of the Notice – Translation agreed by parties:</u> From the date of implementing the Specifications, all bankcard business rules that are inconsistent with the Specifications shall be abolished.



DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	<u>Appendix, Chapter I, Art.1.1</u> Purpose These Business Practices aim to promote the bank card interoperable service in China, to establish a business practice system for bank card interoperation, to regulate bank card cross-bank operation, to improve the bank card utilization environment, to achieve the use of bank cards throughout the country, and to promote the development of bank card business.	<u>Appendix, Chapter I, Art.1.1</u> Purpose The purpose of these Specifications is to promote the interoperability of our bankcard business, establish a system of business specifications for the bankcard interoperability, standardize the cross-bank business operations of bankcards, improve the environment for use of bankcards, achieve the nationwide use of bankcards and boost the development of the bankcard business.	[See the parties' translations]
	<u>Appendix, Chapter I, Art.1.3</u> [See agreed translation]	<u>Appendix, Chapter I, Art.1.3</u> [See agreed translation]	<u>Appendix, Chapter I, Art.1.3 – Translation agreed by parties:</u> These Business Practices apply to each of the commercial banks and non-bank financial institutions participating in bank card interoperable services, various types of interoperated bank cards and relevant cross-bank businesses.
	<u>Appendix, Chapter I, Art. 2.1</u> [See agreed translation]	<u>Appendix, Chapter I, Art. 2.1</u> [See agreed translation]	<u>Appendix, Chapter I, Art. 2.1 – Translation agreed by parties:</u> After applying for membership of a BJO and becoming its formal member, a Bankcard Financial Institution will be eligible to apply for participation in bankcard interoperability business and becoming a network member.
	<u>Appendix, Chapter I, Art. 4.1</u> Purpose The purpose is to regulate and develop the domestic bank card acquiring market, to facilitate customers acquiring and training, and to set up a unified bank card network logo while carrying out interoperating business.	<u>Appendix, Chapter I, Art. 4.1</u> Purpose To standardize and develop domestic bankcard acceptance market and facilitate the acceptance and training of merchants, a uniform bankcard networking logo will be created concurrently with the implementation of networked interoperability business.	[See the parties' translations]
	<u>Appendix, Chapter I, Art. 4.2</u> Network Logo The logo of the network is comprised of the Chinese character of "UnionPay" and a graph symbolizing the united network, which has been formulated by the United Association and registered with the trademark registration bureau. The United Association possesses	<u>Appendix, Chapter I, Art. 4.2</u> Networking Logo Composed of the Chinese characters of "Yin Lian" and the pattern symbolizing the network, the networking logo is made by BJO and registered with the trademark bureau. Its ownership and use management right both belong to BJO, which will draw up the management	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	the ownership in and the use and management right of the logo, and promulgates administrative measures for the production, utilization etc. of the network logo.	measures for the making and use of the networking logo.	
	<u>Appendix, Chapter I, Art. 4.3</u> Use right of logo The Interoperating Members automatically obtain the right to use the logo as from the date on which cross-bank business is officially carried out thereby upon approval of the United Association.	<u>Appendix, Chapter I, Art. 4.3</u> Logo Use Right Networked members obtain the logo use right automatically starting from the day their cross-bank business is launched formally with the approval of BJO.	[See the parties' translations]
	<u>Appendix, Chapter I, Art. 4.4</u> Use of logo A. The network logo is used by Interoperating Bank cards of all Interoperating Members, terminal equipment and processing premises, advertising and promoting materials for bank card business of each Interoperating Member, etc. B. Each Interoperating Member shall use the network logo according to the requirements, and shall not change the logo without permission. C. While providing training for the Designated Merchants, the Interoperating Members must promote the united network logo and provide training in relation to the logo, and must instruct the customers to accept all bank cards bearing the united network logo. D. The Interoperating Members shall obtain the written consent of the United Association if they make use of the logo beyond the scope of the interoperable business.	<u>Appendix, Chapter I, Art. 4.4</u> Use of Logo A. The networking logo is used for all networked bankcards, terminals and acceptance sites of all networked members as well as the advertising publicity they conduct for bankcard business. B. Networked members shall use the networking logo as required and shall not take the liberty to change it. C. When training their merchants, networked members must publicize the networking logo, train them in the use of it and require them to accept all bankcards bearing the logo. D. Networked members must obtain the written approval of BJO before using the logo outside the networked interoperability business.	[See the parties' translations]
	<u>Appendix, Chapter I, Art. 5.2.1</u> Qualification of interoperability The Bank-Card Financial Institutions shall first join the United Association in order to apply for interoperability, and the other Professional Service Institutions shall obtain specific acknowledgement from the United Association in order to apply for interoperability.	<u>Appendix, Chapter I, Art. 5.2.1</u> Network Access Eligibility A Bankcard Financial Institution that applies for network access must join the BJO first. Other specialized service institutions that apply for network access must obtain the special approval of BJO.	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	<u>Appendix, Chapter I, Art. 5.2.2</u> Requirement for system The Interoperating Banks shall have secure and highly efficient computer processing system, and shall meet the technical specifications and standards of the National Bank Card Networks.	<u>Appendix, Chapter I, Art. 5.2.2</u> Requirement for System A Networked Bank must have a secure and efficient computer processing system that meets the technical specifications and standards of the National Bankcard Center.	[See the parties' translations]
	<u>Appendix, Chapter I, Art. 5.2.3</u> Business requirements An Interoperating Bank can be either an Issuing Bank or an Acquiring Bank, and can be both an Issuing Bank and an Acquiring Bank. If an Interoperating Bank is an Issuing Bank, when interoperating, it must comply with relevant industry standards for card and usage standard under <i>Bankcards Issuer Identification Code and Card Number, Bankcards Magnetic Strip Information Formats and Use Specifications, China Financial Integrated Circuit (IC) Card Specifications</i> ; if it is an Acquiring Bank, when interoperating, its terminal equipments must comply with the requirements of <i>Bankcard Magnetic Strip Specifications of Sales Point Terminals (POS)</i> and other relevant regulations; meanwhile, its terminals for acceptance of IC cards shall comply with terminal standards under <i>China Financial Integrated Circuit (IC) Card Specifications</i> .	<u>Appendix, Chapter I, Art. 5.2.3</u> Requirements for Business A Networked Bank can be either a card-issuing bank or an acquiring bank or both. For network access as a card-issuing bank, it must observe relevant standards of the industry for cards and use thereof, including the <i>Identification Codes and Card Numbers of Bankcard-issuing Banks, the Specifications for the Format and Use of the Information on the Magnetic Stripes of bankcards</i> and the <i>Specifications of China for Financial Integrated Circuit (IC) Cards</i> ; for network access as a card acquiring bank, it must have terminals that meet the requirements of the <i>Specifications for Points of Sales (POS) of Bank Magnetic Stripe Cards</i> and other relevant regulations, while the terminals that accept IC cards must also meet the criteria for terminals set out in the <i>Specifications of China for Financial Integrated Circuit (IC) Cards</i> .	[See the parties' translations]
	<u>Appendix, Chapter II, Art. 1.2</u> Unified Logo The Unified Network Logo must be posted on the machines and equipment of any merchant developed by each Interoperating Member in accordance with relevant regulations of interoperability, and shall be posted on the merchant's cash machines.	<u>Appendix, Chapter II, Art. 1.2</u> Uniform Logo The machines and equipment of the merchants developed by networked members must be affixed with the uniform networking logo according to the regulations on networked interoperability, which must be placed or pasted on the checkout counter of the merchants.	[See the parties' translations]
	<u>Appendix, Chapter IV, Art. 1.4</u> Principles of Settlement The national cross-bank funds settlement of bank cards shall be based on the settlement data provided by the Information Exchange Center. The settlement data of the Information Exchange Center shall be generated from transaction records of the Information Exchange Center	<u>Appendix, Chapter IV, Art. 1.4</u> Clearing Principle The national fund clearing of the cross-bank business of bankcards is based on the clearing data of the Information Switching Center, which are generated on the basis of the central transaction records and the clearing documents uploaded by the acquiring banks.	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	and from the settlement documents submitted by Acquiring Banks. If the accounts of the Interoperating Members are inconsistent with those of the Information Exchange Center, the date of the Information Exchange Center shall be used as a basis for settlement first and, if any error is discovered after the settlement, such error shall be handled in accordance with relevant provisions of Errors Correction.	When a networked member cannot reconcile its account with the Information Switching Center, clearing shall take place first on the basis of the data of the Information Switching Center. If any error is found after the clearing, the relevant provisions on error handling shall apply.	
	<u>Appendix, Chapter IV, Art. 3.2</u> Cross-bank transaction settlement not through the Headquarter Center Bank card cross-bank transactions transmitted only through the Regional Center (and not through the Headquarter Center) shall be handled by a Regional Center and its Interoperating Members by reference to measures for settlement of cross-bank transactions transmitted through the Headquarter Center.	<u>Appendix, Chapter IV, Art. 3.2</u> Clearing of Transactions That Do not Go through General Center  The cross-bank transactions of bankcards that are diverted only through a regional center (rather than through the General Center) are handled by the regional centers and their networked members according to the clearing methods for the cross-bank transactions diverted through the General Center.	[See the parties' translations]
	<u>Appendix, Chapter X</u> Supplemental Provisions All bank cards referred to in these Business Practices shall adopt the definitions and classifications in the <i>Measures for the Administration of Bank Card Business</i> by PBOC. These Business Practices are not applicable to the situation where a foreign currency card issued outside China is used in China. The State Bank Card Office will be responsible for the interpretation of these Business Practices. These Business Practices shall be implemented as from the date of promulgation by PBOC.	<u>Appendix, Chapter X</u> Supplementary Provisions The bankcards mentioned herein are subject to the definition and classification in the <i>Administrative Measures for Bankcard Business</i> of the People's Bank of China. These Specifications do not apply to the domestic interoperable use of the foreign currency cards issued outside China. These Specifications shall be interpreted by NBO.  These Specifications are implemented as from the day they are released by the People's Bank of China.	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	<p><u>Schedule: Definitions of Terms</u></p> <p>Unified Network Logo is comprised of the unified brand name of the domestic bank cards (namely the Chinese characters of "China UnionPay") and the symbolized logo of the united network, has been registered with the trademark office, and the ownership and usage management right thereof belongs to the United Association. The United Association will promulgate the measures for the promulgation, use and management of the logo of interoperability separately.</p>	<p><u>Schedule: Definitions of Terms</u></p> <p>"Networking logo" consists of the uniform brand name of domestic bankcards (i.e. the Chinese characters of "Yin Lian") and the design that symbolizes interoperability network. It is registered with the trademark office, with its ownership and use management right belonging to BJO, which will separately formulate the measures for the production, use and management of the networking logo.</p>	<p><u>Schedule: Definitions of Terms - UNOG translation:</u></p> <p>The network logo comprises the uniform brand name for domestic bank cards (the Chinese characters <i>yinlian</i> 银联) and the design symbolizing the united network, as registered with the trademark office. All rights of ownership and use belong to the Association of Interoperable Bank Card Service (AIBCS), which will separately define measures for the production, use and management of the logo.</p>
<p><b>Document No. 103</b> Exhibit US-1 Exhibit CHN-65</p>	<p>Section II.5(1)</p> <p>Consolidating and improving the achievements of networking use: We should earnestly summarize and spread the working experience of networking use in recent years, where the range of networking use shall be further extended to all the cities at and above the prefecture-city level and economically-developed cities at the county level. We should ensure that all bankcard machines satisfy the relevant criteria and standards of networking use, strictly abide by the principle of "one counter, one machine" so as to realize the sharing of resources. We should improve the technical standards for using RMB bankcards as soon as possible and strengthen the popularization of the technical standards of RMB bankcards that are formulated according to the international criteria. Those RMB bankcards as newly issued by any commercial bank shall meet the said technical standards and shall complete the work of changing the present non-standardized bankcards as soon as possible.</p>	<p><u>Section II. 5(1)</u></p> <p>Consolidate and heighten the results of the networked interoperability. Carefully sum up and spread the experience in the networked interoperability efforts made in recent years, further expand the scope of networked interoperability to all prefecture-level and higher-level cities and economically-developed county-level cities; ensure that all bankcard machines meet the specifications and standards for networked interoperability, strictly observe the principle of "one machine one counter" and realize the sharing of resources; lose no time to improve and implement the Chinese technical standard for RMB bankcards, intensify the popularization of the Chinese technical standard for RMB bankcards formulated according to international standards. The new RMB bankcards issued by commercial banks must meet the technical standard. The replacement of the existing cards that do not meet the standard shall be completed as soon as possible.</p>	<p>[See the parties' translations]</p>
	<p><u>Section III</u></p> <p>...By 2006, the RMB bank card operation shall be opened to the outside world in an all-around manner, and accordingly the bank card industry of our country is facing a comparatively big challenge and we should make use of the limited time to enhance the international competitiveness of our industries.</p>	<p><u>Section III</u></p> <p>...When the RMB bankcard business is opened completely to the outside world by the end of 2006, the Chinese bankcard industry will be faced with serious challenges and must capitalize on the limited time to enhance its international competitiveness...</p>	
			<p><u>Section III - UNOG translation:</u></p> <p>The RMB bankcard business opens fully to the outside world at the close of 2006, posing greater challenges to the Chinese bankcard industry; the limited time [remaining] must be used to boost that industry's competitiveness.</p>

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
Document No. 129 Exhibit US-53 Exhibit CHN-59	<u>Art. 3.2(i)</u> [See agreed translation]	<u>Art. 3.2(i)</u> [See agreed translation]	<u>Art. 3.2(i) – Translation agreed by parties:</u> All commercial banks and postal saving and remittance bureaus should further speed up the standardization of terminals and the development of cross-bank business, and should, before the end of 2003, in all prefecture-level and higher-level cities, realize resource sharing of all terminals such as ATM and POS and the cross-bank and cross-region use of various types of non-special-purpose bankcards.
	<u>Art. 3.2(ii)</u> Universal use of bank cards bearing the CUP logo. All RMB bank cards newly issued by all commercial banks and all postal savings and remittance bureaus must conform to the unified business specifications and technical standards and must bear the unified CUP logo; all commercial banks and all postal saving and remittance bureaus must formulate specific plans for replacement of and specific working requirements on the remaining bank cards not bearing the CUP logo and must file the replacement plans and other materials with the PBOC before August 20, 2003.	<u>Art. 3.2(ii)</u> Overall popularization of the "Yin Lian" logo cards. All types of RMB bankcards newly issued by the commercial banks, postal saving and remittance bureaus, must comply with uniform business specifications and technical standards, and shall bear the uniform "Yin Lian" logo as stipulated; for the existing cards without "Yin Lian" logo, the commercial banks, postal saving and remittance bureaus shall draw up replacement plans and clarify work requirements, and materials such as the replacement plans shall be reported to PBOC for record before August 20, 2003.	[See the parties' translations]
	<u>Art. 3.4</u> Fully improve the efficiency of error processing in inter-bank bank card transactions. (i) China Unionpay Joint Stock Co., Ltd. shall, in conjunction with all commercial banks, further supplement and perfect error processing management measures and implementation rules, establish a scientific and effective error processing procedures, clarify the responsibilities of the parties involved in error processing and specify the task assignment at each link. (ii) All commercial banks, postal saving and remittance bureaus and China UnionPay Joint Stock Co., Ltd. Shall continue to improve the technical processing methods, strengthen the supervision and inspection of error processing at each link and improve the efficiency of error processing. (iii) Pay special attention to complaints handling, improve the efficiency of complaints handling and provide better services to cardholders	<u>Art. 3.4</u> Improve the efficiency of error handling in the cross-bank transactions of bankcards (i) China UnionPay Co., Ltd. shall join the commercial banks in further supplementing and improving the management measures for error handling and the detailed rules for implementation thereof, establishing a scientific and effective flow of error handling, clarify the responsibilities of those participating in error handling and detail the division of work at all links. (ii) The commercial banks, postal saving and remittance bureaus and China UnionPay Co., Ltd. shall continue to improve technical processing means, strengthen the urging and inspection of all links of error handling and improve the efficiency of error handling. (iii) Attach great importance to complaint handling, improve the efficiency of complaint handling and provide better service for cardholders.	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
<b>Document No. 142</b> Exhibit US-55 Exhibit CHN-69	<u>Art. II.3</u> Protecting the information safety of cardholders. Card issuers shall set up an effective information safety protection system to protect the information safety of cardholders. They shall provide clients with safe and reliable services for setting and changing passwords and make sure that clients can change their passwords over the counter, through telephone banking or in other expedite and safe ways. They shall hide part of the card number on the account statements or other service vouchers (except those printed out over the counter) issued to cardholders. Bank cards issued by card issuers shall meet the requirements of the Bank Card Specifications (JR0052-2099) and the Technical Specifications on Bankcard Interoperability (JR0055-2009). Card issuers shall give priority to the issuance of IC bank cards which adopt the PBOC 2.0 Standards so as to improve the anti-counterfeiting ability of bank cards. For large transactions, upon the consent of cardholders, card issuers may make confirmations with or give risk alerts to cardholders or take other risk control measures through phone calls or text messages. Where there is any risk of leakage of bank card information, the card issuer shall contact the cardholder and suggest that the cardholder change the card or password as soon as possible. If it cannot reach the cardholder in the case of emergency, it can take measures to temporarily lock up the cardholder's account.	<u>Art. II.3</u> Protect the security of card holders' information. Card-issuing institutions shall establish an effective information security protection system to protect the security of cardholder information. They shall provide applicants with safe and reliable services for setting and modifying password, which should be able to be quickly and safely changed over the counter, through telephone banking or other channels. The card number on the bank statement and other service vouchers provided to cardholders shall be partially shielded (except the vouchers printed for counter business). Bankcards issued shall comply with the Specifications for Bankcards (JR0052-2009) and the Technical Specifications for Bankcard Interoperability (JR0055-2009). Card issuing institutions shall actively issue bank IC cards that adopt PBOC 2.0 Standard to enhance the anti-counterfeiting capability of the cards. Subject to cardholders' consent, card-issuing institutions may take risk management measures for large-amount transactions, such as making confirmation or giving risk reminders for cardholders through telephone or short message. Where there is any risk of leakage of bankcard information, card-issuing institutions shall contact the cardholder in question and suggest him/her to change the card or change its password as soon as possible. If the cardholder cannot be contacted, the card-issuing institution can take measures to temporarily lock the cardholder's card.	[See the parties' translations]
	<u>Art. II.5</u> ...Card issuers shall timely submit the risk information on bank cards to the credit system of the People's Bank of China, and voluntarily submit the same to the bank card risk information sharing system of China Unionpay, so as to make full use of such information sharing mechanisms to prevent and control risks	<u>Art. II.5</u> ...Card-issuing institutions shall promptly report relevant bankcard risk information to the credit system of PBOC and the bankcard risk information sharing system of China UnionPay to makes full use of the sharing mechanism for risk prevention.	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	<p><u>Art. III.7</u></p> <p>..Acquiring institutions shall set up strict rules for the real name examination and on-site investigation of merchants, make full use of the identity information on-line check system, the credit system of the People's Bank of China and the bank card risk information sharing system of China Unionpay to verify the identities of the legal representatives of persons in charge and the authorized representatives of merchants...</p>	<p><u>Art. III.7</u></p> <p>...Acquiring institutions shall establish a strict system of real name examination and site investigation for absorption of merchants. They shall fully utilize the online identity information examination system, the credit system of PBOC and the bank risk information sharing system of China UnionPay to verify the personal identity of the legal representative or leader and authorized operator of a merchant...</p>	[See the parties' translations]
	<p><u>Art.III.8</u></p> <p>...When finding that any merchant illegally accepts bank cards, the acquiring institution shall timely make investigation, verification and correction....Once it is confirmed that the merchant has committed any of such illegal acts, the acquiring institution shall immediately terminate its bank card transactions, report it to the public security department, report the relevant information to the People's Bank of China, submit the relevant information on the merchant and its legal representative or person in charge to the credit system of the People's Bank of China, and voluntarily submit it to the bank card risk information sharing system of China Unionpay...</p>	<p><u>Art.III.8</u></p> <p>...If any merchant is found to accept bankcards in suspected violation of regulations, the acquiring institution shall make timely investigation and verification for correction....for any merchant with confirmed acceptance of counterfeit cards, illegal information copying, cash-out of fraudulency, the acquiring institution shall immediately terminate its bankcard transactions, report the same to the public security department and PBOC and submit the information of the merchant and its legal representative or leader to the credit system of PBOC and the bankcard risk information sharing system of China UnionPay...</p>	[See the parties' translations]
	<p><u>Art. III.11</u></p> <p>...Acquiring institutions shall correctly set and register the relevant merchant information with China Unionpay, submit correct information to China Unionpay at the time of transaction processing, and make sure that the card acceptance terminals can fully and accurately read and transmit the card verification code.</p>	<p><u>Art. III.11</u></p> <p>...Acquiring institutions shall correctly set and register with China UnionPay the information of relevant merchants, upload accurately to China UnionPay during transactions processing. Meanwhile, they shall ensure that the acceptance terminals can read and transmit card verification code completely and accurately</p>	[See the parties' translations]



DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	<p><u>Art. V.15</u> Improving the Anti-risk Service Level of China Unionpay Setting up and improving the bank card risk prevention and control system. China Unionpay shall set up a transaction data recording, analyzing and monitoring system, make more efforts in monitoring and analyzing suspicious transactions, and make comprehensive and dynamic assessment and categorized management of transaction risks, so as to protect the safety of accounts and transaction information...China Unionpay shall strengthen the standard administration of its branches and subsidiary companies, implement the relevant bank card business standards and technical norms, separate the inter-bank clearing business, acquiring business and outsourcing service business from each other and assume the compensatory liability for cases or losses caused by its poor management of acquiring business or outsourcing service business...</p>	<p><u>Art. V.15</u> Raise the Risk Prevention Service Level of China UnionPay Establish and improve bankcard risk prevention and controls system. China UnionPay shall establish the system for the recording, analyzing and monitoring of transaction data, strengthen the supervision and analysis of suspicious transactions, make comprehensive and dynamic assessment and conduct classified management of transaction risks to protect the security of accounts and transaction information...China UnionPay shall strengthen the standardization management of its branches and subsidiaries, strictly implement the business specifications and technical standards related to bankcard, separate cross-bank clearing business, acquiring business and outsourcing service business, assume compensation responsibility for the cases and losses resulting from its poor management on acquiring business and outsourcing service business...</p>	[See the parties' translations]
	<p><u>Art. V.16</u> ...China Unionpay shall coordinate all member institutions in setting up a work mechanism for preventing bank card risks and an information sharing platform so as to provide good services for member institutions to submit information on suspicious bank card transactions and violation of laws and regulations and use the bank card risk information sharing system, and make continuous efforts to improve the bank card risk information sharing mechanism...</p>	<p><u>Art. V.16</u> ...China UnionPay shall coordinate the member institutions to establish the working mechanism for preventing bankcard risks and a information sharing platform, provide them with good services in reporting the information on bankcard transactions that are suspicious and violate laws and regulations and using the bankcard risk information sharing system, continuously improve the mechanism of sharing bankcard risk information...</p>	[See the parties' translations]
	<p><u>Art. VI.18</u> ...The People's Bank of China shall, together with the Ministry of Public Security, set up a long-term effective mechanism for cracking down on bank card crimes as soon as possible, coordinate the forces and resources of both of them as well as those of commercial banks and China Unionpay, jointly set up an office for jointly combating bank card crimes, and keep smooth intelligence channels.</p>	<p><u>Art. VI.18</u> ...PBOC shall, together with the Ministry of Public Security, establish a long-term regime as soon as possible for the joint penalization of bankcard crimes, coordinate the strength and resources of the two departments and the commercial banks and China UnionPay, set up the office for the joint penalization and keep the information channel unblocked.</p>	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
<b>Document No. 149</b> Exhibit US-50 Exhibit CHN-70	<u>Art. 2(5)(iii)</u> Strictly control the opening of bankcard acceptance terminals. The acquiring institutions may not allow the non-CUP and non- PBOC 2.0 pre-payment cards issued by other enterprises to be accepted at any POS terminals.	<u>Art. 2(5)(iii)</u> Strictly control the opening of bankcard acceptance terminals. No acquiring institutions may, through the bankcard acceptance terminals, accept non-"Yin Lian" or non-PBOC2.0 standard prepaid cards issued by non-financial institution enterprises.	<u>Art. 2(5)(iii) - UNOG translation:</u> Strictly control access to bankcard terminals. No acquiring institutions may allow non-"Yin Lian/UnionPay" and non-PBOC2.0 standard prepaid cards issued by non-financial social enterprises to be accepted at bankcard terminal equipment.
<b>Document No. 153</b> Exhibit US-49 Exhibit CHN-66	<u>Art. 1.2</u> ...At the present time, China UnionPay is the domestic clearance organization which specializes in the RMB bank card inter-bank information routing and exchange. Its main responsibility is to set up and operate a secure and efficient bank card inter-bank information routing and exchange network to achieve the inter-bank use of bank cards. China UnionPay shall focus on this main business, improve the network service level and enhance the management and operation of the brand "China Unionpay".	<u>Art. 1.2</u> ...China UnionPay is a clearing organization within China that currently specializes in the cross-bank information exchange for RMB bankcards. Its primary responsibility is to establish and operate a secure and efficient network for the cross-bank information exchange of bankcards, and to realize the cross-bank interoperability of bankcards. China UnionPay shall focus on this primary business, improve its network services and strengthen the management and operation of the "Yin Lian" brand.	<u>Art. 1.2 - UNOG translation:</u> China UnionPay is currently the domestic clearing organisation specialising in RMB bank card inter-bank information routing and exchange. Its main responsibility is to set up and operate a secure and efficient bank card inter-bank information routing and exchange network to bring about bank card inter-operability among banks. China UnionPay shall focus on this primary business, conscientiously improve the level of network service, and enhance the management and operation of the "Yin Lian/UnionPay" brand.
	<u>Art. 1.3</u> Regarding the third party service providers of merchant acquiring business. The third party service providers are the legal person enterprises which engage in non-core business of the bank card acquiring business entrusted by merchant acquiring institutions on the basis of making their own operation decisions and taking full responsibility for their own profits and losses. Since the bank card information exchange system concerns the security of financial information and payment system, engagement in bank card information exchange services is subject to a system of strict access and management. No third party service provider shall engage in bank card information exchange services.	<u>Art. 1.3</u> About the third party service providers for merchant acquiring business. Third party service providers refer to those legal entities that are entrusted by merchant acquiring institutions to carry out the non-core business in the bankcard acquiring business and are independent in operation and responsible for their own profits and losses. Since the bankcard information switching system is significant to the security of financial information and the payment system, there is strict access and administrative system for engaging in bankcard information switching business; thus, no third party service provider may engage in the bankcard information switching business.	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	<p><u>Art. 2.2</u> POS terminals placed by the acquiring institutions or by third party service providers must conform to the business specifications and technical standards of cross-network interoperability, be posted with the unified CUP logo, and be capable of accepting all bank cards bearing the CUP logo. For the acquiring institutions which cannot accept all bank cards bearing the CUP logo or intentionally set obstacles against the bank cards issued by others, customers, merchants and issuers are entitled to report and file complaints to PBOC.</p>	<p><u>Art. 2.2</u> The POS machines placed by merchant acquiring institutions or by third party service providers entrusted by merchant acquiring institutions, shall be in accordance with business specifications and technical standards of networked interoperability, bear the uniform "Yin Lian" logo and be able to accept all "Yin Lian" logo cards. With respect to merchant acquiring institutions that cannot realize the acceptance of all "Yin Lian" logo cards or intentionally set obstacles against bankcards that are not issued by its own bank, customers, merchants and card-issuing institutions have the right to report and complain to the People's Bank of China.</p>	[See the parties' translations]
	<p><u>Article 4, second paragraph</u> Merchant acquiring institutions shall take precautions against acquiring risks in conducting POS direct connections business, and strengthen daily training to the direct connection merchants. Merchant acquiring institutions shall comply with the principle of interoperability in conducting POS indirect connection business, open all acquiring equipment to CUP cards, and strictly comply with the unified inter-bank business specifications and technical standards.</p>	<p><u>Article 4, second paragraph</u> While carrying out POS business of direct connection, a merchant acquiring institution shall guard against acquiring risks and strengthen the daily training of merchants of direct connection; while carrying out the POS business of indirect connection, it shall meet the principle of networked interoperability, open acquiring machines to all China UnionPay cards and strictly observe uniform cross-bank business specifications and technical standards.</p>	[See the parties' translations]
	<p><u>Article 5, second paragraph</u> After being approved by PBOC, China UnionPay may set up branches in regions where there is a market demand, in accordance with the company's overall plan to provide bank card information exchange and clearance services. A nationwide inter-bank transaction network shall be formed as soon as possible.</p>	<p><u>Article 5, second paragraph</u> With the approval of the People's Bank of China, China UnionPay may set up affiliates in regions with market demand according to its own overall plan to provide bankcard information switching and clearing services and form an cross-bank transaction network system that covers the whole country.</p>	[See the parties' translations]

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
	<u>Article 5, third paragraph</u> In order to regulate the payment clearance services market, and strengthen the administration of information routing and exchange, the current professional service platform established by China UnionPay in non-CUP branch regions and engagement in inter-bank POS transaction information transfer shall be directly managed and operated by China Unionpay, and shall not be indirectly managed or operated through authorization.	<u>Article 5, third paragraph</u> To standardize the payment clearing service market and strengthen the management of information transfer, the professional service platforms that have been set up by China UnionPay in regions without China UnionPay branch to engage in the transfer of POS cross-bank transaction information shall be managed and operated directly by China UnionPay, which shall not manage and operate the professional service platforms indirectly through authorization.	[See the parties' translations]
	<u>Art. 6, third paragraph</u> [See agreed translation]	<u>Art. 6, third paragraph</u> [See agreed translation]	<u>Art. 6, third paragraph – <i>Translation agreed by parties:</i></u> ...When dual currency credit cards and debit cards are used in Hong Kong, Macao and other countries/regions where the CUP network exists, the Chinese issuing banks should support routing through the CUP network and open the RMB accounts related transactions and clearing services to the CUP network...
	<u>Art. 6, third paragraph (last sentence)</u> ...No organizations should set any obstacles or cause any interference.	<u>Art. 6, third paragraph (last sentence)</u> ...no institution may set any obstacle and intervene thereto.	[See the parties' translations]
<b>Document No. 219</b> Exhibit US-47 Exhibit CHN-63	<u>Art. III</u> A Renminbi card acquiring institution in a border area shall regulate the merchants' execution of contracts, and clarify in the relevant Renminbi card acquisition agreement that no merchant shall use the sales slip, sales settlement slip, the "UnionPay" mark or the POS for the purposes not covered by the acquisition agreement, bring the POS outside the territory for use, authorize a third party to handle the Renminbi card business or transfer such business to the third party, counterfeit another merchant transaction as its own merchant transaction to carry out liquidation with the acquiring institution, or use fictitious POS transaction to draw cash for clients.	<u>Art. III</u> The acquiring agreement of relevant RMB cards shall clearly stipulate that merchants shall not use the purchase slips, purchase statements, "Yin Lian" logo and POS terminals for purposes outside the scope delimited by acquiring agreement; shall not take any POS set abroad; shall not entrust or transfer the business of accepting RMB cards to any third party; shall not use the transactions of other merchants to pass for the transactions of their own for clearing with the acquiring institution; shall not use POS machines to fabricate transactions so as to withdraw cash for customers.	<u>Art. III - <i>UNOG translation:</i></u> RMB card acquisition agreements shall clearly stipulate that merchants must not use sales slips, purchase receipts, the Yin Lian/UnionPay logo or POS terminals for purposes outside the scope of those agreements, must not take POS devices for use outside the country, must not entrust or transfer the handling of RMB card business to a third party, must not pass off other merchants' transactions as their own for clearance with the acquiring institution, and must not use POS terminals to fabricate transactions so as to withdraw cash for customers.

DOCUMENT NO.	TRANSLATION BY UNITED STATES	TRANSLATION BY CHINA	TRANSLATION AGREED BY PARTIES / TRANSLATION SUGGESTED BY UNOG
<b>Document No. 254</b> Exhibit US-48 Exhibit CHN-64	<u>Art. 3</u> Where RMB bank cards issued by domestic banks are used for paying expenses or withdrawing cash in Hong Kong dollars or Macao dollars in Hong Kong or Macao, the issuers shall process clearing in RMB with China UnionPay Joint Stock Co., Ltd. (hereinafter "China UnionPay") and China UnionPay shall, after purchasing foreign exchanges from the designated foreign exchange banks, process clearing in Hong Kong dollars or Macao dollars with the acquiring banks in Hong Kong and Macao;	<u>Art. 3</u> If a RMB bankcard issued by a Mainland Bank is used in Hong Kong or Macau for consumption or withdrawal of HKD or MOP cash, the card-issuing bank shall use RMB to clear with China UnionPay Co., Ltd. (hereafter referred to as "China UnionPay"). China UnionPay shall then purchase foreign currency from designated foreign exchange banks and clear with Hong Kong/Macau acquiring banks in HKD or MOP.	[See the parties' translations]
	<u>Art. 4</u> [See agreed translation]	<u>Art. 4</u> [See agreed translation]	<u>Art. 4 – <i>Translation agreed by parties:</i></u> Where the RMB bank cards issued by Hong Kong or Macao participating banks are used for paying expenses or withdrawing RMB cash in Mainland China, the issuers shall process the clearing in RMB with the Mainland acquiring banks through the clearing banks and China UnionPay.
	<u>Art. 17</u> Banks in Mainland China shall, in accordance with "the notice" and this circular, handle relevant business and clearing through the clearing banks and China UnionPay, and shall not directly carry out RMB transactions with other Hong Kong or Macao Institutions.	<u>Art. 17</u> Mainland banks shall, as required by the Announcements and the Circular, operate and clear relevant business through clearing banks and China UnionPay, and shall not make RMB transactions with other Hong Kong/Macau institutions directly.	[See the parties' translations]