

VIII. CONCLUSIONS AND RECOMMENDATIONS

8.1 For the reasons set forth in this Report, the Panel concludes as follows:

- (a) In respect of the United States' panel request:⁹³⁹
 - (i) the Panel finds that China has failed to establish that the United States' panel request is inconsistent with Article 6.2 of the DSU on the grounds that it does not provide a brief summary of the legal basis sufficient to present the problem clearly.
- (b) In respect of the services at issue:
 - (i) the Panel finds that the services at issue as defined by the United States in its request for the establishment of a panel are classifiable under Sector 7.B(d) of China's Schedule, which reads "[a]ll payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers draft (including import and export settlement)".
- (c) In respect of repealed or replaced Chinese legal instruments:
 - (i) the Panel finds that Document Nos. 94 and 272 were repealed prior to the date of establishment of the panel and, therefore, do not figure in the Panel's findings or recommendations; and
 - (ii) the Panel finds that Document No. 66 was replaced by Document No. 53 prior to the date of establishment of the panel and, therefore, does not figure in the Panel's findings or recommendations.
- (d) In respect of China's measures at issue:
 - (i) the Panel finds that China, through Document Nos. 37, 57 and 129, imposes requirements on issuers that bank cards issued in China bear the *Yin Lian*/UnionPay logo, and furthermore, China, through Document Nos. 17, 37, 57, 76 and 129, requires that issuers become members of the CUP network, and that the bank cards they issue in China meet certain uniform business specifications and technical standards;
 - (ii) the Panel finds that China, through Document Nos. 37 and 153, imposes requirements that all terminals (ATMs, merchant processing devices and POS terminals) in China that are part of the national bank card inter-bank processing network be capable of accepting all bank cards bearing the *Yin Lian*/UnionPay logo;
 - (iii) the Panel finds that China, through Document No. 153, imposes requirements on acquirers to post the *Yin Lian*/UnionPay logo, and furthermore, China,

stated that "[i]n the light of these findings, and under the guidance of the principle of judicial economy, we do not see the need to reach a separate conclusion on these measures considered jointly, for the resolution of this dispute" (Panel Report, *Turkey – Rice*, para. 7.281). We further note that the United States itself has drawn our attention to this particular statement. See United States' first written submission, fn 49.

⁹³⁹ The Panel's conclusions incorporate those set forth in its preliminary ruling, which is contained in document WT/DS413/4 circulated on 30 September 2011 and which forms an integral part of this Report.

through Document Nos. 37, 76 and 153, imposes requirements that acquirers join the CUP network and comply with uniform business standards and technical specifications of inter-bank interoperability, and that terminal equipment operated or provided by acquirers be capable of accepting bank cards bearing the *Yin Lian*/UnionPay logo;

- (iv) the Panel finds that China, through Document Nos. 16, 8 and 254, imposes requirements that CUP and no other EPS supplier handle the clearing of certain RMB bank card transactions that involve either an RMB bank card issued in China and used in Hong Kong or Macao, or an RMB bank card issued in Hong Kong or Macao that is used in China in an RMB-denominated transaction;
 - (v) the Panel finds that the United States failed to establish that China, through Document Nos. 37, 57, 16, 8, 219, 254, 103, 153, 149, 53, 49, 129, 76, 17 and/or 142, imposes requirements that mandate the use of CUP and/or establish CUP as the sole supplier of EPS for all domestic RMB payment card transactions; and
 - (vi) the Panel finds that the United States failed to establish that China, through Document Nos. 37, 57, 153, 219 and/or 76, imposes broad prohibitions on the use of "non-CUP" cards for cross-region or inter-bank transactions.
- (e) In respect of the United States' claims under Article XVI of the GATS:
- (i) in relation to the United States' claims concerning China's Sector 7.B(d) mode 1 market access commitment, the Panel finds that the issuer, terminal equipment, acquirer and Hong Kong/Macao requirements are not inconsistent with Article XVI of the GATS, as China has not undertaken a market access commitment under this mode and in this sector in respect of the services at issue in this dispute;
 - (ii) the Panel finds that the United States failed to establish that the issuer requirements are inconsistent with Article XVI:2(a) of the GATS, in respect of China's Sector 7.B(d) mode 3 market access commitment, as these requirements do not impose a limitation that falls within the scope of Article XVI:2(a);
 - (iii) the Panel finds that the United States failed to establish that the terminal equipment requirements are inconsistent with Article XVI:2(a) of the GATS, in respect of China's Sector 7.B(d) mode 3 market access commitment, as these requirements do not impose a limitation that falls within the scope of Article XVI:2(a);
 - (iv) the Panel finds that the United States failed to establish that the acquirer requirements are inconsistent with Article XVI:2(a) of the GATS, in respect of China's Sector 7.B(d) mode 3 market access commitment, as these requirements do not impose a limitation that falls within the scope of Article XVI:2(a);
 - (v) the Panel finds that the Hong Kong/Macao requirements are inconsistent with Article XVI:2(a) of the GATS because, contrary to China's Sector 7.B(d)

mode 3 market access commitments, they maintain a limitation on the number of service suppliers in the form of a monopoly;

- (vi) the Panel finds that the United States failed to establish that the Hong Kong/Macao, issuer, terminal equipment and acquirer requirements, when considered jointly, give rise to a separate and independent breach of Article XVI:2(a) of the GATS;
 - (vii) the Panel finds that the United States failed to present a *prima facie* case that the issuer, terminal equipment or acquirer requirements, considered either individually or jointly, are inconsistent with Article XVI:1 of the GATS in respect of China's Sector 7.B(d) mode 3 market access commitment; and
 - (viii) the Panel exercised judicial economy with respect to the United States' Sector 7.B(d) mode 3 market access claims under Article XVI:1 of the GATS regarding the Hong Kong/Macao requirements.
- (f) In respect of the United States' claims under Article XVII of the GATS:
- (i) the Panel finds that the issuer requirements are inconsistent with Article XVII:1 of the GATS, because contrary to China's Sector 7.B(d) mode 1 and mode 3 national treatment commitments, these requirements fail to accord to services and service suppliers of any other Member treatment no less favourable than China accords to its own like services and service suppliers;
 - (ii) the Panel finds that the terminal equipment requirements are inconsistent with Article XVII:1 of the GATS, because contrary to China's Sector 7.B(d) mode 1 and mode 3 national treatment commitments, these requirements fail to accord to services and service suppliers of any other Member treatment no less favourable than China accords to its own like services and service suppliers;
 - (iii) the Panel finds that the acquirer requirements are inconsistent with Article XVII:1 of the GATS, because contrary to China's Sector 7.B(d) mode 1 and mode 3 national treatment commitments, these requirements fail to accord to services and service suppliers of any other Member treatment no less favourable than China accords to its own like services and service suppliers;
 - (iv) the Panel finds that the Hong Kong/Macao requirements are not inconsistent with Article XVII:1 of the GATS, as China has no Sector 7.B(d) mode 1 national treatment obligation in respect of these requirements;
 - (v) the Panel exercised judicial economy with respect to the United States' Sector 7.B(d) mode 3 national treatment claims under Article XVII:1 of the GATS regarding the Hong Kong/Macao requirements; and
 - (vi) the Panel declined to conclude separately on whether the issuer, terminal equipment, acquirer and Hong Kong/Macao requirements, when considered jointly, are also inconsistent with Article XVII:1 of the GATS.

8.2 Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. We conclude that, to the extent that the measures at issue are inconsistent with the GATS, they have nullified or impaired benefits accruing to the United States under that agreement.

8.3 Pursuant to Article 19.1 of the DSU, we recommend that the Dispute Settlement Body request China to bring its measure into conformity with its obligations under the GATS.
