

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

Request for the Establishment of a Panel by the United States

The following communication, dated 11 February 2011, from the delegation of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 15 September 2010, the United States requested 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* ("DSU"), and Article XXII of the *General Agreement on Trade in Services* ("GATS") with respect to certain restrictions and requirements maintained by China affecting electronic payment services¹ for payment card² transactions and the suppliers of those services ("electronic payment services suppliers").³ The United States held consultations with China on 27 – 28 October 2010. Unfortunately, those consultations did not resolve the dispute.

In the financial services sector, as set out in China's GATS Schedule of Specific Commitments on Services (the "Schedule"),⁴ China undertook commitments under Articles XVI and XVII of the GATS with respect to:

¹ "Electronic payment services" involve the services through which transactions involving payment cards (as defined below) are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated. 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 transaction information and payment flows 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 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; and the facilitation, management and/or other participation in the transfer of net payments owed among participating institutions.

² A "payment card" includes a bank card, credit card, charge card, debit card, check card, automated teller machine ("ATM") card, prepaid card, and other similar card or payment or money transmission product or access device, and the unique account number associated with that card or product or access device.

³ WT/DS413/1.

⁴ Annex 9 of the *Protocol on the Accession of the People's Republic of China*, WT/L/432, 23 November 2001 (the "Accession Protocol").

- "Banking services as listed below: . . . All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts (including import and export settlement)";
- "Other financial services as listed below: . . . Provision and transfer of financial information, and financial data processing and related software by supplier of other financial services"; and
- "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."⁵

Despite those commitments, China imposes market access restrictions and requirements on service suppliers of other Members seeking to supply electronic payment services in China. Through these and other related and reinforcing requirements and restrictions China accords less favorable treatment to electronic payment services suppliers of other Members than to Chinese suppliers of these services.

China UnionPay ("CUP"), a Chinese entity, is the only entity that China permits to supply electronic payment services for payment card transactions denominated and paid in renminbi ("RMB") in China. China also requires the handling by CUP of all RMB transactions in Macao or Hong Kong using payment cards issued in Mainland China, as well as any RMB transactions in Mainland China using RMB payment cards issued in Hong Kong, China or Macao, China. The United States considers that these measures 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 of the GATS. These measures also appear 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 addition, China requires all payment card processing devices at merchant locations, all automated teller machines ("ATMs"), and all point-of-sale ("POS") terminals in China to be compatible with CUP's system and capable of accepting CUP payment cards. China also requires that all acquiring institutions⁶ post the CUP logo and be capable of accepting all payment cards bearing the CUP logo. China further requires that all payment cards, including "dual currency" cards, issued in China capable of being used for transactions denominated and paid in RMB bear the CUP logo. This means that issuing banks must have access to the CUP system, and must pay CUP for that access. These measures do not impose similar requirements regarding non-CUP payment cards or to transactions using non-CUP payment cards. The United States considers that these measures 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 United States considers 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.

⁵ Section II, 7 (Financial Services), B (Banking and Other Financial Services) of the Schedule (circulated in WT/ACC/CHN/49/Add.2 and WT/MIN(01)/3/Add.2).

⁶ An "acquiring institution" provides POS equipment to merchants so they can process payment cards, maintains the merchant's account, handles relations with the merchant, and ensures that payments are properly credited to the merchant.

China also requires that all cross-bank or inter-bank transactions involving payment cards be handled through CUP. China prohibits the use of non-CUP payment cards for cross-region or cross-bank or inter-bank transactions. The United States also considers that these measures 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 United States also considers 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.

The United States understands that the instruments through which China maintains these measures include:

- Measures for the Administration of Bank Card Business by the People's Bank of China (Yinfa [1999] 17), issued on 27 January 1999;
- Circular of the People's Bank of China on Promulgation of Opinions on Implementation of Joint Work in Bank Card Interoperability in 2001 (Yinfa [2001] 37) issued on 19 February 2001;
- Circular on Uniform Use of CUP Logo and its Holographic Label for Anti-counterfeiting by the People's Bank of China (Yinfa, [2001] 57), issued on 13 March 2001;
- Notice of Circulating the Bank Card Connection Business Standard by the People's Bank of China (Yinfa [2001] 76), issued 29 March 2001, including but not limited to the Appendix, Business Practices for the Interoperable Service of Bank Cards
- Opinions on Bank Card Interoperability Related Work in 2002 by the People's Bank of China (Yinfa [2002] 94), issued on 5 April 2002;
- Circular regarding Issues concerning Bank Card Interoperability Related Work by the People's Bank of China (Yinfa [2002] 272), issued on 29 August 2002;
- Circular on Further Improving Bank Card Interoperability Related Work by the People's Bank of China (Yinfa [2003] 129), issued on 2 July 2003;
- Announcement of Clearing Arrangements Provided by Banks in relation to Individuals' Deposits, Exchanges, Bank Card and Remittance in RMB in Hong Kong (PBOC Announcement [2003] 16), issued on 19 November 2003;
- Circular on Regulating the Administration of Foreign Currency Bank Cards by the State Administration of Foreign Exchange Circular (Huifa [2004] 66), issued on 30 June 2004;
- Announcement of Clearing Arrangements Provided by Banks in relation to Individuals' Deposits, Exchanges, Bank Cards and Remittance in RMB in Macao (PBOC Announcement [2004] 8), issued on 3 August 2004;
- Notice of the People's Bank of China concerning Relevant Issues on Accepting and Using Renminbi Bank Cards in Border Areas (Yinfa [2004] 219), issued on 21 September 2004;

- Circular regarding Issues concerning Individual RMB Business Handled by Banks in Mainland China and Banks in Hong Kong and Macao by the People's Bank of China (Yinfa [2004] 254), issued on 28 October 2004;
- Some Opinions of the People's Bank of China, the National Reform and Development Commission, the Ministry of Public Security, the Ministry of Finance, the Ministry of Information Industry, the Ministry of Commerce, the State Administration of Taxation, China Banking Regulatory Commission and the State Administration of Foreign Exchange on Promoting the Development of Bank Card Industry Some Opinions of the People's Bank of China, the National Reform and Development Commission, the Ministry of Public Security, the Ministry of Finance, the Ministry of Information Industry, the Ministry of Commerce, the State Administration of Taxation, China Banking Regulatory Commission and the State Administration of Foreign Exchange on Promoting the Development of Bank Card Industry (Yinfa [2005] 103), issued 24 April 2005;
- Guiding Opinions of the People's Bank of China on Regulating and Promoting the Development of Bank Card Acceptance Market (Yinfa [2005] 153), issued on 16 June 2005;
- Notice of the People's Bank of China on the Relevant Issues concerning Strengthening the Administration of Oversea Business Acceptance of Bank Cards (Yinfa [2007] 273), issued on 6 August 2007;
- Notice of the China Banking Regulatory Commission on the Issues Concerning Wholly Foreign-funded and Chinese-foreign Equity Joint Banks in Conducting the Bank Card Business (Yin Jian Fa [2007] 49), issued 6 June 2007;
- Notice of the People's Bank of China, the China Banking Regulatory Commission, the Ministry of Public Security and the State Administration for Industry and Commerce on Strengthening the Safety Management of Bank Cards and Preventing and Combating Bank Card Crimes (Yinfa [2009] 142), issued 27 April 2009;
- The Opinions of the Standing Office of the People's Bank of China on the Circular on Strengthening the Safety Management of Bankcards and Preventing and Fighting Crimes in Bank Cards by the People's Bank of China, the China Banking Regulatory Commission, the Ministry of Public Security and the State Administration for Industry and Commerce (Yinfa [2009] 149), issued 1 August 2009;
- Notice of the State Administration of Foreign Exchange on the Management of Foreign Currency Bank Cards [2010] 53, issued 11 October 2010; and
- The "business specifications" and "technical standards" that are identified in the instruments above, including in Document No. 17, Document No. 57, Document No. 129, and Document No. 49;
- as well as any amendments to date or any related implementing measures to date.

The United States considers that these measures are inconsistent with China's obligations under Articles XVI, including XVI:1 and XVI:2(a), and XVII of the GATS. These measures also

appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

Accordingly, the United States respectfully requests that, pursuant to Article 6 of the DSU, the Dispute Settlement Body establish a panel to examine the matter, with the standard terms of reference as set out in Article 7.1 of the DSU.
