

China – Certain Measures Affecting Electronic Payment Services

(DS413)

SUBMISSION OF THE UNITED STATES OF AMERICA IN RESPONSE
TO CHINA'S REQUEST FOR A PRELIMINARY RULING

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TABLE OF REPORTS CITED

Short Title	Full Case Title and Citation
<i>EC – Computer Equipment</i>	Panel Report, <i>European Communities – Customs Classification of Certain Computer Equipment</i> , WT/DS62/R, WT/DS67/R, WT/DS68/R, adopted 22 June 1998, as modified by Appellate Body Report WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R, DSR 1998:V, 1891
<i>EC – Computer Equipment</i>	Appellate Body Report, <i>European Communities – Customs Classification of Certain Computer Equipment</i> , WT/DS62/AB/R, WT/DS67/AB/R, WT/DS68/AB/R, adopted 22 June 1998, DSR 1998:V, 1851
<i>Korea – Dairy</i>	Appellate Body Report, <i>Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products</i> , WT/DS98/AB/R, adopted 12 January 2000, DSR 2000:I, 3
<i>Mexico – Corn Syrup</i>	Panel Report, <i>Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States</i> , WT/DS132/R, adopted 24 February 2000, and Corr.1, DSR 2000:III, 1345
<i>US – Carbon Steel</i>	Appellate Body Report, <i>United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany</i> , WT/DS213/AB/R and Corr.1, adopted 19 December 2002, DSR 2002:IX, 3779
<i>US – Gambling</i>	Appellate Body Report, <i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> , WT/DS285/AB/R, adopted 20 April 2005, DSR 2005:XII, 5663 (Corr.1, DSR 2006:XII, 5475)
<i>US – Gambling</i>	Panel Report, <i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> , WT/DS285/R, adopted 20 April 2005, as modified by Appellate Body Report WT/DS285/AB/R, DSR 2005:XII, 5797

I. INTRODUCTION

1. Each day around the world, credit, charge, debit, and other payment cards are used in hundreds of millions of transactions where cardholders purchase a vast array of goods and services, ranging from groceries, clothing, and gasoline, to airplane tickets, hotel accommodations, and dining at restaurants. In terms of both volume and value, the amount of goods and services subject to payment card transactions is staggering. The services that enable, facilitate, and manage the transfer of funds between cardholders and merchants – commonly known as electronic payment services (“EPS”)¹ – are essential to processing the several hundred million card-based electronic transactions that occur daily around the world. These services are vital to the operation of a modern economy.

2. When China joined the World Trade Organization (“WTO”) in 2001, it made important commitments with respect to electronic payment services. In 2005, China explicitly recognized that “the RMB bank card operation shall be opened to the outside world in an all-around manner.”² In the financial services sector, as set out in China’s Schedule of Specific Commitments on Services, China undertook both market access and national treatment commitments with respect to electronic payment services. Under the terms of its Schedule, China was required to fully implement these commitments as of December 2006. Yet, despite China’s commitments 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, China continues to maintain a government-mandated domestic monopoly, enabling only its domestic champion, China UnionPay, Co. Ltd. (“CUP” or “China UnionPay”), to provide these services, thereby blocking participation by foreign suppliers.

3. China itself acknowledged in 2005 that “the bank card industry of our country is facing a comparatively big challenge” because its WTO commitments were to take effect in 2006.³ Yet despite the December 2006 deadline for the implementation of its WTO commitments, China failed to remove the measures that form the basis for CUP’s monopoly on the supply of EPS for RMB payment card transactions (*e.g.*, those using credit card, charge card, and debit cards). Not only did China fail to eliminate the monopoly, it also adopted additional measures to lock in CUP’s dominance. Statements from PBOC and CUP officials suggest that China did not dismantle CUP’s monopoly because China wanted more time to establish and solidify CUP’s presence overseas before it would eventually have to face competition from foreign EPS suppliers in China.⁴

¹ See U.S. Request for the Establishment of a Panel, *China – Certain Measures Affecting Electronic Payment Services*, WT/DS413/2, February 11, 2011 (“U.S. panel request”), page 1 including notes 1 and 2.

² Some Opinions of the People’s Bank of China, the National Reform and Development Commission, the Ministry of Public Security, the Ministry of Finance, the Ministry of Information Industry, the Ministry of Commerce, the State Administration of Taxation, China Banking Regulatory Commission and the State Administration of Foreign Exchange on Promoting the Development of Bank Card Industry (Yinfa [2005] 103), issued 24 April 2005 (“Document No. 103”), Article III (Exhibit US-1).

³ Document No. 103, Article III (Exhibit US-1).

⁴ See, *e.g.*, Wan Jianhua (former CUP President) Development China’s Bank Card: Controlling destiny with their own hands, http://www.gov.cn/zwhd/2006-05/07/content_274635.htm (7 May 2006) (Exhibit US-2)

4. Since December 2006, China has steadfastly refused to allow foreign suppliers of electronic payment services to process RMB payment card transactions and has enacted numerous barriers to establishing the processing infrastructure, network, rules, and procedures that are essential to the supply of EPS, and hence necessary for foreign suppliers' processing of such card-based transactions in China. Meanwhile, operating from its protected home market monopoly position, CUP has been rapidly expanding its card acceptance and issuance internationally since 2003. Unlike foreign suppliers of electronic payment services in China, CUP is able to have full and unencumbered access to the domestic payment card market in a growing number of foreign countries in which it has chosen to operate (now numbering more than 110). In other words, foreign EPS suppliers in China do not have the same market access in China that CUP enjoys abroad.

5. China failed to open its market as required by its WTO obligations. The measures that provide for CUP's monopoly position remain in place, and China has introduced reinforcing measures to strengthen and entrench the CUP monopoly. This monopoly structure ensures that CUP is the sole entity that can provide EPS for RMB transactions in China – the vast majority of all transactions in China.

6. The United States enumerated its concerns regarding China's measures in the U.S. panel request. Nonetheless, on July 5, 2011, China filed a request for a preliminary ruling with respect to the consistency of the U.S. panel request with Article 6.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU").⁵ Yet the U.S. panel request is in writing, indicates that consultations were held, identifies the specific measures at issue, and provides a brief summary of the legal basis of the complaint sufficient to present the problem clearly. China's procedural challenge is baseless. The U.S. panel request is fully consistent with DSU Article 6.2.

7. The description of the service as set out in the U.S. panel request – "electronic payment services" for "payment card" transactions⁶ – is drawn from industry sources and reflects the broad and common understanding of these services within this sector. As explained in this submission, suppliers of the services at issue in this dispute are described as supplying, or characterize themselves as supplying, "electronic payment services" for "payment card" transactions and as operating within the "global payments industry." The U.S. panel request identifies China's commitments to provide both market access and national treatment for "{a}ll payment and money transmission services, including credit, charge and debit cards...."⁷ In its

(CUP's then President, Wan Jianhua, explained on May 7, 2006 "The main battlefield of international competition is in the domestic market. Going out is to guard the domestic market. . . . I'll raise an example. A receptionist asks, Visa, MasterCard, CUP, AMEX, JCB, which do you prefer? Applicants will ask, how do these cards differ? The receptionist says that CUP cards can only be used domestically, while the other cards are used worldwide. Even if the applicants only go abroad a few times, they will have to choose a bank card that is used worldwide. Because of this, we must first solve the problem of international acceptance."

⁵ Request for Preliminary Ruling by China, 5 July 2011.

⁶ U.S. panel request, page 1, including notes 1 and 2.

⁷ U.S. panel request, pages 1-2.

panel request, the United States also identifies the specific measures maintained by China that create the monopoly structure and restrict the supply of EPS by foreign suppliers.⁸ The United States also provides in its panel request a detailed narrative of the claims it is making as an additional basis for China to understand “the legal basis of the complaint.”⁹

8. In addition, the U.S. panel request asserts that the measures identified in the U.S. panel request are inconsistent with China's obligations under the *General Agreement on Trade in Services* (“GATS”) Article XVI:1 and XVI:2 not to adopt or maintain measures of the types listed in Article XVI:2.¹⁰ The U.S. panel request also asserts that these measures are also inconsistent with China's obligations under GATS Article XVII to accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers, in respect of all measures affecting the supply of services.¹¹

9. In sum, the U.S. panel request is fully consistent with DSU Article 6.2, China's request is without merit, and the Panel should reject China's request and decide this case on its merits.

II. PROCEDURAL HISTORY OF CHINA'S PRELIMINARY RULING REQUEST

10. On July 5, 2011 China filed a request for a preliminary ruling on the consistency of the U.S. panel request with DSU Article 6.2.¹² In its submission, China requested that the Panel adopt procedures and a timetable to provide for separate submissions, a hearing, and findings by the Panel on China's request before the United States had had an opportunity to provide its first submission. However, China failed to explain why it would suffer prejudice from receiving the U.S. response in the U.S. first submission, an approach consistent with the customary practice in responding to preliminary ruling requests. Nor did China explain how its request would avoid prejudice to the United States and its interest, as the complaining party, in presenting its case in a coherent manner. Rather, China's request would require the United States to address certain key aspects of its case in advance and separate from other key aspects. And China failed to address the delay in the Panel proceedings caused by its request, a delay that China itself had successfully argued to a prior panel as grounds for denying a similar request.

III. OVERVIEW: THE U.S. PANEL REQUEST SATISFIES EACH OF THE REQUIREMENTS OF DSU ARTICLE 6.2

A. The Requirements of DSU Article 6.2

11. Article 6.2 of the DSU provides in part as follows:

⁸ U.S. panel request, pages 2-4.

⁹ U.S. panel request, pages 2-4.

¹⁰ U.S. panel request, pages 2-5.

¹¹ U.S. panel request, pages 2-5.

¹² Request for Preliminary Ruling by China, 5 July 2011.

The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

12. The Appellate Body has described the requirements of DSU Article 6.2 as follows:

When parsed into its constituent parts, Article 6.2 may be seen to impose the following requirements. The request must: (i) be in writing; (ii) indicate whether consultations were held; (iii) identify the specific measures at issue; and (iv) provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.¹³

13. In summarizing the purposes of the terms of reference in WTO disputes, the Appellate Body has explained that:

The requirements of precision in the request for the establishment of a panel flow from the two essential purposes of the terms of reference. First, the terms of reference define the scope of the dispute. Secondly, the terms of reference, and the request for the establishment of a panel on which they are based, serve the *due process* objective of notifying the parties and third parties of the nature of a complainant's case.¹⁴

14. In analyzing whether a panel request complies with DSU Article 6.2, the Appellate Body has stated that “compliance with the requirements of Article 6.2 must be determined on the merits of each case, having considered the panel request as a whole, and in the light of attendant circumstances.”¹⁵ Compliance with the requirements of DSU Article 6.2 must be determined by considering the panel request as a whole, and not simply on the basis of isolated portions of the panel request.¹⁶

- B. The U.S. Panel Request is in writing, indicates that consultations were held, identifies the specific measures at issue, and provides a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

15. The U.S. panel request meets each of these requirements under Article 6.2 of the DSU. The panel request identifies the specific measures being challenged, the specific commitments at issue in China's schedule, and the specific obligations that are the subject of the U.S. complaint. In addition, the U.S. panel request specifies, with precision, the services at issue: “electronic payment services for payment card transactions.”¹⁷ The United States also provides in its panel

¹³ Appellate Body Report, *Korea – Dairy*, para. 120.

¹⁴ Appellate Body Report, *United States – Carbon Steel*, para. 126.

¹⁵ Appellate Body Report, *United States – Carbon Steel*, paras. 126 and 127.

¹⁶ Appellate Body Report, *United States – Carbon Steel*, paras. 126 and 127.

¹⁷ U.S. panel request, page 1 and notes 1 and 2.

request a detailed narrative of the claims it is making as an additional basis for China to understand “the legal basis of the complaint.” The U.S. panel request contains information “sufficient to present the problem clearly.” Again, the U.S. panel request “does not merely list the articles alleged to have been violated. The request also sets forth *facts and circumstances describing the substance of the dispute.*”¹⁸ Consequently, as in *Mexico – Corn Syrup*, the “request is sufficiently detailed to set forth the legal basis of the complaint so as to inform the defending Member . . . and potential third parties of the claims made.”¹⁹

16. China's argument essentially reduces to the assertion that the United States needed to “explain how or why the United States considers the challenged measures to be inconsistent with China's specific commitments.”²⁰ China also states that “[t]he foundation of the U.S. panel request in this dispute is a lengthy definition of the services that it alleges to be at issue – what it calls ‘electronic payment services’” and that “[t]his is a term of the United States' own making.”²¹ China further argues that the term electronic payment services “does not correspond to any of the service subsectors set forth in China's Schedule of Specific Commitments.”²²

17. As an initial matter, China is wrong factually. First, as explained in detail in this submission, the description of the sector at issue in this dispute that is set out in the U.S. panel request – “electronic payment services” for “payment card” transactions – is drawn from industry sources and reflects the broad and common understanding within this sector.²³ Suppliers of the services at issue in this dispute who work within this sector are described as supplying, or characterize themselves as supplying, “electronic payment services” and as operating within the “global payments industry.”²⁴ The sector that services credit, charge, debit, and other payment card transactions characterizes itself as providing “electronic payment services.”²⁵ China simply cannot credibly assert that the use of this term is somehow confusing or prejudicial.

18. An analogous issue was addressed in the context of a challenge to a product description in a panel request and the purported lack of clarity in terms of tariff classification. The panel in *EC – Computer Equipment* rejected the EU's argument regarding the purported lack of clarity of the term “LAN equipment” and found the definition “is sufficiently specific for the purposes of

¹⁸ Panel Report, *Mexico – Corn Syrup*, para. 7.15 (emphasis added).

¹⁹ Panel Report, *Mexico – Corn Syrup*, para. 7.15.

²⁰ China's Request for a Preliminary Ruling, 5 July 2011, para. 9.

²¹ China's Request for a Preliminary Ruling, 5 July 2011, para. 2; *see also* para 9 (“the U.S. panel request provides no explanation of how ‘electronic payment services’ – a term that appears nowhere in China's Schedule – relates to China's specific commitments in any one of these three subsectors”), para. 11 (“There are, in sum, many possible permutations of what the U.S. claims in this dispute *might* be taken into account in its definition of ‘electronic payment services’ . . .”)

²² China's Request for a Preliminary Ruling, 5 July 2011, para. 2.

²³ *See* section IV of this submission.

²⁴ *See* section IV of this submission.

²⁵ *See* section IV of this submission.

our consideration of this dispute.”²⁶ The panel in *EC – Computer Equipment* also rejected the same type of argument advanced in connection with the term “PC’s with multimedia capability.”²⁷ The EU appealed these panel findings in that dispute on the basis that that the purported lack of clarity violated the EU’s due process rights. The Appellate Body upheld the panel’s findings, rejected the EU’s alleged due process claims in this regard, and explained:

The European Communities argues that the lack of precision of the term, LAN equipment, resulted in a violation of its right to due process which is implicit in the DSU. We note, however, that the European Communities does not contest that the term, LAN equipment, is a commercial term which is readily understandable in the trade. The disagreement between the European Communities and the United States concerns its exact definition and its precise product coverage. We also note that the term, LAN equipment, was used in the consultations between the European Communities and the United States prior to the submission of the request for the establishment of a panel and, in particular, in an “Information Fiche” provided by the European Communities to the United States during informal consultations in Geneva in March 1997. We do not see how the alleged lack of precision of the terms, LAN equipment and PCs with multimedia capability, in the request for the establishment of a panel affected the rights of defense of the European Communities *in the course* of the panel proceedings. As the ability of the European Communities to defend itself was not prejudiced by a lack of knowing the measures at issue, we do not believe that the fundamental rule of due process was violated by the Panel.²⁸

19. China’s assertion that the term “electronic payment services” does not correspond to any of the service subsectors set forth in China’s GATS schedule is equally unavailing. EPS fall within the definition of “*all* payment and money transmission services, including credit, charge and debit cards...” The language of item (d) of China’s Schedule itself makes this clear.

20. EPS are at the center of all payment card transactions and without these services the transactions could not occur. EPS fall within the ordinary meaning of payment and money transmission services, within item (d) of China’s Schedule. As set forth in the U.S. panel request, and as detailed in this submission, EPS involve the services through which transactions involving payment cards are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated. EPS clearly fall within the ordinary meaning of “payment and money transmission service” 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.” Visa, MasterCard, Discover, and American Express are names recognized around the world as credit,

²⁶ Panel Report, *EC – Computer Equipment*, paras. 8.8-8.9.

²⁷ Panel Report, *EC – Computer Equipment*, para. 8.10.

²⁸ Appellate Body Report, *EC – Computer Equipment*, para. 70 (original emphasis).

debit and charge cards. The reference to debit cards covers suppliers of EPS for debit card transactions like First Data, Pulse, NYCE, STAR, and PLUS.

21. And China is wrong as a legal matter as well. The “explanation” that China seeks goes beyond what is required by Article 6.2 of the DSU and instead asks the United States to provide China the U.S. arguments as to “why” China’s measures breach the identified obligations. Similarly, China’s arguments that the services do not fall within the specified sectors²⁹ is a defense by China to the claims – a defense it will be free to make in its first written submission. There is no failure to satisfy the requirements of Article 6.2. And China’s arguments in this regard demonstrate that China does in fact understand the matter raised in the U.S. panel request.

22. Also without merit is China’s argument that “the United States cites three different and mutually exclusive subsectors in China’s Schedule as the legal basis for its claims.”³⁰ Whether a complainant can prevail on separate claims advanced under potentially mutually exclusive subsectors in a Member’s GATS schedule is a substantive legal issue to be decided on the merits based on the evidence and legal arguments presented to the Panel. Identifying potentially mutually exclusive claims in the U.S. panel request is not a failure under Article 6.2 to provide a summary of the legal basis of the complaint. In the three subsectors identified in the U.S. panel request, China undertook both market access and national treatment commitments for modes (1) and (3) as specified in its Schedule. The U.S. panel request thus puts China on notice as to China’s market access and national treatment commitments, including the modes of supply, that are before the Panel.

23. In its request, China appears to acknowledge the claims in the U.S. panel request, but then seeks more – China seeks a detailed explanation of the U.S. legal arguments as to exactly how China’s measures put it in breach of these commitments.³¹ In other words, China concedes that specific commitments and claims are identified in the U.S. panel request, but asks for more than what is required by DSU Article 6.2. With its request for a preliminary ruling, China seeks to have specific legal arguments presented as to how the measures at issue breach commitments identified in the U.S. panel request. China is not entitled to see how the United States will present its legal arguments in advance of the U.S. first submission. Yet, that is precisely what China seeks with its preliminary ruling request.

24. The U.S. panel request identifies that China undertook both market access and national treatment commitments with respect to item (d) “All payment and money transmission services, including credit, charge and debit cards...”³² In addition, the U.S. panel request identifies the specific measures being challenged and the specific obligations that are the subject of the U.S. complaint.³³ The United States also specifies with precision the service at issue: “electronic

²⁹ See, e.g., China’s Request for a Preliminary Ruling, 5 July 2011, paras. 2-3, 9.

³⁰ China’s Request for a Preliminary Ruling, 5 July 2011, para. 2.

³¹ See China’s Request for a Preliminary Ruling, 5 July 2011, paras. 10-11.

³² U.S. panel request, pages 1-2.

³³ U.S. panel request, pages 2-5.

payment services for payment card transactions,”³⁴ and provides in its panel request a detailed narrative of the claims³⁵ it is making in order to provide additional information for China to understand “the legal basis of the complaint.” The U.S. panel request also indicates the following.

25. *China maintains requirements that mandate the use of CUP and/or establish CUP as the sole supplier of EPS for all domestic transactions denominated and paid in RMB.* China requires that all transactions denominated and paid in RMB in China be processed and cleared in RMB through CUP, and that where there is a choice, all domestic transactions on dual currency cards be routed in RMB through CUP.³⁶

26. *China maintains requirements that RMB denominated payment cards issued in China bear the CUP logo.* China requires that any bank cards issued in China for RMB purchases in China, including dual currency payment cards issued in China, must bear the CUP logo.³⁷ This means that issuers – the institutions that issue payment cards to consumers – must have access to the CUP system, and must pay CUP for that access.

27. *China maintains requirements that all automated teller machines (“ATM”), merchant card processing equipment, and point of sale (“POS”) terminals in China accept CUP cards.* China requires that all ATMs, merchant card processing equipment, and POS terminals in China be capable of accepting CUP cards.³⁸ There are no equivalent requirements for non-CUP cards.

28. *China maintains requirements on acquiring institutions to post the CUP logo and be capable of accepting all bank cards bearing the CUP logo.* China requires that all acquiring institutions – the institutions that sign up merchants to accept payment cards – in China post the CUP logo and be capable of accepting all bank cards bearing the CUP logo.³⁹ An acquiring institution, often a bank, provides POS terminal and processing equipment to merchants so it can process payment cards, maintains the merchant's account, handles relations with the merchant, and ensures that payments are properly credited to the merchant.

29. *China maintains broad prohibitions on the use of non-CUP cards.* China prohibits the use of domestically issued non-CUP payment cards where the issuing bank and acquiring bank are different.⁴⁰ China also requires that all inter-bank transactions for all bank cards be handled through CUP.

³⁴ U.S. panel request, page 1, and notes 1 and 2.

³⁵ U.S. panel request, pages 2-3.

³⁶ U.S. panel request, page 2.

³⁷ U.S. panel request, page 2.

³⁸ U.S. panel request, page 2.

³⁹ U.S. panel request, page 2.

⁴⁰ U.S. panel request, page 3.

30. *China maintains requirements pertaining to card-based electronic transactions in China, Macao and Hong Kong.* China requires that CUP be used to handle all RMB transactions in Macao or Hong Kong using bank cards issued in China.⁴¹ China also requires that CUP be used to handle any RMB transactions in China using RMB cards issued in Hong Kong or Macao.

31. The U.S. panel request also asserts that these measures are inconsistent with China's obligations under GATS Article XVI:1 and XVI:2 not to adopt or maintain measures of the types listed in Article XVI:2.⁴² The U.S. panel request also asserts that these measures are also inconsistent with China's obligations under GATS Article XVII to accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers, in respect of all measures affecting the supply of services.⁴³ Accordingly, the U.S. panel request is fully consistent with DSU Article 6.2, China's request is without merit, and the Panel should reject China's request and decide this case on its merits.

IV. THE U.S. PANEL REQUEST IDENTIFIES WITH PRECISION "ELECTRONIC PAYMENT SERVICES" FOR "PAYMENT CARD" TRANSACTIONS

A. The U.S. Panel Request

32. The opening paragraph of the U.S. panel request states:

On 15 September 2010, the United States requested consultations with the Government of the People's Republic of China ("China") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), and Article XXII of the *General Agreement on Trade in Services* ("GATS") with respect to certain restrictions and requirements maintained by China affecting electronic payment services¹ for payment card² transactions and the suppliers of those services ("electronic payment services suppliers"). The United States held consultations with China on 27-28 October 2010. Unfortunately, those consultations did not resolve the dispute.⁴⁴

¹ "Electronic payment services" involve the services through which transactions involving payment cards (as defined below) are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated. Suppliers of electronic payment services supply, directly or indirectly, a system that typically includes the following: the processing infrastructure, network, and rules and procedures that facilitate, manage, and enable transaction information and payment flows and which provide system integrity, stability and financial risk reduction; the process and coordination of approving or declining a transaction, with approval generally permitting a purchase to be finalized or cash to be disbursed or exchanged; the

⁴¹ U.S. panel request, page 2.

⁴² U.S. panel request, pages 2-5.

⁴³ U.S. panel request, pages 2-5.

⁴⁴ U.S. panel request, page 1.

delivery of transaction information among participating entities; the calculation, determination, and reporting of the net financial position of relevant institutions for all transactions that have been authorized; and the facilitation, management and/or other participation in the transfer of net payments owed among participating institutions.

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

33. The U.S. panel request identifies the specific measures at issue and provides a brief summary of the legal basis of the complaint that presents the problem clearly. As part of that summary, the United State also described the nature of the services at issue – “electronic payment services for payment card transactions.” The United State further provides in the U.S. panel request footnotes that set out a description of those services and an illustrative list of payment cards. As explained above, this is more than adequate to satisfy the requirements of DSU Article 6.2. We also note that the description “electronic payment services” is known and customarily used by market participants. The United States further highlights the clarity of its panel request by presenting extensive evidence regarding the use of these terms.

34. Contrary to China's assertion that the description of the service as set out in the U.S. panel request is “a term of the United States' own making”⁴⁵ the description is drawn from industry sources and reflects the broad and common understanding within this sector. Suppliers of the services at issue in this dispute who work within this sector are described as supplying, or characterize themselves as supplying, “electronic payment services” and as operating within the “global payments industry.” In this submission the United States provides extensive evidence in support of this description of the sector at issue in this dispute and as specifically set out in the U.S. panel request⁴⁶ – “electronic payment services” for “payment card” transactions.⁴⁷

⁴⁵ Request for a Preliminary Ruling By China, 5 July 2011, para. 2.

⁴⁶ U.S. panel request, page 1.

⁴⁷ See e.g., Visa 2008 IPO Prospectus, pages 127-147 (Exhibit US-3); Visa 2010 Annual Report, pages 5-13 (Exhibit US-4); MasterCard 2009 Annual Report, pages 5-9 (Exhibit US-5); MasterCard 2010 Annual Report, page 4-10 (Exhibit US-6); American Express Company 2010 Annual Report, pages 4-16 (Exhibit US-7); Discover 2010 Annual Report, pages 1, 3-4 (Exhibit US-8); First Data 2010 Annual Report, page 1 (Exhibit US-9); UBS Investment Research, Visa Inc., 25 June 2008, pages 3, 28-30 (Exhibit US-10); BIS Red Book, “Payment Systems in the United States,” pages 433, 438, 442 (Exhibit US-11); Federal Financial Institutions Examination Council (FFIEC), “Retail Payment Systems, IT Examination Handbook,” February 2010, pages 17, 20-21, 24 (Exhibit US-12); GAO Report: Payments, Clearance, and Settlement, “A Guide to the Systems, Risks, and Issues” (1997) (see discussion of credit cards and process in Section 3, Retail Payment Systems) (Exhibit US-13); Federal Reserve Bank of Kansas City, “Nonbanks in the Payment System: European and U.S. Perspectives,” Section 2.1 (definitions), Section 2.2 (payment types and payment activities), Table 3 (detailed payment activities), Table 7 (table showing non-bank payment companies engaging in specific transaction activity relating to payments in the EU), Table 9 (table showing non-bank payment companies engaging in specific transaction activity relating to payments in the United States) (Exhibit US-14).

B. From Paper-Based Payments to Card-Based Electronic Payments

35. A typical transaction involving the purchase of a good or service entails a payment to the merchant made by the consumer. The payment can take several forms and includes both paper-based payments and electronic-based payments. Paper-based payments include cash (coin and currency), personal checks, money orders, government checks, travelers cheques, official checks, and other paper-based means of transferring value. Electronic-based payments encompass transactions involving payment cards. A “payment card” includes a bank card, credit card, charge card, debit card, check card, ATM card, prepaid card, and other similar card or payment or money transmission product or access device, and the unique account number associated with that card or product or access device.⁴⁸

36. Card-based electronic payments take many forms, including credit cards, charge cards, debit cards, deferred debit cards, ATM cards, prepaid cards, private label cards and other types of general-purpose and limited-use payment cards.⁴⁹ As one EPS supplier explains, the “global payments industry” is in the midst of a major shift from paper-based payments to card-based electronic payments:

[T]he global payments industry... is undergoing a major shift from paper-based payments, such as cash and checks, to card-based and other electronic payments.... [C]onsumers are increasingly attracted to the convenience, security, enhanced services and rewards associated with electronic payment forms.... corporations and governments are shifting to electronic payments to improve efficiency, control and security, and... a growing number of merchants are accepting electronic payments to improve sales and customer convenience.⁵⁰

37. The shift from paper-based to card-based electronic payments is a worldwide phenomenon; with it, demand for EPS has increased.⁵¹ As specified in the U.S. panel request, EPS involve the services through which transactions involving payment cards are processed and through which the transmission of funds between institutions participating in the transactions are managed and facilitated.⁵² Card-based electronic payments typically fall into one of three

⁴⁸ See WT/DS413/2.

⁴⁹ Visa 2008 IPO Prospectus, page 127 (Exhibit US-3).

⁵⁰ Visa 2008 IPO Prospectus, page 127 (Exhibit US-3).

⁵¹ Visa 2008 IPO Prospectus, page 127 (“recent innovations such as contactless cards and mobile payments are also increasing the attractiveness of electronic payments” and “these trends create a substantial growth opportunity for the global payments industry.”) (Exhibit US-3); 2009 MasterCard Annual Report, pages 3-4 (noting the movement from paper-based forms of payment to card-based electronic payments and stating that it “believe[s] the trend within the global payments industry from paper-based forms of payment, such as cash and checks, toward electronic forms of payment, such as payment card transactions, creates significant opportunities for the growth of our business over the longer term.”.) (Exhibit US-5) .

⁵² See, e.g., Visa 2008 IPO Prospectus, pages 127-147 (Exhibit US-3); Visa 2010 Annual Report, pages 5-13 (Exhibit US-4); MasterCard 2009 Annual Report, pages 5-9 (Exhibit US-5); MasterCard 2010 Annual Report, page 4-10 (Exhibit US-6); American Express Company 2010 Annual Report, pages 4-16 (Exhibit US-7); Discover 2010 Annual Report, pages 1, 3-4 (Exhibit US-8); First Data 2010 Annual Report, page 1 (Exhibit US-9); UBS

categories,⁵³ depending on the timing of the payment: “pay later” cards (*e.g.*, credit and charge cards);⁵⁴ “pay now” cards (*e.g.*, debit cards);⁵⁵ and “pay-before” cards (*e.g.*, pre-paid or stored-

Investment Research, Visa Inc., 25 June 2008, pages 3, 28-30 (Exhibit US-10); BIS Red Book, “Payment Systems in the United States,” pages 433, 438, 442 (Exhibit US-11); Federal Financial Institutions Examination Council (FFIEC), “Retail Payment Systems, IT Examination Handbook,” February 2010, pages 17, 20-21, 24 (Exhibit US-12); GAO Report: Payments, Clearance, and Settlement, “A Guide to the Systems, Risks, and Issues” (1997) (see discussion of credit cards and process in Section 3, Retail Payment Systems) (Exhibit US-13); Federal Reserve Bank of Kansas City, “Nonbanks in the Payment System: European and U.S. Perspectives,” Section 2.1 (definitions), Section 2.2 (payment types and payment activities), Table 3 (detailed payment activities), Table 7 (table showing which non-bank payment companies engaging in specific transaction activity relating to payments in the EU), Table 9 (table showing non-bank payment companies engaging in specific transaction activity relating to payments in the United States) (Exhibit US-3).

⁵³ Federal Financial Institutions Examination Council (FFIEC), “Retail Payment Systems, IT Examination Handbook,” February 2010, pages 17, 20-21, 24 (Exhibit US-12).

⁵⁴ “Pay later” card payments occur after the receipt of a good or service and typically refer to credit card payments. A credit card holder enjoys access to a credit line account at a financial institution. Credit cards generally have revolving credit arrangements that allow card holders to make purchases and to be billed at a later date. Most credit card arrangements allow the consumer to carry a balance from one billing cycle to the next and make a minimum payment in each billing cycle rather than requiring payment of the full balance. A charge card provides its holder with a short-term, fixed-period credit arrangement. The balance on a charge card account is payable in full when the statement is received and cannot be rolled over from one billing cycle to the next. Federal Financial Institutions Examination Council (FFIEC), “Retail Payment Systems, IT Examination Handbook,” February 2010, page 17 (Exhibit US-12).

⁵⁵ “Pay now” card payments occur when the goods or services are received and generally are associated with debit payments. Debit cards are associated with an existing account at a financial institution. Debit cards are either card online (*i.e.*, personal identification number (“PIN”)-based) or off-line (*i.e.*, signature-based). Online debit cards use a PIN for customer authentication and online access to account balance information. A debit card user is authenticated by matching the PIN with the account number directly through a merchant’s terminal. Debit card transactions are authorized in real time at the POS terminal. Customers may also receive cash at the POS terminal because messaging between the financial institution and the retailer confirms funds availability. Off-line debit card requires authentication, typically the card holder’s signature action. Signature-based debit card transactions are processed in batch mode through the same bankcard networks as credit card transactions and typically settle at the end of the business day. Generally a cardholder can use an off-line debit card at any terminal that accepts a similar online transaction. Federal Financial Institutions Examination Council (FFIEC), “Retail Payment Systems, IT Examination Handbook,” February 2010, pages 20-21 (Exhibit US-12).

value cards).⁵⁶ Another category, ATM cards, enable consumers to have online access to account information and allow consumers to make withdrawals and deposits at ATMs.⁵⁷

C. Overview of Electronic Payment Services

1. The Role of the EPS in Card-Based Electronic Payment Transactions

38. There are several intermediaries in a typical payment card transaction: the issuing institution, the acquiring institution, the settlement bank, and the supplier of EPS. The role of the EPS supplier is described below, followed by a brief description of the role of the other intermediaries.

39. A supplier of EPS enables cardholders' banks to pay merchants' banks the amount they are owed. Suppliers of electronic payment services supply, directly or indirectly, a system that typically includes the following:

- the processing infrastructure, network, and rules and procedures that facilitate, manage, and enable the transmission of transaction information and payments, and which provide system integrity, stability and financial risk reduction;
- the process and coordination of approving or declining a transaction, with approval generally permitting a purchase to be finalized or cash to be disbursed or exchanged;
- the delivery and transmission of transaction information among participating entities;
- the calculation, determination, and reporting of the net financial position of relevant institutions for all transactions that have been authorized in a given period; and
- the facilitation, management and/or other participation in the transfer of net payments owed among participating institutions.⁵⁸

⁵⁶ "Pay-before" cards are loaded with buying power before the purchase of goods or services occurs. The account associated with the pre-paid debit card may be the liability of a financial institution. The market for prepaid and stored value cards has been described as "one of the fastest growing segments of the retail financial services industry." Prepaid cards typically involve a deposit of funds into an account of the issuer, whereas with stored-value cards the value is prepaid and stored directly on the cards. "The functionality of this product is leading to a wide range of card programs that operate in either closed or open-loop systems, and program innovation has resulted in the development of systems that operate in both structures. Closed-loop systems are generally retailer/issuer business models, while general-purpose cards issued by financial institutions tend to operate in open-loop systems. Open-loop system prepaid cards are processed using the same systems as the branded network cards - MasterCard, Visa, American Express, and Discover - and offer the same functionality." Federal Financial Institutions Examination Council (FFIEC), "Retail Payment Systems, IT Examination Handbook," February 2010, page 24 (Exhibit US-12).

⁵⁷ Consumers typically enter a PIN for authentication at an ATM. An ATM offered by other financial institutions or third parties may be used by an ATM card holder, but in doing so the card holder typically will pay fees to the ATM owner and their own financial institution. Many ATM cards can also be used as debit cards for POS transactions at participating merchants. Federal Financial Institutions Examination Council (FFIEC), "Retail Payment Systems, IT Examination Handbook," February 2010, page 21 (Exhibit US-12).

40. Electronic payment services provide an efficient, timely and reliable means to facilitate the transmission of funds from the holders of payment cards who purchase goods or services to the individuals or businesses that supply them. The network, rules and procedures, and operating system that are part of the EPS architecture that allow processors of payment card transactions to pay merchants promptly the amounts they are owed, and to ensure that customers pay what they owe. EPS suppliers receive, check and transmit the information that the parties need to conduct the transactions, and manage, facilitate, and enable the transmission of funds between participating entities. The rules and procedures established by the EPS supplier give the payment system stability and integrity, and enable it to efficiently handle net flows of money among the institutions involved in card payments.

41. The two principal types of networks used in card-based electronic payment transactions are often referred to as either “open-loop” (or sometimes referred to as “four party” networks) and “closed-loop” (sometimes referred to as “three party” networks) and they have been described as follows:

General purpose and limited-purpose payments networks primarily operate under two different business models. Open-loop payments networks, such as Visa and MasterCard, are multi-party and operate through a system that connects two financial institutions—one that issues the card to the cardholder, known as the issuing financial institution or issuer, and one that has the banking relationship with the merchant, known as the acquiring financial institution or acquirer—and manages information and the flow of value between them. In a typical closed-loop payments network, the payment services are provided directly to merchants and cardholders by the owner of the network without involving third-party financial institution intermediaries. Closed-loop networks can range in size from networks such as American Express and Discover, which issue cards directly to consumers and serve merchants directly, to an individual merchant that issues limited-purpose private-label credit cards to its customers for use only in that merchant's stores. In recent years, the major closed-loop networks have begun to develop relationships with financial institution issuers and acquirers, thereby emulating certain aspects of the open-loop networks.⁵⁹

⁵⁸ See, e.g., Visa 2008 IPO Prospectus, pages 127-147 (Exhibit US-3); Visa 2010 Annual Report, pages 5-13 (Exhibit US-4); MasterCard 2009 Annual Report, pages 5-9 (Exhibit US-5); MasterCard 2010 Annual Report, page 4-10 (Exhibit US-6); American Express Company 2010 Annual Report, pages 4-16 (Exhibit US-7); Discover 2010 Annual Report, pages 1, 3-4 (Exhibit US-8); First Data 2010 Annual Report, page 1 (Exhibit US-9); UBS Investment Research, Visa Inc., 25 June 2008, pages 3, 28-30 (Exhibit US-10); BIS Red Book, “Payment Systems in the United States,” pages 433, 438, 442 (Exhibit US-11); Federal Financial Institutions Examination Council (FFIEC), “Retail Payment Systems, IT Examination Handbook,” February 2010, pages 17, 20-21, 24 (Exhibit US-12).

⁵⁹ Visa 2008 IPO Prospectus, page 128 (Exhibit US-3).

42. EPS suppliers also provide their customers with certain guarantees to ensure the integrity of the electronic payment services, including, for example, instances where customers fail to honor payment cards or where issuers or acquirers fail to fund obligations.⁶⁰

43. In addition to the EPS supplier, other entities play a role in a payment card transaction:

- **The issuing institution (or issuer).** Issuing institutions solicit cardholders, establish individual credit limits, fix terms such as interest rates and fees, and issue payment cards. Debit cards are linked to the card holders' checking or savings account with the issuer, while credit cards provide an unsecured personal line of credit from the issuing bank. An institution seeking to issue cards must itself be capable of supplying EPS or must use an EPS supplier. Issuing institutions agree to adhere to specified rules that allow the EPS supplier to process transactions that use the cards issued by the bank. The issuer administers the cardholder's account and handles relations with the cardholder. The issuer is responsible for ensuring that the cardholder is able to pay, charging the cardholder for each purchase, and the transmission of funds to the EPS's settlement bank for settlement of payment obligations incurred by its cardholders.
- **The acquiring institution.** Acquiring institutions seek to "acquire" transactions on payment cards. Acquiring institutions, often a bank, provide point-of-sale terminals or payment card processing equipment (e.g. a card swiper) to merchants so they can process payment cards. As with issuers, an acquiring institution must itself be capable of supplying EPS or must use an EPS supplier. Acquiring institutions also must adhere to specific rules governing transactions processed on the payment card transactions it has acquired. Acquiring institutions maintain merchant accounts, handle relations with the merchant, and ensure that payments are properly credited to the merchant.
- **The settlement bank.** In an open-loop (four party) network, the EPS's settlement bank manages the flow of money between issues and acquirers. Typically, issuers will transfer funds to the EPS's settlement bank, and the EPS's settlement bank will transfer funds to acquirers.

44. The EPS supplier must license the use of its brand to financial institutions, approve card design, specifications, and other requirements in connection with card issuance. The EPS supplier assigns financial institutions a Bank Identification Number (BIN) for the issuance of specific cards. A BIN is the first three to eleven digits on a payment card. The BIN identifies the payment network to which the card belongs and the financial institution or entity that issued the card.⁶¹ Merchants desiring to accept payment card transactions must execute an agreement

⁶⁰ See, e.g., Visa 2010 Annual Report, pages 12, 30-31, 56-57, 106, note 13 (Exhibit US-4); MasterCard 2010 Annual Report, pages 4, 38, 87 (Exhibit US-6).

⁶¹ Generally recognized international standards for electronic payment cards already exist and are widely used in most other countries around the world. The International Organization for Standardization ("ISO") has assigned particular BIN ranges to specific electronic payments services suppliers to ensure consistent definition and identification of products and usage in the global marketplace. Generally, all Visa cards begin with the number "4" and all MasterCard cards begin with the number "5". BINs are important identifiers for purposes of coordination

with an acquiring institution or EPS supplier. Merchants obtain acceptance or point-of-sale terminals and equipment and infrastructure to process payment card transactions. Generally, the acquiring institutions or third parties rent or purchase POS terminals and provide them to merchants. A connection must also be established between the merchant and the network of the EPS supplier.

45. The processing infrastructure, network, and rules and procedures, which facilitate, manage, and enable transaction information and payment flows, and which provide system integrity, stability and financial risk reduction, are a key component of electronic payment services. The processing infrastructure and network includes the provision of the underlying physical network and wiring, *i.e.*, information technology and telecom infrastructure, the virtual private network (“VPN”), hardware and wiring, mainframe boxes, software and operating system. This processing infrastructure is just one aspect of EPS architecture that enables the transmission of transaction information and payments to move from one entity to another so as to enable the payment card transaction and the timely movement of funds associated with that transaction to occur.

46. Beyond ensuring the timely movement of funds, EPS suppliers also provide risk mitigation. This includes systems that detect fraudulent activity as well as mechanisms to resolve disputes among financial institutions related to transaction activity. EPS thus work to enhance trust in the EPS system so that a merchant can accept the card of a person it does not know and be confident that it will actually receive payment for the purchase, and the acquiring bank can be confident that it will be paid even though it knows nothing about the issuing bank.

47. Where the authorization process results in approval, a purchase may be finalized or cash disbursed or exchanged. The authorization process includes the automated direction and transmission of potential payment card transactions to the appropriate issuing financial institution or their agent for decision making and ensuring a response is ultimately provided merchant or ATM owner. The EPS supplier ensures proper routing by use of a database that the network maintains which contains information on each party connecting to the network. The process also takes account of the circumstances of a given transaction, such as value and acceptance procedure to ensure that the particular payment card transaction attempt is proper and not fraudulent. This serves to permit a purchase to be finalized or cash to be disbursed or exchanged. Completed payment transactions then go through an automated process in which the EPS network's data center receives completed payment card transaction activity from the merchant or ATM owner and edits, sorts, and re-batches the same activity for delivery to the proper issuing financial institution or their agent.

among issuers, acquirers, merchants, and suppliers of EPS. International standards, including the use of BINs assigned by the ISO, allow multiple card brands to operate in a market. The ISO has adopted these standards because card-based electronic payment transactions and processing often occurs across national borders. The CUP card uses “62” and is a proprietary brand of China. 2007 China Payment System Development Report, Payment and Settlement Department of the People's Bank of China, Financial Service Report of the People's Bank of China, No. 5, 2008, page 25 (“PBOC 2007 China Payment System Development Report”), page 59 (Exhibit US-15).

48. The calculation, determination, and reporting of the net financial position of relevant institutions for all card-based transactions that have been authorized in a timely manner or completed are central to EPS. The supplier of EPS also facilitates the transmission of net payments owed among participating institutions. The calculation of the net financial position of a sender/receiver of financial transactions is based on the desired currency and settlement option selected by each entity participating in the transaction. This entails also the creation and execution of the funds transfer order for each financial institution participating in the settlement of a given card transaction.

2. “Front-end” and “Back-end” EPS Processing

49. EPS, whether provided in connection with open-loop (four-party) systems or closed-loop (three party) systems, encompass both (1) “front-end processing” (which determines whether a payment card user has sufficient funds or is otherwise authorized to make a purchase and provides that information to the merchant or ATM owner), and (2) “back-end processing” (which, among other things, determines, calculates, and instructs banks regarding net payments owed among participating institutions).⁶² The process steps described below typify an open-loop system.

50. **Front-end processing and authorization.** This occurs at the time of the transaction. When a cardholder presents a payment card to pay for a transaction, the merchant uses its POS terminal to transmit a request for authorization through its acquirer or other processing agent. The merchant’s processor (typically the acquiring institution) determines the type of transaction (debit or credit), and the particular EPS supplier network that such transaction should be routed to (based on the card’s BIN), and then forwards that request to the relevant EPS.

51. After the EPS supplier receives the authorization request, it undertakes several tasks. It determines the type of transaction (*e.g.*, credit or debit), determines various transaction parameters, identifies the institution that has issued the card, and then routes the authorization request to the issuing institution. The transaction parameters that the EPS supplier can provide include the circumstances of the transaction such as its location or type of merchant.

52. At that point, the issuing institution identifies the card holder’s account and decides whether to authorize the transaction by confirming that the card is authentic, the account is in good standing, and the account limit is not exceeded or there are sufficient funds available (in the case of debit). The issuer then authorizes or rejects the transaction based on these validations as well as the cardholder’s record and the attributes of the transaction provided by the EPS. That

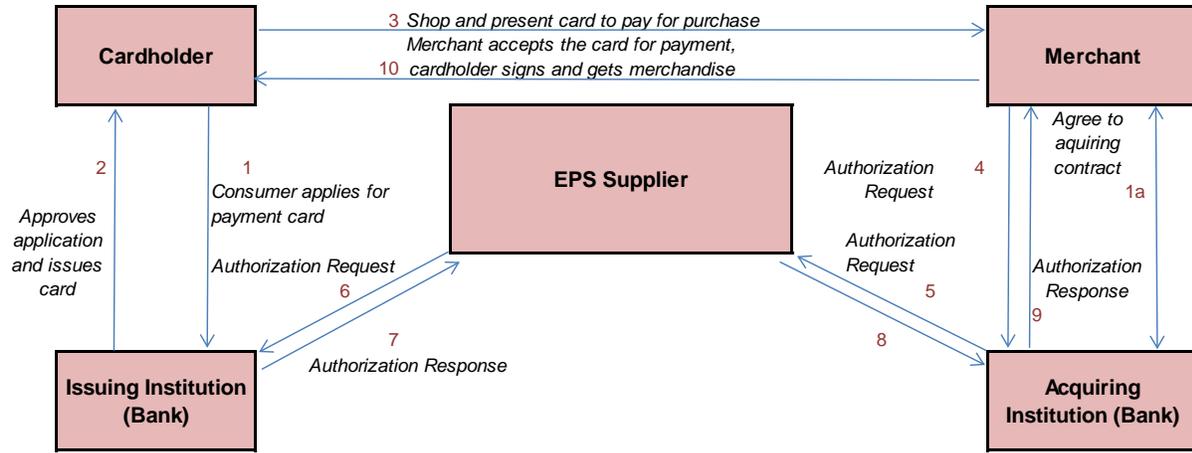
⁶² See, *e.g.*, Visa 2008 IPO Prospectus, pages 127-147 (Exhibit US-3); Visa 2010 Annual Report, pages 5-13 (Exhibit US-4); MasterCard 2009 Annual Report, pages 5-9 (Exhibit US-5); MasterCard 2010 Annual Report, page 4-10 (Exhibit US-6); American Express Company 2010 Annual Report, pages 4-16 (Exhibit US-7); Discover 2010 Annual Report, pages 1, 3-4 (Exhibit US-8); First Data 2010 Annual Report, page 1 (Exhibit US-9); UBS Investment Research, Visa Inc., 25 June 2008, pages 3, 28-30 (Exhibit US-10); BIS Red Book, “Payment Systems in the United States,” pages 433, 438, 442 (Exhibit US-11); Federal Financial Institutions Examination Council (FFIEC), “Retail Payment Systems, IT Examination Handbook,” February 2010, pages 17, 20-21, 24 (Exhibit US-12).

result is sent back to the merchant via the EPS system. If the transaction has been authorized, the EPS supplier receives the approved transaction information and determines who submitted the original request. Then the EPS supplier returns the authorization information to the acquiring institution (or in certain contexts to the merchant processor or merchant, as the case may be) and identifies the institution that has issued the card. Finally, when the merchant receives the authorization, it accepts the card for payment and completes the sale.

53. **Back-end processing.** At the time of the transaction or at a later time, the merchant submits this transaction information for clearing and payment to the acquiring institution and the acquiring institution sends all of an EPS supplier's transactions to such EPS supplier. The EPS supplier aggregates all of the card-based payment transactions it received and processed that day and populates the transaction with relevant information (which can differ based on transaction type). The EPS supplier organizes this information by the respective card-issuing bank, and then sends messages to the participating institutions containing the transactions that it cleared and the net amounts to be paid and received in settlement of the card transactions for the day.

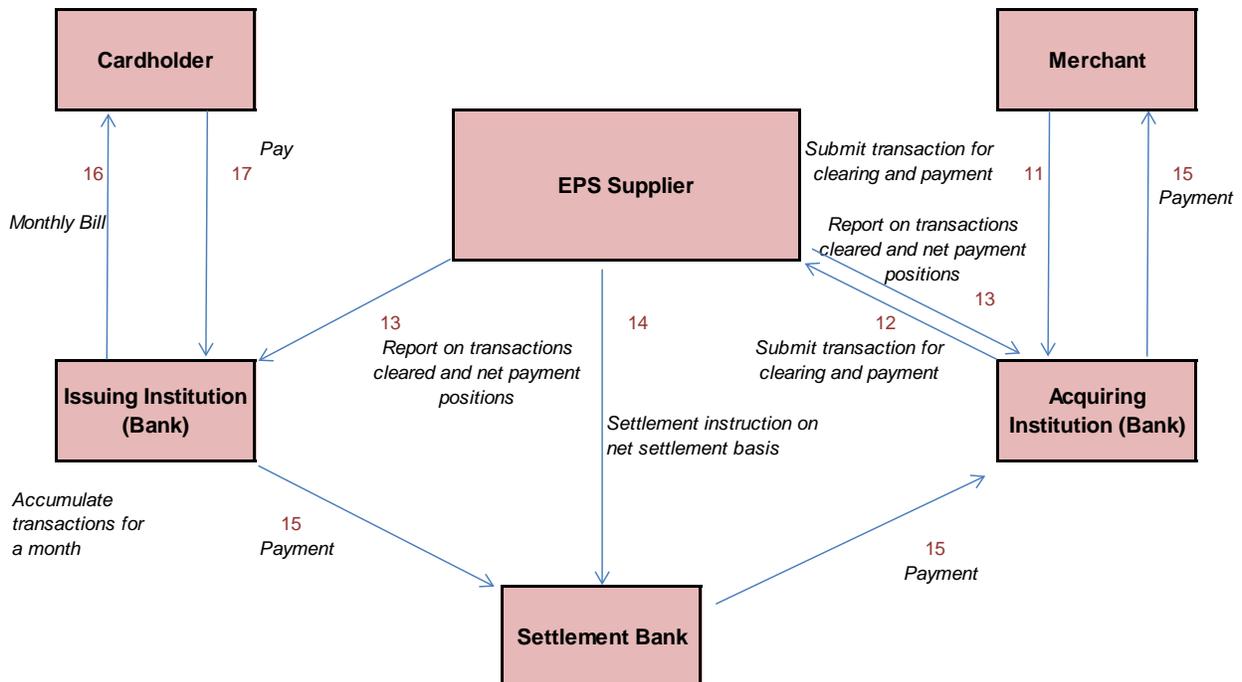
54. The following diagrams illustrate a payment network and the interaction between the cardholder, issuer, acquiring institution, merchant, and supplier of EPS. The following diagrams depict both front-end and back-end processing for a typical four-party payment card transaction. These diagrams are relevant for understanding credit, charge, and debit card transactions, whether undertaken in the context of open-loop (four party) and closed-loop (three-party) transactions, and with respect to other variations where the EPS supplier also acts as the issuing bank, the acquiring bank, or both, or has a direct relationship with a merchant.

Front-End EPS Processing



Accumulate transactions for a month

Back-End EPS Processing



Accumulate transactions for a month

D. Intense Global Competition in the Supply of EPS for Card-Based Electronic Payment Transactions

55. Outside of China, the competition to provide services for card-based electronic payment transactions is intense. EPS suppliers explain that they compete “in the global payment marketplace against all forms of payment, including paper-based forms (principally cash and checks)” and “card-based payments (including credit, charge, debit, ATM, prepaid, private-label and other types of general purpose and limited use cards).”⁶³

56. American Express Company (“American Express”), for example, states that:

Our global card network ... competes in the global payments industry with other card networks, including, among others, Visa, MasterCard, Diners Club International ... and Discover (primarily in the United States). We are the third largest general-purpose charge and credit card network based on charge volume, behind Visa and MasterCard, which we believe are larger than we are in most countries No single entity participates on a global basis in the full range of activities that are encompassed by our closed-loop business model.⁶⁴

57. Discover confirms that one of its two principal segments is “payment services” and that it operates a “global payments network.”⁶⁵ As noted in Discover’s 2010 Annual Report:

In our payment services business, we compete with other networks for volume and to attract third-party issuers to issue credit, debit and prepaid cards on the Discover, PULSE and Diners Club networks. We generally compete on the basis of customization of services and various pricing strategies, including incentives and rebates. The Diners Club and Discover networks’ primary competitors are Visa, MasterCard and American Express, and PULSE’s competitors include Visa’s Interlink, STAR, and MasterCard’s Maestro. American Express is a particularly strong competitor to Diners Club as both cards significantly target international business travelers.⁶⁶

58. First Data Corporation (“First Data”), principally involved in debit card transactions, also indicates that it competes in the “global payments industry.”⁶⁷ JCB, a Japanese EPS supplier, describes its major business areas as including “{c}redit card operations, providing credit card operation services.”⁶⁸ JCB is also both the largest card issuer and acquirer in Japan,⁶⁹ and in

⁶³ Visa 2008 IPO Prospectus, page 147 (Exhibit US-3).

⁶⁴ American Express 2010 Annual Report, page 13 (Exhibit US-7).

⁶⁵ Discover 2010 Annual Report, page 145 (Exhibit US-8).

⁶⁶ Discover 2010 Annual Report, page 10 (Exhibit US-8).

⁶⁷ First Data 2010 Annual Report, page 15 (Exhibit US-9).

⁶⁸ <http://www.jcbcorporate.com/english/corp/data.html> (Exhibit US-16).

⁶⁹ <http://www.jcbinternational.com/business/ic/release/release1.htm> (Exhibit US-17).

1991, launched its Global Systems Network.⁷⁰ JCB describes the network as providing “the highest levels of efficiency, reliability, and security for cardmembers, merchants and partner financial institutions throughout the world.”⁷¹ Other EPS suppliers provide similar statements as to the nature of the competition in the provision of services related to card-based electronic payment transactions.

59. CUP is a significant and increasingly active participant in this competition and EPS suppliers describe CUP as a competitor.⁷² CUP's Articles of Association are explicit that the company is “to provide advanced electronic payment technologies and specialized services in connection with the inter-bank bank card information switching.”⁷³ CUP itself recently noted the global reach of its “payment services” around the world:

As the bankcard association in China, China UnionPay operates the national inter-bank clearing and settlement system, develops the worldwide UnionPay Card acceptance network, promotes the issuance and usage of the UnionPay Card as well as other innovative payment solutions, so as to provide quality, efficient and safe payment services to cardholders. To date, the total number of the UnionPay Card issued both at home and aboard has exceeded 2.5 billion. The UnionPay network has been extended to all the cities and rural areas in China. In addition, China UnionPay has enabled the UnionPay Card acceptance over 110 countries and regions through extensive cooperation with about 400 financial institutions around the world.

60. CUP's success in the global market for card-based electronic payment transactions reflects and is in accord with the “purpose of the company,” which is to foster “and promote the rapid development of China's bank card industry.”⁷⁴

61. As the discussion in above in section IV makes clear, the term “electronic payment services” as set out in the U.S. panel request is a commonly understood term for service supplied for payment card based electronic transactions, and, outside of China, there is intense global competition to provide these services, and CUP is an active competitor.

⁷⁰ <https://www.jcbinternational.com/htm/about/history.htm> (Exhibit US-18).

⁷¹ <http://www.jcbcorporate.com/english/business/systemnetwork.html> (Exhibit US-19).

⁷² 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).

⁷³ The Articles of Association of China UnionPay Co., Ltd., Article 12 (Exhibit US-20).

⁷⁴ The Articles of Association of China UnionPay Co., Ltd., Article 11 (Exhibit US-20).

V. THE U.S. PANEL REQUEST IDENTIFIES SPECIFIC MEASURES OF CHINA THAT MAINTAIN CUP'S MONOPOLY ON THE SUPPLY OF EPS AND THAT AFFECT THE SUPPLY OF EPS BY FOREIGN SUPPLIERS

A. The U.S. Panel Request

62. The U.S. panel request describes CUP and China's measures that maintain CUP's monopoly on the supply of EPS and that affect the supply of EPS by foreign suppliers:

China UnionPay ("CUP"), a Chinese entity, is the only entity that China permits to supply electronic payment services for payment card transactions denominated and paid in renminbi ("RMB") in China. China also requires the handling by CUP of all RMB transactions in Macao or Hong Kong using payment cards issued in Mainland China, as well as any RMB transactions in Mainland China using RMB payment cards issued in Hong Kong, China or Macao, China. The United States considers that these measures are inconsistent with China's obligations under GATS Article XVI:1 to accord services and services suppliers of any other Member treatment no less favorable than that provided for in China's Schedule and that China is maintaining or adopting measures set out in Article XVI:2 of the GATS. These measures also appear inconsistent with China's obligations under GATS Article XVII to accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers.

In addition, China requires all payment card processing devices at merchant locations, all automated teller machines ("ATMs"), and all point-of-sale ("POS") terminals in China to be compatible with CUP's system and capable of accepting CUP payment cards. China also requires that all acquiring institutions post the CUP logo and be capable of accepting all payment cards bearing the CUP logo. China further requires that all payment cards, including "dual currency" cards, issued in China capable of being used for transactions denominated and paid in RMB bear the CUP logo. This means that issuing banks must have access to the CUP system, and must pay CUP for that access. These measures do not impose similar requirements regarding non-CUP payment cards or to transactions using non-CUP payment cards. The United States considers that these measures are inconsistent with China's obligations under GATS Article XVI:1 to accord services and services suppliers of any other Member treatment no less favorable than that provided for in China's Schedule and that China is maintaining or adopting measures set out in Article XVI:2. The United States considers that these measures are inconsistent with China's obligations under GATS Article XVII to accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers.

China also requires that all cross-bank or inter-bank transactions involving payment cards be handled through CUP. China prohibits the use of non-CUP

payment cards for cross-region or cross-bank or inter-bank transactions. The United States also considers that these measures are inconsistent with China's obligations under GATS Article XVI:1 to accord services and services suppliers of any other Member treatment no less favorable than that provided for in China's Schedule and that China is maintaining or adopting measures set out in Article XVI:2. The United States also considers that these measures are inconsistent with China's obligations under GATS Article XVII to accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers.⁷⁵

63. As the above passages from the U.S. panel request make clear, the United States is challenging China's measures that maintain CUP's monopoly on the supply of EPS and that affect the supply of EPS by foreign suppliers.

B. The Evolution of China's Payment Card System and the Creation of CUP

64. The first credit cards were introduced in China in 1979 by the Bank of China ("BOC"), who acted as an agent for non-Chinese card issuers such as HSBC and Chase Manhattan Bank.⁷⁶ In June 1985 BOC launched the first domestic Chinese credit card, the "Great Wall Card."⁷⁷ Chinese state-owned banks⁷⁸ subsequently issued their own payment cards with their own specific logos.⁷⁹ Each bank operated an independent three-party, closed-loop, payment network, recruiting its own merchant network, issuing its own decals, and establishing its own ATM and POS systems.⁸⁰

65. Chinese banks also worked closely with foreign EPS suppliers, allowing foreign suppliers to place their logos alongside the logos of domestic banks proprietary branded cards. Foreign electronic payment service suppliers were allowed only to process non-RMB transactions on payment cards issued outside of China when used in China, while the domestic Chinese banks processed RMB transactions (the vast majority of domestic transactions).

66. In 1993, the Chinese government launched the ten-year "Golden Card Project," aiming to popularize the use of card-based electronic payments.⁸¹ The national project, initiated under the

⁷⁵ U.S. Panel Request, pages 2-3 (footnote omitted)

⁷⁶ Steve Worthington, *The Chinese payment card market: an exploratory study*, 21 INT'L J. OF BANK MARKETING, pages 324, 325 (2003) (Exhibit US-21).

⁷⁷ Worthington, at page 325 (Exhibit US-21).

⁷⁸ The Bank of China, the Industrial and Commercial Bank of China, the China Construction Bank, the Agricultural Bank of China, and the Bank of Communications.

⁷⁹ Other cards issued by these banks included the Peony Card for the Industrial and Commercial Bank of China and the Dragon Card for China Construction Bank.

⁸⁰ Worthington, at page 325 (Exhibit US-21).

⁸¹ Pecht, Michael, pages 82–83 CHINA'S ELECTRONICS INDUSTRY: THE DEFINITIVE GUIDE FOR COMPANIES AND POLICY (2006) (Exhibit US-22).

Ministry of Electronic Industry and then transferred to the PBOC, worked to coordinate the banks' existing networks and bring them under a comprehensive national framework. The PBOC created a national hub and several regional hubs; theoretically, banks would connect their existing local EPS networks to these "Golden Card Centers," and enable cross-bank (or inter-bank), intra-city and inter-city card transactions.⁸²

67. The original project was conceived in three phases.⁸³ First, during the pilot period (1994 – 1996), the government established 12 trial information exchange centers,⁸⁴ aiming to issue 30 million bank cards covering 30 million people.⁸⁵ In the second phase (1997 – 1999), the government sought to expand card use to trial medium-sized cities, issue 60 million cards, and create a state-authorized switching center that would link the various regional bank card information exchange centers in these trial cities.⁸⁶ By 1999, the first two phases were completed: the National Information Exchange Center was in operation by the end of 1998, and the number of bank cards issued by Chinese banks had exceeded 217 million.⁸⁷ The third stage of the project (2000 – 2003) aimed to popularize bank card use and link 400 cities, issuing 200 million cards nationwide that would cover 300 million people.⁸⁸

68. The number of bank cards issued grew exponentially from 1990 to 2001.⁸⁹ There was not, however, a corresponding increase in consumer use.⁹⁰ Officials attributed the project's slowdown to a lack of emphasis at the local level, the low penetration of bank cards in key cities, and non-standardization.⁹¹ Individual banks were also reluctant to establish a national network, as doing so would undermine previous investment in their own proprietary networks.⁹²

⁸² Pecht, at pages 82–83 (Exhibit US-22).

⁸³ Laurence J. Brahm, page 246 CHINA AFTER WTO (2002). Brahm provides a detailed description of the three proposed phases of the Golden Card Project (Exhibit US-23).

⁸⁴ The twelve trial provinces and municipalities included Beijing, Tianjin, Shanghai, Jiansu, Hainan, Liaoning, Dalian, Shangdong, Qingdao, Hangzhou, Guangdong, and Xiamen.

⁸⁵ Brahm, at page 246 (Exhibit US-23).

⁸⁶ Brahm, at page 246 (Exhibit US-23).

⁸⁷ Brahm, at page 246 (Exhibit US-23).

⁸⁸ Brahm, at page 246 (Exhibit US-23).

⁸⁹ Worthington, page 326 (Exhibit US-21) (citing PBOC statistics). In 2001, the PBOC stated that the 55 financial institutions in China had issued a total of 330 million payment cards, an increase of 18.4 percent from June 2000. In comparison, Chinese banks had issued 3 million cards in 1990, 40 million in 1993, 150 million in 1995 after the initiation of the Golden Card Project, and 217 million in 1997.

⁹⁰ Worthington, page 326 (Exhibit US-21). Indeed, while the trade value of bank cards totaled RMB 4.85 trillion in June 2001, an increase of 224 percent from the previous year, the value of consumer bank card spending increased only 28.6 percent.

⁹¹ "Credit Card Project's Milestone," *China Daily* (Nov. 18, 2003), available at: http://www.chinadaily.com.cn/en/doc/2003-11/18/content_282634.htm (Exhibit US-24).

⁹² Worthington, page 327 (Exhibit US-21).

69. The payment card system was inefficient and fragmented, and limited to local regional transactions. Chinese banks' independent and uncoordinated efforts undermined the efficacy of payment card use. Bank cards were inconvenient for individual consumers to use because they were not widely accepted by merchants, and the networks' ad hoc development resulted in some merchants having multiple terminals and others having none.⁹³ Additionally, consumers could access cash and purchase items only from the POS terminals bearing their respective bank's logo.⁹⁴ Incompatibility between the various bank networks also prevented cross-bank or inter-bank transactions at the national level.⁹⁵

70. Instead of allowing these market inefficiencies to be remedied with the opening of its market to competition, including from foreign suppliers of EPS consistent with its WTO commitments, the Chinese government took steps to consolidate the industry under a domestic champion. First, in January 2001, the PBOC issued a series of measures that standardized bank cards and mandated the use of the "UnionPay" logo.⁹⁶ Second, in March 2002, the PBOC approved and authorized the establishment of CUP,⁹⁷ a private limited liability corporation whose shares were primarily held by four of China's state-owned commercial banks.⁹⁸ The Golden Card Centers were merged, and their existing assets were converted into equity in the new company.⁹⁹ The purpose of CUP was described in the company's "Notification of Business License Approval and Issuance" as follows:

To establish and operate a single nationwide inter-bank card information and switching network, to provide advanced electronic payment technologies and specialized services in connection with the inter-bank bank card information switching, and to engage in bankcard technological innovation; to manage and operate the brand of "UnionPay", to formulate the code and technical standards

⁹³ "Strong Measures to be Taken to Achieve the Target of Connecting Bank-Card Networks This Year." People's Bank of China (March 27, 2002), available at: <http://www.pbc.gov.cn/publish/english/955/1965/19655.html> (Exhibit US-25).

⁹⁴ "Strong Measures to be Taken to Achieve the Target of Connecting Bank-Card Networks This Year." People's Bank of China (March 27, 2002), available at: <http://www.pbc.gov.cn/publish/english/955/1965/19655.html> (Exhibit US-25).

⁹⁵ "Strong Measures to be Taken to Achieve the Target of Connecting Bank-Card Networks This Year." People's Bank of China (March 27, 2002), available at: <http://www.pbc.gov.cn/publish/english/955/1965/19655.html> (Exhibit US-25).

⁹⁶ See also "Central Bank Introduces Bankcard Network Logo," *People's Bank of China Press* (January 13, 2002), available at: <http://www.pbc.gov.cn/publish/english/955/1961/19616/19616.html> (Exhibit US-26).

⁹⁷ The People's Bank of China, The Reply of the People's Bank of China on the Opening of China UnionPay Co., Ltd., Yin Fu No. [2002] 64, para.1 (Exhibit US-27). ("We approve the opening of China UnionPay Co. Ltd and the Articles of Association of China UnionPay Co., Ltd.")

⁹⁸ Tianle Chang, "Trump Card Played to Link Banks Nationwide." *China Daily* (Mar. 27, 2002) (Exhibit US-28). The founding shareholders included the Industrial and Commercial Bank of China, the Agricultural Bank of China, the Bank of China, and the China Construction Bank.

⁹⁹ Tianle Chang, "Trump Card Played to Link Banks Nationwide." *China Daily* (Mar. 27, 2002) (Exhibit US-28).

for inter-bank card transactions, to mediate and arbitrate any business disputes arising out of inter-bank transactions, to organize trainings for the industry, business seminars and international exchange programs, and to conduct related researches and consulting services; and to conduct such other businesses as may be approved by the People's Bank of China.¹⁰⁰

71. Starting with an initial endowment of over RMB 130 million, CUP completed the deployment of a nationwide cross-bank and cross-region electronic payment network.¹⁰¹ Aggressively promoted by the Chinese government, CUP grew exponentially: just two years after its initiation, CUP-compatible ATMs accounted for nearly 99 percent of the 70,000 ATMs installed in the country, an increase from about half of the total 40,000 ATMs installed in 2002; similarly, CUP-compatible bank cards accounted for about 48 percent of the total 770 million cardholders in the country, growing from just 21 percent of 495 million in 2002.¹⁰²

72. A fundamental purpose of CUP explicitly set out in the company's Articles of Association is to "promote the rapid development of China's bank card industry."¹⁰³ The Articles of Association set out the scope of the company's business and provide a clear picture of the monopoly structure in terms nearly identical to the Chinese government's approval and authorization notification:

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 card information and switching network; (2) to provide advanced electronic payment technologies and specialized services in connection with the inter-bank bank card information switching; (3) 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 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 to conduct related research and consulting services; and (7) to conduct such other businesses as may be approved by the People's Bank of China.¹⁰⁴

73. From its inception, China UnionPay was envisioned not only as a means to create a uniform national platform for electronic payment services, but also as a homegrown company championing a national brand. Members of the PBOC and CUP's executive board have

¹⁰⁰ Shanghai Municipal Administration for Industry and Commerce, Notification of Business License Approval and Issuance for China UnionPay Co., Ltd. March 19, 2002 (Exhibit US-29).

¹⁰¹ Marina Yue Zhang & Mark Dodgson, 215 HIGH-TECH ENTREPRENEURSHIP IN ASIA: INNOVATION, INDUSTRY, AND INSTITUTIONAL DYNAMICS IN MOBILE PAYMENTS, Edward Elgar Publishing Limited (2007) (Exhibit US-30).

¹⁰² Zhang & Dodgson, at page 216 (Exhibit US-30).

¹⁰³ The Articles of Association of China UnionPay Co., Ltd., Article 11 (Exhibit US-20).

¹⁰⁴ The Articles of Association of China UnionPay Co., Ltd., Article 12 (Exhibit US-20).

repeatedly reinforced this point. For example, in remarks at the Nation Brand Forum, CUP's former president Wan Jianhua argued that China should act in its own "national interest," and therefore that "China's national enterprises should be concerned with developing their own national brands."¹⁰⁵ Echoing Wan, Xu Luode, CUP's current President, stated that CUP had a responsibility in addition to its "historic mission" to "develop its own brand, and thus take a leadership role in contributing to China's bank card industry."¹⁰⁶ The Chinese government has taken a deep interest in the development and progress of CUP,¹⁰⁷ and the corporation has hired as its top executives key former PBOC officials: CUP President Xu Luode had previously served as the Director General of the PBOC Payment and Clearing Department, the branch that regulates EPS in China, and CUP Chairman Su Ning had been Vice President of the PBOC. Additionally, Premier Wen Jiabao and President Hu Jintao have made special visits to CUP in May 2007 and January 2010, respectively, each touting CUP's ability to build an "independent brand" and encouraging the corporation to "accelerate [its] internationalization process."¹⁰⁸ Indeed, that objective is echoed by CUP's corporate slogan, "CUP used where the Chinese go."

74. With China's accession to the WTO in 2001, the Chinese government worked to build CUP's core capabilities and to prepare it for the arrival of China's deadline to complete liberalization of the financial sector in 2006.¹⁰⁹ The Chinese government's efforts to strengthen CUP coincided with measures that resulted in the systematic exclusion of foreign suppliers of EPS from the market.

¹⁰⁵ Interview with Wan Jianhua, *Economic Daily News* (Nov. 23, 2005) ("所以做民族的品牌没有什么不应该的，各个国家，包括像发达国家。") (Exhibit US-31).

¹⁰⁶ Zou Liang, "CUP President Xu Luode: CUP's long-term goal is creating own bank card brand," *Shanghai Securities News*, available at: http://news.rfidworld.com.cn/2008_6/200862485477595.html (Exhibit US-32). See also "CUP Monopoly? 银联垄断" *New Express Editor 新快报编辑* (March 8, 2011), available at: <http://bank.engold.org/c/2011-03-08/c235088.html> (Exhibit US-33) ("Many countries in the world do not have their own clearing systems: if they don't use VISA, then they use Mastercard. It's already been very difficult for us to develop our own brand.")

世界上很多国家都没有自己清算网络了，不是用VISA，就是用MASTER，我们搞了一个自己的品牌，已经很难了。)

¹⁰⁷ "About Us," China UnionPay, available at: http://en.unionpay.com/comInstr/aboutUs/file_4912292.html (Exhibit US-34) ("The Chinese government has paid close attention to UnionPay since its establishment.").

¹⁰⁸ "About Us," China UnionPay, available at: http://en.unionpay.com/comInstr/aboutUs/file_4912292.html (Exhibit US-34).

¹⁰⁹ See Chen Gang, "China building its own bankcard brand," *Xinhua Net*, available at: http://news.xinhuanet.com/english/2005-06/10/content_3068993.htm (Exhibit US-35) ("When China fully opens its financial market at the end of 2006, China's bankcard industry will face heated competition with foreign brands, so the establishment of China's own bankcard brand is really important for domestic industry to become more competitive"); see also Chan Kah Khuen, "Payment Service Industry in China" (July 29, 2005), available at: <http://www.innovar.com.sg/Archives/Payment%20Service%20Industry%20in%20China-29Jul05.pdf> (Exhibit US-36).

75. Locked out of China's market for processing card-based transactions denominated and paid in RMB, foreign EPS suppliers have been confined to operating in the comparatively insignificant market of processing card-based transactions dealing with foreign currencies. Even this market, however, is shrinking rapidly due to the Chinese government's policies and CUP's monopoly. By 2010, CUP had grown its network outside of China, and CUP cards could be used in well over 100 countries, including in Australia, Canada, Malaysia, Singapore, the United Arab Emirates, and the United States.¹¹⁰

76. In the years since its inception in 2002, CUP has emerged as a dominant domestic and international player in the EPS market. CUP controls the merchant services network and owns half of the POS terminals in China.¹¹¹ In 2007, just five years after CUP was created, PBOC reported on the company's explosive growth and its mammoth transaction volume (placing it then fourth within the world).¹¹² Because of its success, CUP briefly considered an initial public offering ("IPO") in 2008, with President Xu Luode stating that he remained open to considering an IPO again if the conditions were right.¹¹³ China continues to sustain CUP's growth and to maintain a regulatory environment that has entrenched CUP's hold over the Chinese payment card market.

C. The U.S. Panel Request Identifies the Specific Measures of China That Maintain CUP's Monopoly on the Supply of EPS and that Affect the Supply of EPS By Foreign Suppliers

77. In addition to the narrative description of China's measures that maintain CUP's monopoly on the supply of EPS and that affect the supply of EPS by foreign suppliers, the U.S. panel request enumerated separate instruments.¹¹⁴ The U.S. panel request identifies the following:

- ***Requirements that mandate the use of CUP and/or establish CUP as the sole supplier of EPS for all domestic transactions denominated and paid in RMB.*** China imposes requirements that all transactions denominated and paid in RMB in China be processed and cleared in RMB through CUP, and that where there is a choice, all domestic transactions on dual currency cards be routed in RMB through CUP.¹¹⁵

¹¹⁰ "China UnionPay extends coverage globally" *China View*, available at: http://news.xinhuanet.com/english/2006-02/04/content_4133801.htm (Exhibit US-37).

¹¹¹ Louise Naughton, "Rural areas key to Chinese growth," 450 *Cards International*, 21, 21 (2010) (Exhibit US-38).

¹¹² PBOC 2007 China Payment System Development Report, pages 59-60 (Exhibit US-15).

¹¹³ "China UnionPay will not take in foreign shareholders; considering IPO – report," *Xinhua Newsfeed*, May 28, 2008, available at: http://www.quamnet.com/newscontent.action?articleId=850421&listSectionCode=NEW_IPO (Exhibit US-39).

¹¹⁴ U.S. Panel Request, pages 2-4.

¹¹⁵ U.S. Panel Request, pages 2-4. As will be explained further in the U.S. first submission, the United States understands that these requirements may be imposed through, *inter alia* Circular of the People's Bank of

- **Requirements on issuers that payment cards issued in China bear the CUP logo.** China imposes requirements that any bank cards¹¹⁶ issued in China for RMB purchases in China, as well as any dual currency cards issued in China, must bear the CUP logo. In practice, this means that issuers must pay CUP for access to the CUP system.¹¹⁷
- **Requirements that all ATM and POS terminals in China accept CUP cards.** China requires that all ATM, merchant card processing equipment, and point-of-sale terminals

China on Promulgation of Opinions on Implementation of Joint Work in Bank Card Interoperability in 2001 (Yinfa [2001] 37), issued on 19 February 2001 (“Document No. 37”) (Exhibit US-40); Circular on Uniform Use of CUP Logo and its Holographic Label for Anti-Counterfeiting by the People’s Bank of China (Yinfa [2001] 57), issued on 13 March 2001 (“Document No. 57”) (Exhibit US-41); Opinions on Bank Card Interoperability Related Work in 2002 by the People’s Bank of China (Yinfa [2002] 94), issued on 5 April 2002 (“Document No. 94”) (Exhibit US-42); Circular Regarding Issues Concerning Bank Card Interoperability Related Work by the People’s Bank of China (Yinfa [2002] 272), issued on 29 August 2002 (“Document No. 272”) (Exhibit US-43); Announcement of Clearing Arrangements Provided by Banks in Relation to Individuals’ Deposits, Exchanges, Bank Card and Remittance in RMB in Hong Kong (PBOC Announcement [2003] 16), issued on 19 November 2003 (“Document No. 16”) (Exhibit US-44); Circular on Regulating the Administration of Foreign Currency Bank Cards by the State Administration of Foreign Exchange Circular (Huifa [2004] 66), issued on 30 June 2004 (“Document No. 66”) (Exhibit US-45); Announcement of Clearing Arrangements Provided by Banks in Relation to Individuals’ Deposits, Exchanges, Bank Cards and Remittance in RMB in Macao (PBOC Announcement [2004] 8), issued on 3 August 2004 (“Document No. 8”) (Exhibit US-46); Notice of the People’s Bank of China Concerning Relevant Issues on Accepting and Using Renminbi Bank Cards in Border Areas (Yinfa [2004] 219), issued on 21 September 2004 (“Document No. 219”) (Exhibit US-47); Circular Regarding Issues Concerning Individual RMB Business Handled by Banks in Mainland China and Banks in Hong Kong and Macao by the People’s Bank of China (Yinfa [2004] 254), issued on 28 October 2004 (“Document No. 254”) (Exhibit US-48); Document No. 103 (Exhibit US-1)); Guiding Opinions of the People’s Bank of China on Regulating and Promoting the Development of Bank Card Acceptance Market (Yinfa [2005] 153), issued on 16 June 2005 (“Document No. 153”) (Exhibit US-49); The Opinions of the Standing Office of the People’s Bank of China on the Circular on Strengthening the Safety Management of Bankcards and Preventing and Fighting Crimes in Bank Cards by the People’s Bank of China, the China Banking Regulatory Commission, the Ministry of Public Security and the State Administration for Industry and Commerce (Yinfa [2009] 149), issued 1 August 2009 (“Document No. 149”) (Exhibit US-50); Notice of the State Administration of Foreign Exchange on the Management of Foreign Currency Bank Cards [2010] 53, issued 11 October 2010 (“Document No. 53”) (Exhibit US-51); Notice of the China Banking Regulatory Commission on the Issues Concerning Wholly Foreign-funded and Chinese-foreign Equity Joint Banks in Conducting the Bank Card Business (Yin Jian Fa [2007] 49), issued 6 June 2007 (“Document No. 49”) (Exhibit US-62).

¹¹⁶ U.S. Panel Request, pages 2-4. As will be explained further in the U.S. first submission, the United States understands that these requirements may be imposed through, *inter alia*, Measures for the Administration of Bank Card Business by the People’s Bank of China (Yinfa [1999] 17), issued on 27 January 1999 (“Document No. 17”) (Exhibit US-52), Document No. 17, Article 5, states that “Bank cards are classified into credit cards and debit cards” and “Bank cards may be classified into RMB cards and foreign currency cards.” In turn, Document No. 17 provides that “Debit cards” include “cards for transferring accounts... cards for special purpose and stored value cards (see Document No. 17, Articles 7-10) (Exhibit US-52).

¹¹⁷ U.S. Panel Request, pages 2-4. As will be explained further in the U.S. first submission, the United States understands that these requirements may be imposed through, *inter alia*, Document No. 37; Document No. 57; Document No. 94; Document No. 272; Circular on Further Improving Bank Card Interoperability Related Work by the People’s Bank of China (Yinfa [2003] 129), issued on 2 July 2003 (“Document No. 129”) (Exhibit US-53); Document No. 219 (Exhibit US-47).

in China be capable of accepting CUP cards. There is no equivalent requirement for other non-CUP cards.¹¹⁸

- **Requirements on acquiring institutions to post the CUP Logo and be capable of accepting all bank cards bearing the CUP logo.** China requires that all acquiring institutions in China post the CUP logo and be capable of accepting all bank cards bearing the CUP logo.¹¹⁹
- **Broad prohibitions on the use of non-CUP cards.** China maintains broad prohibitions on the use of non-CUP cards for cross-region or inter-bank (cross-bank) transactions. China also requires that all inter-bank transactions for all bank cards be handled through CUP.¹²⁰
- **Requirements in China, Macao, and Hong Kong.** China also requires that CUP be used to handle all RMB transactions in Macao or Hong Kong using bank cards issued in China. In addition, China also requires that CUP be used to handle any RMB transactions in China using RMB cards issued in Hong Kong or Macao.¹²¹

D. Requirements that Mandate use of CUP for RMB Transactions in China and/or Help Establish CUP as the Exclusive Supplier of EPS for RMB Transactions in China

78. The U.S. panel request identified the measures of concern – the requirements imposed by China, and the instruments through which such requirements are imposed. In this section, and as may be further elaborated in the U.S. first submission, the United States explains how these identified measures operate. Central to China's maintenance of CUP's monopoly are requirements that mandate the use of CUP for RMB transactions in China and that help to establish CUP as the exclusive supplier of EPS for RMB transactions in China. The web of measures issued between 2001 and 2010 affect every aspect of the electronic payment system for card-based transactions and all participants in a card-based electronic payment transaction, including issuers, acquiring institutions, merchants, and suppliers of EPS.

¹¹⁸ U.S. Panel Request, pages 2-4. As will be explained further in the U.S. first submission, the United States understands that these requirements may be imposed through, *inter alia*, Document No. 17 (Exhibit US-52); Document No. 37 (Exhibit US-40); Document No. 94 (Exhibit US-42); Document No. 272 (Exhibit US-43).

¹¹⁹ U.S. Panel Request, pages 2-4. As will be explained further in the U.S. first submission, the United States understands that these requirements may be imposed through, *inter alia*, Document No. 94 (Exhibit US-42); Document No. 272 (Exhibit US-43); Document No. 153 (Exhibit US-49); Document No. 149 (Exhibit US-50).

¹²⁰ U.S. Panel Request, pages 2-4. As will be explained further in the U.S. first submission, the United States understands that these requirements may be imposed through, *inter alia*, Document No. 37 (Exhibit US-40); Document No. 57 (Exhibit US-41); Document No. 94 (Exhibit US-42); Document No. 272 (Exhibit US-43).

¹²¹ U.S. Panel Request, pages 2-4. As will be explained further in the U.S. first submission, the United States understands that these requirements may be imposed through, *inter alia*, Document No. 16 (Exhibit US-44); Document No. 8 (Exhibit US-46); Document No. 219 (Exhibit US-47); Document No. 254 (Exhibit US-48).

79. In 2001 it was evident that the People's Bank of China was taking steps to create a monopoly for CUP. PBOC issued a requirement that “[b]y 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.”¹²² In that same measure, PBOC specified that:

Starting this year, all commercial banks shall arrange the replacement of all bank cards which do not conform to the unified requirements and the CUP logo usage requirements and will basically complete the work by the end of 2003. Starting in 2004, all bank cards not bearing a CUP logo will not be used for cross-region or inter-bank transactions.¹²³

80. That measure also sets forth a requirement that all “[c]ommercial banks which have opened bank card business in China must join the nationwide bank card inter-bank exchange network, to complete the interoperability of its bank card business processing system and nationwide bank card inter-bank processing network.”¹²⁴

81. Also in 2001, through Document No. 57, PBOC imposed several requirements “to further promote the construction of the ‘Golden Card Project,’ as approved by the State Council.” In particular, PBOC stated that “it is decided to launch the unified CUP logo... on bank cards with RMB settlement function issued by all commercial banks.”¹²⁵

82. Document No. 57 imposes requirements mandating that payment cards bear the CUP logo:

All bank cards issued by commercial banks solely for domestic use must bear the CUP logo at the specified position at the lower right corner on the front of the cards, and all RMB credit cards issued solely for domestic use must also bear the CUP holographic anti-counterfeiting logo at the specified position at the lower right corner on the front of the cards. Commercial banks have the discretion to decide whether to place the CUP holographic logo on their RMB debit cards issued solely for domestic use, but shall not use any anti-counterfeit logo other than the CUP holographic anti-counterfeit logo.¹²⁶

¹²² Document No. 37, Article 1, Section 1.2(i) (Exhibit US-40).

¹²³ Document No. 37, Article 2, Section 2.2(i) (Exhibit US-40).

¹²⁴ Document No. 37, Article 3, Section 3.1(i) (Exhibit US-40).

¹²⁵ Document No. 57, Preamble (Exhibit US-41).

¹²⁶ Document No. 57, Article 1 (Exhibit US-41).

All 'dual account' bank cards issued by any commercial banks that can be used both in China and abroad must bear the unified CUP logo at the specified position at the upper right corner on the front of the cards.¹²⁷

83. Document No. 57 also specifies that cards must comply with certain "Business Specifications for Interoperable Service of Bank Cards and relevant technical standards" – standards that are unique and specific to CUP:

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.¹²⁸

84. Document No. 57 further provides an additional admonishment that "all commercial banks shall take the job of promoting CUP logo use and acceptance seriously and gradually reduce the role of their own bank card brands in the market" and that "[s]tarting January 1 2004, all POS terminals and merchants in the bank card acceptance market must have the CUP logo posted."¹²⁹

85. In addition, Document No. 57 requires that "Regional bank card interoperability logos produced and designed regionally shall be gradually abolished" and "[s]tarting January 1, 2002, no bank cards shall be allowed to bear any regional interoperability logo" and, finally, 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."¹³⁰

86. By 2004, the requirement that all domestic currency payment card transactions be processed by CUP was firmly in place. All domestic transactions for all domestic cards are required to be processed and cleared in RMB through domestic clearance channels (*i.e.*, CUP), and where there is a choice all domestic transactions on dual currency cards must be routed in RMB through CUP. Specifically, Document No. 66 provides that "[d]omestic card transactions within China shall, after the deduction of the amount of cash in any foreign currency withdrawn over the counter, be settled in Renminbi through the domestic clearing channel. Any overdraft arising from domestic transactions shall be paid by the holder of the card in Renminbi."¹³¹

¹²⁷ Document No. 57, Article 2 (Exhibit US-41).

¹²⁸ Document No. 57, Article 3 (Exhibit US-41).

¹²⁹ Document No. 57, Article 5 (Exhibit US-41).

¹³⁰ Document No. 57, Article 6 (Exhibit US-41).

¹³¹ Document No. 66, Article 5.2 (Exhibit US-45).

87. Similarly, Document No. 66 established a requirement that CUP and only CUP may provide EPS with respect to all RMB-denominated transactions:

China Unionpay Joint Stock Co., Ltd. (hereinafter referred to as “China Unionpay”) shall arrange for the clearing in Renminbi in connection with the domestic transactions under domestic and foreign currency cards. The issuing financial institutions must submit the card BINs of domestic and foreign currency cards to China Unionpay for download by acquiring financial institutions from the platform of China Unionpay. The acquiring financial institutions shall make proper system setup for bank cards, under which, Renminbi cards shall precede others when being read. Each issuing financial institution shall, on a monthly basis, submit for archival purpose to China Unionpay the amount of transactions processed by mistake or mis-switch and the list of the acquiring institutions making such mistake or mis-switch.¹³²

88. CUP and only CUP is allowed to provide EPS with respect to all RMB-denominated transactions in China. Separate and apart from Document No. 66, other measures issued by PBOC, in 2005 and later, reinforced CUP's role as the exclusive supplier of EPS for processing domestic payment card transactions. For example, Document No. 153 identifies CUP as “the domestic clearance organization which specializes in the RMB bank card inter-bank information routing and exchange.”¹³³ In addition, Document No. 153 is unequivocal that “No third party service provider shall engage in bank card information exchange services.”¹³⁴ Elsewhere that measure specifies that “when dual currency credit cards and debit cards are used in Hong Kong, Macao and other countries/regions where the CUP network exists, the Chinese issuing banks should support routing through the CUP network and open RMB accounts related transactions and settlements through the CUP network.”¹³⁵ Finally, PBOC further admonishes that “No organizations should set any obstacles or cause any interference.”¹³⁶

89. Other requirements set forth in Document No. 153 reinforce CUP's role as the sole supplier of EPS. All acquiring institutions must post the CUP logo and be capable of accepting all bank cards bearing the CUP logo.¹³⁷ In addition, the measure 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.”¹³⁸

¹³² Document No. 66, Article 7.3 (Exhibit US-45).

¹³³ Document No. 153, Article 1.2 (Exhibit US-49).

¹³⁴ Document No. 153, Article 1.2 (Exhibit US-49).

¹³⁵ Document No. 153, Article 6 (Exhibit US-49).

¹³⁶ Document No. 153, Article 6 (Exhibit US-49).

¹³⁷ Document No. 153, Article 2 (Exhibit US-49).

¹³⁸ Document No. 153, Article 2.2 (Exhibit US-49).

Similarly, the business specifications and technical standards referred to in Document No. 153 further help to solidify CUP's role as the sole supplier of EPS.

90. Much more recently, China reaffirmed CUP's exclusive role as the provider of EPS for all RMB-denominated transactions in China. In 2010, China issued a regulation that requires that "[d]omestic card transactions inside China shall be settled in RMB through domestic clearing channels" – *i.e.*, CUP.¹³⁹

91. In addition to the measures establishing CUP's monopoly in China, China has also imposed a requirement that CUP supply EPS with respect to transactions in Hong Kong, China. In 2003, PBOC stated "matters in relation to individual RMB bank card clearance shall be organized and handled by the clearance banks and China Union Pay."¹⁴⁰ China imposes a similar requirement for all such transactions in Macao.¹⁴¹

92. Other measures also clearly provide that CUP must be used to process authorized card transactions and also that no supplier of EPS can process a card transaction that is not authorized. Document No. 219 provides that:

A Renminbi card acquiring institution in a border area shall regulate the merchants' execution of contracts, and clarify in the relevant Renminbi card acquisition agreement that no merchant shall use the sales slip, sales settlement slip, the "UnionPay" mark or the POS for the purposes not covered by the acquisition agreement, bring the POS outside the territory for use, authorize a third party to handle the Renminbi card business or transfer such business to the third party, counterfeit another merchant transaction as its own merchant transaction to carry out liquidation with the acquiring institution, or use fictitious POS transaction to draw cash for clients.¹⁴²

93. In addition, Document No. 254 imposes a requirement that CUP be used to handle all RMB transactions in Macao or Hong Kong using bank cards issued in China, and a requirement that CUP be used to handle any RMB transactions in China using RMB cards issued in Hong Kong or Macao.¹⁴³

94. In 2002, China also imposed interoperability requirements to establish CUP as an exclusive supplier of EPS. For example, Document No. 272 provides:

All commercial banks must further specify their measures and working plans for promoting and using bank cards bearing the CUP logo, and must ensure that all

¹³⁹ Document No. 53, Article V.2 (Exhibit US-51).

¹⁴⁰ Document No. 16, Article 6 (Exhibit US-44).

¹⁴¹ Document No. 8, Article 6 (Exhibit US-46).

¹⁴² Document No. 219, Article III (Exhibit US-47).

¹⁴³ Document No. 254, Articles 3, 4, and 17 (Exhibit US-48).

newly issued bank cards conform to the unified requirements of bank cards bearing the CUP logo. Starting on October 1, 2002, all commercial banks shall not issue bank cards that do not bear the CUP logo in cities where they have completed the system transformation, terminal equipment transformation and opening to inter-bank business, and must launch the overall replacement work in relation to all categories of current bank cards that do not bear the CUP logo.¹⁴⁴

95. Document No. 272 established additional requirements for inter-bank or cross-bank transactions, requiring that all such transactions for all bank cards be handled through CUP:

Except the cities in which “the city center model” or “the non-center model” has been adopted to achieve the inter-bank use of bank cards, no new city center is allowed to be built in other cities, nor can “the non-center model” be promoted therein, nor can the method of node extensions for city bank card information exchange centers be adopted therein to achieve inter-bank use of bank cards. All inter-bank transactions of bank cards must be achieved through the internal systems of the commercial banks and the networks of China Unionpay (“UnionPay Networks”).¹⁴⁵

96. Document 94 also established requirements related to the interoperability of bank cards – those bearing the CUP logo. Article 2, entitled “Focus of bank card interoperability related work in 2002” states:

Concerning standardization transformation of terminal equipments such as ATM, POS, etc., for the purpose of improving efficiency of interoperability, further improve development of the bank card processing market, promote interoperability of bank card and popularization and application of bank cards bearing the CUP logo. On this basis, gradually expand the coverage of bank card acceptance, improve service environment and increase the ratio of spending by consumers using bank cards in total retail sales.¹⁴⁶

97. Elsewhere Document No. 94 provides instructions to “carry out implementation of unified business specifications and technical standards,” as provides:

In compliance with the unified arrangement made in the 2001 national bank card work conference, commercial banks shall continue to carry out standardization transformation of branch business process systems and terminal equipment such as ATM, POS etc., and make sure to complete standardization transformation of equipment of those 40 cities where the bank cards bearing the CUP logo are being popularized and promoted. The standardization transformation of bank card business processing systems of all banks and terminal equipments such as ATM,

¹⁴⁴ Document No. 272, Article 3 (Exhibit US-43).

¹⁴⁵ Document No. 272, Article 4.1 (Exhibit US-43).

¹⁴⁶ Document No. 94, Article 2 (Exhibit US-42).

POS etc. in the 40 cities shall be collectively conducted phase by phase in accordance with the unified schedule defined in Appendix 1 hereto.

The transformation of terminal equipment shall be conducted with a system where a bank is responsible for its own equipment. China UnionPay Joint Stock Co., Ltd (China UnionPay) shall be responsible for transformation of the POS equipment which are managed and operated by city centers. The transformation of those POS equipment outsourced to be managed and operated by third parties shall be the responsibility of the bank which originally owned such equipment.

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.”¹⁴⁷

98. Document No. 94 sets out additional interoperability and inter-bank network requirements and responsibilities:

All commercial banks shall be responsible for interoperability related work and business opening, processing system transformation, terminal transformation, promotion and popularization of bank cards bearing the CUP logo and ensure network operation quality in the 300 cities. The local branches of PBOC shall be responsible for organizing and driving forward the interoperation of bank cards and clean-up and rectification of POS equipments in the 100 cities, the specific implementation of which shall be all commercial banks' responsibility. PBOC and the headquarters of commercial banks shall be responsible for organizing and implementing the popularization of bank cards bearing the CUP logo in the 40 cities. China Unionpay shall be responsible for construction, operation, management of inter-bank exchange network of bank cards and industry disciplinary work related to interoperability of bank cards.¹⁴⁸

99. Other measures confirm CUP's central role, including with respect to “the administration of overseas business acceptance of bank cards”¹⁴⁹ and for establishing and maintaining a risk

¹⁴⁷ Document No. 94, Article 3.1 (Exhibit US-42).

¹⁴⁸ Document No. 94, Article 4.2 (Exhibit US-42).

¹⁴⁹ Notice of the People's Bank of China on the Relevant Issues concerning Strengthening the Administration of Oversea Business Acceptance of Bank Cards (Yinfa [2007] 273), issued on 6 August 2007 (“Document No. 273”) (Exhibit US-54).

management system in connection with card-based electronic payment transactions.¹⁵⁰ Document No. 149, issued in 2009, confirms the requirement that “[t]he acquiring organizations may not allow the non-CUP and non-PBOC 2.0 pre-payment cards to be accepted at any POS terminals.”¹⁵¹

100. Finally, one of the measures contains an explicit recognition of China's WTO obligations as of 2006 related to electronic payment services. Document No. 103 states in part:

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.¹⁵²

101. Despite this clear acknowledgement in 2005 of the need to open its market, China failed to do so. Indeed, rather than dismantle the CUP monopoly, China has nurtured its domestic champion and introduced reinforcing measures to maintain the CUP monopoly

E. Requirements that Payment Cards Bear the CUP Logo

102. The U.S. panel request identified the measures of concern – the requirements imposed by China, and the instruments through which such requirements are imposed. In this section, and as may be further elaborated in the U.S. first submission, the United States explains how these identified measures operate. China imposes requirements that “bank cards” (which are defined to encompass the range of payment cards that are broadly used in card-based electronic payment transactions)¹⁵³ issued in China for RMB purchases in China, as well as any dual currency cards issued in China, must bear the CUP logo. In practice, this means that issuers of payment cards must have access to the CUP system, and pay CUP for that access.

103. Document No. 57 contains several requirements mandating that payment cards bear the CUP logo:

¹⁵⁰Notice of the People's Bank of China, the China Banking Regulatory Commission, the Ministry of Public Security and the State Administration for Industry and Commerce on Strengthening the Safety Management of Bank Cards and Preventing and Combating Bank Card Crimes (Yinfa [2009] 142), issued 27 April 2009 (“Document No. 142”) (Exhibit US-55) .

¹⁵¹ Document No. 149, Article 2(4)(iii) (Exhibit US-50).

¹⁵² Document No. 103, Article III (Exhibit US-1).

¹⁵³ Document No. 17 specifies that “Bank cards are classified into credit cards and debit cards” and “Bank cards may be classified into RMB cards and foreign currency cards” (Article 5) (Exhibit US-52). Document No. 17 further provides that “Debit cards” include “cards for transferring accounts... cards for special purpose and stored-value cards” (Articles 7-10) (Exhibit US-52).

- “All bank cards issued by commercial banks solely for domestic use must bear the CUP logo at the specified position at the lower right corner on the front of the cards.”¹⁵⁴
- “all RMB credit cards issued solely for domestic use must also bear the CUP holographic anti-counterfeiting logo at the specified position at the lower right corner on the front of the cards.”¹⁵⁵
- “Commercial banks have the discretion to decide whether to place the CUP holographic logo on their RMB debit cards issued solely for domestic use, but shall not use any anti-counterfeit logo other than the CUP holographic anti-counterfeit logo.”¹⁵⁶
- “All ‘dual account’ bank cards issued by any commercial banks that can be used both in China and abroad must bear the unified CUP logo at the specified position at the upper right corner on the front of the cards.”¹⁵⁷

104. Document No. 57 further specifies that payment cards “must comply with the unified ‘Business Specifications for Interoperable Service of Bank Cards’ and relevant technical standards”¹⁵⁸ Document No. 57 requires that “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.”¹⁵⁹ Through this measure, China also mandates the use and promotion of CUP cards, in directing that “[a]ll commercial banks shall take the job of promoting CUP logo use and acceptance seriously and gradually reduce the role of their own bank card brands in the market.”¹⁶⁰ Under Document No. 57, as of January 1 2004, “all POS terminals and merchants in the bank card acceptance market must have the CUP logo posted.”¹⁶¹

105. At the same time, Document No. 57 provides that “Regional bank card interoperability logos produced and designed regionally shall be gradually abolished,” directing that “no bank cards shall be allowed to bear any regional interoperability logo” as of January 1, 2002.¹⁶² Starting January 1, 2004, “the specially engaged merchants of bank cards and terminal

¹⁵⁴ Document No. 57, Article 1 (Exhibit US-41).

¹⁵⁵ Document No. 57, Article 1 (Exhibit US-41).

¹⁵⁶ Document No. 57, Article 1 (Exhibit US-41).

¹⁵⁷ Document No. 57, Article 2 (Exhibit US-41).

¹⁵⁸ Document No. 57, Article 3 (Exhibit US-41).

¹⁵⁹ Document No. 57, Article 3 (Exhibit US-41).

¹⁶⁰ Document No. 57, Article 3 (Exhibit US-41).

¹⁶¹ Document No. 57, Article 5 (Exhibit US-41).

¹⁶² Document No. 57, Article 5 (Exhibit US-41).

equipment such as ATM, POS etc. shall not bear any regional bank card interoperability logo.”¹⁶³

106. Similarly, Document No. 37 provides that by the end of 2001, “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.”¹⁶⁴ Article 2 of Document No. 37 provides that all ATM and 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:

Bank cards issued by all commercial banks with inter-bank usability in China must bear the CUP logo at the specified position on the front of the cards, and all RMB credit cards issued solely for domestic use must also bear the CUP special anti-counterfeiting logo at the specified position, provided that special cards issued solely for specific regions or for specific usage shall not use the CUP logo;

All terminals (such as ATM and POS) which join the nationwide bank card inter-bank processing network must be capable of accepting all bank cards bearing the CUP logo and must post the CUP logo; and

All cards bearing the CUP logo must strictly abide by the unified technical specifications and all bank card issuers must provide corresponding cross-region and inter-bank services pursuant to the unified business specifications.

107. Document No. 129 requires that all newly issued bank cards must bear the CUP logo and “must conform to the unified business specifications and technical standards and must bear the unified CUP logo.”¹⁶⁵ Document No. 219 requires the use of CUP to process authorized card transactions and mandates that no supplier of EPS can process a card transaction that is not authorized (*i.e.*, cards not bearing the CUP logo).¹⁶⁶

108. Document No. 272 details additional requirements relating to the use and promotion of cards bearing the CUP logo, mandating that “all commercial banks” must “further specify their measures and working plans for promoting and using bank cards bearing the CUP logo, and must ensure that all newly issued bank cards conform to the unified requirements of bank cards

¹⁶³ Document No. 57, Article 5 (Exhibit US-41).

¹⁶⁴ Document No. 37, Article 1, Section 1.2(i) (Exhibit US-40).

¹⁶⁵ Document No. 129, Article 3.2 (ii) (Exhibit US-53).

¹⁶⁶ Document No. 219, Article III (“A Renminbi card acquiring institution in a border area shall regulate the merchants’ execution of contracts, and clarify in the relevant Renminbi card acquisition agreement that no merchant shall use the sales slip, sales settlement slip, the “UnionPay” mark or the POS for the purposes not covered by the acquisition agreement, bring the POS outside the territory for use, authorize a third party to handle the Renminbi card business or transfer such business to the third party, counterfeit another merchant transaction as its own merchant transaction to carry out liquidation with the acquiring institution, or use fictitious POS transaction to draw cash for clients.”) (Exhibit US-47).

bearing the CUP logo.”¹⁶⁷ As of October 1, 2002, all commercial banks are prohibited from issuing “bank cards that do not bear the CUP logo in cities where they have completed the system transformation, terminal equipment transformation and opening to inter-bank business.” And for cities where such systems are not in place the commercial banks “must launch the overall replacement work in relation to all categories of current bank cards that do not bear the CUP logo.”¹⁶⁸ Document No. 272 further specifies that “[a]ll inter-bank transactions of bank cards must be achieved through the internal systems of the commercial banks and the networks of China Unionpay (“UnionPay Networks”).”¹⁶⁹

109. Document No. 94 establishes additional requirements relating to “card interoperability” and highlights the importance of the CUP logo requirements to “further improve development of the bank card processing market, promote interoperability of bank card and popularization and application of bank cards bearing the CUP logo.”¹⁷⁰ Document No. 94 references the “unified arrangement made in 2001” and mandates that “commercial banks shall continue to carry out standardization transformation of branch business process systems and terminal equipment such as ATM, POS etc., and make sure to complete standardization transformation of equipment of those 40 cities where the bank cards bearing the CUP logo are being popularized and promoted.”¹⁷¹ China required CUP to transform “the POS equipment which are managed and operated by city centers.”¹⁷²

110. Document No. 94 provides direction to commercial banks that highlights the importance of interoperability for all cards bearing the CUP logo:

All commercial banks shall be responsible for interoperability related work and business opening, processing system transformation, terminal transformation, promotion and popularization of bank cards bearing the CUP logo and ensure network operation quality in the 300 cities. The local branches of PBOC shall be responsible for organizing and driving forward the interoperation of bank cards and clean-up and rectification of POS equipments in the 100 cities, the specific implementation of which shall be all commercial banks' responsibility. PBOC and the headquarters of commercial banks shall be responsible for organizing and implementing the popularization of bank cards bearing the CUP logo in the 40 cities. China Unionpay shall be responsible for construction, operation, management of inter-bank exchange network of bank cards and industry disciplinary work related to interoperability of bank cards.¹⁷³

¹⁶⁷ Document No. 272, Article 3 (Exhibit US-43).

¹⁶⁸ Document No. 272, Article 3 (Exhibit US-43).

¹⁶⁹ Document No. 272, Article 4.1 (Exhibit US-43).

¹⁷⁰ Document No. 94, Article 2 (Exhibit US-42).

¹⁷¹ Document No. 94, Article 3(i) (Exhibit US-42).

¹⁷² Document No. 94, Article 3(ii) (Exhibit US-42).

¹⁷³ Document No. 94, Article 4.2 (Exhibit US-42).

111. Through these measures China imposes requirements that any bank cards issued in China only for RMB purchases in China, as well as any dual currency cards issued in China, must bear the CUP logo. This means that issuers must have access to the CUP system, and pay CUP for that access, and these requirements have served to promote and help establish the exclusive use of CUP cards for RMB purchases in China, as well as any dual currency cards issued in China, for RMB purchases in China.

F. Requirements that ATM, Merchant Card Processing Equipment, and POS Terminals Be Capable of Accepting CUP Cards

112. The U.S. panel request identified the measures of concern – the requirements imposed by China, and the instruments through which such requirements are imposed. In this section, and as may be further elaborated in the U.S. first submission, the United States explains how these identified measures operate. China also imposes requirements that all ATM, merchant card processing equipment, and point-of-sale or “POS” terminals, in China be capable of accepting CUP cards. There is no equivalent requirement for merchants to accept other payment cards.

113. Document No. 76 contains a requirement 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.”¹⁷⁴ In its Appendix, Document No. 76 defines “Unified Network Logo” as follows:

Unified Network Logo is comprised of the unified brand name of the domestic bank cards (namely the Chinese characters of “China UnionPay”) and the symbolized logo of the united network, has been registered with the trademark office, and the ownership and usage management right thereof belongs to the United Association.¹⁷⁵

114. Issued in 2001, Document No. 37 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.”¹⁷⁶ Document No. 37 further specifies that that all ATM and POS terminals in China to be capable of accepting CUP cards:

All terminals (such as ATM and POS) which join the nationwide bank card inter-bank processing network must be capable of accepting all bank cards bearing the CUP logo and must post the CUP logo.¹⁷⁷

¹⁷⁴ Document No. 76, Chapter II, Section 1.2 (Exhibit US-56).

¹⁷⁵ Document No. 76, Appendix (Definition of “Unified Network Logo”) (Exhibit US-56).

¹⁷⁶ Document No. 37, Article 1, Section 1.2(i) (Exhibit US-40).

¹⁷⁷ Document No. 37, Article 1, Section 1.2(i) (Exhibit US-40).

115. Document No. 37 further specifies that “[a]ll cards bearing the CUP logo must strictly abide by the unified technical specifications” and that “all bank card issuers must provide corresponding cross-region and inter-bank services pursuant to the unified business specifications.”¹⁷⁸

116. Similarly, in 2002, Document No. 272 confirmed requirements relating to “system transformation, terminal equipment transformation and opening to inter-bank business” and “that all newly issued bank cards conform to the unified requirements of bank cards bearing the CUP logo.” Document No. 272 requires that “Starting on October 1, 2002, all commercial banks shall not issue bank cards that do not bear the CUP logo in cities where they have completed the system transformation, terminal equipment transformation and opening to inter-bank business, and must launch the overall replacement work in relation to all categories of current bank cards that do not bear the CUP logo.”¹⁷⁹

117. Document No. 94 provides additional direction with respect to “bank card interoperability related work in 2002” related to “standardization transformation of terminal equipments such as ATM, POS, etc., for the purpose of “improving efficiency of interoperability” and “popularization and application of bank cards bearing the CUP logo.”¹⁸⁰ Document No. 94 also details additional requirements regarding “Relevant Work Requirements” and specific directions for “implementation of unified business specifications and technical standards” and mandates that “commercial banks shall continue to carry out standardization transformation of branch business process systems and terminal equipment such as ATM, POS etc.” in order “to complete standardization transformation of equipment.”¹⁸¹ Elsewhere Document 94 speaks in terms of “processing system transformation, terminal transformation, promotion and popularization of bank cards bearing the CUP logo.”¹⁸²

118. As the above measures demonstrate, China imposes a requirement that all ATM, merchant card processing equipment, and point-of-sale or “POS” terminals in China be capable of accepting CUP cards, and there is no equivalent requirement for acceptance of other cards.

G. Requirement that All Acquiring Institutions in China Post the CUP Logo

119. The U.S. panel request identified the measures of concern – the requirements imposed by China, and the instruments through which such requirements are imposed. In this section, and as may be further elaborated in the U.S. first submission, the United States explains how these identified measures operate. China also imposes a requirement that all acquiring institutions in China post the CUP logo and be capable of accepting all bank cards using the CUP logo.

¹⁷⁸ Document No. 37, Article 1, Section 2.1 (Exhibit US-40).

¹⁷⁹ Document No. 272, Article 3 (Exhibit US-43).

¹⁸⁰ Document No. 94, Article 2 (Exhibit US-42).

¹⁸¹ Document No. 94, Article 3.1 (Exhibit US-42).

¹⁸² Document No. 94, Article 4.2 (Exhibit US-42).

120. Document No. 153 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.”¹⁸³

121. Document No. 149, from 2009, provides that “[t]he acquiring organizations may not allow the non-CUP and non-PBOC 2.0 pre-payment cards to be accepted at any POS terminals.”¹⁸⁴

122. Document No. 94 references the need for “transformation of terminal equipments such as ATM, POS, etc.,” in order to improve “efficiency of interoperability, further improve development of the bank card processing market, promote interoperability of bank card and popularization and application of bank cards bearing the CUP logo.”¹⁸⁵ Document No. 94 further specifies requirements pertaining to “standardization transformation of branch business process systems and terminal equipment such as ATM, POS” and provides that “[a]ll commercial banks shall be responsible for interoperability related work and business opening, processing system transformation, terminal transformation, promotion and popularization of bank cards bearing the CUP logo.”¹⁸⁶

123. Through the above measures, China requires that all acquiring institutions in China post the CUP logo and be capable of accepting all bank cards using the CUP logo.

H. Prohibition on the Use of Non-CUP Cards for Inter-bank or Cross-Region Transactions; and Requirement that all Inter-Bank Transactions Must be Handled by CUP

124. The U.S. panel request identified the measures of concern – the requirements imposed by China, and the instruments through which such requirements are imposed. In this section, and as may be further elaborated in the U.S. first submission, the United States explains how these identified measures operate. The constituent documents creating CUP leave no doubt that CUP was to be the exclusive provider of EPS for inter-bank transactions. Indeed, the purpose of CUP was described in the company’s “Notification of Business License Approval and Issuance,” which describes the “Business Scope” as follows:

To establish and operate a single nationwide inter-bank card information and switching network, to provide advanced electronic payment technologies and specialized services in connection with the inter-bank bank card information switching, and to engage in bankcard technological innovation; to manage and operate the brand of “UnionPay”, to formulate the code and technical standards

¹⁸³ Document No. 153, Article 2.2 (Exhibit US-49).

¹⁸⁴ Document No. 149, Section 2(5)(iii) (Exhibit US-50).

¹⁸⁵ Document No. 94, Article 4.2 (Exhibit US-42).

¹⁸⁶ Document No. 94, Article 4.2 (Exhibit US-42).

for interbank card transactions, to mediate and arbitrate any business disputes arising out of inter-bank transactions....¹⁸⁷

125. CUP's Articles of Association clearly reflect the fact that the central purpose of CUP's existence is to operate a single inter-bank card payment card network in China:

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 card information and switching network; (2) to provide advanced electronic payment technologies and specialized services in connection with the inter-bank bank card information switching; (3) 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 card transactions, and to mediate and arbitrate any business dispute s arising out of inter-bank transactions....¹⁸⁸

126. Document No. 37 imposed a requirement that "By the end of this year [2001], 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."¹⁸⁹ Document No. 37 also operates to help establish the exclusive use of CUP for inter-bank transactions in several ways. First, it provides that "all RMB credit cards issued solely for domestic use" and "[b]ank cards issued by all commercial banks with inter-bank usability in China must bear the CUP logo."¹⁹⁰ Second, "[a]ll terminals (such as ATM and POS) which join the nationwide bank card inter-bank processing network must be capable of accepting all bank cards bearing the CUP logo and must post the CUP logo."¹⁹¹ Third, "[a]ll cards bearing the CUP logo must strictly abide by the unified technical specifications and all bank card issuers must provide corresponding cross-region and inter-bank services pursuant to the unified business specifications." Fourth, "[c]ommercial banks which have opened bank card business in China must join the nationwide bank card inter-bank exchange network, to complete the interoperability of its bank card business processing system and nationwide bank card inter-bank processing network."¹⁹² Fifth, banks which have joined the network must operate "in accordance with "Business Specifications for Interoperable Service of Bankcards."¹⁹³ Finally, Document No. 37 imposed a hard deadline prohibiting the

¹⁸⁷ Shanghai Municipal Administration for Industry and Commerce, Notification of Business License Approval and Issuance for China UnionPay Co., Ltd. March 19, 2002 (Exhibit US-29).

¹⁸⁸ The Articles of Association of China UnionPay Co., Ltd., Article 12 (Exhibit US-20).

¹⁸⁹ Document No. 37, Article 1, Section 1.2 (Exhibit US-40).

¹⁹⁰ Document No. 37, Article 2, Section 2.1(i) (Exhibit US-40).

¹⁹¹ Document No. 37, Article 2, Section 2.1(ii) (Exhibit US-40).

¹⁹² Document No. 37, Article 2, Section 2.1(iii) (Exhibit US-40).

¹⁹³ Document No. 37, Article 3, Section 3.1(i) (Exhibit US-40).

use for non-CUP cards for cross-region or inter-bank transactions: “Starting in 2004, all bank cards not bearing a CUP logo will not be used for cross-region or inter-bank transactions.”¹⁹⁴

127. Document No. 57 contains similar CUP logo requirements,¹⁹⁵ and also establishes additional requirements that advance the goal of a single unified network using CUP cards for inter-bank transactions as of 2001: “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.”¹⁹⁶ Document No. 57 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.”¹⁹⁷

128. Document No. 272 also sets out requirements pertaining to the use and promotion of cards bearing the CUP logo and “terminal equipment transformation and opening to inter-bank business” combined with “the overall replacement work in relation to all categories of current bank cards that do not bear the CUP logo.”¹⁹⁸ Document No. 272 also includes an unequivocal declaration, that, as of 2002, all inter-bank transactions for all bank cards must be handled through CUP:

All inter-bank transactions of bank cards must be achieved through the internal systems of the commercial banks and the networks of China Unionpay (“UnionPay Networks”).¹⁹⁹

129. Document No. 94 contains requirements designed to “further improve development of the bank card processing market, promote interoperability of bank card and popularization and application of bank cards bearing the CUP logo.”²⁰⁰

130. As noted earlier, Document No. 94 mandates the “implementation of unified business specifications and technical standards” and “provides [that] commercial banks shall continue to carry out standardization transformation of branch business process systems and terminal equipment such as ATM, POS etc., and make sure to complete standardization transformation of equipment” in order to promote and popularize “bank cards bearing the CUP logo.”²⁰¹

¹⁹⁴ Document No. 37, Article 2, Section 2.2(i) (Exhibit US-40).

¹⁹⁵ Document No. 57, Articles 1-6 (Exhibit US-41).

¹⁹⁶ Document No. 57, Article 3 (Exhibit US-41).

¹⁹⁷ Document No. 57, Article 3 (Exhibit US-41).

¹⁹⁸ Document No. 272, Article 3 (Exhibit US-43).

¹⁹⁹ Document No. 272, Article 4, Section 4.1 (Exhibit US-43).

²⁰⁰ Document No. 94, Article 2 (Exhibit US-42).

²⁰¹ Document No. 94, Article 3 (Exhibit US-42).

Document No. 94 provides that CUP shall be partially responsible for transforming POS equipment and that “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.”²⁰²

131. Thus, as of 2002, nearly a decade ago, in terms of nationwide implementation efforts, Document No. 94 mandated that “All commercial banks shall be responsible for interoperability related work and business opening, processing system transformation, terminal transformation, promotion and popularization of bank cards bearing the CUP logo and ensure network operation quality in the 300 cities.”²⁰³ As for the “other 100 cities,” the local branches of PBOC were “responsible for organizing and driving forward the interoperation of bank cards and clean-up and rectification of POS equipments” and that “PBOC and the headquarters of commercial banks shall be responsible for organizing and implementing the popularization of bank cards bearing the CUP logo in the 40 [other] cities” noted.”²⁰⁴ Finally, Document No. 94 specifies that “China Unionpay shall be responsible for construction, operation, management of inter-bank exchange network of bank cards and industry disciplinary work related to interoperability of bank cards.”²⁰⁵

I. Requirements in China, Macao, and Hong Kong

132. The U.S. panel request identified the measures of concern – the requirements imposed by China, and the instruments through which such requirements are imposed. In this section, and as may be further elaborated in the U.S. first submission, the United States explains how these identified measures operate. China also maintains measures requiring 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.

133. With respect to transactions in Hong Kong, Document No. 16 provides that “matters in relation to individual RMB bank card clearance shall be organized and handled by the clearance banks and China Union Pay....”²⁰⁶ Similarly, for transactions in Macao, Document No. 8 provides that “matters in relation to individual RMB bank card clearance shall be organized and handled by the clearance banks and China Union Pay....”²⁰⁷

134. Finally, Document No. 254 imposes requirements that CUP be used to handle all RMB transactions in Macao or Hong Kong using bank cards issued in China, and a requirement that

²⁰² Document No. 94, Article 3 (Exhibit US-42).

²⁰³ Document No. 94, Article 4 (Exhibit US-42).

²⁰⁴ Document No. 94, Article 4 (Exhibit US-42).

²⁰⁵ Document No. 94, Article 4 (Exhibit US-42).

²⁰⁶ Document No. 16, Article 6 (Exhibit US-42).

²⁰⁷ Document No. 8, Article 6 (Exhibit US-46).

CUP be used to handle any RMB transactions in China using RMB cards issued in Hong Kong or Macao.²⁰⁸

VI. THE U.S. PANEL REQUEST SPECIFIES THAT CHINA’S GATS SCHEDULE INCLUDES BOTH MARKET ACCESS AND NATIONAL TREATMENT COMMITMENTS WITH RESPECT TO “ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS...”

A. The U.S. Panel Request

135. The U.S. panel request identifies specific market access and national treatment commitments that China has undertaken in its GATS Schedule:

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

- “Banking services as listed below: . . . All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts (including import and export settlement)”;
- “Other financial services as listed below: . . . Provision and transfer of financial information, and financial data processing and related software by supplier of other financial services”; and
- “Advisory, intermediation and other auxiliary financial services on all activities listed in subparagraphs (a) through (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.”²⁰⁹

136. Contrary to China’s assertions,²¹⁰ the fact that the United States identifies three separate subsectors in the U.S. panel request does not make the U.S. panel request inconsistent with DSU Article 6.2. Whether the United States could simultaneously prevail on separate claims under three potentially mutually exclusive subsectors in China’s schedule is a substantive legal issue to be decided on the merits based on the evidence and legal arguments presented to the Panel. Identifying potentially mutually exclusive claims in the U.S. panel request is not a failure under Article 6.2 to provide a summary of the legal basis of the complaint. With respect to each of the subsectors identified in the U.S. panel request, China undertook both market access and national treatment commitments for modes (1) and (3) as specified in its Schedule. The commitments for each mode of supply for items (d), (k), and (l) in China’s Schedule are specified therein, and the

²⁰⁸ Document No. 254, Articles 3, 4, and 17 (Exhibit US-48).

²⁰⁹ U.S. Panel Request, pages 1-2.

²¹⁰ China’s Request for a Preliminary Ruling, paras. 2, 9-12.

U.S. panel request thus puts China on notice as to China's market access and national treatment commitments, including the modes of supply, that are before the Panel.

137. China appears to acknowledge the claims that are before the Panel in light of the U.S. panel request, but in addition seeks a detailed legal explanation of exactly how China's measures put it in breach of these commitments.²¹¹ In other words, China concedes that claims are identified in the U.S. panel request, but then seeks more than that. China is looking for precise legal arguments as to exactly how the measures at issue breach these commitments. China is not, however, entitled to see how the United States will present its legal arguments in advance of the U.S. first submission.

138. The United States would further observe that the discussion that follows is not necessary for the Panel to reject China's preliminary ruling request. However, the United States considers that it serves to illustrate that, on its face, the U.S. panel request puts China on notice that it has undertaken market access and national treatment commitments in its Schedule that cover electronic payment services for payment card transactions.

B. China's Schedule of GATS Commitments Covers "All payment and money transmission services, including credit, charge and debit cards..." (item d)

139. In Sector 7B, under the Banking and Other Financial Services heading of its Services Schedule,²¹² China undertook market access and national treatment commitments with respect to "[a]ll payment and money transmission services," which includes the electronic payment services supplied in connection with credit, charge, debit, and other payment card transactions. Sector 7B of China's Services Schedule provides, in relevant part:

²¹¹ China's Request for a Preliminary Ruling, paras. 9-12.

²¹² Section II, 7 (Financial Services), B (Banking and Other Financial Services) of the Schedule (circulated in WT/ACC/CHN/49/Add.2 and WT/MIN(01)/3/Add.2).

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons			
Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
7. FINANCIAL SERVICES			
<p>B. Banking and Other Financial Services (excluding insurance and securities)</p> <p>***</p> <p>d. All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts (including import and export settlement);</p>	<p>(1) Unbound except for the following:</p> <ul style="list-style-type: none"> - Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services; - Advisory, intermediation and other auxiliary financial services on all activities listed in subparagraphs (a) through (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy. <p>(2) None</p> <p>(3) A. <u>Geographic coverage</u> For foreign currency business, there will be no geographic restriction upon accession. For local currency business, ... {w}ithin five years after accession, all geographic restrictions will be removed.</p> <p>B. <u>Clients</u> For foreign currency business, foreign financial institutions will be permitted to provide services in China without restriction as to clients upon accession. For local currency business, within ... five years after accession, foreign financial institutions will be permitted to provide services to all Chinese clients. Foreign financial institutions licensed for local currency business in one region of China may service clients in any other region that has been opened for such business.</p> <p>C. <u>Licensing</u> Criteria for authorization to deal in China’s financial services sector are solely prudential (i.e., contain no economic needs test or quantitative limits on licenses). Within five years after accession, any existing non-prudential measures restricting ownership, operation, and juridical form of foreign financial institutions, including on internal branching and licenses, shall be eliminated.</p> <p>Foreign financial institutions who meet</p>	<p>(1) None</p> <p>(2) None</p> <p>(3) Except for geographic restrictions and client limitations on local currency business (listed in the market access column), foreign financial institution may do business, without restrictions or need for case-by-case approval, with foreign invested enterprises, non-Chinese natural persons, Chinese natural persons and Chinese enterprises. Otherwise, none.</p>	

	<p>the following condition are permitted to establish a subsidiary of a foreign bank or a foreign finance company in China:</p> <ul style="list-style-type: none"> - total assets of more than US \$10 billion at the end of the year prior to filing the application. <p>Foreign financial institutions who meet the following condition are permitted to establish a branch of a foreign bank in China:</p> <ul style="list-style-type: none"> - total assets of more than US \$20 billion at the end of the year prior to filing the application. <p>Foreign financial institutions who meet the following condition are permitted to establish a Chinese-foreign joint bank or a Chinese-foreign joint finance company in China:</p> <ul style="list-style-type: none"> - total assets of more than US \$10 billion at the end of the year prior to filing the application. <p>Qualifications for foreign financial institutions to engage in local currency business are as follows:</p> <ul style="list-style-type: none"> - three years business operation in China and being profitable for two consecutive years prior to the application, otherwise, none. <p>(4) Unbound except as indicated in horizontal commitments.</p>	<p>(4) Unbound except as indicated in horizontal commitments.</p>	
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140. The first column of China’s Services Schedule sets out China’s particular commitments. As indicated in Sector 7B, the services listed include:

- (d) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts (including import and export settlement);

141. Services that are supplied internationally can take various forms. Under the GATS, the “modes” of supply are defined based on the relationship between the origin of the supplier of the

service and the consumer. Four different modes of supply are defined in the GATS.²¹³ When a Member undertakes a commitment on a sector or subsector, it must indicate for each mode of supply what limitations, if any, it maintains on market access and/or national treatment.

142. China undertook both market access and national treatment commitments for modes (1) and (3) with respect to item (d), “All payment and money transmission services, including credit, charge and debit cards...”

143. The second column of China's Services Schedule sets out the terms, limitations, and conditions with respect to this market access commitment related to “All payment and money transmission services, including credit, charge and debit cards...” that China has undertaken. The Second column provides as follows with respect to mode (1):

(1) Unbound except for the following:

- Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;
- Advisory, intermediation and other auxiliary financial services on all activities listed in subparagraphs (a) through (k), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

144. Under the market access commitments for mode 3, China scheduled certain limitations regarding geographic presence, potential clients, and licensing, all of which were to be eliminated within five years after China's accession. The fifth anniversary of China's accession was December 11, 2006. Therefore, after December 11, 2006, China's Services Schedule provides no market access limitations under mode 3 for financial services with respect to electronic payment services.

145. With regard to national treatment restrictions under mode 3 for all payment and money transmission services, China's schedule explicitly provides for no limitations other than the geographic and client restrictions provided for in the market access column. In other words, because China's national treatment restrictions referenced and incorporated its market access limitations, the expiration of those market access restrictions on December 11, 2006 also means there are no longer any national treatment limitations on these services.

146. Nor do China's inscriptions under its horizontal commitments create any limitations on China's commitments in Sector 7B of its specific commitments that would cover the measures

²¹³ The four modes of supply: (1) cross-border (where the services are supplied from the territory of one Member into the territory of another Member); (2) consumption abroad (where the service is supplied to the consumer outside the territory of the Member where the consumer resides); (3) commercial presence; and (4) presence of natural persons of a Member in the territory of another Member. *See* GATS, Art. I:2.

identified in the U.S. panel request. The terms, limitations, conditions, and qualifications scheduled in China's horizontal commitments do not cover Chinese measures that prohibit foreign-invested enterprises from providing electronic payment services. China's inscriptions under its horizontal commitments likewise do not extend to the measures at issue on the provision of electronic payment services in China.²¹⁴

C. EPS Fall Within the Ordinary Meaning of “All payment and money transmission services, including credit, charge and debit cards...” (Item d)

147. The Appellate Body has confirmed that the customary rules of treaty interpretation reflected in Articles 31 and 32 of the Vienna Convention apply to the interpretation of specific commitments in a Member's GATS Schedule.²¹⁵ Article 31(1) of the *Vienna Convention* requires a treaty to be interpreted “in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.” As the Appellate Body has explained, “In order to identify the ordinary meaning, a Panel may start with the dictionary definitions of the terms to be interpreted. But dictionaries alone are not necessarily capable of resolving complex questions of interpretation, as they typically aim to catalogue *all* meanings of words – be those meanings common or rare, universal or specialized.”²¹⁶

148. The Appellate Body has stated that “the structure of the GATS necessarily implies two things. First, because the GATS covers *all* services except those supplied in the exercise of governmental authority, it follows that a Member may schedule a specific commitment in respect of *any* service. Second, because a Member's obligations regarding a particular service depend on the specific commitments that it has made with respect to the sector or subsector within which that service falls, a specific service cannot fall within two different sectors or subsectors. In other words, the sectors and subsectors in a Member's Schedule must be mutually exclusive.”²¹⁷

149. EPS are at the center of all payment card transactions and without these services the transactions could not occur. EPS fall within the ordinary meaning of payment and money transmission services, within item (d) of China's Schedule. The language of item (d) itself makes this abundantly clear. First, as detailed extensively in this submission and described in greater detail below, EPS involve the services through which transactions involving payment cards are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated. EPS clearly fall 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

²¹⁴ China's Services Schedule, Part I: Horizontal Commitments, WT/MIN(01)/3/Add.2, page 2.

²¹⁵ Appellate Body Report, *United States – Gambling Services*, WT/DS285/AB/R, paras. 159-160.

²¹⁶ Appellate Body Report, *United States – Gambling Services*, WT/DS285/AB/R, para. 164 (footnotes omitted).

²¹⁷ Appellate Body Report, *United States – Gambling Services*, WT/DS285/AB/R, para. 180.

line with the recognition that EPS are integral to the processing of credit, charge, debit and other payment card-based electronic payment transactions, and without these services, payment card transactions could not occur. EPS suppliers such as Visa, MasterCard, and American Express are names recognized around the world as credit cards and charge cards. The reference to debit cards covers suppliers of EPS for debit card transactions like Visa, MasterCard, Discover, First Data, Pulse, NYCE, STAR, and PLUS.

1. “All payment and money transmission services”

150. The ordinary meanings of the key terms, as reflected in definitions from the Oxford English Dictionary, are:

- **payment 1** An act, or the action or process, of paying
- **pay . . . 2** *v.t.* **a** Give (a person) money etc. that is due for goods received, a service done, or a debt incurred; remunerate. Also, hand over or transfer (money etc.) in return for something
- **money . . . 1** A current medium of exchange in the form of coins and (in mod. use) banknotes; coins and banknotes collectively. . . . **b** Any objects or material serving the same purposes as coin.
- **transmission . . . 1** Conveyance or transfer from one person or place to another; the action or process of passing from one person, organism, generation, etc., to another, as by personal contact, stored information, genetic inheritance, etc.²¹⁸

151. Specialized financial sources provide similar definitions. The Bank for International Settlements’ (“BIS”) glossary of terms used in payments and settlements systems defines “payment” as:

the payer’s transfer of a monetary claim on a party acceptable to the payee. Typically, claims take the form of banknotes or deposit balances held at a financial institution or at a central bank.²¹⁹

152. Other definitions include “[a] transfer of funds in any form between two parties;”²²⁰ “[t]ransfer of money from one party to another with the assent of both parties;”²²¹ and “transfer of funds to settle a debt.”²²²

²¹⁸ *New Shorter Oxford English Dictionary*, pages 1813, 2129, 2130, and 3372 (1993) (Exhibit US-57).

²¹⁹ Bank for International Settlements, A glossary of terms used in payments and settlements systems, page 37 (Mar. 2003) (Exhibit US-58).

²²⁰ American Bankers Association, *Banking Terminology*, page 262 (Exhibit US-59).

²²¹ John V. Terry, *Dictionary for Business & Finance*, page 240 (1990) (Exhibit US-60).

153. The definitions of “payment” and “money transmission” alike establish that item d covers the action of transferring money from one person to another. Financial sector sources also confirm that EPS qualify as payment or money transmission services.

154. The BIS 2003 Red Book includes a report on “Payment systems in the United States,” and refers to Visa and MasterCard as “privately operated payment systems” and the “two largest bank card networks operating in the United States.”²²³

155. As described in detail in this submission, electronic payment services involve the services through which transactions involving payment cards are processed and through which transfers of funds between institutions participating in the transactions are managed and facilitated. In this way, suppliers of EPS provide “payment” services in as much as they manage and facilitate the “act, or the action or process, of paying,” which entails “{g}iv{ing} (a person) money etc. that is due for goods received, a service done, or... transfer{ing} (money etc.) in return for something.” EPS suppliers likewise engage in “money transmission” services as they facilitate, manage, and enable, the “conveyance or transfer from one person or place to another” or engage in “the action or process of passing from one person” (i.e., from the cardholder to the merchant, and the issuing institution to the acquiring institution), “money” or a “current medium of exchange in the form of ... banknotes.”

2. “Credit, charge and debit cards”

156. “[C]redit, charge and debit cards” are explicitly included in the definition of all payment services. The description of item d itself expressly and unequivocally provides that it “include{s} credit, charge and debit cards.” EPS are integral to the processing of credit, charge, debit and other payment card-based electronic payment transactions, and without these services, payment card transactions could not occur. Merchants would not have the confidence to accept a piece of plastic as payment without the authorization received from the EPS, and funds would not reach their proper destinations without the payment instructions generated by an EPS.

157. The BIS 2003 Red Book, which includes a report on “Payment systems in the United States,” includes Visa and MasterCard in its section on “other institutions that provide payment services.” The report includes among “privately operated payment systems” the “nationwide credit and debit card networks.”²²⁴ The BIS 2003 Red Book states that “other organizations involved in providing payment services include... bank card companies...”²²⁵ In turn, “bank card companies” are described as follows:

Bank card companies license credit and debit card trademarks to financial institutions, authorize transactions and provide certain clearing and settlement

²²² Carolyn N. Gipson, *The McGraw-Hill Dictionary of Internal Trade and Finance*, page 291 (Exhibit US-61).

²²³ BIS Red Book, “Payment Systems in the United States,” *Introduction*, page 433 (Exhibit US-11).

²²⁴ BIS Red Book, “Payment Systems in the United States,” *Introduction*, page 433 (Exhibit US-11).

²²⁵ BIS Red Book, “Payment Systems in the United States,” Section 1.3.3, page 437 (Exhibit US-11).

services for transactions between banks. Visa and MasterCard are the two largest bank card networks operating in the United States, but many smaller bank card networks are common throughout the United States. Other card-issuing companies include national “travel and entertainment” card issuers and a number of major retailers that issue cards to their customers.²²⁶

158. The U.S. Federal Financial Institutions Examination Council's “Retail Payment Systems, IT Examination Handbook (“FFIEC Handbook”) states that card-based electronic payments typically fall into one of three categories, depending on the timing of the payment. First, “pay later” payments occur after the receipt of the goods or services and typically refer to credit payments. A credit card enables a consumer to access a credit line account at a financial institution. Second, “pay now” payments occur when the goods or services are received and generally are associated with debit payments. Debit card payments are related to an existing transaction account at a financial institution. Finally, “pay before” or “pre-pay,” refers to payments for goods or services with prepaid or stored-value cards, which are loaded with buying power before the purchase of goods or services occurs.²²⁷ The account associated with the pre-paid debit card may be the liability of a financial institution.

159. The BIS 2003 Red Book includes payment cards in its description of “payment media and instruments” and in describing “card payments,” the BIS 2003 Red Book explains that “credit cards” are “the most frequently used electronic payment instrument in the United States” and that “these cards combine a payment instrument with a credit arrangement.”²²⁸ Among the processors of credit card transactions identified specifically are Visa, MasterCard, Discover, American Express as well as limited-use proprietary cards, such as those issued by retail stores and oil and telephone companies.²²⁹

160. The BIS 2003 Red Book includes payment cards in its description of “payment media and instruments” and in describing “card payments,” the BIS 2003 Red Book includes an explanation of debit card networks and processors of debit card transactions. Specifically, it notes that “approximately 4 billion PIN-based transactions were effected in 2000, processed primarily by Star, Interlink, NYCE and Pulse. Approximately 5.5 billion signature-based transactions were effected in 2000. The sole processors of signature-based debit transactions in the United States during 2000 were Visa and MasterCard.”²³⁰

161. More broadly, the BIS 2003 Red Book provides a description of the EPS network for processing electronic payment card transactions. It explains that in the United States, inter-bank

²²⁶ BIS Red Book, “Payment Systems in the United States,” Section 1.3.3, page 438 (Exhibit US-11).

²²⁷ Federal Financial Institutions Examination Council (FFIEC), “Retail Payment Systems, IT Examination Handbook,” February 2010, p. 17 (Exhibit US-12).

²²⁸ BIS Red Book, “Payment Systems in the United States,” Section 1.3.3, page 438 (Exhibit US-11).

²²⁹ BIS Red Book, “Payment Systems in the United States,” Section 1.3.3, page 438 (Exhibit US-11).

²³⁰ BIS Red Book, “Payment Systems in the United States,” Section 1.3.3, page 438 (Exhibit US-11).

payments are processed and settled primarily through” certain mechanisms. Included in its list of processors are “card networks.” According to the 2003 Red Book:

Credit card, ATM and POS associations provide communications, transaction authorization and interbank financial settlement for their member financial institutions. Bank card networks are typically owned by a group of financial institutions that provide initial capital and establish uniform operating policies, procedures and controls. Some major networks are owned by non-bank companies. The largest credit card and signature-based debit card networks in the United States are Visa and MasterCard. American Express and Discover Card are also major credit card networks. There were 45 ATM and POS networks operating in the United States during 2000, although consolidation is occurring among existing networks. Concord EFS National Bank and First Data Merchant Services Corporation are the largest providers of ATM and debit card services based on PINs.²³¹

162. The descriptions above are in harmony with the BIS 2003 Red Book’s description of the “operation of card networks”:

Credit card, ATM and POS associations sort and route transaction data from acquiring banks to issuing banks over proprietary networks. The associations generally settle on a net basis with the acquiring and issuing banks daily, although typically with a one- or two-day lag between payment initiation and settlement. Generally, the associations use the acquiring and issuing banks’ aggregated transaction information to compile each bank’s net settlement position. Member banks may be required to maintain collateral with the associations’ settlement banks to manage default risks. Acquiring and issuing banks may settle directly with each other, through regional settlement banks or through the Federal Reserve, or by other net settlement arrangements. The settlement process can vary significantly, depending upon the member involved.²³²

163. Other sources contain similar descriptions that comport with the descriptions above regarding the services that the processors of card-based electronic transactions provide in connection with payment card transactions, including credit, charge and debit card transactions.²³³

²³¹ BIS Red Book, “Payment Systems in the United States,” Section 3.1.3, page 442 (Exhibit US-11).

²³² BIS Red Book, “Payment Systems in the United States,” Section 3.1.3(a), page 443(Exhibit US-11).

²³³ See, e.g., GAO Report: Payments, Clearance, and Settlement, “A Guide to the Systems, Risks, and Issues” (1997) (see discussion of credit cards and process in Section 3, Retail Payment Systems) (Exhibit US-13); Federal Reserve Bank of Kansas City, “Nonbanks in the Payment System: European and U.S. Perspectives,” Section 2.1 (definitions), Section 2.2 (payment types and payment activities), Table 3 (detailed payment activities), Table 7 (table showing non-bank payment companies engaging specific transaction activity relating to payments in the EU), Table 9 (table showing non-bank payment companies engaging in specific transaction activity relating to payments in the United States) (Exhibit US-14).

3. The sector servicing credit, charge, and debit card transactions characterizes itself as providing “payment services”

164. The BIS 2003 Red Book includes a report on “Payment Systems in the United States,” and refers to Visa and MasterCard as “privately operated payment systems” and the “two largest bank card networks operating in the United States.”²³⁴ Bank card networks are described as “licensing credit and debit card trademarks to financial institutions, authorizing transactions, and providing certain clearing and settlement services for transactions between banks.”²³⁵ The BIS 2003 Red Book includes payment cards in its description of “payment media and instruments,” and in describing “card payments,” the BIS 2003 Red Book explains that “{c}redit cards are the most frequently used electronic payment instrument in the United States” and that they “combine a payment instrument with a credit arrangement.”²³⁶

165. In describing “card payments,” the BIS 2003 Red Book explains that debit cards transfer funds from a cardholder’s transactions account at an issuing bank and that cardholders authorize debit card transactions either by entering a personal identification number (PIN) directly into a merchant’s online terminal or by a written signature, and that debit card payment transactions are processed by, among others, Star, Interlink, NYCE and Pulse, Visa, and MasterCard.²³⁷

166. The BIS 2003 Red Book provides a description of the services for processing card-based electronic payment transactions. According to the BIS 2003 Red Book “{c}redit card, ATM and POS associations provide communications, transaction authorization and interbank financial settlement for their member financial institutions.”²³⁸ The 2003 Red Book states that “{t}he largest credit card and signature-based debit card networks in the United States are Visa and MasterCard. American Express and Discover Card are also major credit card networks.” It further notes that First Data is among the largest providers of ATM and debit card services based on PINs.²³⁹

167. The FFIEC Handbook confirms that card-based electronic payments typically fall into one of three categories, depending on the timing of the payment. The FFIEC Handbook also categorizes cards in terms of the timing of payment: “Pay Later” payments (credit and charge cards), “Pay Now” payments (debit cards), and “Pay Before” cards (pre-paid and stored-value).²⁴⁰

²³⁴ BIS Red Book, “Payment Systems in the United States,” *Introduction*, page 433 (Exhibit US-11).

²³⁵ BIS Red Book, “Payment Systems in the United States,” Section 1.3.3, page 438 (Exhibit US-11).

²³⁶ BIS Red Book, “Payment Systems in the United States,” Section 1.3.3, page 438 (Exhibit US-11).

²³⁷ BIS Red Book, “Payment Systems in the United States,” Section 1.3.3, page 438 (Exhibit US-11).

²³⁸ BIS Red Book, “Payment Systems in the United States,” Section 3.1.3, page 442 (Exhibit US-11).

²³⁹ BIS Red Book, “Payment Systems in the United States,” Section 3.1.3, page 442 (Exhibit US-11).

²⁴⁰ Federal Financial Institutions Examination Council (FFIEC), “Retail Payment Systems, IT Examination Handbook,” February 2010, page 17 (Exhibit US-12).

168. Other sources contain similar descriptions that comport with the descriptions above regarding the services that the processors of card-based electronic transactions provide in connection with payment card transactions, including credit, charge and debit card transactions.²⁴¹

169. Suppliers of EPS characterize themselves as providing “electronic payment services” and as operating within the “global payments industry.” Visa Inc.’s (“Visa”) IPO prospectus is illustrative: “Visa operates the world’s largest retail electronic payments network and manages the world’s most recognized global financial services brand.”²⁴² The company describes itself as “facilitate{ng} global commerce through the transfer of value and information among financial institutions, merchants, consumers, businesses and government entities,” and providing its primary customers, financial institutions, “with product platforms encompassing consumer credit, debit, prepaid and commercial payments.”²⁴³ The centrality of the “*payment*” aspect of any card-based transaction is plain, as the company notes that “the most common card-based forms of payment are general-purpose cards” typically categorized as “pay now,” “pay later” or “pay before” cards.²⁴⁴

170. The services supplied by the company entail “transaction processing services (primarily authorization, clearing and settlement)” through a “secure, centralized, global processing platform” that enable “customers to offer efficient and effective payment methods to their cardholders and merchants.”²⁴⁵ A principal role of the EPS supplier is to “adopt and enforce a common set of rules adhered to by our customers to ensure the efficient and secure functioning of our payments network and the maintenance and promotion of our brands.”²⁴⁶ This service is described as offering a “broad range of product platforms (e.g., credit, debit) to financial institutions” and operating a “data processing network that transfers transaction data and manages payment flow between issuers and acquirers.”²⁴⁷ An EPS supplier establishes and maintains a “payments network brand for payment products and acceptance locations,” as well as “rules and standards for its product platforms and payments network.”²⁴⁸

²⁴¹ See, e.g., GAO Report: Payments, Clearance, and Settlement, “A Guide to the Systems, Risks, and Issues” (1997) (see discussion of credit cards and process in Section 3, Retail Payment Systems) (Exhibit US-13); Federal Reserve Bank of Kansas City, “Nonbanks in the Payment System: European and U.S. Perspectives,” Section 2.1 (definitions), Section 2.2 (payment types and payment activities), Table 3 (detailed payment activities), Table 7 (table showing which non-bank payment companies engage in each specific transaction activity relating to payments in the EU), Table 9 (table showing which non-bank payment companies engage in each specific transaction activity relating to payments in the United States) (Exhibit US-14).

²⁴² Visa 2008 IPO Prospectus, page 1; see also page 129 (Exhibit US-3).

²⁴³ Visa 2008 IPO Prospectus, page 1 (Exhibit US-3).

²⁴⁴ Visa 2008 IPO Prospectus, page 127 (Exhibit US-3).

²⁴⁵ Visa 2008 IPO Prospectus, pages 129, 135-136 (Exhibit US-3).

²⁴⁶ Visa 2008 IPO Prospectus, pages 129, 135-136 (Exhibit US-3).

²⁴⁷ Visa 2008 IPO Prospectus, pages 129, 135-136 (Exhibit US-3).

²⁴⁸ Visa 2008 IPO Prospectus, page 129 (Exhibit US-3).

171. The payment service that enables and facilitates a card-based electronic transactions is described as follows:

Our core processing services involve the routing of payment information and related data to facilitate the authorization, clearing and settlement of transactions between Visa issuers, which are the financial institutions that issue Visa cards to cardholders, and acquirers, which are the financial institutions that offer Visa network connectivity and payments acceptance services to merchants. In addition, we offer a range of value-added processing services to support our customers' Visa programs and to promote the growth and security of the Visa payments network.²⁴⁹

172. Other independent sources describe the major suppliers of the electronic payment services in similar terms. For example, the UBS Investment Research paper asks the question "What is Visa?" and answers with the statement that "it is the world's largest payment network."²⁵⁰ Elsewhere UBS states "Visa Inc. (V) owns and operates the largest electronic payments network in the world and is one of the prime beneficiaries of the global secular trends that are driving the migration from paper- to electronic-based forms of payment."²⁵¹ The company is described as being "a payments network that helps connect merchant acquiring entities with issuing banks so that they can authorize and settle electronic payments over a central system quickly and securely." The UBS paper continues:

To help its members and merchants benefit from this network infrastructure, V sets processing rules and interchange rates, guarantees payment (on behalf of its member banks) provides liability protections (for all merchants and consumers), and develops new products and services. At its core, V is the largest payments network that can also be described as a massive processing engine. Its primary clients are the approximate 17,000 financial institutions that issue cards under its name.²⁵²

173. The central role that suppliers of EPS play in a card-based electronic payment transaction is highlighted as providing "order, accountability, and security to the electronic payments system by issuing and administering a common set of 'rules' and operating procedures that all participants in the network must adhere to."²⁵³ The EPS supplier is an "impartial payments referee" and its role is to ensure that "all parties along the electronic payments system cooperate to make that transaction a success."²⁵⁴

²⁴⁹ Visa 2008 IPO Prospectus, pages 135-136; *see also* Visa 2010 Annual Report, page 7 (Exhibit US-3).

²⁵⁰ UBS Investment Research, Visa Inc., 25 June 2008, page 28 (Exhibit US-10).

²⁵¹ UBS Investment Research, Visa Inc., 25 June 2008, page 3 (Exhibit US-10).

²⁵² UBS Investment Research, Visa Inc., 25 June 2008, page 28 (Exhibit US-10).

²⁵³ UBS Investment Research, Visa Inc., 25 June 2008, page 30 (Exhibit US-10).

²⁵⁴ UBS Investment Research, Visa Inc., 25 June 2008, page 30 (Exhibit US-10).

174. MasterCard's Chairman's cover letter for MasterCard's 2009 Annual Report underscores that that company has "vast opportunities in global payments" and recognizes the "new world in which electronic payments, in whatever form, are rapidly becoming the currency of choice," and the company's "global payments network" is noted.²⁵⁵ The annual report explains that it "is a leading global payment solutions company that provides a variety of services in support of the credit, debit and related payment programs of approximately 23,000 financial institutions and other entities that are our customers" and that it "develop{s} and market{s} payment solutions, process payment transactions, and provide{s} support services to our customers and, depending upon the service, to merchants and other clients" and "manage a family of well-known, widely accepted payment card brands."²⁵⁶ The annual report describes MasterCard as operating in the "the global payments industry, which consists of all forms of payment including... cards—credit cards, charge cards, debit cards ... ATM ..., pre-paid cards and other types of cards..."²⁵⁷ The annual report refers to the same categories of payment cards as do others, in terms of "pay later" cards (credit and charge), "pay now" cards (debit), and "pay before" cards (pre-paid or stored-value),²⁵⁸ and generally describes itself as providing "payment services and solutions."²⁵⁹

175. American Express's 2010 Annual Report states that the company's "principal products and services are charge and credit payment card products and travel-related services offered to consumers and businesses"²⁶⁰ and that its products and services include: "charge and credit card products... stored value products such as... prepaid products... network services" and "merchant acquisition and processing, point of sale, servicing and settlement, and marketing and information products and services for merchants."²⁶¹ The company describes itself as operating "a global general-purpose charge and credit card network for both proprietary Cards and Cards issued under the global network services business."²⁶²

176. Discover's 2010 Annual Report indicates that the company provides "payment services" and explains that its credit card customers' operations "are processed over the Discover

²⁵⁵ MasterCard 2009 Annual Report, Chairman's Message, page 1 (Exhibit US-5).

²⁵⁶ MasterCard 2009 Annual Report, pages 3-4 (Exhibit US-5). The MasterCard 2010 Annual Report states that it "is a leading global payments company" that "provide[s] a variety of services in support of the credit, debit, prepaid, and related payment programs of approximately 22,000 financial institutions and other entities." MasterCard states that it "offer[s] a wide range of payment solutions, which enables our customers to develop and implement credit, debit, prepaid and related payment programs for their customers," and "manage[s] a family of well-known, widely accepted payment card demands." MasterCard 2010 Annual Report, page 4 (Exhibit US-6).

²⁵⁷ MasterCard 2009 Annual Report, page 5 (Exhibit US-5); MasterCard 2010 Annual Report, page 5 (Exhibit US-6).

²⁵⁸ MasterCard 2009 Annual Report, page 5 (Exhibit US-5); MasterCard 2010 Annual Report, page 5 (Exhibit US-6).

²⁵⁹ MasterCard 2009 Annual Report, page 5 (Exhibit US-5); MasterCard 2010 Annual Report, page 7 (Exhibit US-6).

²⁶⁰ American Express Company 2010 Annual Report, page 1 (Exhibit US-7).

²⁶¹ American Express Company 2010 Annual Report, page 2-3 (Exhibit US-7).

²⁶² American Express Company 2010 Annual Report, page 4 (Exhibit US-7).

Network.”²⁶³ Discover also provides debit card payment services through its PULSE network, and its payment services include “switching and settling ATM, personal identification number (‘PIN’) POS debit and signature debit transactions initiated through the use of debit cards issued by participating financial institutions.”²⁶⁴ With respect to its Diners Club business, the Discover 2010 Annual Report indicates that the company provides “payment services” and provides “processing and settlement of cross border transactions” on its network.²⁶⁵ Discover provides other payment services through other arrangements related to credit, debit and prepaid cards.²⁶⁶

177. First Data provides electronic payment services for debit card transactions. The company notes that its “processing services include authorization, transaction capture, settlement, chargeback handling, and internet-based transaction processing” and that “the vast majority of these services pertain to transactions in which consumer payments to merchants are made through a card association (such as Visa or MasterCard), a debit network, or another payment network (such as Discover).”²⁶⁷

178. JCB describes its major business areas as including “{c}redit card operations, providing credit card operation services.”²⁶⁸ JCB has stated that its customer base includes 64.21 million cardholders and that its annual transaction volume is over 8,628.2 billion yen.²⁶⁹ JCB is also both the largest card issuer and acquirer in Japan.²⁷⁰ In 1991, JCB launched its Global Systems Network.²⁷¹ This network is described as providing current payment functions, such as instant access for non-stop on-line authorizations and data interchange for settlement and transaction processing, as well as a “a multilateral, comprehensive communication highway between JCB, cardmembers, merchants, and partner financial institutions for exchanging a variety of data and information essential to support JCB’s high-quality services.” JCB describes the network as providing “the highest levels of efficiency, reliability, and security for cardmembers, merchants and partner financial institutions throughout the world.”²⁷²

4. GATS Financial Services Annex and Supplementary Materials

179. The GATS provides useful context, as the first 17 words in category d of China’s Schedule are identical to clause (viii) of the definition of “financial services” in paragraph 5(a) of the GATS Annex on Financial Services. The only difference comes at the end of category d,

²⁶³ Discover 2010 Annual Report, page 2 (Exhibit US-8).

²⁶⁴ Discover 2010 Annual Report, page 3 (Exhibit US-8).

²⁶⁵ Discover 2010 Annual Report, page 4 (Exhibit US-8).

²⁶⁶ Discover 2010 Annual Report, page 4 (Exhibit US-8).

²⁶⁷ First Data 2010 Annual Report, page 3 (Exhibit US-9).

²⁶⁸ <http://www.jcbcorporate.com/english/corp/data.html> (Exhibit US-16).

²⁶⁹ <http://www.jcbcorporate.com/english/corp/data.html> (Exhibit US-16).

²⁷⁰ <http://www.jcbinternational.com/business/ic/release/release1.htm> (Exhibit US-17).

²⁷¹ <https://www.jcbinternational.com/htm/about/history.htm> (Exhibit US-18).

²⁷² <http://www.jcbcorporate.com/english/business/systemnetwork.html> (Exhibit US-19).

where China adds the parenthetical “including import and export settlement,” which does not appear in the GATS definition. This addition provides further evidence that category d has a comprehensive scope.

180. Supplementary materials provide further guidance. The Services Sectoral Classification List (“W/120 document”), which the GATT Secretariat issued during the Uruguay Round, created a framework for scheduling commitments.²⁷³ It 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 the W/120 document, and closely follows the category descriptions. Item (d) in the W/120 document is simply “[a]ll payment and money transmission services,” with neither the parenthetical that appears in China’s schedule nor the examples of payment, debit, and credit cards that appear in the GATS definition of financial services. The decision by the negotiators of China’s schedule to augment the W/120 definition with an open list containing several examples indicates that they sought to ensure a comprehensive scope.

VII. THE U.S. PANEL REQUEST SPECIFIES THAT CHINA’S MEASURES ARE INCONSISTENT WITH CHINA’S GATS MARKET ACCESS AND NATIONAL TREATMENT COMMITMENTS

181. In addition to identifying the service at issue, the specific measures at issue, and China’s GATS commitments, the U.S. panel request specifies that China’s measures that maintain CUP’s monopoly on the supply of EPS and that affect the supply of EPS by foreign suppliers are inconsistent with China’s obligations under GATS Article XVI:1 to accord services and services suppliers of any other Member treatment no less favorable than that provided for in China’s Schedule and that China is maintaining or adopting measures set out in Article XVI:2. The U.S. panel request also states that these measures are inconsistent with China’s obligations under GATS Article XVII to accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers. The U.S. panel request provides as follows:

China UnionPay (“CUP”), a Chinese entity, is the only entity that China permits to supply electronic payment services for payment card transactions denominated and paid in renminbi (“RMB”) in China. China also requires the handling by CUP of all RMB transactions in Macao or Hong Kong using payment cards issued in Mainland China, as well as any RMB transactions in Mainland China using RMB payment cards issued in Hong Kong, China or Macao, China. The United States considers that these measures are inconsistent with China’s obligations under GATS Article XVI:1 to accord services and services suppliers of any other Member treatment no less favorable than that provided for in China’s Schedule and that China is maintaining or adopting measures set out in Article XVI:2 of the GATS. These measures also appear inconsistent with China’s obligations under GATS Article XVII to accord to services and service suppliers

²⁷³ Services Sectoral Classification List, Note by the Secretariat, MTN.GNS/W120, 10 July 1991.

of any other Member treatment no less favorable than that it accords to its own like services and service suppliers.

In addition, China requires all payment card processing devices at merchant locations, all automated teller machines (“ATMs”), and all point-of-sale (“POS”) terminals in China to be compatible with CUP’s system and capable of accepting CUP payment cards. China also requires that all acquiring institutions post the CUP logo and be capable of accepting all payment cards bearing the CUP logo. China further requires that all payment cards, including “dual currency” cards, issued in China capable of being used for transactions denominated and paid in RMB bear the CUP logo. This means that issuing banks must have access to the CUP system, and must pay CUP for that access. These measures do not impose similar requirements regarding non-CUP payment cards or to transactions using non-CUP payment cards. The United States considers that these measures are inconsistent with China’s obligations under GATS Article XVI:1 to accord services and services suppliers of any other Member treatment no less favorable than that provided for in China’s Schedule and that China is maintaining or adopting measures set out in Article XVI:2. The United States considers that these measures are inconsistent with China’s obligations under GATS Article XVII to accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers.

China also requires that all cross-bank or inter-bank transactions involving payment cards be handled through CUP. China prohibits the use of non-CUP payment cards for cross-region or cross-bank or inter-bank transactions. The United States also considers that these measures are inconsistent with China’s obligations under GATS Article XVI:1 to accord services and services suppliers of any other Member treatment no less favorable than that provided for in China’s Schedule and that China is maintaining or adopting measures set out in Article XVI:2. The United States also considers that these measures are inconsistent with China’s obligations under GATS Article XVII to accord to services and service suppliers of any other Member treatment no less favorable than that it accords to its own like services and service suppliers.²⁷⁴

182. The United States identified in its panel request that China undertook both market access and national treatment commitments with respect to item (d) “All payment and money transmission services, including credit, charge and debit cards...” In addition, the U.S. panel request identifies the specific measures being challenged and the specific GATS obligations that are the subject of the U.S. complaint. The United States also specified with precision the service at issue, “electronic payment services” for “payment card” transactions and provided in its panel request, as set forth above, a detailed narrative of the legal claims it is making that provides additional information for China to understand “the legal basis of the complaint.” Nothing more is required.

²⁷⁴ U.S. Panel Request, pages 2-3.

VIII. CONCLUSION

183. The U.S. panel request is fully consistent with DSU Article 6.2. The U.S. panel request is in writing, indicates that consultations were held, identifies the specific measures at issue, and provides a brief summary of the legal basis of the complaint sufficient to present the problem clearly. Accordingly, the United States requests that the Panel reject in its entirety China's request for preliminary ruling.