

The background features a gradient from red at the top to blue at the bottom, overlaid with faint, semi-transparent circular patterns and numbers. The numbers, including 40, 150, 160, 170, 180, 190, 200, 210, 220, 230, 240, 250, and 260, are arranged in a circular path on the left side. The circular patterns consist of solid and dashed lines, some with arrows indicating a clockwise direction.

DS413: CHINA - ELECTRONIC PAYMENT SERVICES

JOHANA EARNHART

OUTLINE

- Context
- China Union Pay
- Overview
- Who is involved?
- Agreements
- Timeline
- Panel Findings
- Implementation
- Observations

CONTEXT

- Electronic payment services (EPS) providers are those who make payments using credit, debit, and prepaid cards possible
- China's UnionPay (CUP) was the third-largest electronic payment service supplier behind Visa and Mastercard¹
- Chinese requirements: payment cards (debit and credit) bear the CUP logo, ATMs and POS systems have to accept CUP cards, businesses and other institutions must post CUP logos and accept CUP cards, and CUP would be the only EPS responsible for clearing RMB bank cards
 - Service providers from WTO countries can only facilitate transactions in foreign currencies

¹ "The WTO Outlaws the Privileges of the Chinese Payment Services Giant | ASIL."

CHINA UNION PAY

Short History

- 2002 – Creation of China Union Pay
- 2005 – CUP expand internationally
- 2015 – outranked Visa in total number of operations

Why people use it?

- Wide acceptance
- Modern top-notch security features
- Cross-border remittances
- Card emergency service

OVERVIEW

Main Question: Are China's regulations surrounding the implementation of China Union Pay (CUP) in violation of their commitments to market access (XVI) and national treatment (XVII) obligations.

United States

- Claims China only allows China Union Pay to supply electronic payment services
 - CUP acting as a monopoly under government-imposed regulations

China

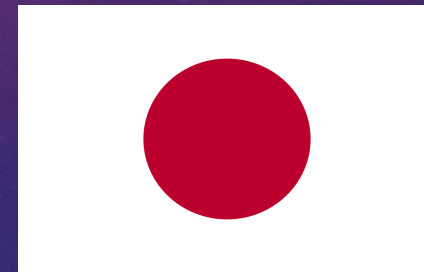
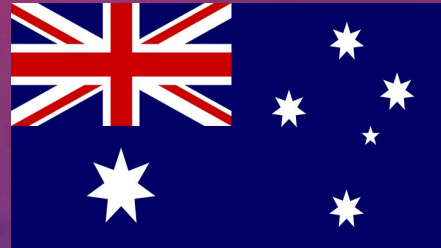
- Claims US has no valid argument
 - Not in violation of market access nor national treatment obligations
- Electronic Payments Services falls under “banking and other financial services” and “all payment and money transmission services”

Ruling: China violated national treatment obligations but did not violate market access obligations.¹

¹ “The WTO Outlaws the Privileges of the Chinese Payment Services Giant | ASIL.”

COUNTRIES INVOLVED

- Complainant – United States
- Respondent – China
- Third Parties – Australia, Ecuador, the European Union, Guatemala, Japan, Korea, and India



WTO AGREEMENTS

- XVI – Market Access

- XVI:1 - With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.
- XVI:2(a) - In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:
 - (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test

- XVII – National Treatment

- 1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers.
- 2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
- 3. Formally identical or formally different treatment shall be considered to be less favorable if it modifies the conditions of competition in favor of services or service suppliers of the Member compared to like services or service suppliers of any other Member.

TIMELINE¹

2010

- Sept 20: United States requests consultations with China

2011

- Feb 11: U.S. requests establishment of Panel
- Mar 25: Establishment of Panel

2012

- July 16: Circulation of Panel Report
- Aug 31: Panel recommendation adopted

¹“WTO Dispute Settlement: One-Page Case Summaries – 1995–2016.”

KEY PANEL FINDINGS¹

- Services at issue: China's Services Schedule, reads "[a]ll pay and money transmission services, including credit, charge, and debit cards, travelers checks and bankers drafts"
- GATS Commitments: China's Schedule includes provisions committed to market access allowing foreign electronic payment service suppliers to supply their services in their commercial market as long as they are able to meet the requirements
- Article XVI (Market Access Obligation): Lack of evidence that China maintains China UnionPay as a monopoly supplier in regards to XVI. Though there was inconsistent practices under XVI:2(a).
- Article XVII (National Treatment Obligation): China's actions generally inconsistent.

¹ "WTO Dispute Settlement: One-Page Case Summaries – 1995–2016."

IMPLEMENTATION

- China and United States agreed a reasonable period of time to implement recommendations to be 11 months after the adoption of the panel reports
 - Time expired July 2013
- Repealed or invalidated measures presented in the Panel reports recommendations¹
 - In Oct 2014 – China state they would open their electronic payment services market to foreign providers
 - China did not officially decide to open their markets until April 2015
- In 2016 and 2017, the China's central bank provided additional instructions for foreign applicants to enter the EPS market
 - US companies completed the new applications but were not approved/denied quickly leaving them still unable to enter the market
- US did not agree that China complied with recommendations and fails to take the required steps to allow foreign access to this market

¹ "WT/DS413/9/Add.1."

OBSERVATIONS

- One of the first cases to provide interpretations on the financial services annex of the GATS
- While China accepted the decision of the Panel they have been slow to allow market access to US suppliers
- US was not able to succeed in their all-out monopoly claim but was able to establish the monopoly of CUP in RMB denominated transactions

REFERENCES

- United States Trade Representative. “Certain Measures Affecting Electronic Payment Services.” Accessed February 28, 2022. <http://ustr.gov/node/1400>.
- “The WTO Outlaws the Privileges of the Chinese Payment Services Giant | ASIL.” Accessed February 22, 2022. <https://www.asil.org/insights/volume/16/issue/31/wto-outlaws-privileges-chinese-payment-services-giant>.
- PaySpace Magazine. “UnionPay: The Story of Chinese Payment Giant,” November 5, 2020. <https://payspacemagazine.com/banks/throwback-thursday-chinese-payment-giant-unionpay/>.
- “WT/DS413/9/Add.1.” Accessed February 28, 2022. https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=118867,118124,117377,85903,95299,104750,86862,101369,96091,87418&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.
- “WTO Dispute Settlement: One-Page Case Summaries – 1995–2016,” n.d., 309.