

COMMUNICATION FROM JAPAN

Transitional Review Mechanism in connection with Paragraph 18 of
the Protocol on the Accession of the People's Republic of China

The following communication, dated 25 October 2004, from the delegation of Japan, is being circulated to Members of the Council for Trade in Services.

- Questions and Comments of Japan on the Implementation by China
of its Commitments on Trade in Services -

1. During the last three years, after its accession to WTO, the Chinese economy has made an enormous development by a high growth rate and has made a great contribution to the development of the world economy. Especially, the liberalization of the services trade has been attracted with a special importance. At the end of this year, a large number of China's commitments enter into an implementation phase. At this critical juncture, China is further invited to take necessary steps to ensure regular and effective application of public comments procedures, well-in-advance publication of laws and regulations, avoidance of abrupt regulatory change, clear demarcation of departmental responsibilities, improvement in inter-departmental and central-provincial coordination etc. In a transitional period of evolving regulations, the importance of transparency, predictability, stability and consistency is paramount. Japan is confident that this transitional review mechanism will be meaningful for making those efforts by China more efficient and productive.

2. In accordance with paragraph 18 of the Protocol on the Accession of the People's Republic of China, which states that "China shall provide relevant information to each subsidiary body in advance of the review" and in the spirit of cooperation to render the TRM process in a most efficient and effective manner, Japan requests China to provide in advance of the Regular Session Meeting of the Council for Trade in Services responses and relevant information to the following questions and comments.

3. With respect to Japan's questions and comments on insurance and insurance-related services and banking services, please refer to the documents that has been sent to the Committee on Trade in Financial Services.

I. GENERAL

4. The delay of the remittance of foreign currency and exchange of "renmin-bi" constitute substantial barriers for supplying services in China. This raises concerns in the context of Article XI of the GATS. Japan hopes that China will take concrete steps to improve the situation.

II. PROFESSIONAL SERVICES

5. According to "Regulations on Administration of Foreign-Invested Construction and Engineering Design Enterprises" and "Regulations on Management of Foreign founded Urban Planning Services Enterprises" (Decree No.114 and 116 of the Ministry of Construction), foreign construction service enterprises and architectural and engineering design service enterprises need to clear qualification requirements by the Chinese authority, such as minimum capital, number of engineers and foreign-engineer-ratio. Some of such requirements raise doubts concerning their consistency with Article XVII of the GATS and China's Schedule. Japan considers that these requirements are more burdensome than necessary and Japan requests China to ease or abolish these requirements. For architectural, engineering, integrated engineering and urban planning services, Japan continued to be interested in the wholly foreign-owned enterprises will be permitted under reasonable conditions as set out in China's Schedule.

III. COMPUTER AND RELATED SERVICES

6. Japan has a keen interest in China's compliance for its accession commitments in computer and related services and would like China to ensure the compliance with such commitments when introducing and applying its regulations for the services closely related to computer and related services. Japan would also like to ask China to ensure the transparency in accordance with Article III of the GATS, in the scope of computer and related services so that service suppliers can be fully informed of such regulations.

IV. COMMUNICATION SERVICES: TELECOMMUNICATION

7. A "Telecommunications Act" which is a basic law on operating telecommunication business is yet to be constituted. Unfortunately, due to lack of such a law, telecommunication operators are facing difficulties in entering into and expanding their businesses in the Chinese market despite China's commitment. Japan urges the Chinese authority to enact a "Telecommunications Act", which is consistent with WTO rules and commitments as soon as possible.

8. Telecommunication business in China is facing difficulties due to the lack of transparency, in particular in licensing, authorization requirements and procedures. Therefore, Japan requests China to establish and disclose clear standards for licensing and authorization (including for the establishment of joint ventures). For such purposes, it is suggested to introduce a "manual for market entry into Chinese telecommunication market" as a comprehensive guidance for market entry.

9. Japan understands that Chinese authority approves licenses only to newly established enterprises although Chinese laws do not prescribe licensing criteria. Such requirements could cause inconsistency with Article XVI:2:(e) of the GATS. Therefore, Japan seeks the abolishment of this requirement and requests that authorization should be given to all enterprises including already established enterprises.

10. Japan understands that the resale of telecommunication services is not permitted in China, while there is no reservation in China's Schedule. Japan requests the abolition of this requirement.

11. Regarding the International Gateway for providing the international telecommunication services, the construction, operation and maintenance are permitted only for the Chinese state-owned enterprises, while there is no reservation in China's Schedule. Japan requests the abolition of this requirement.

12. Japan hopes that under rapidly evolving regulatory and business environments in China, China will not introduce new standards, which are irrelevant to the objectives and principles of WTO.

V. CONSTRUCTION AND RELATED SERVICES

13. After the establishment of "Regulations on Administration of Foreign-Invested Construction Enterprises" (Decree No.113 of the Ministry of Construction) and the abolition of "the Tentative Measures on Administration of Foreign Enterprise Qualifications for Contracting for Construction Projects" (Decree No.32 of the Ministry of Construction), Japan considers that higher barriers for foreign construction enterprises to provide services in China have been introduced. Japan would like to know China's view on this point.

14. Only 4 types of construction projects are allowed to be undertaken by wholly foreign-owned enterprises as set out in China's Schedule. In addition to this limitation, according to "Regulations on Administration of Foreign-Invested Construction Enterprises", which came into force in December 2002, the foreign construction enterprises needed to be qualified by the Chinese authority, and are subject to requirements such as minimum capital and number of engineers. Japan understands these requirements constitute substantial barriers to foreign construction enterprises. Japan seeks easing, or abolition of these requirements. Japan would like to know China's view on how these requirements are compatible with the GATS Article VI:5 and the GATS Article XVII.

VI. DISTRIBUTION SERVICES

15. The liberalization of distribution services is an issue of great interest to Japan. Japan hopes the phase-in commitments in China's Schedule are duly implemented according to the provision of "Measures for the Administration of Foreign Investment in Commercial Fields", promulgated on 16 April 2004 and took effect on 1 June 2004. Japan seeks China's assurance on this point. Regarding the "Measures for the Administration of Foreign Investment in Commercial Fields", Japan has information that China is preparing for the regulations or guidelines to implement these "Measures". If this is the case, Japan would like to know the details of such regulations or guidelines and its consistency with China's commitments.

16. According to Article 17 of "Measures for the Administration of Foreign Investment in Commercial Fields", a relevant regulation is to be published in the fields of automobiles. From the view point of monitoring the implementation of commitments, Japan would like to ask for China's clarifications when the regulation will be issued.

17. According to China's Schedule, in the automobile sector, Japan understands that wholly foreign-owned enterprises will be permitted to engage in retailing services after the date of 11 December 2004 except for such "chain stores which sell products of different types and brands with more than 30 outlets". Japan seeks China's assurance on this point. For the purpose of clarifying this commitment, Japan has a great interest to the definitions of "brand", "type" and "chain store". Japan would like to make sure whether each brand of different Chinese partners with the same Japanese manufacturer may be recognized as an individual brand. In this connection, Japan would like to confirm the definition of the terms on mode 3 in retail services: "chain stores", "different types" and "different brands".

18. At "the follow-up meeting of the Japan-China Economic Partnership Consultation" in June 2004, China clearly stated that the "Auto Industry Development Policy" which took effect on and after 1 June 2004 does not prohibit any dealers from selling both Chinese-made and imported automobiles in China. In light of Article XVII of the GATS, Japan would like to urge China to confirm that the Chinese government's statement means that dealers are always allowed to sell both

Chinese-made and imported automobiles without any conditions and to confirm that there is no sales discrimination, in any fashion, between Chinese-made and imported automobiles.

19. With regards to "Market Management Measures on Automobile Brand Names", China has given the opportunity for comments in advance. Japan has already posed the comments to the Ministry of Commerce and hopes the regulations on automobile brands and automobile distribution network will be formed in a manner consistent with WTO rules.

20. On franchising, Japan would like to confirm that China will implement its commitment to "within three years after China's accession to the WTO, none" in Mode 3 on MA and NT.

VII. TOURISM AND TRAVEL RELATED SERVICE

21. In China, the limitation of the establishment of foreign travel enterprise' branch offices constitutes barriers to services supply in China. Japan requests faithful and early, if possible, implementation of the commitments. Please explain the current preparation status.

VIII. TRANSPORT SERVICE (MARITIME TRANSPORT SERVICES AND AUXILIARY SERVICES)

22. A wholly owned foreign shipping company is prohibited in China (not included in China's Schedule). Japan would like to know the information of the further liberalization in these fields. According to China's Schedule, the list of Article II exemption states: "The parties concerned may, through bilateral agreements, establish entities to engage in usual business in China either as joint venture or wholly-owned subsidiaries subjects to the Chinese laws on joint venture and on foreign enterprises for ships owned or operated by carriers of the parties concerned. Indeed, if there is a bilateral agreement with China, "The interim provisions on examination and approval of wholly-foreign-owned shipping companies" provides a special arrangement for the establishment of the wholly owned foreign shipping company under the special conditions, including: "more than 15 years experience as a marine transport enterprise", "more than 3 years as representatives in China" or "there is a scheduled entering a port where the wholly owned foreign shipping company is located". The third condition constitutes barriers to supplying services for customers who reside in the inner part of China. Japan would like to know the view of China on this point. And Japan understands that under "The interim provisions on examination and approval of wholly-foreign-owned shipping companies", some wholly owned foreign shipping companies are permitted. However, in case of the enterprises of some countries, special conditions mentioned above were eased or not applied and wholly owned foreign shipping companies are permitted under the condition of bilateral agreement. In this context, Japan requests China to provide further information on this point, including the name of the countries to which China provides more favorable treatment by bilateral agreements, to what extent favorable treatment has been given by such agreements.

23. On freight forwarding agency services, where the current commitments provide that within four years after accession, wholly-foreign-owned subsidiaries will be permitted, Japan would like to know the plan and schedule for the implementation of this phase-in commitment.

24. The Regulations on International Maritime Transportation, which is administered by Ministry of Communications, provides that a non vessel operating common carrier (NVOCC) needs to pay as the surety bond a sum of RMB 800,000 Yuan (Article 8). Japan seeks China's justification of this sum of surety bond in the light of GATS Article VI:5, particularly for being not more burdensome than necessary to ensure the quality of the services. Japan would like to know whether there is any plan of revision, easing or abolition of this requirement.

25. In China, the Regulations on International Maritime Transportation administered by Ministry of Communications cover NVOCC, while "Regulations concerning Foreign Investment in International Freight Forwarding Operations" administered by Ministry of Commerce covers freight forwarding agency services. When services suppliers are not operating vessels themselves, but through carriage contracts with other vessel operators including as a part of multimodal transport, the regulatory status is not quite evident between these two regulations.* This unclear implementation of the two regulations is causing the confusion and concerns in light of Article VI:1 of the GATS. Japan requests China to introduce and explain clear demarcations of the scope of the two regulations, and which Ministry is in charge of the said services.

IX. OTHERS

26. Japan understands that the "Foreign Trade Law" was amended and came into force in July 2004. Japan requests China to present the relevant information regarding the plan or schedule of preparing laws, regulations, guidelines concerned for implementation of the law. Japan requests China to administer the Act consistently with the China's commitments upon accession to the WTO.

* Paragraph 3 of note to the Draft Schedule on Maritime Transport Services: "person on whose behalf the bill of lading/any other document evidencing a contract of carriage of goods is issued and who is responsible for the carriage of goods pursuant to the contract of carriage".