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Resolving WTO Challenge to China's Treatment of U.S. Financial Information Service Suppliers

What are financial information services?

- Banks, investment firms, insurance companies and other entities and individuals dealing with financial markets need to keep constantly abreast of national and global developments that could affect those markets. Suppliers of financial information services provide specialized services incorporating news, data, analysis, and commentary that these kinds of customers require in order to make fast and effective business and investment decisions.

What WTO commitments did China make regarding financial information services?

- In December 2001, as part of its WTO accession, China committed in its General Agreement on Trade in Services (GATS) Schedule to provide market access for foreign financial information service providers and also to treat those providers no less favorably than it treats Chinese providers of financial information services.
- China also agreed as part of its WTO Accession Protocol commitments to ensure that its government regulators in service sectors covered by its WTO commitments, including financial information services, would be independent from service suppliers in the sectors they were regulating. Avoiding conflicts of interest within a regulatory body is an important principle in ensuring fair competition.
- China made an additional GATS commitment that it would not cut back on the scope of activities that foreign service suppliers had been permitted to conduct in China as of the time China acceded to the WTO. In other words, these activities were "grandfathered," ensuring that foreign companies already operating in China could continue their operations after China's WTO accession.

What Chinese policies were at issue?

- In September 2006, Xinhua News Agency issued new regulations requiring foreign financial information providers to use a single, Xinhua-designated agent, both to solicit contracts with, and to provide financial information to, their domestic and foreign clients in China. During this same period, another Xinhua entity was launching a competing financial information service – "Xinhua 08."
- Xinhua's new policies also required foreign financial information suppliers to provide sensitive commercial information concerning their customers and services, including prices. In addition, foreign financial service providers could not establish local operations in China to provide their services.



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- As a result, China was restricting foreign information service suppliers' operations in a manner that appeared to be inconsistent with its WTO commitments, and that constrained the suppliers' activities more than they had been at the time China joined the WTO, despite China's GATS "grandfather" obligation.
- In effect, Xinhua and its affiliates acted as both the regulator of foreign service suppliers and as their competitor in this sector because of Xinhua 08. This dual role gave rise to a fundamental conflict of interest.

How did China's regulations harm U.S. financial information service providers?

- China's regulations placed foreign financial information suppliers in an untenable position: they had to conduct their operations through an agent designated by, and affiliated with, Xinhua – that is, their regulator and one of their competitors.
- This regime both hampered the foreign companies' ability to do business and created a great deal of market uncertainty for them going forward in China.

What will the MOU accomplish?

- China has committed to eliminate all the problems raised by the United States. China will:
 - designate an independent regulator that will have no conflicts of interests with the companies it is regulating and will use a fair and transparent approach to licensing;
 - eliminate the requirement that U.S. companies must use an agent to do business;
 - limit the regulator to requesting only information that is relevant to the regulatory function, ensure the confidentiality of that information, and protect against its misuse;
 - confirm the rights of U.S. companies to set up local operations in China;
 - treat U.S. companies at least as well as it treats Chinese companies.
- In addition, as China develops new legal measures to implement its MOU commitments, the United States will have the right to comment on the proposed measures.

What is the broader history of WTO disputes with China?

- WTO dispute settlement procedures have facilitated the resolution of other U.S. trade disputes with China:
 - July 2004 – Four months after the United States filed a WTO dispute against China challenging value-added tax rebates that discriminated against imported semiconductors, the United States and China resolved the matter during the consultation phase, ensuring fair access to a market worth over \$2 billion to U.S. manufacturers and workers in the semiconductor industry.
 - January 2006 – The United States and China resolved a dispute involving China's imposition of antidumping duties on kraft linerboard shortly after the United States



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informed China that it would soon be filing a request for WTO consultations. China eliminated the antidumping order on kraft linerboard, terminating the unfair barrier to U.S. paper products and benefiting U.S. kraft linerboard mills in 14 states.

- November 2007 – In March and June 2007, the United States and Mexico held joint WTO dispute settlement consultations with China regarding several export subsidy and import substitution subsidy programs, which are prohibited under WTO rules. These subsidies offered significant benefits across a wide range of manufacturing sectors in China. In November 2007, China signed Memoranda of Understanding with the United States and Mexico in which China agreed to end all the prohibited subsidies at issue by January 1, 2008.
- Where WTO consultations have not led to a resolution, the United States has requested that a WTO dispute settlement panel be appointed to resolve the dispute:
 - In March 2006, the United States, the European Communities and Canada began panel proceedings challenging Chinese regulations that impose local content requirements in the auto sector through discriminatory charges on imported auto parts. The WTO panel issued its decision in June 2008 agreeing with the United States that China had acted inconsistently with its WTO obligations. China has appealed to the WTO Appellate Body, and China's appeal is expected to be decided in December 2008.
 - In April 2007, the United States launched a WTO dispute challenging deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks on a wide range of products. At the United States' request, the WTO established a panel in September 2007, and panel proceedings are in progress.
 - In April 2007, the United States also launched a WTO dispute challenging China's restrictions on the importation and distribution of products of copyright-intensive industries such as theatrical films, DVDs, music, books and journals. A panel was established in this dispute in November 2007, and the panel process is underway.