

**CHINA – MEASURES AFFECTING FINANCIAL INFORMATION SERVICES AND
FOREIGN FINANCIAL INFORMATION SUPPLIERS**

Request for Consultations by the United States

The following communication, dated 3 March 2008, from the delegation of the United States to the delegation of China and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the People's Republic of China ("China") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* and Article XXII of the *General Agreement on Trade in Services* ("GATS") with respect to certain measures pertaining to financial information services and service suppliers.

In the financial services sector, as set out in its GATS Schedule of Specific Commitments on Services (the "Schedule"),¹ China made market access and national treatment commitments with regard to the provision and transfer of financial information. China also undertook a horizontal "standstill" commitment in its Schedule not to make the conditions of ownership, operation, and scope of activities - as set out in contractual agreements or licences establishing or authorizing the operation or supply of services by an existing foreign service supplier - more restrictive than they were as of the date of China's accession to the World Trade Organization ("WTO"). Despite those commitments, various measures of China appear to impose market access restrictions and discriminatory requirements on foreign service suppliers seeking to supply financial information to customers in China.

China requires foreign financial information suppliers to supply their services through an entity designated by Xinhua News Agency ("Xinhua"). Xinhua has designated only one agent, China Economic Information Service ("CEIS"), one of Xinhua's commercial enterprises. China prohibits foreign financial information suppliers from directly soliciting subscriptions for their services, requiring that solicitation of subscriptions be done through the Xinhua-designated entity. China likewise prohibits users of financial information services in China from directly subscribing to services supplied by foreign suppliers. Furthermore, in order to renew their licences, China requires foreign financial information suppliers to provide the Foreign Information Administration Center ("FIAC"), a regulatory body within the Xinhua framework, detailed and confidential information concerning their financial information services and their customers along with a copy of an agreement with the designated agent. China also requires customers to provide FIAC detailed information regarding their financial information services contracts with foreign suppliers. These and other requirements and restrictions appear to accord less favorable treatment to foreign financial

¹ Annex 9 of the *Protocol on the Accession of the People's Republic of China*, WT/L/432, 23 November 2001 (the "Accession Protocol").

information services and service suppliers than that accorded Chinese financial information services and service suppliers which are not affected by these requirements and restrictions.

China also appears to prevent foreign financial information service suppliers from establishing any commercial presence in China other than limited representative offices.

In its Accession Protocol (which incorporates the commitment in paragraph 309 of the *Report of the Working Party on the Accession of China*²), for the services included in its Schedule, China committed to maintain regulatory authorities that are separate from and not accountable to service suppliers they regulate. Xinhua, through its organizational structure, including related entities and affiliates, appears to be both the regulator of foreign financial information suppliers and their competitor in the domestic market. For example, in addition to having responsibility for the examination and approval of foreign financial information suppliers, Xinhua also supplies financial information services through its commercial entity, CEIS. On June 20, 2007, Xinhua also launched "Xinhua 08", a financial information supplier that supplies services on a commercial basis and in competition with foreign service suppliers. Individuals within Xinhua who have authority over FIAC also appear to be participants in Xinhua's commercial activities. China thus appears to have failed to provide a regulatory authority that is separate from and not accountable to a service supplier that authority regulates.

China's measures also appear to impose requirements on foreign financial information suppliers that are more restrictive than those imposed on them at the time of China's accession to the WTO. Pursuant to licenses granted at that time, reflecting an exchange of letters between Xinhua and the US Government in 1997, foreign financial information suppliers were allowed to contract with customers in China, to distribute their services directly to these customers, and to have their license applications approved without providing the regulator details of financial transactions with their customers.

The United States understands that the measures through which China has maintained these requirements and restrictions include:

- Notice Authorizing Xinhua News Agency to Implement Centralized Administration over the Release of Economic Information in the People's Republic of China by Foreign News Agencies and their Subsidiary Information Institutions (State Council, 31 December 1995 (issued as Circular No.1 of 1996));
- Decision on Establishing Administrative Permission for the Administrative Examination and Approval of Items that must be Retained (State Council Order No. 412, 29 June 2004)
- Measures for Administering the Release of News and Information in China by Foreign News Agencies (Xinhua News Agency, 10 September 2006);
- Notices on the Annual Inspection of Foreign News Dissemination Entities (Notice provided to foreign financial information suppliers regarding information that must be provided to FIAC as part of its annual licensing procedures);

² WT/MIN(01)/3, 10 November 2001, para. 309 (the "Working Party Report").

- Catalogue of Industries for Guiding Foreign Investment (Order No. 57 of the National Development and Reform Commission and the Ministry of Commerce, 31 October 2007);
- Decisions of the State Council Regarding Entrance of Non-Public Capital into Cultural Industries (Promulgated by the State Council, 13 April 2005);
- Several Opinions on Introducing Foreign Investment into the Cultural Sector (Ministry of Culture No. 19, 6 July 2005);
- Opinion on Foreign Investment in Cultural Industries (Promulgated by the Ministry of Culture, 5 August 2005);
- Detailed Rules on the Approval and Control of Resident Representative Offices of Foreign Enterprises (MOFTEC Order No. 3, 13 February 1995);
- Procedures of the State Administration for Industry and Commerce for the Registration and Administration of Resident Representative Offices of Foreign Enterprises (Promulgated by the State Council, 5 March 1983);
- Rules for Internet Information Services (State Council Decree No. 292, September 2000); and
- Administrative Rules for Internet News Information Services (State Council Information Office and Ministry of Information Industry, 25 September 2005);

as well as any amendments, related measures, or implementing measures.

These measures appear to be inconsistent with the following provisions:

- Article XVI of the GATS;
- Article XVII of the GATS;
- Article XVIII of the GATS;
- The horizontal standstill commitment contained in China's Schedule; and
- China's Accession Protocol (including Part I.1.2 which incorporates the commitments reproduced in paragraph 309 of the Working Party Report), which is an integral part of the *Marrakesh Agreement Establishing the World Trade Organization*.

China's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.
