

WORLD TRADE ORGANIZATION

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

Joint Communication from China and the European Communities

The following communication, dated 4 December 2008, from the delegation of China and the delegation of the European Communities, is circulated at the request of those delegations.

The Government of the People's Republic of China and the European Communities wish to notify the Dispute Settlement Body that we have signed the attached Memorandum of Understanding regarding the matter raised by the European Communities in the dispute *China – Measures Affecting Financial Information Services and Foreign Financial Information Suppliers* (WT/DS372).

We ask that you circulate this notification and the attachment to the Dispute Settlement Body.

Sun Zhenyu
Ambassador
Permanent Mission
of the People's Republic of China

Eckart Guth
Ambassador
Permanent Delegation of the European
Commission to the International
Organisations in Geneva

**Memorandum of Understanding Between the People's Republic of China and
the European Communities Regarding Measures Affecting Foreign Suppliers
of Financial Information Services**

Whereas the European Communities requested consultations with the People's Republic of China ("China") at the World Trade Organization ("WTO") on 3 March 2008 regarding certain measures affecting foreign suppliers of financial information services (DS372);

Whereas China and the European Communities held constructive consultations in Geneva on 22 and 23 April 2008;

China and the European Communities have agreed as follows:

1. During the consultations, the European Communities described its concerns regarding the independence of the regulator of financial information services in China.

- (a) The State Council, following the approval of the Reform Plan of the State Council by the first meeting of the 11th Session of the National People's Congress on 15 March 2008, has been undertaking adjustment of certain elements in China's institutional structure. China confirms that the State Council will, by 31 January 2009, authorize a new regulator of financial information services (the "new regulator") and that the new regulator will be a governmental entity separate from, and not accountable to, any supplier of financial information services.
- (b) The new regulator, within its mandate, will have the authority to require that suppliers of financial information services comply with all relevant Chinese laws, regulations, and departmental rules.

2. The European Communities also described its concerns about China's measures relating to foreign financial information service suppliers, including through the *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*, issued by the General Office of the State Council on 31 December 1995 (the "Circular"), and the *Measures for Administering the Release of News Information in China by Foreign News Agencies*, issued by Xinhua News Agency on 10 September 2006 (the "2006 Measures").

- (a) China confirms that a legal instrument (the "new measures") of at least equal legal stature to the *2006 Measures* will be promulgated by 30 April 2009 to replace the *2006 Measures*, effective no later than 1 June 2009.
- (b) China confirms that under the new measures, a new licensing system will be applied to foreign suppliers of financial information services. China further confirms that this new licensing system will conform to the commitments that China made in paragraph 308 of the Working Party Report accompanying its Protocol of Accession to the World Trade Organization.
- (c) China confirms that beginning on the date of the implementation of the new measures, China will permit foreign suppliers of financial information services to supply financial information services, directly or indirectly, without requiring the involvement of any agent or intermediary, and will not impose any licensing requirements or similar approvals on service consumers in order for them to receive financial information services from foreign suppliers.

- (d) The new regulator may require foreign suppliers of financial information services to submit only information that is relevant to matters under the license. The new regulator may require foreign suppliers of financial information services to file with the new regulator relevant information identifying each subscriber to the financial information service within thirty (30) days after the conclusion of the subscription contract with that subscriber, but will not require the filing of the subscription contract itself.
- (e) China confirms that it will accord foreign financial information services and foreign suppliers no less favorable treatment than that accorded to Chinese financial information services and service suppliers.
- (f) China clarifies that a document will be issued by the same authority that issued the *Decision on Establishing Administrative Permission for the Administrative Examination and Approval of Items That Must Be Retained (State Council Order No 412)* no later than 31 January 2009, stating that the *State Council Order No. 412* is modified to identify a new regulator and that the *Circular* is superseded and will no longer be implemented, so that foreign suppliers of financial information services will be subjected to the administration of the new regulator in accordance with this Memorandum of Understanding.

3. The European Communities also described its concerns about the protection of commercially valuable information belonging to foreign suppliers of financial information services.

China confirms that, in accordance with China's laws, regulations and departmental rules, the new regulator will take all necessary steps to protect the information provided to it by a foreign supplier of financial information services, and will only use such information for the specific regulatory purpose for which it is provided, and will not otherwise disclose the information to any unauthorized person.

4. During the consultations, the European Communities described its concerns about China's prohibition on foreign suppliers of financial information services operating through commercial presence in China, other than limited representative offices, to supply these services.

China clarifies that Chinese laws, regulations, and departmental rules do not impose any prohibitions on the supply, through commercial presence, of financial information services.

5. The term "financial information service" as used in this Memorandum of Understanding means a service that supplies information that could affect financial markets and/or financial data, targeted at service consumers engaged in financial analysis, financial transactions, financial decision making, or other financial activities. Financial information services are distinct from "news agency services" as defined in UN Provisional Central Product Classification (1991) group 962.

6. As used in this Memorandum of Understanding, the terms "service consumer", "supply", "service supplier" and "commercial presence" are to be interpreted in accordance with Article XXVIII of the *General Agreement on Trade in Services*.

7. China and the European Communities agree to communicate in a timely manner with respect to the implementation of the actions described above, including China's provision of a reasonable period to comment on any proposed measure related to this Memorandum of Understanding prior to the finalization of such measure.

8. This Memorandum of Understanding is without prejudice to the rights and obligations of China and the European Communities under the *WTO Agreement*.

Done in Geneva, 13 November 2008, in two original versions in Chinese and English, respectively, each text being equally authentic.

For the Government of the People's
Republic of China:

For the European Communities:

H.E. Mr. Eckart Guth
Ambassador, Permanent Representative
