CHINA – ELECTRONIC PAYMENT SERVICES
(DS413)

1. MEASURES AND SERVICES AT ISSUE

- **Measures at issue:** A series of requirements imposed by China and alleged by the United States to constitute impermissible market access restrictions or national treatment limitations on foreign suppliers of the services at issue.

- **Services at issue:** Electronic payment services (“EPS”) for all types of renminbi (“RMB”) payment card transactions involving bank cards issued and/or used in China.

2. SUMMARY OF KEY PANEL FINDINGS

- **Classification of the services at issue:** The Panel found that electronic payment services for payment card transactions are classifiable under Subsector 7.B(d) of China’s Services Schedule, which reads “[a]ll payment and money transmission services, including credit, charge, and debit cards, travellers cheques and bankers drafts (including import and export settlement)].” It observed that the use of the term “all” manifests an intention to cover the entire spectrum of the “payment and money transmission services” encompassed under Subsector (d).

- **Scope of China’s GATS commitments:** The Panel rejected the United States’ view that China’s Schedule includes a cross-border (mode 1) market access commitment to allow the supply of EPS into China by foreign EPS suppliers. The Panel found, however, that China’s Schedule includes a market access commitment that allows foreign EPS suppliers to supply their services through commercial presence (mode 3) in China, so long as a supplier meets certain qualifications requirements related to local currency business. The Panel further found that China’s Schedule contains a full national treatment commitment for the cross-border supply of EPS (mode 1) as well as a commitment under mode 3 (commercial presence) that is subject to certain qualifications requirements related to local currency business.

- **GATS Art. XVI (market access obligation):** The Panel rejected on the basis of lack of evidence that China maintains China UnionPay (CUP) – a Chinese EPS supplier – as an across-the-board monopoly supplier for the processing of all domestic RMB payment card transactions, in breach of its obligations under Art. XVI. The Panel found, however, that China acted inconsistently with GATS Art. XVI:2(a) in view of its mode 3 market access commitment by granting CUP a monopoly for the clearing of certain RMB payment card transactions, because only CUP may clear RMB-denominated transactions involving RMB payment cards issued in China and used in Hong Kong or Macao, or RMB cards issued in Hong Kong or Macao used in China.

- **GATS Art. XVII of the GATS (national treatment obligation):** The Panel found that some of the relevant requirements, namely the requirements that all bank cards issued in China must bear the Yin Lian/UnionPay logo (i.e., the logo of CUP’s network) and be interoperable with that network, that all terminal equipment in China must be capable of accepting Yin Lian/UnionPay logo cards, and that acquirers of transactions for payment card companies post the Yin Lian/UnionPay logo and be capable of accepting payment cards bearing that logo, are each inconsistent with China’s national treatment obligations under Art. XVII. This is because, contrary to China’s mode 1 and mode 3 national treatment commitments, these requirements modified the conditions of competition between EPS suppliers of other Members and China’s own like services and service supplier CUP to the detriment of those other EPS suppliers.

3. OTHER ISSUES

- **Preliminary ruling:** The Panel rejected China’s claim that the United States’ request for the establishment of a panel failed to meet the requirement in DSU Art. 6.2 to provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

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1 China – Certain Measures Affecting Electronic Payment Services