

**CHINA – CERTAIN MEASURES AFFECTING ELECTRONIC PAYMENT SERVICES
(WT/DS413)**

U.S. ANSWERS TO PANEL’S SECOND SET OF WRITTEN QUESTIONS

I. THE MEASURES AT ISSUE

Question 70. With reference to paragraph 39 of its second oral statement, does the United States contest that Document No. 66 was replaced by Document No. 53?

1. The United States does not contest that Document No. 53 indicates it will come into force simultaneously with the abolition of other instruments, including Document No. 66, and in this sense, may be considered to have replaced Document No. 53. Notwithstanding China’s replacement of a particular instrument (Document No. 66) with another instrument (Document No. 53), it is important to note that each of the six categories of requirements, which the United States has challenged as six separate measures, remains in place. *See* U.S. panel request, pages 2-3; U.S. July 29, 2011 Response, paras. 77-134; U.S. First Written Submission, paras. 12, 29-36, 45-72, 89-117; U.S. Answers to First Set of Panel Questions, paras. 15-21; U.S. Second Written Submission, paras. 130-215. The United States further understands that following the entry into force of Document No. 53 foreign suppliers experienced no changes in the market regarding the restrictions, prohibitions, and other impediments on the supply of EPS for payment card transactions.

Question 71. In its response to Panel question no. 4, paragraphs 16-20, the United States identified for each of the relevant requirements certain instruments which are said to be referred to in specific paragraphs of United States’ written submissions. However, it appears that some of the instruments listed cannot be found in the paragraphs of the written submissions that have been provided. In the light of this, the Panel would appreciate receiving clarification as to why those instruments have been listed. The noted discrepancies appear to concern the following instruments:

2. In the U.S. panel request, and as elaborated in the U.S. July 29, 2011 Response, and the U.S. First Written Submission, the United States identified six categories of instruments that together establish six separate measures. As the United States has explained, we have provided for each of the six measures an illustrative list of instruments in which the particular measure is reflected. *See* U.S. panel request, pages 2-3; U.S. July 29, 2011 Response, paras. 77-134; U.S. First Written Submission, paras. 12, 29-36, 45-72, 89-117; U.S. Answers to First Set of Panel Questions, paras. 15-21; U.S. Second Written Submission, paras. 130-215.

3. In preparing its response to panel question no. 4, the United States considered it appropriate to include instruments because one or more aspects of the instrument were relevant to that category and therefore should be considered with the others noted in the illustrative list for purposes of the Panel’s analysis of the six categories of measures. Although the United States has grouped the instruments as falling into six categories, there is a significant degree of overlap and many of the instruments contain provisions that are complementary and reinforcing

in terms of their relationship with each other and with respect to the establishment and maintenance of CUP’s monopoly.

4. The United States has requested that the Panel analyze China’s measures both individually and in conjunction with one another as indicated with respect to the categories of requirements maintained by China. The changing legal landscape within China where instruments can be modified, repealed, and replaced in fairly short order, but with no actual effect on the underlying measures, is one reason why the United States has presented its case in the manner in which it has. With respect to each of the additional instruments that the United States identified in response to the Panel’s initial question, the United States explained in what way the particular instrument complemented or reinforced the measure at issue.

(a) Sole supplier requirements (paragraph 16 of the US response to Panel question no. 4):

(i) Document No. 17

5. With respect to China’s measures related to CUP and the use of CUP payment cards that limit the number of suppliers of EPS, the United States explained that instruments interact to establish and maintain the CUP monopoly, and these instruments do so 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 that mandate the use of CUP. Finally, certain instruments implicitly recognize that CUP is the sole supplier of EPS services for RMB denominated transactions. *See* U.S. Second Written Submission, paras. 137-168.

6. With respect to Document No. 17 (Exhibit US-52), Article 64 requires that issuing banks “implement the technical standards prescribed by the state.” As the United States has noted, many of the relevant technical standards are developed by CUP and therefore a requirement to implement CUP standards enhances CUP’s position as sole supplier. *See* U.S. Second Written Submission, paras. 144, 154.

(b) Issuer requirements (paragraph 17):

(i) Document No. 76 (Exhibit US-56/Exhibit US-63)

7. Document No. 76, Article 4 assigns to the “United Association” ownership of the “UnionPay” logo and gives it the use and management rights of the logo. The rights of the “United Association” were eventually transferred to CUP, as the Notification of Business License Approval and Issuance (Exhibit US-29) shows, in which CUP’s “Business Scope” is defined to include management and operation of the UnionPay logo. China’s requirements that all RMB payment cards bear the CUP logo, that all POS terminals be capable of processing CUP cards, and that all acquiring institutions post the CUP logo and accept CUP card based transactions afford CUP significant leverage. In addition, because CUP has exclusive control over the UnionPay logo, it may refuse permission for the logo to appear on any cards that carry the logo of a competing EPS supplier. If CUP refuses permission to use the UnionPay logo, then the cards carrying the logo of the competing supplier cannot be issued (because all cards must

carry to UnionPay logo) and the competing supplier is effectively barred from the market. This provides CUP with the ability to leverage the logo requirements to preserve its monopoly position.

(c) Terminal equipment requirements (paragraph 18):

(i) Document No. 57

(ii) Document No. 153

(iii) Document No. 149

8. Document No. 57 (Exhibit US-41) establishes additional requirements that advance the goal of a single unified network using CUP cards for inter-bank transactions as of 2001: As stated in Document No. 57, Article 3: “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.” See also U.S. Second Written Submission, para. 179. Article 3, also mandates the abolition of “[r]egional bank card interoperability logos produced and designed regionally” and that “[s]tarting January 1, 2004, the specially engaged merchants of bank cards and terminal equipment such as ATM, POS etc. shall not bear any regional bank card interoperability logo.”

9. Document No. 153, Article 2.2 (Exhibit US-49) requires that “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.” See U.S. Second Submission, para. 179.

10. Document 149, Article 2(5)(iii) prohibits acquiring institutions from accepting prepaid cards not bearing the CUP logo. Document No. 149 contains a clear prohibition on accepting non-CUP cards: “No acquiring institutions may, through the bankcard acceptance terminals, accept prepaid cards without the UnionPay logo.” This prohibition would prevent merchants and acquirers from accepting any prepaid cards that do not bear the CUP logo, and foreign-issued prepaid cards are prohibited for transactions in China. See U.S. Second Submission, para. 175.

(d) Acquirer requirements (paragraph 19):

(i) Document No. 37

(ii) Document No. 76 (Exhibit US-56/Exhibit US-63)

11. Document No. 37, Article 2.1(i) requires all commercial banks to make technical preparations for accepting bank cards bearing the CUP logo, and required acquirers to join CUP for accepting cards. As detailed in the U.S. Second Written Submission (paras. 153-165), Document No. 76, established effective requirements that all cards must comply with uniform

standards that are CUP standards and those standards require any financial institutions seeking to acquire merchant bank card transactions must join CUP and process transactions according to CUP’s rules and procedures, including the logo requirements and the unified CUP standards.

(e) Cross-region/-bank prohibitions (paragraph 20):

(i) Document No. 76 (Exhibit US-56/Exhibit US-63)

12. Document No. 76 (Exhibit US-56/US-63) mandates the use of CUP’s rules and procedures for managing all aspects of EPS including issuing, acquiring, use of the CUP logo, and processing. CUP’s rules and procedures as set out in the national bankcard standards and inter-operability requirements are unique to CUP, and together with the requirements on issuers (that RMB card and dual currency card must bear the CUP logo), merchants (all POS terminals must be capable of processing cards bearing the CUP logo) and on acquiring institutions (that they must post the CUP logo and be able to acquire transactions using cards bearing the CUP logo) mean that no other EPS provider can operate in the Chinese market to provide EPS for RMB payment cards transactions.

Question 72. With reference to the United States’ response to Panel question No. 1, could the United States please explain what are the "unified technical specifications" and "unified business specifications" that are mentioned in Article 1, Section 2.1, of Document No. 37?

13. To our knowledge, the terms “unified technical specifications” and “unified business specifications” are not defined. However, several references to certain of these documents appear throughout the materials that are before the panel.

14. The “unified business specifications” includes the Business Practices for the Interoperable Service of Bank Cards (“Business Practices Appendix”) provided in Document No. 76 (Exhibit US-56/63). Document No. 37 (Exhibit US-40), Article 1, Section 1.1(ii) states that banks which have joined the network must ensure that “their bank cards business processing system and business processes flow and operating rules, etc. must comply with the requirements in ‘Joint Technical Specifications on Bank Card Interoperability,’ ‘Management Specifications of Bank IC Card Key,’ and ‘Business Specifications for Interoperable Services of Bank Cards.’”

15. “Unified technical specifications” include a variety of technical documents, some of which are issued by CUP and some of which are issued by PBOC or other agencies. CUP’s authority to issue unified technical specification is made clear in Article 12(5) of CUP’s Articles of Association (Exhibit US-20), which states that the “business scope” of CUP includes “formulat[ing] the code and technical standards for inter-bank bank card transactions.” This same description of CUP’s “business scope” appears in the Notification of Business License Approval and Issuance (Exhibit US-29) that was issued to CUP.

16. Document No. 37 (Exhibit US-40), Article 1, Section 1.1(i) provides an illustrative list of technical standards applicable to “[a]ll bank cards for domestic use” including the “China Financial Integrated Circuit (IC) Card Specifications,” “Magnetic Stripe Data Content and Specifications for Bank Card,” and the “Bank Identification Number and Card Number for Bank

Card.” Article 1, Section 1.1(iii) of the same document states that POS terminals must comply with “Bank Card Magnetic Stripe Specifications for Point of Sales Terminals (POS)” and “China Financial Integrated Circuit (IC) Card Specifications.”

17. Document No. 76, Chapter 1, section 5.2.3 of the Business Practices Appendix (Exhibit US-56/63) states that issuing banks must “comply with relevant industry standards for card and usage standard under *Bankcards Issuer Identification Code and Card Number, Bankcards Magnetic Strip Information Formats and Use Specifications, China Financial Integrated Circuit (IC) Card Specifications*; if it is an Acquiring Bank, where interoperating, its terminal equipment must comply with the requirements of *Bankcard Magnetic Strip Specifications of Sales Point Terminals (POS)* and other relevant regulations; meanwhile, its terminals for acceptance of IC cards shall comply with terminal standards under *China Financial Integrated Circuit (IC) Card Specifications*.”

18. Document No. 142, Section II, paragraph 3 (Exhibit US-55) refers to the “Bank Card Specifications (JR0052-2009),” the “Technical Specifications on Bankcard Interoperability (JR0055-2009).” Section IV, paragraph 12 refers to “Specifications for Automatic Teller Machine (ATM) Terminals (JR/T0002-2009),” while paragraph 13 refers to “Specifications on Point of Sale (POS) Terminals (JR/T0001-2009).”

19. Section II, paragraph 3 of Document No. 142 Exhibit (US-55) also states that “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.” Document No. 149, Article 2(5)(iii) (Exhibit US-50) also refers to the PBOC 2.0 chip standard, and states that “acquiring organizations may not allow the non-CUP and non-PBOC 2.0 pre-payment cards to be accepted at any POS terminal.” PBOC 2.0 is a chip standard developed by PBOC and CUP. It is a China-specific standard that is incompatible with the “EMV” chip standard used by EPS suppliers around the world. Eventually, all cards issued in China will be required to comply with the PBOC 2.0 standard.

II. THE SERVICES AT ISSUE

A. QUESTIONS FOR THE UNITED STATES

Question 73. Could the United States give its views on the comment made by China, in footnote 13 of its answer to the Panel question no. 22(c), whereby “[m]ost EU countries have a national network for clearing and settling domestic payment card transactions (such as Carte Bancaire in France and Pago Bancomat in Italy) and use the international network operators (such as MasterCard’s ‘Maestro’ network) to clear and settle cross-border transactions (including cross-border transactions between members of the Euro-zone)”. In particular, what are the similarities and differences between the situation in the EU and in China when it comes to activities of foreign payment card companies?

20. The comments made by China are inaccurate and irrelevant. There are also fundamental differences between the EU and China with respect to the ability of foreign suppliers to provide EPS for payment card transactions.

21. As an initial matter, while there are some “national payment networks” operating within individual European countries as noted by China, this is by no means the norm. In fact, several so-called national networks have begun to lose support within their domestic markets or have even ceased independent operations over the past decade as the European Union payments industry has become more integrated following development of the Single Euro Payments Area (SEPA). For example, many issuers have begun to migrate existing “Laser” branded debit cards in Ireland to either Visa or MasterCard branded debit cards. “Laser Admits Trouble Ahead as EBS Latest Lender to Ditch Card,” *Independent*, Feb. 10, 2011 (Exhibit US-107). The Single Euro Payments Area is based on the principle of greater competition among card schemes and SEPA payment instruments are intended to “replace national euro payment instruments existing today.” European Payments Council, “Shortcut to SEPA,” Updated Edition March 2011, page 1 (Exhibit US-108).

22. Neither the EU nor any individual member states mandate that transactions be processed by “national” suppliers of EPS for payment card transactions. Unlike in China, “national” suppliers of EPS in Europe such as Groupement des Cartes Bancaires (Carte Bancaires cards) and Consorzio Bancomat (Pago Bancomat cards) have not been established and maintained through regulation as sole domestic suppliers of EPS. Exhibit CHI-103 does not indicate the use of national networks is mandatory.

23. Unlike in China, Europe’s SEPA Card Framework (SCF) does not mandate any level of geographical coverage within the Single European Payment Area. The aim is to ensure that all general purpose cards in circulation in SEPA, whether co-branded or not, will be SCF-compliant from 31 December 2010 onwards. The SEPA Card Framework recognizes that the acceptance of a card at any given terminal is ultimately dependent on the decision of a merchant to accept that particular card. However, the SEPA Card Framework removes barriers so that acceptance of payment cards meets the needs of consumers and retailers. European Payments Council, “Shortcut to the SEPA Cards Framework,” 2010 page 2 (Geographical Reach) (Exhibit US-109). To the extent that payment card transactions are routed over national networks, these decisions are based on purely commercial considerations and arrangements and are not mandated by law regulation as is the case in China. Exhibit CHI-103 indicates that Carte Bancaires has entered into partnerships with Visa and MasterCard so that its cards can have international acceptance and one option going forward would be “*increased* use of international systems for national transactions, which could lead to the disappearance of some or all of the existing European systems in use today...” See China’s Exhibit CHI-103, page 1, “European Payment Card Aspirations” (emphasis added).

24. It should also be noted that Exhibit CHI-103 is somewhat dated, as evidenced by the statement on page 1 that begins, “[b]y the end of 2005, the [European Payment Council (“EPC”)]...*will* decide...” (emphasis added) and by the fact that the figures cited on page three are for the year 2004 with the year 2005 figures being a forecast. SEPA has developed significantly since the publication of Exhibit CHI – 103. According to the European Payment Council’s summary of the SEPA Cards Framework, there is no single solution or scenario that has been suggested, much less mandated, by regulation. Instead, SEPA merely sets forth the aspirational goal that “customers can make electronic euro payments within and across 32 countries under the same basic rights and obligations. ... The aim of creating a SEPA for Cards is to facilitate a consistent customer experience when making (consumers) or accepting

(merchants) payments with cards.” European Payments Council, “SEPA Cards Framework,” Version 2.1, 16 December 2009, Section 3.6.3.1, (Exhibit US-110) makes clear that “This Framework does not have as its purpose the mandating of any single option nor infrastructure.” It is left for the market to dictate how a “consistent customer experience” will be developed. The objective of SEPA is clear that there is no EU or member state requirement or regulation for co-branding or the limitation of international systems to offer services only for transactions outside of the SEPA area:

The Framework is aimed at building an environment in which there are neither technical nor legal or commercial barriers which stand in the way of cardholders¹⁴, banks, payment institutions and merchants choosing and using SCF compliant payment and ATM access card products. ***Each of the parties should be able to make a choice based on value considerations alone*** whether they wish to adopt a particular card product or brand, and have this choice fully supported by technical interoperability, and not constrained by lack of pan-European acceptance.

European Payments Council, “SEPA Cards Framework,” Version 2.1, 16 December 2009, Section 1.2, page 4 (Exhibit US-110) (emphasis added). International cards brands comply with SEPA and are conducting national settlement and clearance for transactions in Europe. See Visa Press Release, “Visa Europe completes €0.5 billion investment in European processing platform,” 30 September 2010 (Exhibit US-111).

25. In sum, the statements by China in footnote 13 are both inaccurate and irrelevant. Regardless of the existence of any number of domestic schemes or processors or payment alternatives in other countries around the world, the fact remains that notwithstanding its WTO commitments, China prevents competition and blocks the ability of foreign providers to supply EPS for payment card transactions.

Question 74. Could the United States please elaborate on why the definition of the services at issue (US Panel request, footnote 1) covers the three-party model? In your reply, please take into account also footnote 63 of China's second written submission. In particular, what does the expression "... between institutions participating in the transactions ..." refer to in a three-party model?

26. Three party model transactions include both those EPS systems that perform the functions of issuer and acquirer internally (*e.g.*, American Express) and “on-us” transactions occurring in a four-party system (*e.g.*, Visa and MasterCard) where the issuer and the acquirer are the same entity. In a three-party transaction, the role of the EPS supplier may vary by circumstance, but its activities would nevertheless clearly fall within the definition of EPS provided by the United States.

27. In some markets and systems, three-party model transactions are processed over the EPS provider's network in the same manner as transactions involving a different issuer and acquirer. For example, in the United States, “on us” Visa and MasterCard transactions are processed over the provider's network. See Visa Business Reviews, “Required Processing of Transactions Through VisaNet,” February 2005, Issue No. 050215 (Exhibit US-112). In some circumstances,

e.g., “on-us” transactions outside the United States, the acquirer’s POS terminal will recognize a card’s BIN as an “on-us” card number and the bank will process the transaction independent of the EPS network. However, whether or not an issuing/acquiring institution recognizes a transaction as “on-us” is purely on a case-by-case basis depending on the POS terminal. Even if the transaction is processed internally and not over the EPS network, it is the EPS provider that developed the payment product (card program), it is the EPS provider’s intellectual property that is enabling the switching of the transaction and supporting the electronic payment process, the transaction is governed by the EPS provider’s rules and procedures, and the transaction is secured by the EPS provider’s risk management and fraud protections. The fact that certain payment card transactions may occur where the issuing institution and acquiring institution are the same does not change the definition or scope of the service being provided.

28. The cardholders and merchants participate in the payment card transaction. For the cardholder, the EPS brand displayed by a merchant represents acceptance and ability to pay without the need to use cash. For the merchant, a card from an EPS network represents an assurance that the merchant will receive payment for the purchase. The EPS suppliers network, infrastructure, rules, risk policies, financial institution requirements, etc. are built to meet these fundamental demands by cardholders and merchants, and the issuing and acquiring institutions that have relationships with cardholders and merchants, in the fastest, most secure and most reliable way. This is true even in a three-party model where a single institution is both the issuer and acquirer. The EPS supplier still must conduct an authorization of the transaction, which includes providing information such as the merchant code, POS terminal ID, country codes of the issuer, acquirer, and merchant, transaction currency, etc. Furthermore, as a practical matter in many instances it would be virtually impossible to distinguish “on-us” three-party transactions from four-party transactions.

Question 76. In the view of the Parties, what would be the relevance of CPC version 1.1 and CPC version 2 under Article 31 and Article 32 of the Vienna Convention?

29. Before considering Central Product Classification System (CPC) versions 1.1 and 2.0, it is useful to first go back to CPC versions that preceded them. The chronology of the CPC is as follows:

- CPC Provisional was approved in 1989.
- CPC Version 1.0 was approved in 1997.
- CPC Version 1.1 was approved in 2002.
- CPC version 2.0 was approved in 2006.

30. The evolution of the United Nation’s Central Product Classification from the CPC Provisional to CPC Version 2.0 provides important insights with regard key classification issues that have been debated throughout this proceeding. The CPC has an important relationship with the Services Sectoral Classification List, Note by the Secretariat, MTN.GNS/W120, 10 July 1991 (“Document W/120”), which the GATT Secretariat issued during the Uruguay Round to help create a framework for scheduling commitments. Document W/120 appears to have been the

starting point for the “Banking and Other Financial Services (Excluding Insurance and Securities)” section of China’s Schedule, which designates its categories with letters and numbers identical to those used in the “Banking and other financial services (excl. insurance)” section of Document W/120, and closely follows the category descriptions.

31. Document W/120 includes a correspondence between the services sectors it identifies and the corresponding CPC Provisional classification codes. Document W/120, Item 7.B(b) (“Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transactions”) corresponds to CPC provisional classification 8113 (Other credit granting services). See Exhibit US-105, pages 2 and 4. CPC Provisional classification 8113, approved in 1989, contains further sub-classifications, including classification 81133 (*Credit card services*), which code contains an “explanatory note” that describes the services classified there as follows:

Services consisting in financing the purchase of products by granting point-of-sale credit using plastic cards or tokens.

See Exhibit US-105, page 5. The services described as “financing the purchase of products by granting point-of-sale credit using plastic cards” is placed within category 7.B.b of Document W/120. “[G]ranteeing point of sale credit using plastic cards” is clearly a description of the issuance of credit cards, and again, is a service that falls within category 7.B.b of Document W/120.

32. On the other hand, Document W/120, Item 7.B.d (“All payment and money transmission services) corresponds to CPC provisional classification 81339 (“Other services auxiliary to financial intermediation n.e.c.”), which is described as “other services auxiliary to financial intermediation, not elsewhere classified, e.g., services related to the implementation of monetary policy.). See Exhibit US-105, pages 2 and 6.

33. In connection with the transition of the CPC from the CPC Provisional to CPC Version 1.0, approved in 1997, the CPC provisional code for classification 81339 corresponds to classification 71553 in CPC version 1.0. See Exhibit US-105, pages 6, 7 and 8.

34. CPC version 1.0 classification 71553 was also expanded to include a subclass of “financial transactions processing and clearinghouse services.” See page 8 of Exhibit US-105. The “Explanatory note” describes the service in the subclass “financial transactions processing and clearinghouse services” as follows:

This subclass includes:

- services of processing financial transactions such as verification of financial balances, authorization of transactions, transfer of funds to and from transactor’s accounts, notification of banks (or credit card issuers) of individual transactions and provision of daily summaries

- services of clear cheques, drafts and other payment orders.”

See Exhibit US-105, page 8. This description is an apt description of EPS for payment card processing. This is inescapable when one simply compares CPC version 1.0 classification 71553, subclass of “financial transactions processing and clearinghouse services,” and the “Explanatory note” (see Exhibit US-105, page 8), with the U.S. description of EPS for payment card transactions (see U.S. Panel Request, page 1, note 1; U.S. July 29 Response, paras. 38-54; U.S. First Written Submission, para. 10; U.S. Second Written Submission, paras. 11-41). Thus, it is clear that retail payment transaction processing associated with credit card transactions was included in item 7.B(d) of Document W/120.

35. Significantly, the “Explanatory note” for classification code 71553 also explains that services of processing securities transactions are not included in this classification:

This subclass does not include:

- services of processing securities transactions, cf. 71523.”

See Exhibit US-105, page 8. The explicit exclusion of the service of “processing of securities transactions” confirms that it is fundamentally different from retail payment transactions, including payment card transactions processing.

36. In the transition from CPC Version 1.0 to CPC Version 1.1, classification code 71553 was further expanded to include “debit card merchant services.” See Exhibit US-105, page 9. Classification code 71553 continued to explicitly exclude “services of processing securities transactions, cf. 71523.” See Exhibit US-105, page 9. Finally, the transition from CPC Version 1.1 to CPC version 2.0 confirms that the scope of the services in classification code 71553 remained the same, although the code was renumbered as 71593. See Exhibit US-105, page 10.

37. As Exhibit US-105 clearly demonstrates, the evolution of the United Nation’s Central Product Classification and the successive iterations of the CPC are in complete accord with the U.S. position that EPS for payment card transactions is a service that is one type of “all payment and money transmission services” that falls within classification 7.B.d of Document W/120, item (viii) of the Annex on Financial Services, and subsector (d) of China’s Schedule of Specific Commitments. Moreover, the evolution of CPC shows that credit card issuance services may be appropriately classified as lending and consumer credit and, hence, classification 7.B.(b) of the W/120, item (vi) in the Annex, and subsector (b) in China’s Schedule. This in turn, provides further support for the ordinary meaning of the terms in the illustrative list of “credit, charge, and debit cards” in subsector (d) of China’s Schedule. As the United States has explained, as this list appears as part of “all payment and money transmission services, logically, the list refers to the processing of these types of payment card transactions – and the evolution of the relevant CPC classification bars this out. The issuance of credit cards (China’s interpretation of the illustrative list) is more of a credit granting service, which the evolution of a different classification demonstrates is covered separately.

38. Additional support can be found in CPC Versions 1.0 and 1.1. The explanatory note in CPC Version 1.0 describes EPS for credit card transactions, and CPC Version 1.1 adds debit card transaction processing. These CPC Versions confirm that retail payment transaction processing associated with credit card transactions was intended to be included in item 7.B(d) of W/120,

item (viii) of the Annex and subsector (d) of China's Schedule. There is also an explicit inclusion of debit card transaction processing. Equally important, the specific exclusion of the "processing of securities transactions" shows that it is fundamentally different and a different service than retail payment transaction, including payment card transaction processing.

39. Finally, in terms of the interpretive relevance of the CPC versions, the United States would note that CPC Provisional and CPC Version 1.0 are relevant as supplementary means of interpretation within the meaning of Article 32 of the Vienna Convention of the Law of Treaties. The CPC Provisional was approved in 1989 and was used extensively in preparing Document W/120 and CPC Version 1.0 was approved in 1997, and both of these CPC versions were contemporaneous with China's GATS Schedule negotiations and pre-dated China's accession to the WTO.

40. Accordingly, the CPC can be used in at least two ways consistent with Article 32 of the Vienna convention. The Provisional and Version 1.0 of the CPC as set out in Exhibit US-105 "serve to confirm the meaning of" subsector (d) "resulting from the application of Article 31 [of the Vienna Convention]." Specifically, CPC Provisional and CPC Version 1.0 confirm that EPS for payment card transactions is a single service that falls within the scope of "all payment and money transmission services, including credit, charge and debit cards" and that no element of EPS for payment card transactions falls within item (xiv) of the Annex on Financial Services. If they are not used "to confirm the meaning" of subsector (d), the CPC Provisional and CPC Version 1.0 can certainly assist to determine the meaning of subsector (d) to the extent that the panel would consider there to be ambiguity (Article 32 (a)) or where, as here, China's interpretation would lead to a result that is unreasonable (Article 32(b)). In addition, CPC Version 1.1 and CPC Version 2.0 provide further support for this interpretation of China's Schedule.

41. As Exhibit US-105 and the preceding discussion make clear, the evolution of the CPC from the CPC Provisional to CPC Version 1.0 and continuing with CPC Version 1.1 and CPC Version 2.0, each version of the CPC supports the U.S. position regarding the classification of EPS for payment card transactions. While CPC Version 1.1 was approved in 2002 and CPC Version 2.0 was approved in 2006, after China's accession to the WTO, these later versions of the CPC demonstrate that retail payment transaction processing associated with credit card and debit card transactions was intended to be included in item 7.B(d) of W/120, item (viii) of the Annex and 7.B.(d) of China's Schedule. They also demonstrate that the specific exclusionary references to the "processing of securities transactions" shows that it is fundamentally different and a different service than processing of retail payment transactions, including payment card transaction processing.

III. SCOPE OF CHINA'S COMMITMENTS

Question 77. The Panel refers to the US answer to Panel question no. 46 and the chart correlating each component of EPS to the relevant mode 1 commitment allegedly undertaken by China. Could the United States complement this chart with the addition of a third column indicating, with respect to the five elements included in the EPS "system", the services that, according to the United States, would be outside the mode 1 commitment, but would remain under subsector (d)?

42. As an initial matter, China’s measures prevent the foreign supply of EPS for payment card transactions irrespective of the mode of supply. The chart provided by the United States was an attempt to provide an illustrative list of elements of EPS (which the United States has demonstrated is a single, integrated service) that would entail the provision of financial information and financial data processing. The fuller description in column 2 of that chart is an elaboration of the element of EPS in the first column – and is not an elaboration of the “provision of financial information” or “auxiliary services.” As explained in connection with the chart following paragraph 121 provided with the U.S. Response to the First Set of Questions from the Panel, several elements of EPS are included in the descriptions of the two “excepted” elements, and are, therefore, covered by China’s mode 1 commitment (in addition to its mode 3 commitment).

43. However, as an example of an aspect of the service at the “back end” of EPS processing (see U.S. July 29, 2011 Response, paras. 38-54) that falls outside the scope of China’s mode 1 commitment is the establishment of the settlement account. All of the other aspects of EPS are intended primarily to achieve the final transfer of funds related to a transaction. The establishment of the settlement account is critical because this account is used as the channel for transferring funds. Without the establishment of this account, much of the efficiency and utility of EPS would disappear, as banks would then be forced to settle accounts with each other on a bilateral basis. While the generation of the settlement instructions for managing the account would fall within the scope of China’s cross-border commitments (as it entails the provision of financial information), the actual establishment of the settlement account would not fall within the scope of that description.

44. The fact that many of the components of EPS fall within the scope of China’s mode 1 commitment does not mean that there is complete, or even near-complete, overlap between China’s mode 1 and mode 3 commitments. China’s mode 1 commitment applies not only with respect to the services in subsector (d) but also to services in subsectors (a), (b), (c), and (f). Aspects of some or all of these services, *e.g.*, the taking of deposits, would raise questions as to whether they would fall within the scope of China’s cross-border commitment. The fact that the two “excepted” descriptions of permissible cross border activity cover several elements of EPS for payment card transactions is not an unusual or unexpected conclusion. China’s Schedule groups a wide array of sectors together, and applies the same market access and national treatment obligations to all services in sectors (a) through (f).

Question 78. With reference to paragraph 126 of the United States' second written submission, are there dictionaries or documents of relevant international organizations that provide definitions similar to the one contained in the "Dictionary of Finance and Banking"?

45. Yes. In addition to the definitions of financial institutions previously provided by the United States, including one that explicitly includes “credit card operators” (*see* Exhibit US-67 and Exhibit US-76), other examples of similar definitions of “financial institutions” include The American Bankers Association, *Banking Terminology*, Third Edition, 1989, page 153 (Exhibit US-113), which defines a “financial institution” as follows:

(1) A firm that handles financial transactions or gives financial advice. (2) A depository institution, or its agent or service bureau. (3) An establishment responsible for holding in custody, lending, exchanging, or issuing money; for extending credit; and for facilitating transmission of funds.

46. EPS suppliers would clearly fall under either item 1 (“a firm that handles financial transactions”) or item 3 (“an establishment responsible for... facilitating transmission of funds.”). Similarly, The Dictionary of Banking, A Bankline Publication, Probus Publishing Company, 1994, page 106 (Exhibit US-114) defines “financial institutions” broadly as follows:

Business organizations that offer a broad base of financial services or specialize in specific functions, products, or services, e.g., commercial banks, thrift institutions, investment banks, pension funds, credit unions, investment companies, insurance companies, securities brokers and dealers, real estate investment trusts, stock exchanges, and others that deal in money or equivalents.

47. Clearly, EPS suppliers would qualify as “[b]usiness organizations that offer a broad base of financial services or specialize in specific functions, products, or services.” Among the examples are business organizations that “deal in money or equivalents.” Payment cards are non-cash, electronic retail payment instruments that are used in retail payment systems as cash equivalents.

Question 81. In paragraph 12 of its opening oral statement, China states that interbank credit card claims for payment are financial assets within the ordinary meaning of that term. Leaving aside the analogy to checks as negotiable instruments, do the parties consider that interbank claims for payment are negotiable instruments?

48. An interbank claim for payment is not a negotiable instrument. A negotiable instrument is a written instrument containing an unconditional order or promise to pay a definite sum on demand or at a definite time. The modern interbank system is based on account-based settlement arrangements. Interbank claims are expressed and settled via credit and debit account entries rather than through negotiable instruments.

49. China’s interventions during the second meeting of the Panel with the Parties further confirmed that China’s Schedule explicitly includes certain claims for payments between banks that fall within subsector (d) as one of the payment services covered by this subsector. In response to the Panel’s question regarding the explicit reference to “settlement” in the description of subsector (d), China tried to reconcile this reference and its position that the clearing and settlement aspects of the service for payment card transactions does not fall within subsector (d), but rather should be classified as item (xiv) in the Annex on Financial Services. China explained that this reference should be interpreted to be very limited and to extend, for example, only to letters of credit arrangements and claims for payments between banks in this context. Of course, there is no basis for such a narrow reading.

50. On what basis should the letter of credit arrangement and the resulting claims for payment between banks be treated any differently than the claims for payment between banks in a payment card transaction? China could not articulate any reason, and the explicit use of

“settlement” and China’s example of the letter of credit arrangement and resulting claims for payments between banks arising out of letter of credit arrangements only serves to undermine China’s position that certain elements of EPS for payment card transactions should be considered as “settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments.”

51. Finally, the United States would refer the Panel to Exhibit US-105, and the U.S. answer to question no. 76 above, which traces the evolution of the United Nation’s Central Product Classification and sets of the successive iterations of the CPC for the relevant classification at issue.

Question 82. The Panel notes that, in discussing the ordinary meaning of key terms at stake, both Parties quote various industry sources, such as company brochures, annual reports or websites. Are the Parties of the view that such material constitutes a relevant source for the purpose of (i) establishing the ordinary meaning of treaty terms under Article 31 of the Vienna Convention or (ii) otherwise interpreting GATS Schedules of commitments?

52. These industry sources are relevant sources for determining ordinary meaning under Article 31 and in interpreting GATS Schedule of Commitments. To provide support for the position that EPS for payment card transactions falls within the ordinary meaning of subsector (d) of China’s Schedule, the United States started with dictionary definitions of the key terms in subsector (d), including “payment”, “pay”, “money”, and “transmission.” But, as the Appellate Body has explained, dictionary definitions alone may not be capable of resolving complex questions of interpretation (*See Appellate Body Report, US-Gambling*, para. 164) The industry sources provided by the United States confirm the ordinary meaning of the service and demonstrate that EPS is a payment service that is one type of “all” “payment and money transmission service” falling within subsector (d). It is also useful to recall that the common usage of terms provides the basis for dictionary definitions. In many instances, the common usage of a term is as that term is used within a particular industry or sector. Consequently, it is appropriate and may be helpful to look at how those involved with the service at issue would understand the terms in a GATS Schedule of Commitments.

53. In addition, the international sources cited by the Parties, including, for example, the source documents from the Bank for International Settlements and the BIS Committee on Payment and Settlement Systems also provide assistance, consistent with the customary rules of interpretation reflected in the Vienna Convention, in determining the ordinary meaning of key terms in China’s Schedule and the service at issue in this dispute.

Question 83. The Panel notes that subsector (d) in China's Schedule refers to "bankers drafts (including import and export settlement)" (emphasis added). Taking into account the principle of effective treaty interpretation, could the Parties elaborate on the meaning, and relevance to the present case, of the reference to "(including import and export settlement)"? How can this be reconciled with China's statement in response to question 39(a) that "[s]ince it is beyond any reasonable dispute that the clearing and settlement of negotiable instruments is encompassed by item (xiv), it would be arbitrary and illogical to conclude that clearing and settlement services for certain types of retail payment

instruments are covered by item (xiv), while clearing and settlement services for other types of retail payment instruments are covered by item (viii)”?

54. The parenthetical phrase “(including import and export settlement)” does not appear in item (viii) of the Annex on Financial Services. China added this phrase to the description of the services covered by subsector (d) in China’s Schedule. The explicit use of “settlement” here is in accord with the fact that for that retail payment services there is an element of settlement and clearing that occurs as part of the payment service. EPS is integral to the processing of credit, charge, debit, and other payment card-based electronic payment transactions.

55. EPS gives merchants the confidence to accept payment cards instead of cash by authorizing and authenticating the transaction. EPS also generates the payment instructions that make sure that the funds are actually transferred according to the transaction. While EPS suppliers perform information transmitting (clearing) and transaction processing (settlement) functions, the EPS suppliers are completely different market participants than the exchanges, clearing houses, and settlement service providers that perform the settlement and clearing services for transactions of financial assets as described in item (xiv).

56. In its response to a Panel question during the second panel meeting, China tried to reconcile the reference to “settlement” in the description of subsector (d) with its position that the clearing and settlement aspects of the service for payment card transactions does not fall within subsector (d), but rather should be classified as item (xiv) in the Annex on Financial Services. China’s intervention during the second meeting, however, only served to confirm that the reference reflects China’s intention for certain claims for payments between banks to fall within subsector (d) as one of the payment services covered by this subsector. China explained that this reference is limited and only referred to letters of credit and claims for payments between banks in this context. There is no basis for such a narrow reading. China failed to articulate any reason and the explicit use of “settlement” and China’s example of the letter of credit arrangement and resulting claims for payments between banks arising out of letter of credit arrangements only serves to undermine China’s position and support the U.S. definition and classification of the service at issue.

57. The United States would also refer the Panel to Exhibit US-105, and the U.S. answer to question no. 76 above, which traces the evolution of the United Nation’s Central Product Classification and sets of the successive iterations of the CPC for the relevant classification at issue.

58. Finally, the explicit reference to “settlement” within the sectoral description of the services covered by subsector (d) and China’s own example during the second panel meeting of the letter of credit arrangement and resulting claims for payment between banks arising out of those transactions also patently contradicts China’s assertion in its response to Panel question 39(a) that “[s]ince it is beyond any reasonable dispute that the clearing and settlement of negotiable instruments is encompassed by item (xiv), it would be arbitrary and illogical to conclude that clearing and settlement services for certain types of retail payment instruments are covered by item (xiv), while clearing and settlement services for other types of retail payment instruments are covered by item (viii).”

Question 84. China has separate commitments for "motor vehicle financing by non-bank financial institutions". In this regard, please answer the following questions:

(a) **Does the term "non-bank financial institutions" cover foreign finance companies?**

59. Yes. The inclusion of the word "bank" in the phrase "non-bank financial institution" demonstrates that the term "financial institution" is a term that encompasses more than banks alone and the term would encompass foreign finance companies, as well as any other type of "non-bank financial institution."

(b) **If so, why was the relevant commitment not included under subsector (b) and/or (c)?**

60. It is unclear why China did not include this in subsector (b) and or (c). The United States would note that where the identity of the supplier is relevant to the classification of the service, the sectoral description must clearly indicate that to be the case. This is an example of where the service description itself makes the identity of the supplier a relevant inquiry.

Question 85. China's mode 1 market access entry uses the phrase "[p]rovision and transfer of financial information, and financial data processing and related software by suppliers of other financial services". Does the phrase "by suppliers of other financial services" qualify also the phrase "[p]rovision and transfer of financial information"? In other words, is that phrase about the provision and transfer of financial information by suppliers of other services?

61. In looking at the grammatical structure and punctuation of the sentence the phrase "by suppliers of other financial services" would not seem to qualify the phrase "[p]rovision and transfer of financial information".

IV. CLAIMS UNDER ARTICLES XVI AND XVII OF THE GATS

Question 86. With reference to paragraph 172 of the United States' second written submission, could the United States please elaborate on why the alleged requirement to comply with CUP's rules and procedures as set out in the national bankcard standards and inter-operability requirements supports the assertion that no EPS supplier other than CUP can operate in the Chinese market? Please specify the provisions of Document No. 76 (Exhibit US-56/Exhibit US-63).

62. The Business Practices Appendix in Document 76 (Exhibit US-56/63) is an embodiment of many of the operational and technical requirements for the CUP network. Other payment networks (such as MasterCard and Visa) maintain their own operating regulations, although they do not carry the force of law like requirements in Document 76. The requirements in the Business Practices Appendix in Document 76, Chapter I (Basic Provisions), Articles 4.1-4.4 establish the Unionpay logo and define the rights to use the Unionpay logo. These requirements would of course be incompatible with the logo usage and requirements for other networks such as MasterCard and Visa. Chapter II (Market Rules), Article 2 mandates the posting of the

UnionPay logo at merchants. This requirement is of course incompatible with competing network requirements that do not use the UnionPay logo.

63. The mandate to apply CUP's rules and procedures to all EPS transactions, in combination with the mandate that all cards denominated in RMB must bear the CUP logo (as explained in response to question no. 87) and the mandate that all merchants and acquirers must be capable of accepting CUP cards (as explained in response to question no. 92) work together to establish and entrench CUP's monopoly over transactions involving cards issued and used in China.

64. CUP's Operating Regulations, Volume III, Rules on UnionPay Card, BIN and Logo, April 2011, Section 2.5.3.2 (Exhibit US-115) implement the mandate regarding the requirements related to the use and non-use of the CUP logo in the following manner:

The following logos cannot appear on UnionPay Card surface (including card face and card back).

- Name/logo/trademark of credit card or debit card of the companies and their subsidiaries that are deemed to have competitive relationship with UnionPay by UnionPay Board of Directors
- Trademark or logo similar to UnionPay that is confusable
- Logo with political tendency (unless it belongs to part of the logo name or trademark of the Member and the written approval from UnionPay has been obtained in advance)
- Character or logo that is not used for identifying the Issuer or its service but for the purpose of advertisement or promotion
- Other logo and character that may impose negative impact on UnionPay logo.

The application of UnionPay partner's relevant logo on UnionPay Card as approved by UnionPay and in compliance with the requirements in Section 2.5.3.1 is not forbidden.

65. China's measures require that all RMB payment cards, or dual currency, issued in China bear the CUP logo, that all POS terminals be capable of accepting payment cards bearing the CUP logo, and that all acquiring institutions post the CUP logo and be capable of acquiring transactions that use cards bearing the CUP logo. China has also given a legal mandate that CUP's rules regarding logos (in terms of use and non-use) must be followed, and those rules also preclude any competitor's logo from appearing on the cards.

Question 87. With reference to paragraph 161 of the United States' second written submission, what is the basis for the United States' assertion that the CUP logo signifies that, whenever a payment card is used, the relevant transaction will be processed by CUP?

66. Whenever a payment card bearing the CUP logo is used for a transaction in China (and in certain instances in Hong Kong and Macau), that payment card transaction will be processed by CUP. As the United States has explained in its submissions, several instruments require the use and display of the CUP logo and the acceptance of the CUP cards. For example, Document No. 37 (Exhibit US-40) provides that “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.” Furthermore, Article 2 of Document No. 37 provides that all ATM and point-of-sale (“POS”) terminals in China must be capable of accepting CUP cards and prohibits the use of non-CUP cards for cross-region or cross-bank transactions. Document 76 (Exhibit US-56/63) also states that 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.” Document No. 76, Business Practices Appendix, Chapter 2, Art. 1.2 (Exhibit US-56/63)).

67. Along with the requirement to display the CUP logo and accept CUP cards, China also requires that CUP supply the EPS for domestic transactions made using a card bearing the CUP logo. For example, and as further detailed in the U.S. Second Written Submission, Article V.2 of Document 53 (Exhibit US-51) 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. In addition, 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”. Document 76 establishes CUP’s rules and procedures as the sole set of rules that may govern EPS transactions for cards issued and used in China.

68. As the United States explained in response to question no. 6 from the panel, Document No. 53, Article VII.3 (Exhibit US-51) requires that when new DBDC cards are issued by banks in China, the BIN numbers from those cards are reported by the banks to CUP, which loads the BIN numbers into its electronic BIN table along with the BIN numbers from CUP only cards. The impact of Document No. 53’s requirement is to guarantee that CUP processes all transactions in China relying on cards issued in China. Indeed, when a card holder swipes a card at a merchant’s POS terminal, the BIN is transferred electronically either to an acquirer (if the POS terminal is connected to the acquirer) or directly to CUP (if the POS terminal is connected directly to CUP). When either the acquirer or CUP receives the BIN, they will compare it to CUP’s BIN table, which is the list of BINs that CUP is authorized to process. Once a BIN is confirmed to appear on CUP’s BIN table, the transaction is automatically processed over that network – in this case, the CUP network.

69. The logo requirements work in conjunction with one another and are reinforced and complemented by the mandate to conform to CUP’s rules and procedures contained in Document 76. These requirements work together to reinforce CUP’s monopoly over payment card transactions in China by ensuring that only CUP cards can be issued for RMB denominated accounts, that all merchants will accept those cards when they are presented for purchases, and that the transactions will be processed in accordance with CUP’s rules and procedures. Consequently, no other supplier of EPS may conduct domestic RMB transactions in China.

Question 88. The Panel has the following questions in reference to paragraphs 145 and 146 of the United States' second written submission:

- (a) ***The United States says that "CUP is the only 'domestic clearing channel' ... and ... therefore the measure does establish CUP as a monopoly." Could the United States please elaborate on how the assertion that CUP is the only domestic clearing channel supports the conclusion that there is a governmental limitation in place on the number of suppliers that are allowed to operate?***

70. China has designated CUP as the domestic clearing organization that must clear all RMB payment card transactions in China.

71. CUP’s foundational documents confirm that CUP operates the “single” network for RMB payment card transactions. CUP’s Articles of Association (Exhibit US-20) and a business license issued to CUP by the Shanghai Municipal Administration of Industry and Commerce (Exhibit US-29) are each dated 2002, and both use the phrase “single nationwide inter-bank card information and switching network.” The use of the word “single” confirms that CUP is the sole domestic clearing channel for RMB payment card transactions. If the contemplated scope of CUP’s envisaged simply the establishment and operation of a “nationwide inter-bank card information and switching network,” there would be no need for including the word “single” in this phrase. Rather, the use of the word “single” is consistent with the fact that CUP’s network is intended to be the exclusive network for all RMB payment card transactions in China.

72. 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.* As the document makes clear, these procedures are binding on all banks. According to paragraph 2 of the Notice, “[t]he Standard is applicable to all entities “with bank card businesses, all Interoperating Bank cards and related cross-bank business.” Paragraph 3 of the Notice states that “all acquiring banks that have been participating in bank card acceptance business shall meet the relevant requirements of the Business Practices” and “the Issuing Banks shall start compulsory businesses, and shall complete the ban card processing system reform in combination with the implementation of technical standards of various bank cards.”

73. Several of the 19 instruments require use of the uniform business specifications and technical standards. These include Document No. 37 Article 1, Sections 1.1, 1.2, Article 2, Sections 2.1, 2.2, Article 3, Section 3.1 (Exhibit US-40); Document 57, Article 3 (Exhibit US-41); Document 153, Article 2, Section 2.2, Article 4 (Exhibit US-49); Document 129, Section 3.2 (Exhibit US-53); Document 142, Article II.3, Article VI.18 (Exhibit US-55); Document 49, Article IV (Exhibit US-62); and Document 17, Article 64 (Exhibit US-52); Document 103, Article 5(1) (Exhibit US-1):

74. Paragraph 5 of Document No. 76 (the Notice) states that “[a]ll bank card business rules that are inconsistent with the Business Practices shall be abolished as from the implementation date of the Business Practices.” Furthermore, Chapter 10 of the Business Specifications Appendix states that “[t]hese Business Practices are not applicable to the situation where a foreign currency card issued outside China is used in China,” which in turn implies that the Business Specifications Appendix apply with respect to all transactions involving domestically-issued cards.

75. Section 1.2 of Document 153 (Exhibit US-49) also 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). China argues that, properly translated, this provision states that CUP is only “*a*” clearing organization, rather than “*the*” bank card clearing organization, and that even if Document No. 153 did designate CUP as “*the*” clearing organization within China for RMB bank cards, this would not establish a “monopoly” for CUP. It should also be noted that the PBOC’s 2007 China Payment System Development Report, states that “CUP operates *the* bankcard inter-bank transaction clearing system to switch message and process the clearing data of bankcard inter-bank transactions,” page 59 (emphasis added) (Exhibit US-90). The PBOC thus recognizes CUP’s position as “*the*” sole supplier in the market.

76. Moreover, as explained in paragraph 27 of the U.S. answers to the Panel’s first set of questions, other provision of Document No. 153 appears to confirm the designation of CUP as the sole supplier:

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.

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.

77. All of this is consistent with the fact that CUP’s network is the exclusive network for all RMB payment card transactions in China.

(b) *Taking into account that Document No. 53 mentioned therein refers to more than one clearing channel, could the United States please explain the legal basis for arguing that this provision enforces a monopoly?*

78. That Document No. 53, which became effective after the parties conducted consultations in this case, in November 2010, refers to domestic clearing channels in the plural does not change the fact that CUP is required to and in fact does process all RM payment card transactions in China. China asserted during the second Panel meeting that there exists one other domestic entity, the Rural Credit Banks Funds Clearing Center, that purportedly also handles

certain RMB payment card transactions in certain rural areas within China. Even if this were to be true, and China has not provided any evidence to substantiate its assertion, this would still be inconsistent with China’s obligations under GATS Article XVI:2(a) as even these facts would constitute a situation of “exclusive service suppliers.”

79. Moreover, the “Rural Credit Bank Fund Settlement Center” does *not* appear to be bankcard network. Instead it is a clearing and settlement center used by rural commercial banks in China. The United States understands that payment cards issued by these institutions still carry the CUP logo and issuing institutions must therefore be members of CUP and follow all applicable CUP rules and regulations. The RCBFSC is *not* an acceptance mark and cannot operate independently from CUP. See <http://www.nongxinyin.com/index.htm> (as is evident from the RCBFSC’s website, even rural banks in China that use the Rural Credit Bank Fund Settlement Center issue bank cards bearing the CUP logo and transactions using these cards are processed by CUP).

80. Finally, the United States was unable to locate any mention of the Rural Credit Banks Funds Clearing Center in any of the instruments that maintain and reinforce CUP’s monopoly or exclusive supplier position.

Question 89. With reference to paragraph 147 of the United States' second written submission, could the United States please explain the example of the settlement bank in China? Specifically, please explain by reference to this example whether and how the relevant requirements prevent foreign EPS suppliers from providing EPS in China or to Chinese clients. In your response, please take into account footnote 52 of China's second written submission.

81. To the extent it is permissible to issue and use an RMB card in Hong Kong or Macao, it is clear that CUP is the designated EPS supplier, and foreign EPS suppliers are not permitted to be involved. For example, 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. 8 (Exhibit US-46) similarly requires that CUP be used to clear RMB denominated transactions in Macao.

82. With respect to the argument presented in footnote 52 of China’s second written submission, the U.S. panel request states that “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.” This statement means that CUP is the only entity in China that can process RMB-denominated transactions, which includes not only domestic transactions, but also RMB-denominated transactions in Hong Kong and Macao.

Question 90. With reference to Article 6 of Document No. 153 (Exhibit US-49; "the Chinese issuing banks should support routing through the CUP network"; "no organizations should set any obstacles or cause any interference") and the United States' discussion of this at paragraph 150 of its second written submission, is Article 6 a provision that could be found to be inconsistent, as such, with China's WTO obligations?

83. Yes, this provision could be found to be inconsistent as such with China’s obligations under Articles XVI and XVII of the GATS. As the Appellate Body stated in *US - OCTG Sunset Reviews*, para. 172:

By definition, an “as such” claim challenges laws, regulations, or other instruments of a Member that have general and prospective application, asserting that a Member’s conduct – not only in a particular instance that has occurred, but in future situations as well – will necessarily be inconsistent with that Member’s WTO obligations. In essence, complaining parties bringing “as such” challenges seek to prevent Members *ex ante* from engaging in certain conduct.

84. With respect to Document No. 153 and the clauses referenced in the Panel’s question, the first clause contains a mandate that issuing banks should support payment card transaction processing by CUP. In other words, the first clause establishes an advantage for CUP, one not provided to other EPS suppliers. The second clause referred to reinforces this mandate with another explicit mandate that no organization should block or otherwise interfere with processing by CUP. Indeed, the explicit mandate in Document No. 153, Article 1, Section 1.3 of Document No. 153 confirms CUP’s role as the sole supplier and that there shall be no interference with CUP’s processing: “No third party service provider shall engage in bank card information exchange services.” Application of these provisions necessarily results in action that is inconsistent with China’s obligations under the GATS.

Question 91. With reference to Article 2(5)(iii) of Document No. 149 and paragraph 175 of the United States' second written submission, could the United States indicate whether the article concerned should be understood as referring to non-CUP pre-payment cards (as Exhibit US-50 suggests) or to cards not bearing the CUP logo (as paragraph 175 suggests). If it is the former, what is the meaning of "non-CUP"?

85. There is no practical difference between the two formulations. Article 2(5)(iii) of 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 terminal.” On its face, this means that only CUP cards may be used at such terminals, and such terminals should not accept cards that direct transactions for processing by other EPS suppliers over other networks. When the United States referred to cards “not bearing the CUP logo,” it refers to cards that might direct transactions to EPS suppliers and networks other than CUP. This requirement to accept only CUP cards is reinforced by the requirement in the same provision that terminals only accept cards that comply with the PBOC 2.0 chip standard, which, as explained in response to question 72, is a PBOC and CUP developed standard that is unique to China and incompatible with the “EMV” standard used by EPS suppliers around the world.

Question 92. At paragraph 181 of the United States' second written submission, the United States refers to a requirement on acquirers to be capable of accepting all bank cards carrying the CUP logo, including by complying with the business standards and technical specifications of interbank operability. In the next paragraph of the same submission, the United States quotes from Document No. 153, however, wherein a difference appears to be made between a requirement to conform to business specifications and technical standards and a requirement to be capable of accepting all bank cards bearing the CUP logo.

- (a) ***Could the United States please explain the difference between the two requirements in Document No. 153?***
- (b) ***Also, please explain whether the United States' challenge to requirement 4 (requirements on acquiring institutions to post the CUP logo and be capable of accepting all bank cards bearing the CUP logo) relates also to the alleged requirement to comply with the business standards and technical specifications of interbank operability, and if so, where in its previous submissions this was made clear.***

86. The requirement to comply with the business standards and technical specifications is inextricably linked to the requirement to “be capable of accepting all bank cards bearing the CUP logo.” As the United States explains below in response to question no. 115, Chapter I, Article 2.1 of the Business Practices Appendix in Document 76 (Exhibit US-56/63) indicates that an institution may not engage in interoperable bank card business in China, either as an issuing institution or an acquiring institution, until it has applied in writing and has been accepted as an “interoperating member” of the United Association (which, became CUP). Thus, the first step an acquiring institution must take in order to be “capable of accepting all bank cards bearing the CUP logo” is to apply in writing and be approved as a member of CUP. Once an acquiring institution has been approved as a member of CUP, the acquiring institution gains rights to the CUP logo according to Chapter I, Article 4.3 of the Business Practices Appendix in Document 76 (Exhibit US-56/63). See also Exhibit US-106. As a member of CUP, the acquiring institution must then comply with the business standards set forth in Document 76 when acquiring merchant transactions. Furthermore, the acquiring institution’s POS equipment must conform to the additional business standards and technical specifications as described in response to question no. 72 in order to be capable of accepting all CUP cards.

87. See also U.S. response to question no. 86 above and Exhibit US-115.

88. Moreover, as the United States explained in response to question no.15 from the Panel, Document No. 37 (Exhibit US-40) and Document No. 57 (Exhibit US-41) reinforce the network of regulations that China has put in place to establish and entrench the CUP monopoly and cannot be viewed in isolation from the other measures that the United States has identified. Document No. 37 and Document No. 57 require use of the CUP logo and require that all bankcards be interoperable with CUP. This is one piece of the puzzle. Together the logo and interoperability requirements in conjunction with requirements that CUP process RMB payment card transactions and other foreign currency denominated card transactions that occur in China establish and entrench the CUP as the sole supplier of EPS services in China.

89. The requirements that all cards and POS terminals must bear the Union Pay logo and be interoperable with the CUP network means that all banks who wish to issue bank cards (as discussed in response to question 115), all bank that 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 discussed in response to Q. 94). These requirements supported CUP becoming the sole supplier of EPS in China. Suppliers of electronic payment services must ordinarily invest heavily and incur substantial expense to build

acceptance of their payment products by merchants, often in vigorous competition with other suppliers of EPS.

90. The U.S. challenge of requirements on acquiring institutions to post the CUP logo and be capable of accepting all bank cards bearing the CUP logo does include the requirement to comply with business standards and technical specifications. The U.S. specific concerns with the business practices and technical specifications have been raised since the inception of this dispute. See U.S. Panel Request, page 4; U.S. July 29, 2011 Response, paras. 70, 72, 83, 89, 97, 104, 107, 117, 120, 124, 125, 127, 130; U.S. First Written Submission, paras. 46, 93, 101, 107, 112; U.S. Answers to First Set of Panel Questions, paras. 2, 18-19, and 57; U.S. Second Written Submission, paras. 109, 128, 144, 153-165, 181-182, 185, and 190.

Question 93. In paragraph 201 of its rebuttal submission, the United States submits that "[a]ny 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." Could the United States indicate to the Panel the specific provision(s) in any of the instruments before the Panel which regulate access fees for issuers?

91. The PBOC through Document No. 94 (Exhibit US-42), granted CUP the ability to oversee the regulation of interbank transactions, including fee-setting. Articles 3.1(iii) provides in part:

China UnionPay shall complete the formulation of the regulations on error and complaint handling regarding bank cards interoperability as soon as possible and ensure the implementation of such regulations, and regulate fee charging methods and standards for inter-bank transactions at all city centers as soon as possible. In accordance with unified standards, commercial banks shall within their respective banks complete the formulation of the rules on settlement, error and complaint handling, etc. regarding interoperation of bank cards and ensure the implementation of such rules. (emphasis added)

92. CUP's Articles of Incorporation, Chapter 2, Articles 11 and 12 (Exhibit US-20) provides CUP with significant scope to implement PBOC's mandate to regulate fee charging methods. Article 11 directs CUP "to establish and operate a single nationwide inter-bank bank card information switching network."

93. Specific rules regarding CUP's fees are set forth in CUP's Operating Regulations, Chapter 7 ("Fees"), which includes subsections 7.1 (Membership Fee), 7.1.1 (General Requirements), 7.1.2 (Membership Fee for Institutions in Mainland China), 7.1.2 (Membership Fee for Institutions in Mainland China), 7.2 (Testing Fee). CUP's Operating Regulations, Volume I, Institution Management, Chapter 7, September 2009 (Exhibit US-116).

Question 94. In its first written submission, the United States submits that "CUP can set standards and fees such that it could, and in fact does, exclude all potential suppliers of EPS seeking to compete in providing services for card-based electronic payment transactions" (paragraph 65, emphasis added). Could the United States please elaborate on this statement?

94. For example, as explained below in response to question no. 117, CUP uses its control over the CUP logo to prevent other logos from appearing on payment cards. CUP is the exclusive owner of the logo, and, by law, the logo must appear on all cards issued in China. CUP will not license its logo for use on cards that carry the logo of competing EPS suppliers, and consequently prevents the logo of competing suppliers from appearing on cards in China. See, Document No. 76, Chapter I, Section 4, Business Practices Appendix (Exhibit US-56/63) governing the use of the CUP logo. See also CUP's Operating Regulations, Volume III, Rules on UnionPay Card, BIN and Log, April 2011 (Exhibit US-XX), which contains rules that prohibit a "non-UnionPay logo" from appearing on China UnionPay cards.

95. CUP is also responsible for issuing BIN numbers in China, and it has the authority to deny, or delay the issuance of, BIN numbers to competing suppliers.

96. With respect to the payment of fees, China's system ensures that CUP obtains a financial advantage over its competitors. China requires that all cards carry the CUP logo, and that all domestic transactions be processed over the CUP network. In order to join the network, the issuing and acquiring banks must pay fees to CUP. In this way, the law operates so as to compel the banks to pay CUP. The forced payment creates an unlevel playing field with other suppliers, even in those small areas where other suppliers are permitted to operate (e.g., dual currency cards).

97. CUP has also worked closely with the PBOC in the development of a China-specific IC chip standard known as PBOC 2.0, which is not compatible with the EMV chip standard used by major multinational brands. China intends to require that all cards comply with the new chip standard, including dual currency cards. The consequence of this requirement will be that foreign EPS suppliers will need to significantly redesign their chips in order to allow their cards to be used in China, or be locked out of the market entirely.

Question 95. With reference to Article V.3 of Document No. 53, what is the meaning of the term "international bank card organization" that appears therein, as follows:

"Clearing through an international bank card organization" refers to two circumstances: the clearing of domestic transaction made with domestic foreign currency cards through an international bank card organization; and "wrong throw", in which the clearing is made through an international bank card organization 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.

98. "International bank card organizations," as that term is used in Document No. 53, refers to foreign branded EPS suppliers that operate on a global basis.

99. Document No. 53 addresses the foreign exchange aspects of DBDC cards' domestic and international transactions are handled, as well as how the exchange aspects of foreign issued cards' transactions in China are handled. Document No. 53 states that domestic transactions from such cards must be settled in RMB and not in foreign currencies. Moreover, pursuant to Document No. 53, domestically issued foreign currency cards cannot be used to withdraw cash

in foreign currency from domestic ATMs. Further, foreign currency cards issued in China are restricted to use at only certain merchant category codes outside of China.

100. Section 5.3 refers to the “processing” of transactions by international bank card organizations, which include international EPS providers such as JCB, Visa, MasterCard, Discover, and American Express. Section 5.3 indicates that DBDC cards should be treated as RMB cards when used domestically in China (*i.e.* used as CUP cards). In fact, as the United States explained in response to Q. 6, Article 7.3 of Document 53 requires issuing banks to report all BIN numbers of DBDC cards to CUP (the “domestic RMB card clearing organization”) and those BIN numbers are then routed to CUP for processing. The structure of the measure, specifically the references in Document No. 53 to the processing of transactions by international bank cards as a “special circumstances” and “mis-switch” or “mis-throw” make it clear to banks that these transactions are to be directed to CUP as a general policy matter.

101. That there exists the potential for an extremely limited number of domestically issued foreign currency cards in rare instances to be processed (again in rare instances or erroneously) through international networks should not affect the analysis. Moreover, the rarity of such processing is also reflected by the fact that it would introduce multiple additional costs to the cardholder, issuer, and merchant – given the requirements in China – as any such transaction must be converted first to RMB, then converted to the foreign currency, and then converted back again to RMB for settlement and clearing.

102. With respect to the “Great Wall” cards identified by China in its Exhibit CHI-98, the cards pictured in the exhibit are issued by only one bank and are a legacy product from before the time that CUP was established and which continues for frequent overseas business travellers. The cards illustrated in Exhibit CHI - 98 are explicitly titled “international” cards that are not intended for use domestically in China. Moreover, a close read of Exhibit CHI-98 shows that the Great Wall cards are not issued by Bank of China in China, rather they are issued by Bank of China’s Hong Kong subsidiary. The Great Wall card website and application are located at www.boci.com.hk, with the “hk” tag indicating Hong Kong. Because these cards technically are issued outside of China, they would not fall within the scope of cards “issued in China and used in China.” Foreign currency cards used in China represent a miniscule number of all payment cards used in China. For example, Visa reports that it processed foreign currency card transactions per year in China with a value of approximately *\$11 million*. Even when including DBDC card transactions processed by Visa, the figure only increases to around *\$87 million*. Visa company data on domestic transactions FY 2010/2011 (Exhibit US - 117). When compared to the amount of RMB transactions in China in terms of value *RMB 11.2 trillion (\$1.779 trillion)* that were processed by CUP in 2010 (See “2010 Bankcard Interbank Transaction Volume Exceeds RMB 11 Trillion,” http://en.unionpay.com/news/newsroom/file_61804915.html) (Exhibit US-118), these foreign currency and DBDC card transactions in China barely register as even a rounding error when viewed against the value of domestic transactions in China processed by CUP.

Question 96. Could the United States please indicate where in the material provided to date reference is made to the alleged fact that CUP sets fees for access to its network? Please elaborate on the nature and structure of fees, e.g. periodicity.

103. Please see U.S. response to question no. 93 above and Exhibit US-116.

Question 115. In its oral comment on China's oral response to question 77 from the Panel, the United States asserted that in order to gain the right to bear the CUP logo, an issuing bank must first join the CUP network. Could the United States elaborate on what it meant with this statement? For China, has any foreign bank actually applied to join the CUP network and thereby use the CUP logo on its cards?

104. Document 76 (Exhibit US-56/63), Business Practices Appendix, Chapter I, Article 2.3 defines “interoperating members” as those “parties involved in bank card interoperable business which is officially interoperated by the Bank-Card Financial Institutions (*which are members of the United Association*).” (emphasis added) As the United States explained in paragraph 160 of its Second Written Submission, CUP was given the role of operating the “United Association” when it was established in 2002 and thus, any reference to the “United Association” in Document 76 is a reference to CUP.

105. Document No. 76, Business Practices Appendix, Chapter I, Article 2.1 indicates that an institution may not engage in interoperable bank card business, either as an issuing institution or an acquiring institution, until it has applied in writing and has been accepted as an “interoperating member” of the United Association (CUP). Business Practices Appendix, Chapter I, Article 4.3 of Document 76 indicates that interoperating members obtain the right to use the “UnionPay” logo “automatically from the date on which cross-bank business is carried out upon approval by CUP.” Furthermore, Business Practices Appendix, Chapter I, Article 5.4.2 of Document 76 indicates that a member that voluntarily withdraws must cease using the CUP logo from the date of network disconnection.

106. According to the procedures set forth in the above-described articles of Document 76, an issuing bank must apply in writing, be approved for membership in CUP, and must remain a member in order to issue cards bearing the CUP logo.

107. The requirement on issuing banks to issue only cards that carry the CUP logo, when combined with the requirements on acquiring banks to be capable of accepting CUP cards (as discussed in response to question no. 92), and the mandate to use CUP processing rules (as discussed in response to question no. 86) establishes CUP's monopoly over RMB denominated cards. No other EPS supplier can establish a competing interoperative bank card network.

108. The United States understands that foreign banks, including Standard Chartered Bank, Citibank, HSBC, Development Bank of Singapore, Hang Seng Bank, and Bank of East Asia have joined CUP and are issuing CUP-branded bank cards in China. However, the ability of foreign banks to issue CUP-branded cards is not at issue in this case. The U.S. claims concern the ability of Chinese and foreign banks to issue cards supported by EPS suppliers other than CUP.

Question 116. What are the first two digits appearing on the dual logo credit cards issued in China for RMB-denominated transactions? Do these digits automatically determine which network will process the RMB-denominated transactions paid with such cards in

China? If not, could you explain what determines which network processes such transactions?

109. The card numbers that appear on “dual logo credit cards issued in China for RMB-denominated transactions” follow the same international standard as other payment cards issued in other markets. Specifically, the International Standards Organization (“ISO”) establishes the protocol through which all bankcard identification numbers (“BIN”) are assigned. The first digit appearing on bankcards is known as the “major industry identifier” and represents “the first digit of the issuer identification number that identifies the major industry of the card issuer.” The first six digits appearing on bankcards (inclusive of the major industry identifier) constitute the “issuer identification number.” The remaining digits that appear on bankcards (except for the final digit) constitute the card’s unique “individual account identification.” The final digit appearing on bankcards is known as the “check digit” and is used as an additional security measure to verify that all other digits on the bankcard are legitimate.

110. The ISO assigns administrative responsibility for ranges of Issuer Identification Numbers (IIN) to specific stakeholders. For example, Visa manages and assigns all IINs that begin with the digit “4.” Likewise, MasterCard manages and assigns all IINs that begin with the digit “5.” Visa and MasterCard, in turn, assign ranges within each of these assignments to specific issuing institutions that issue each network’s respective payment cards. By custom, China Union Pay has been assigned and manages all IINs that begin with the digits “62.” (see http://en.unionpay.com/comInstr/product/file_2649109.html) As does Visa and MasterCard, IINs within this range are re-assigned by CUP to issuing institutions that issue CUP products.

111. “Dual logo credit cards issued in China for RMB-denominated transactions” traditionally begin with the digit that has been assigned to the international network associated with the issuance. For example, Visa-CUP dual branded, dual-currency cards issued in China begin with the digit “4” with the remaining five digits of the IIN being specific to the issuing institution.

112. Neither the first two digits nor any combination of the digits appearing on dual logo credit cards issued in China for RMB-denominated transactions determines how transactions conducted with these products are processed or by which network these transactions are processed. Only CUP can process such transactions when denominated in RMB. Therefore, a dual branded dual currency card that begins with the digit “3”, “4” or “5” is processed over CUP’s network when used in China for an RMB-denominated transaction, despite the fact that this range of IINs is assigned by the ISO to American Express, Visa or MasterCard for management. When DBDC cards are issued, Article 7.3 of Document 53 requires that the BIN numbers be reported to CUP, which then loads those BIN numbers into its BIN table. When those cards are used in China, they are then routed to CUP for processing, even though the BIN number is assigned to the foreign currency card brand.

Question 117. The United States asserts in paragraph 172 of its second written submission that “[b]ecause CUP has exclusive control over the UnionPay logo, it may refuse permission for the logo to appear on any cards that carry the logo of a competing EPS supplier.” Are the parties aware of any case where CUP has refused permission for the logo to appear on a card carrying the logo of another payment card company?

113. CUP has denied Chinese issuing institutions the ability to issue new dual branded, dual currency (DBDC) cards, essentially through the card approval process. As noted above, CUP's operating regulations enable CUP to prevent any logo from appearing on a CUP card "that are deemed to have competitive relationship with UnionPay by UnionPay Board of Directors" or "that may impose negative impact on UnionPay logo." CUP's Operating Regulations, Volume III, Rules on UnionPay Card, BIN and Logo, April 2011, Section 2.5.3.2 (Exhibit US-115)

114. CUP has not approved EPS suppliers' applications for new DBDC card programs. Furthermore, even when CUP had been approving new DBDC card programs, it was requiring Chinese issuers to issue CUP-branded only cards until the share of CUP-issued cards in the issuer's portfolio reached a certain threshold percentage (e.g., 80%). Reports in China's press confirm that CUP has denied approvals for new DBDC cards and has pressured banks to issue more CUP cards. The following press accounts are examples:

- "UnionPay 'Calls a Stop' and Dual-Currency Card Stands at the 'Crossroad', Shanghai Stock Exchange, Issue Number 167, 28 June 2007 ("Press Article 1") (Exhibit US-119);
- "China UnionPay Refuses to Approve Dual-Currency Debit Cards of Shanghai Pudong Development Bank, and Efforts for Cancellation of Dual-Currency Cards Continue," May 15, 2007 ("Press Article 2") (Exhibit US-120);
- Miao Xiaodan, "Why Does the Call for A Stop to Dual-Currency Card Incurs Dispute," 17 July 2007 ("Press Article 3") (Exhibit US-121);
- Zhao Hongmei, "Examination and Approval of Dual-Currency Cards Face Obstacle Again, and Its Existence Shall Be Determined by Consumers Following One Year of Disputes," June 22, 2007 China Economic Times ("Press Article 4") (Exhibit US-122);
- People's Daily/Market Daily, "By Calling A Stop to Dual-Currency Credit Cards, China UnionPay Intends to Seize the Monopoly Position," July 12, 2006 ("Press Article 5") (Exhibit US-123).

115. China Merchants Bank, China Minsheng Banking Corporation, Bank of China, China Citic Bank, and Shanghai Pudong Development Bank have reportedly been denied approval of new DB/DC cards by CUP. See Press Article 2 (Exhibit US-120) and Press Article 4 (Exhibit US-122). In denying Shanghai Pudong's application for a dual brand/dual currency debit card, China UnionPay indicated that the cards were denied in part because, "*the network of UnionPay has extended beyond the territory, and it thus suggests that Shanghai Pudong Development Bank adopt the UnionPay standard when issuing new RMB debit cards.*" Press Article 2 (Exhibit US-120) (emphasis added). According to one press account, CUP's actions are purely based on competitive concerns, "to consolidate its position as the only domestic institution for RMB cross-bank payment and clearance business, and from the interest-driven consideration to seize the market for domestic people to use cards overseas." Press Article 3(Exhibit US-121).

Question 118. The United States alleges that China maintains a monopoly for CUP in respect of all transactions where a payment card is "issued in China and used in China" (United States' second written submission, paragraph 1 (emphasis added)). With regard

to the "requirements pertaining to card-based electronic transactions in China, Macao and Hong Kong" (e.g. United States' second written submission, paragraph 189), is the above-quoted phrase correct?

116. Yes. CUP does have a monopoly with respect to transactions where a payment card is issued in China and used in China. It is also true, as explained in the U.S. July 29 Response (sections V.B, V.C, and V.I) and in the U.S. First Written Submission (paras. 4, 13, 54, 58 and 80), that China requires that CUP be used to handle all RMB transactions in Macao or Hong Kong using bank cards issued in China, and that CUP be used to handle any RMB transactions in China using RMB cards issued in Hong Kong or Macao. China has established and maintains a monopoly for CUP on these transactions as well.

Question 119. With reference to footnote 191 of the United States' second written submission, where it is stated that Document No. 94 and Document No. 272 have been repealed which instruments, if any, currently require the use of the Business Practices Appendix?

117. 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.

118. As the United States has explained, several of the 19 instruments expressly reference these technical standards and specifications. See for example the U.S. Second Written Submission, para. 154. These include:

- Document No. 37 (Exhibit US-40): Article 1, Sections 1.1 and 1.2 require that bank cards shall comply with designated technical standards and with the “Business Specifications for Interoperable Services of Bank Card.” Article 2, Section 2.1 requires that all cards bearing the CUP logo (which, by virtue of measures described elsewhere, includes all cards issued in China for domestic use) "must strictly abide by the unified technical specification and all bank card issuers must provide corresponding cross-region and inter-bank services pursuant to the unified business specifications." Article 2, Section 2.2 requires the “replacement of all bank cards that do not conform to the unified requirements and the CUP logo usage requirements.” Article 3, Section 3.1 requires that commercial banks join the “nationwide bank card inter-bank exchange network” and once they have done so, “they must fully open various necessary functions in accordance with 'Business Specifications for Interoperable Service of Bank Cards.’”
- Document 57 (Exhibit US-41): Article 3 requires that “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 Card’ and relevant technical standards.”

- Document 153 (Exhibit US-49): Article 2, Section 2.2 states that “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.” Article 4 requires that “Merchant acquiring institutions shall . . . strictly comply with the unified inter-bank business specifications and technical standard.”
- Document 129 (Exhibit US-53): Section 3.2 states, “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 . . .”
- Document 142, (Exhibit US-55): Article II.3 requires that all bank cards must comply with certain technical specifications. Article VI.18 requires PBOC and CBRC to “urge all bank card operators to strictly implement the bank card business standards.”
- Document 49 (Exhibit US-62): Article IV requires that “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 for the network of bank cards.”
- Document 17 (Exhibit US-52): Article 64 requires that issuing banks “implement the technical standards prescribed by the state.” In fact, many of the relevant technical standards are developed by CUP.
- Document 103 (Exhibit US-1): Article 5(1) requires that any newly issued RMB bank cards shall comply with applicable technical standards. Those standards are in the control of CUP.

Question 120. With regard to Article 1, Section 1.2, of Document No. 153 (Exhibits US-49 and China's translation), please explain the reference to "[a]t the present time" and "currently", respectively.

119. These statements reflect the legal and market reality at the time of the issuance of this instrument. Since the issuance of Document No. 153, China has not issued any measure that would open its market to any foreign EPS suppliers. Thus, even now, “at the present time,” CUP’s monopoly position remains in place.

Question 121. With reference to Exhibit US-20 (Article 12) and Exhibit US-29 (Article 29), what is the meaning of the word "single" in the phrase "single nationwide inter-bank card information and switching network"?

120. CUP’s Articles of Association (Exhibit US-20) and a business license issued to CUP by the Shanghai Municipal Administration of Industry and Commerce (Exhibit US-29) are each dated 2002. The use of the phrase “single nationwide inter-bank card information and switching network” and specifically the inclusion of the word “single” is telling. If the contemplated scope of CUP’s envisaged simply the establishment and operation of a “nationwide inter-bank card

information and switching network,” there would be no need for including the word “single” in this phrase. Rather, the use of the word “single” is consistent with the fact that CUP’s network is intended to be the exclusive network for all payment card transactions where the card is issued in China and is used in China. China’s decision early on to position CUP as the monopoly supplier of EPS in China is reflected in these foundational documents. Thus, these two documents accurately set out the task entrusted to CUP – to establish and operate an exclusive “nationwide inter-bank card information and switching network” – the only one permitted in China for RMB-payment card transactions in China, and foreign currency denominated payment card transactions where the card is issued in China and used in China.

Question 122. Document No. 17 (Exhibit US-52) in its Article 64 contains the phrase "except those with the mark of any international credit card organization". Does this mean that commercial banks in China can issue such cards for RMB-denominated transactions and that they need not implement the technical standards prescribed by the state in respect of such cards? If not, what is the importance of the relevant phrase?

121. No. This section of the law pre-dates the creation of CUP. Commercial banks in China cannot issue RMB-denominated cards carrying the logo of an international credit card organization. The United States understands that China does not currently require dual branded-dual currency cards to use the PBOC 2.0 chip standard, but is phasing in that requirement, and all such cards will be required to use PBOC 2.0.

Question 123. With reference to the agreed translation submitted by the Parties concerning Exhibit US-51 and Exhibit CHI-71, Article VII.3 states, inter alia, that "[d]omestic RMB card organizations shall do a good job in the RMB clearing of domestic transactions of home-foreign currency cards". Could the Parties clarify what "good job" means?

122. The use of the term “shall” in the sentence indicates that the rest of the phrase that follows is part of the mandate set forth in Article VII.3.

Question 124. What are the relevant criteria for establishing likeness in the context of Article XVII of the GATS, in cases where a difference of treatment is not exclusively linked to the origin of service suppliers?

123. As the Panel’s question indicates, where a difference of treatment is exclusively linked to origin, the like services requirement will be satisfied. Again, here, 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.” Panel Report, para. 7.975

124. Accordingly, there is no need in this case to address applicable criteria in cases where a difference in treatment is not exclusively linked to the origin of service suppliers.

125. In any event, CUP’s foundational documents make clear that CUP supplies a service like that of the foreign EPS suppliers and the service that is at issue in this dispute. For example, Chapter 2 of CUP’s Articles of Incorporation, entitled “Purpose and Business Scope” states as follows:

Article 11. 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 businesses, 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.

Article 12. 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.

126. The PBOC Preparatory Group on China UnionPay Co., Ltd. reiterated that the primary function of CUP is the provision of information. Paragraph 1 of the Approval of the People’s Bank of China on the Preparation for the Establishment of China UnionPay Co., Ltd. (Yin Fu No. [2001] 234) and paragraph 2 of the Reply of the People’s Bank of China on the Opening of China UnionPay Co., Ltd. (Yin Fu No. [2002] 64) (Exhibit US-27) both state that the PBOC “approve[s] the preparation for the establishment of China UnionPay Co., Ltd. (‘CUP’). This company will be a joint-stock financial institution that provides an inter-bank bankcard information switching network and specialized services in connection therewith.”

127. In terms of competition, CUP is a significant and increasingly active participant in this sector and EPS suppliers describe CUP as a competitor. *See, e.g.*, Visa 2008 IPO Prospectus, page 147 (“In certain countries, our competitors have leading positions, such as JCB in Japan and China UnionPay in China, which is the sole domestic payment processor and operates the sole domestic acceptance mark in China due to local regulation.”) (Exhibit US-3); MasterCard 2009 Annual Report, page 20 (“some of competitors such as JCB in Japan and China UnionPay have leading positions in their domestic markets... China UnionPay is the sole domestic processor designated by the Chinese government and operates the sole national cross-bank information switch network in China due to local regulation.”) (Exhibit US-5). Indeed, CUP’s global success is in accord with the “purpose of the company,” which is to foster “and promote the rapid development of China’s bank card industry.” CUP’s Articles of Incorporation, Article 11 (Exhibit US-20).

128. Finally, in terms of the “classification” of these services, the United States would refer the Panel to Exhibit US-105 and the U.S. answer to question no. 76 above, as well as the U.S. July 29, 2011 Response, the U.S. First Written Submission, the U.S. Answers to the First Set of Written Questions, and the U.S. Second Written Submission.

Question 125. Is there currently a foreign bank card clearance organization established in China that is engaged in foreign currency business?

129. The United States understands “foreign bank card clearance organization” to mean internationally-branded card brands such as Visa, MasterCard, Discover, American Express, and JCB, and “foreign currency business” to be the processing of bank card transactions associated with an account denominated in a foreign currency for use outside of China. Several foreign bank card clearance organizations process the foreign currency card portion of transactions on dual brand/dual currency cards and a much smaller number of cards that have only a foreign currency denominated account and function. Processing of foreign currency bank card transactions does not include conversion of the foreign currencies to RMB and foreign bank card organizations are not allowed to process RMB denominated bank card transactions, which are the vast majority of the transactions processed in China.