

China – Certain Measures Affecting Electronic Payment Services

(DS413)

**EXECUTIVE SUMMARY OF THE
SECOND WRITTEN SUBMISSION OF THE UNITED STATES OF AMERICA**

December 2, 2011

I. INTRODUCTION

1. China created and maintains a monopoly for China UnionPay, Co. Ltd. (“CUP”) to supply the service necessary for credit, charge, debit and other payment card transactions to occur in China for *all* transactions where the card is issued in China and used in China. Such transactions, whether RMB-payment card transactions or transactions using foreign currency denominated payment cards issued in China, constitute the overwhelming number of all payment card transactions in China.

2. The evidence and arguments advanced by the United States also establish that the service at issue is a single, integrated service falling within subsector (d) of China Schedule of Specific Commitments: “All payment and money transmission services, including credit, charge and debit cards...” China undertook both mode 1 (cross-border) and mode 3 (commercial presence) commitments with respect to subsector (d). Finally, China’s measures are inconsistent with China’s obligations under Articles XVI:1 and XVI:2 of the *General Agreement on Trade in Services* (“GATS”) not to adopt or maintain measures of the types listed in Article XVI:2, and 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.

II. EPS FOR PAYMENT CARD TRANSACTIONS IS A SINGLE, INTEGRATED SERVICE THAT FALLS WITHIN THE ORDINARY MEANING OF SUBSECTOR (D) OF CHINA’S SCHEDULE (“ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE AND DEBIT CARDS...”)

3. As the United States has demonstrated, EPS for payment card transactions is a single, integrated service – one that is supplied and consumed as such. The extensive evidence provided by the United States demonstrates that EPS is at the center of all payment card transactions and without this service the transactions could not occur. EPS fall within the ordinary meaning of payment and money transmission services, within subsector (d) of China’s Schedule. The language of subsector (d) itself makes this abundantly clear. EPS clearly fall within the ordinary meaning of “payment and money transmission services” as one type of “*all*” such services. In addition, 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.” The explicit reference to these types of cards is in line with the recognition that EPS is integral to the processing of credit, charge, debit and other payment card-based electronic payment transactions, and without EPS, payment card transactions could not occur.

4. China tries to delink and disaggregate certain components of EPS that are central to payment card transactions. China combines its disaggregation strategy with an exceedingly narrow interpretation of its commitments, arguing that only issuing and acquiring services are covered by subsector (d). Indeed, China has declined even to provide a response to the question of where – even under its flawed disaggregation theory – remaining elements of EPS should be classified, underscoring the difficulty of its position. Simply, China’s arguments cannot be reconciled with the text of its commitments or how the service at issue operates in practice.

5. Contrary to China's assertions, EPS for payment card transactions constitutes one integral service. The service is supplied as coherent whole. A supplier of EPS enables cardholders' banks to pay merchants' banks the amount they are owed. EPS suppliers 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 allow merchants to be paid the amounts they are owed and ensure that cardholders 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 efficiently to handle net flows of money among the institutions involved in card payments. Each component is critical to effectuate the payment card transaction and EPS suppliers provide the entire package of services to their customers, the institutions that are participating in the payment card transactions.

6. Regarding China's assertion that the approach described by the United States (and endorsed by several third parties) would somehow undermine the GATS and the principle of mutual exclusivity, this argument is also misplaced. To the contrary, if China's position were accepted – that a service must first be disaggregated into subcomponents and each subcomponent separately classified – it would render Members' concessions meaningless for a wide range of services.

**III. EPS FOR PAYMENT CARD TRANSACTIONS DOES NOT FALL WITHIN ITEM (XIV)
("SETTLEMENT AND CLEARING SERVICES FOR FINANCIAL ASSETS, INCLUDING
SECURITIES, DERIVATIVE PRODUCTS AND OTHER NEGOTIABLE INSTRUMENTS")**

7. China relies on an exceedingly narrow reading of subsector (d) that essentially reads the qualifying word "all" out of the sectoral description of "all payment and money transmission services, including credit, charge, and debit cards..." and on arguments that fail to account for the fact that EPS are at the heart of credit, charge and debit card transactions. Moreover, China's exceedingly narrow reading of subsector (d) stands in stark contrast to China's exceedingly broad interpretation of item (xiv) of the Annex. China's broad reading is combined with an incorrect understanding of the services in item (xiv) that places China's interpretation at odds with fundamental, recognized differences in the operation and risk profile of financial services under item (xiv) and services related to retail payment processing, such as EPS for payment card transactions.

8. The same rules of treaty interpretation that compel the conclusion that EPS for payment card transactions fall within subsector (d) also compel the conclusion that EPS for payment card transactions do not fall within item (xiv). In this regard, Article 31(1) of the *Vienna Convention* requires that the terms "settlement and clearing services for financial assets, including securities, derivatives and other negotiable instruments" 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." Various commentaries on the *Vienna Convention*

point out that “ordinary meaning” cannot be analyzed independently from the other interpretive elements described in Article 31, including “context.”

9. China’s position is inconsistent with the ordinary meaning of “settlement and clearing services for financial assets” and also fails to recognize that item (xiv) is a substantially different financial service than EPS for payment card transactions, which is a type of retail payment service. The BIS CPSS has explained that “[r]etail payments are generally classified as cash payments or non-cash payments,” which are subclassified into “cheque payments, direct funds transfers and card payments.” Indeed, there are many practical differences between the systems used to settle and clear investment instruments of the kind referenced in item (xiv) and the systems used to settle and clear retail payment instruments, like payment cards. These differences relate to: (1) the financial instruments involved and the value of typical transactions, (2) the market participants involved in the transaction and related processing; (3) the infrastructure needs for such processes to occur safely and efficiently; and (4) regulatory oversight and the relative risks presented to the financial system as a whole.

10. China’s position also fails to interpret the term “financial asset” within its immediate context, i.e., the full sentence in item (xiv). An examination of each of the items in the illustrative list demonstrate that retail receipts, such as a claim on a payment card, are not of the same type of financial assets as the items included in the illustrative list – “securities, derivative products and other negotiable instruments.” This further supports the conclusion that they are not within the scope of “financial assets” referenced in the provision.

11. A “security” is generally defined as “an instrument that signifies an ownership position in a corporation (a stock), a creditor relationship with a corporation or government body (a bond) or rights to ownership...” Securities are, in short, ownership and investment instruments. Credit and debit cards are not similar to securities. Payment cards are retail payment instruments. They provide a non-cash alternative for consumers to use when making purchases. A payment card does not provide a pledge of property to secure a loan, it is not an investment instrument, and it is not tradeable on money markets or capital markets.

12. Derivatives are also investment instruments. A derivative is “a financial contract the value of which depends on the value of one or more underlying reference assets, rates or indices” such as futures contracts and options. A payment card is not a contract whose value is dependent of the performance of some other asset or investment. It is simply an instrument for making retail purchases.

13. Payment cards and the sales slips generated from payment card transactions do not meet the internationally accepted criteria for a negotiable instrument. A payment card transaction does not involve a written promise or order to pay that satisfies the definition above and, thus, does not involve a negotiable instrument. Some payment card transactions are processed entirely electronically, without the cardholder signing a sales slip and, thus, do not result in the creation of any writing, signed by the cardholder, either promising to pay or ordering the payment of an amount to the merchant. Other payment card transactions require the cardholder to sign a sales slip instructing the bank that issued the payment card to pay the merchant for the transaction, but

the sales slips created in connection with such transactions are not payable to bearer, but rather, are payable only to the identified merchant. Finally, payment cards are not similar to the types of negotiable instruments referenced in Item (xiv), such as commercial paper, which a type of investment instrument that is processed through settlement and clearing. As noted, in context, the types of negotiable instruments referenced in item (xiv) are tradeable assets, and do not include instruments that are used for retail payments.

IV. CHINA’S MODE 1 AND MODE 3 COMMITMENTS FOR SUBSECTOR (D) “ALL PAYMENT AND MONEY TRANSMISSION SERVICES, INCLUDING CREDIT, CHARGE, AND DEBIT CARDS...”

A. China’s Mode 1 Commitments for “All Payment and Money Transmission Services, Including Credit, Charge and Debit Cards...”

14. It is plain from the text that China has taken mode 1 commitments for “all payment and money transmission services, including credit, charge and debit cards...” The word “Unbound” is followed by the qualifying phrase “except for the following,” which in turn is further elaborated by two sentences that describe elements of the services within subsector (d) for which China has taken mode 1 commitments. Proper treaty interpretation requires that the qualifying phrase “except for the following” and the further specific elaboration following the word “Unbound” should be given meaning. In response to the Panel’s questions, the United States prepared a chart in which it identified several aspects of EPS that are covered by the mode 1 market access commitment undertaken by China.

15. China’s responses to the Panel’s questions regarding the meaning of the extensive language qualifying the term “Unbound...” essentially reduces to the single point that all of the extensive language qualifying the term “Unbound” in its market commitments was provided simply to confirm language already existing elsewhere. In short, according to China, that the additional wording should be given no meaning. This is not credible. If China wished to in fact be fully “Unbound,” that is, not to have any commitments, it would have left the word “Unbound” unqualified. However, as the Schedule reflects, China did not do so. It is not credible to argue that this language is merely for greater certainty to repeat China’s commitments in subsectors (k) and (l). Such an argument fails to give meaning to this treaty language.

16. The services defined by the sector and subsector descriptions cannot be altered by the commitments made in the market access or national treatment columns. While a WTO Member may place limitations on the scope of its commitment with respect to a given sector, limitations inscribed in the market access and national treatment columns cannot change the scope of the sector description itself.

17. Elements of CUP’s own activities are described in terms similar to the “excepted” elements that are set out in China’s mode 1 market access commitments. The Chinese regulatory system similarly describes a primary activity of CUP as exchanging information among financial institutions. This is all of course consistent with the recognition that the ability to “transfer financial information” and supply “advisory, intermediation and other auxiliary financial services” cross-border with respect to an integrated service (when the service supplier is located

in a particular country) is often necessary for corporate risk management purposes and typically occurs in the ordinary course of business.

18. Finally, the concept that a service may include elements of “provision and transfer of financial information, and financial data processing” was recognized, for example, in paragraph 8 of the Uruguay Round Understanding on Commitments in Financial Services. The provision and transfer of financial information and data processing is central to the supply of many different financial services, and, according to the Understanding, signatory WTO Members cannot frustrate their commitments by, for example, blocking the ability to communicate and process information.

B. China’s Mode 3 Commitments for “All Payment and Money Transmission Services, Including Credit, Charge and Debit Cards...”

19. China has mode 3 market access and national treatment commitments for subsector (d). The presence of the term “financial institution” in China’s schedule does not create a separate and independent limitation. There is nothing in China’s Schedule that indicates it may condition the supply of a service on the criteria listed in column 2 and in addition require that another Member’s supplier meet additional (and unspecified) criteria to be recognized as a “foreign financial institution.” The Schedule states that “[c]riteria for authorization to deal in China’s financial services sector are solely prudential.” Thus, under China’s Schedule, the only limitations China may impose are in connection with legitimate prudential regulation and the limitations explicitly listed in China’s Schedule – the now defunct restrictions on geographic scope and use of domestic currency, and ongoing requirements applicable to banks. The additional references to the term “financial institution” in the paragraphs that follow the explicit statement that the criteria are “solely prudential” does not alter that unequivocal statement as to the sole criteria for authorization to deal in China’s financial services sector.

20. The fact that subsector (d) falls under the heading of “banking services” does not operate to limit China’s commitments to “banks” or other “regulated financial institutions” as China argues. The “banking services” heading does not operate in this manner. The characteristics and nature of the service control the classification of that service.

21. It is also evident from China’s Schedule itself that the term “banking services” listed in China’s Schedule, including those listed in subsector (d) are not limited to those provided by banks as China claims. The definition of “financial service supplier” in the Annex on Financial Services provides additional support in this regard: “A financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term ‘financial service supplier’ does not include a public entity.” This definition covers not only banks but other suppliers of financial services, which supply or wish to supply financial services within the meaning of the Annex.

22. China also argues that its mode 3 market access and national treatment commitments for subsector (d) are limited to foreign financial institutions. Although China includes certain limitations with respect to foreign financial institutions, this does not mean that its commitments are limited to foreign financial institutions. Such a limitation would have needed to be imposed

explicitly, and China did not do so. Finally, even if it were the case that the term “financial institution” somehow served as a limitation in China’s Schedule (and it is clear from the above that it does not), the definition of “financial institution” offered by China is far too narrow. Many definitions are much broader, and some explicitly include “an operator of a credit card system.”

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

23. The measures imposed by China on the supply of EPS are inconsistent with Article XVI:2 of the GATS because they limit the number of suppliers of EPS for RMB-denominated transactions that are paid in RMB. The evidence provided by the United States demonstrates that China’s measures limit the number of suppliers of EPS for payment card transactions. China requires that all RMB-denominated payment card transactions in China be processed by CUP, and that CUP process all foreign currency denominated card transactions where the card is issued in China. In short, China requires that CUP process all payment card transactions where the card is issued in China and used in China.

24. During the Panel’s first meeting with the Parties, China asserted several times that the United States had failed to demonstrate that foreign EPS suppliers could not supply EPS for payment card transactions in China. The Panel has now asked China Question 22(b) from the Panel to China:

Could China confirm that operators other than China UnionPay could be authorised to establish their own network and process domestic RMB-denominated payment card transactions independently from China UnionPay's network? If relevant, please identify legal instruments and provisions that address this.

25. China did not answer the Panel’s question. This is not surprising because, as the United States has demonstrated, in fact and as China’s measures mandate, EPS suppliers other than China UnionPay cannot process domestic RMB-denominated payment card transactions in China. EPS suppliers other than CUP cannot process any payment card transactions in China where the card is issued in China and used in China.

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.

26. Even without considering Documents Nos. 94, 272 and 66, which China argues have either been repealed or replaced, the remaining instruments establish and maintain the CUP monopoly in essentially three ways. First, certain instruments explicitly state that CUP must be used to process specific types of transactions. Second, certain instruments establish and/or require the use of business specifications and technical standards which mandate the use of CUP. Finally, certain instruments implicitly recognize that CUP is the sole supplier of EPS services for RMB denominated transactions.

27. Several instruments independently designate CUP as a sole supplier. Document No. 53 (Exhibit US-51) is a primary example. Article V.2 of Document 53 states that “[d]omestic card transactions inside China shall be settled in RMB through domestic clearing channels” CUP is the only “domestic clearing channel” and, therefore, the only entity that can settle domestic card transactions. Article V.3 sets forth procedures for correcting the erroneous processing of such transactions through an international bank card organization. Moreover, Article VII.3 then states that “[d]omestic RMB card clearing organizations shall do a good job in the RMB clearing of domestic transactions of home-foreign currency cards.” These are foreign denominated currency payment cards that are issued in China.

28. Document No. 16 (Exhibit US-44) states that, with respect to Hong Kong, “[m]atters in relation to individual RMB bank card clearing shall be organized and handled by the clearance banks and China UnionPay Joint Stock Co., Ltd.” Document No. 254 (Exhibit US-48) requires that CUP process RMB transactions involving RMB cards issued in China and used in Hong Kong or Macao, or involved RMB cards issued in Hong Kong or Macao and used in China. Document No. 8 (Exhibit US-46) requires that CUP be used to clear RMB denominated transactions in Macao. China does not deny that CUP has a monopoly over such services. Section 1.2 of Document 153 (Exhibit US-49) appears to explicitly recognize that “China UnionPay is *the* domestic clearance organization which specializes in the RMB bank inter-bank information routing and exchange” (emphasis supplied). Other provisions of Document No. 153 appear to confirm the designation of CUP as the sole supplier.

29. Section 2.2 of Document No. 37 (Exhibit US-40) states that cards that do not comply with “the unified requirements and the CUP logo usage requirements” must be replaced and that, “[s]tarting in 2004, all bank cards not bearing a CUP logo will not be used for cross-region or inter-bank transactions.” Article 6 of Document 57 (Exhibit US-41) requires that all “regional bank card interoperability logos produced and designed regionally shall be gradually abolished.” Also, Article 6 of Document 153 (Exhibit US-49) states that, in any country where dual currency cards are used, “the Chinese issuing banks should support routing through the CUP network and open RMB accounts related transactions and settlements to the CUP network.” Document 149 (Exhibit US-50) states that “acquiring organizations may not allow the non-CUP and non-PBOC 2.0 pre-payment cards to be accepted at any POS terminals.” Document No. 219, Article III, prohibits processing of payment card transactions by third-parties, mandating that “no merchant shall... authorize a third party to handle Renminbi card business or transfer such business to a third party.”

30. In addition, certain instruments establish and/or require the use of business specifications and technical standards which mandate the use of CUP. Document No. 76 (Exhibit US-56/US-63) includes the “Notice of People’s Bank of China in Relation to Issuance of Business Practices for the Interoperable Services of Bank Cards,” and an accompanying Appendix, which includes the “Business Practices for the Interoperable Services of Bank Cards” (“Business Practices Appendix”). The Business Practices Appendix requires that all domestic transactions on domestically issued cards be processed over the network that was to become CUP. Several of the 19 instruments explicitly require the use of uniform business specifications and technical standards, including: Document No. 37 (Exhibit US-40); Document 57 (Exhibit US-41);

Document 153 (Exhibit US-49); Document 129 (Exhibit US-53); Document 142, (Exhibit US-55); Document 49 (Exhibit US-62); Document 17 (Exhibit US-52); and Document 103 (Exhibit US-1)

31. Another category of instruments recognizes that CUP is the sole supplier of EPS services for transactions on cards issued and used in China. These measures include, for example, measures related to fraud protection and similar regulation which is explicitly directed only to CUP.

Logo requirements on issuing institutions, requirements related to POS terminals and ATMs, requirements on acquiring institutions, prohibitions on the use of non-CUP cards and non-CUP EPS suppliers, and requirements for certain transactions involving RMB denominated cards issued and/or used in Macau and Hong Kong

32. The collective effect of these measures is to establish CUP as the sole entity able to provide EPS for payment card transactions in China where the card is issued in China and used in China. Banks in China must use CUP's network in order to issue or acquire bank card transactions. Only CUP cards can be issued as RMB denominated cards. The logo and interoperability requirements mean that that all banks that wish to acquire merchant transactions or operate ATMs and all merchants who wish to accept bank cards must join CUP and process transactions in accordance with CUP's rules and procedures as set out in Document No. 76 (Exhibit US-56/US-63). These requirements gave CUP automatic and universal acceptance of its RMB payment card products by banks and merchants in China and permitted and supported CUP becoming the sole supplier of EPS in China. These measures have entrenched CUP's monopoly position. Suppliers of EPS must ordinarily invest heavily and incur substantial expense to build acceptance of their payment card products by merchants, often in vigorous competition with other suppliers of EPS. All transactions that take place involving cards issued in China and used for transactions in China must be processed over CUP's network as well as transactions involving RMB denominated cards issued and/or used in Macau and Hong Kong.

VI. CHINA'S MEASURES ACCORD LESS FAVORABLE TREATMENT TO FOREIGN EPS SUPPLIERS

33. A national treatment commitment under Article XVII of the GATS obligates a WTO Member to accord services and service suppliers of other Members "treatment no less favorable than that it accords to its own like services and services suppliers." Article XVII:2 specifies that a Member may meet this requirement in instances in which it accords foreign services or suppliers formally different treatment. Article XVII:3 defines treatment as "less favorable" if it "modifies the conditions of competition in favour of services or service suppliers of the Member."

34. The measures at issue affect the supply of services in two principal ways. First, there are measures that impose a limitation such that CUP is the sole entity that can process certain transactions, such as domestic RMB transactions. This of course means that foreign suppliers of EPS are prevented from supplying the service at all. Second, there are measures that promote CUP's position in the marketplace such as by imposing certain requirements on every key player

in a card-based electronic payment transaction, including issuers (all cards issued in China for domestic RMB transactions must bear the CUP logo), merchants (all merchant card processing equipment and POS terminals must accept CUP cards), and acquiring institutions (which must post CUP logo and accept CUP cards).

35. The United States has explained how China's measures affect every aspect of a card-based electronic payment transaction and the key players – issuers, acquiring institutions, merchants, and EPS suppliers – involved in such transactions.

36. China's measures ensure that CUP is the sole supplier of EPS for payment card transactions in China where the card is issued in China and used in China, and for certain payment card transactions involving Hong Kong and Macau. The description of the scope of CUP's business in CUP's Articles of Association, CUP's "Notification of Business License Approval and Issuance," and PBOC's reply with respect to the establishment of CUP clearly establish that CUP is to be the single nationwide inter-bank card network. Additional provisions prohibit processing of transactions by third-parties (*i.e.*, any network other than CUP). China's measures discriminate against foreign suppliers of EPS by either categorically precluding their participation in the market, or by modifying the conditions of competition among the key participants – issuers, acquiring institutions, merchants, and the EPS supplier – in card-based electronic payment transactions.

37. China's measures require that any payment cards used only for RMB purchases in China, as well as any dual currency cards issued in China, bear the CUP logo. No other EPS provider is afforded such a privilege. Any issuer of payment cards in China is required to have access to the CUP system (and to pay for that privilege) and, as a result, issuers have no reason to seek alternative suppliers of EPS. The logo requirements also operate such that even if a card was issued with the logo of a foreign EPS supplier, CUP would also obtain an advantage as the CUP logo would have to appear on the card as well.

38. Similarly, China's measures require all ATMs, POS terminals, and merchant card processing equipment accept CUP cards. Once again, no foreign EPS supplier is afforded a similar privilege. Moreover, even were a foreign supplier of EPS able to create or secure access to a POS terminal, then China's measures would still provide CUP with an advantage because of the requirement that all ATMs, POS terminals, and merchant card processing equipment accept CUP cards.

39. For the same reasons, China's measures requiring that all acquiring institutions in China post the CUP logo and accept all cards bearing that logo distort the competitive relationship between CUP and foreign suppliers. No foreign EPS supplier is afforded a similar privilege. Acquiring institutions have important relationships with merchants, often providing POS terminal and processing equipment to merchants so it can process payment cards. Acquiring institutions also maintain the merchant's account, handle relations with the merchant, and ensures that payments are properly credited to the merchant.

40. The broad prohibitions on the use of non-CUP cards and that prevent foreign suppliers of EPS have similar adverse effects on competition and operate to accord less favorable treatment

to foreign EPS suppliers. China requires that all inter-bank transactions for all bank cards be handled through CUP.

41. Finally, the requirements pertaining to card-based electronic transactions in China, Macao and Hong Kong also modify the conditions of competition and operate to accord less favorable treatment to foreign EPS suppliers. China requires that CUP be used to handle all RMB transactions in Macao or Hong Kong using bank cards issued in China. China also requires that CUP be used to handle any RMB transactions in China using RMB cards issued in Hong Kong or Macao.

42. These measures affect the conditions of competition in the supply of EPS within the meaning of Article XVII because they directly regulate the terms on which they may be provided. The measures at issue provide different treatment solely according to the identity of the EPS supplier: CUP or not CUP

43. The effect of these measures is to completely distort competition in China's market for EPS for payment card transactions. These measures establish and maintain CUP the sole entity able to provide the full range of EPS for payment card transactions in China where the card is issued in China and used in China. Banks in China must join CUP in order to issue or acquire bank card transactions. Only CUP cards can be issued as RMB denominated cards. The logo and interoperability requirements mean that all banks that wish to acquire merchant transactions or operate ATMs and all merchants who wish to accept bank cards must join CUP and process transactions in accordance with CUP's rules and procedures as set out in Document No. 76 (Exhibit US-56/US-63). These requirements gave CUP automatic and universal acceptance of its RMB payment card products by banks and merchants in China and permitted and supported CUP becoming the sole supplier of EPS in China. No foreign EPS supplier enjoys any of these advantages and CUP is not constrained in the ways in which foreign EPS suppliers are constrained.

44. The measures at issue were meant to favor the domestic Chinese entity and accordingly discriminate on that basis. They have been effective in this regard and outside of China, with the ability to operate from its protected home market, CUP has become a significant and increasingly active competitor. 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" and 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."

45. Finally, it is clear that CUP provides services for payment card transactions "like" those provided by foreign suppliers of EPS for payment card transactions and that the basis for the differential treatment by China in its measures is ultimately one of origin, and the "like service suppliers" requirement of Article XVII is therefore satisfied.

VII. CONCLUSION

46. The United States respectfully requests that the Panel find that China's measures are inconsistent with China's obligations under Article XVI:1 and XVI:2(a) and Article XVII of the GATS. The United States further requests, pursuant to Article 19.1 of the DSU, that the Panel recommend that China bring its measures into conformity with its WTO obligations.