

*China – Certain Measures Affecting Electronic Payment Services*

(DS413)

**EXECUTIVE SUMMARY OF OPENING STATEMENT OF THE UNITED STATES OF AMERICA  
AT THE FIRST MEETING OF THE PANEL WITH THE PARTIES**

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## **I. INTRODUCTION**

1. When China joined the World Trade Organization (“WTO”) in 2001, it made important commitments with respect to electronic payment services (“EPS”) for payment card transactions. China explicitly acknowledged its commitments in 2005 and recognized that by 2006 its payment card market would be “opened to the outside world in an all-around manner.” Simply put, China has not honored its WTO commitments.

2. Under the terms of China’s Schedule of Specific Commitments on Services, China committed to provide both market access and national treatment for “all payment and money transmission services, including credit, charge and debit cards” for domestic currency transactions. Yet, despite these commitments, China continues to maintain a government-mandated domestic monopoly, enabling only its national champion, China UnionPay, Co. Ltd. (“CUP”), to provide these services, thereby blocking foreign service suppliers. The measures at issue establish a monopoly and systematically discriminate against and restrict foreign EPS suppliers while favoring China’s own supplier of EPS.

## **II. EPS FOR PAYMENT CARD TRANSACTIONS FALL WITHIN THE ORDINARY MEANING OF “ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS...” (SUBSECTOR (D))**

3. EPS is the service through which transactions involving credit, charge, debit and other payment cards are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated. China’s commitments pertain to “*all* payment and money transmission services, including credit, charge and debit cards,” indicating that the scope of the commitment covers the service that is essential to payment card transactions. EPS suppliers are at the heart of this service. Without EPS, these payment card transactions could not occur.

4. First, EPS clearly falls within the ordinary meaning of “payment and money transmission services” as one type of “*all*” such services. Second, the phrase “all payment and money transmission services” is modified with an illustrative list that explicitly provides that it “include[s] credit, charge and debit cards.” This explicit reference is in line with the recognition

that EPS is integral to the processing of credit, charge, debit and other card-based electronic payment transactions, and without this service, payment card transactions could not occur.

**III. CHINA’S MODE 1 AND MODE 3 COMMITMENTS FOR “ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS...”**

5. China argues that its mode 3 commitments in subsector (d) apply only to services supplied by banks because subsector (d) falls under the heading of “banking services.” The term “banking services” is not limited in this manner. As even China has recognized, major U.S. EPS suppliers, as well as CUP, were formally operated as associations of banks – and from their inception they were clearly performing “banking services.” The nature of the service that an entity supplies does not change merely because that entity assumes a new corporate form. In analyzing a service for purposes of a GATS commitment, one must look at the characteristics and nature of the service to classify that service.

6. It is also evident from China’s Schedule itself that the term “banking services” listed in China’s Schedule, including those listed in subsector (d) are not limited to those provided by banks as China claims. In addition to the explicit reference to “non-bank financial institutions” in China’s Schedule, there are references to “foreign finance companies” in the market access column and to “foreign financial leasing corporations” in the additional commitments column. Moreover, the definition of “financial service supplier” in the Annex on Financial Services to the GATS covers not only banks but other suppliers of financial services, which supply or wish to supply financial services within the meaning of the Annex.

7. For similar reasons, China’s argument that its mode 3 market access and national treatment commitments for subsector (d) are limited to foreign financial institutions, and that EPS suppliers do not qualify, must also fail. Although China includes certain limitations with respect to foreign financial institutions, this does not mean that its commitments are limited to foreign financial institutions. Such a limitation would have needed to be imposed explicitly. China’s the Schedule states that “[c]riteria for authorization to deal in China’s financial services sector are solely prudential.” Thus, under China’s Schedule, the only limitations China may impose are prudential restrictions and the explicitly listed limitations – defunct restrictions on geographic scope and use of domestic currency, and ongoing requirements applicable to banks.

Finally, the definition of “financial institution” offered by China is far too narrow. There are many definitions that are much broader, and some explicitly include “an operator of a credit card system.”

8. It is also plain from the text that China has taken mode 1 commitments for “all payment and money transmission services, including credit, charge and debit cards...” The word “Unbound” is followed by the qualifying phrase “except for the following,” which in turn is further elaborated by two sentences that describe elements of the services within subsector (d) for which China has taken mode 1 commitments. A fundamental tenet of treaty interpretation requires that the qualifying phrase “except for the following” and the further specific elaboration following the word “Unbound” should be given meaning. China focuses solely on the term “Unbound.” If China wished to in fact be fully “Unbound,” that is, not to have any commitments, it would have left the word “Unbound” unqualified. However, as the Schedule reflects, China did not do so.

9. Much of the activity involved in the supply of EPS for payment card transactions entails the transfer of financial information and financial data processing, and much of this occurs on a cross-border basis. It is therefore not surprising that China made cross-border commitments for subsector (d) for EPS for payment card transactions to the extent that the activities entail the provision and transfer of financial information and financial data processing.

#### **IV. THE SERVICE AT ISSUE IS NOT “SETTLEMENT AND CLEARING SERVICES FOR FINANCIAL ASSETS, INCLUDING SECURITIES, DERIVATIVE PRODUCTS, AND OTHER NEGOTIABLE INSTRUMENTS”**

10. In classifying EPS for payment card transactions under item (xiv), China ignores the ordinary meaning of the provision, the scope of which is limited to investment instruments, such as securities, derivatives, and other negotiable instruments. The context-specific nature of these terms is evident from the international institutional framework that establishes separate regimes for payment systems and securities settlement systems. The Committee on Payment and Settlement Systems (“CPSS”), a part of the Bank for International Settlements (“BIS”), is charged with developing the multilateral framework that governs payment systems, on the one hand, and securities settlement systems, on the other hand – two very distinct systems.

11. The CPSS provides guidance concerning payment systems (which include suppliers of EPS for payment card transactions) and securities settlement systems. The CPSS “glossary of terms used in payments and settlement systems” clearly illustrates that the terms “clearing” and “settlement” each have different meanings in the respective payment and securities contexts. The definitions relating to payments systems, including EPS for payment card transactions, are drawn from different source documents than those for securities settlement systems.

12. It is clear that “settlement and clearing services for financial assets,” as explicitly qualified in item (xiv) of the GATS are clearing and settlement services for assets like derivative products, stocks, or bonds. In contrast, EPS for payment card transactions are used to clear and settle payments associated with the transfer of goods and services, not financial assets. This is also entirely consistent with the explicit reference to “credit, charge and debit card” payment transactions in item (viii) (“all payment and money transmission services...”) and the lack of any similar reference to card transactions in item (xiv).

**V. CHINA’S MEASURES ESTABLISHING AND SUPPORTING CHINA UNIONPAY’S MONOPOLY ON THE SUPPLY OF EPS ARE INCONSISTENT WITH ARTICLE XVI OF THE GATS**

13. The measures imposed by China on the supply of EPS are inconsistent with Article XVI of the GATS because they limit the number of suppliers of EPS for RMB-denominated payment card transactions in China. China maintains numerous measures that ensure CUP’s privileged position by explicitly and effectively limiting the number of foreign EPS suppliers. China’s State Council and the People’s Bank of China (“PBOC”) approved and authorized only one entity, CUP, to process inter-bank card-based payment transactions.

14. The terms of certain measures are explicit in their requirements or prohibitions that establish CUP as the exclusive supplier of EPS for RMB denominated domestic payment card transactions in China. Other measures establish requirements or prohibitions that effectively preclude foreign EPS suppliers from being in the market. China’s measures that create the monopoly structure and restrict the supply of EPS by foreign suppliers affect every element of the electronic payment system and all of the key participants (issuers, acquiring institutions, merchants, and EPS suppliers themselves) and card-based electronic payment transactions.

China has chosen not to offer substantive rebuttal to U.S. claims related to the challenged measures or to the CUP monopoly.

**VI. CHINA’S MEASURES ESTABLISHING AND SUPPORTING CHINA UNIONPAY’S MONOPOLY ON THE SUPPLY OF EPS ARE INCONSISTENT WITH ARTICLE XVII OF THE GATS**

15. The measures at issue affect the supply of services in two principal ways. First, there are measures that impose a limitation such that CUP is the sole entity that can process certain transactions, such as domestic RMB transactions. This of course means that foreign suppliers of EPS are prevented from supplying the service at all. Second, there are measures that promote CUP’s position in the marketplace such as by imposing certain requirements on every key player in a card-based electronic payment transaction, including issuers (all cards issued in China for domestic RMB transactions must bear the CUP logo), merchants (all merchant card processing equipment and POS terminals must accept CUP cards), and acquiring institutions (which must post the CUP logo and accept CUP cards).

16. It is important to note that the measures at issue provide disparate treatment solely according to the identity of the EPS supplier: CUP or not CUP. The EPS supplied is the same, and therefore is “like services.”

17. China’s own documents demonstrate China’s concern about the potential competition its domestic supplier of EPS would face from foreign EPS suppliers:

By 2006, the RMB bank card operation shall be opened to the outside world in an all-around manner, and accordingly the bank card industry of our country is facing a comparatively big challenge and we should make use of the limited time to enhance the international competitiveness of our industries.

18. It is unsurprising that the measures at issue here are meant to favor the domestic Chinese entity and accordingly discriminate on that basis.

**VII. CONCLUSION**

19. The United States respectfully requests that the Panel find that China’s measures are inconsistent with China’s obligations under Article XVI:1 and XVI:2(a) and Article XVII of the GATS.