

**COMMUNICATION FROM THE SEPARATE CUSTOMS TERRITORY OF TAIWAN,
PENGHU, KINMEN AND MATSU**

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 11 November 2004, from the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, is being circulated to the Members of the Council for Trade in Services

**Written Questions to China from the Separate Customs Territory of Taiwan,
Penghu, Kinmen and Matsu concerning Trade in Services**

I. ADVERTISING SERVICES

1. We welcome China's *Measures Governing Foreign Invested Advertisement Enterprises*, published on 3 March 2004, and we have noted that foreign service suppliers are permitted to engage in the advertising business in China in the form of joint ventures and wholly-foreign-owned enterprises. It would be appreciated, however, if China could please provide some further clarification and information, as follows:

- (a) China requires joint ventures and wholly foreign-owned enterprises to have been established and running for 2 years and 3 years respectively, prior to the application being made (Articles 9 and 10). We wonder whether this might be seen as a hindrance to new foreign service suppliers attempting to gain early access to the market.
- (b) Foreign-invested advertising enterprises that intend to set up subsidiaries are required to have an annual turnover of no less than RMB 20 million (Article 11). It would be appreciated if China could clarify the rationale for this additional requirement, which was not listed in its schedule of GATS commitments.

II. COMMUNICATION SERVICES

2. While it is evident that China has made progress on the implementation of measures to open up its communications market, and certain regulations have already been issued, we would appreciate further clarification of the following:

- (a) According to Articles 9 and 14 of the *Regulations of the People's Republic of China on Telecommunications (PRCTEL)* and Article 9 of the *Administrative Measures on*

Telecommunications Business Operation Licenses (AMTBOL), the value-added telecom services operating in provinces, municipal areas and municipalities (PMMs) should be approved by the telecom authorities of the respective PMMs. However, according to the last part of Article 9 of AMTBOL, foreign-invested telecom businesses must comply with the *Provisions on the Administration of Foreign-invested Telecommunication Enterprises (PAFTE)* and need to be approved by the MII. Articles 13, 15, 16 and 17 of the *PAFTE* place additional limitations on foreign-invested value-added telecom services. Not only must they first be ratified by the telecom authorities of the PMM, but they must also be approved by the MII and other offices. It would appear, therefore, that foreign-invested value-added telecom businesses have more provisions to deal with than domestic businesses. Could China please confirm whether its ratification system in the *PAFTE*, especially as it applies to foreign-invested value-added telecom services operating in the PMMs, is consistent with GATS Article 17 on national treatment and GATS Article 6 on domestic regulation for reasonable, objective and impartial methods?

- (b) Article 4 of the *PAFTE* provides that the geographical scope within which foreign-invested telecom companies are allowed to operate is identified by the MII in accordance with the relevant regulations. Apart from those contained in China's Schedule of Specific Commitments, we would appreciate knowing whether any other stipulations or "relevant regulations" exist at the present time.
- (c) According to Article 15 of *PAFTE*, some items of foreign-invested telecom services must be approved by the Planning Department or the Economic General Administrative Department of the State Council. Could China please advise us as to what these investment items are, and provide details of the relevant regulation?

3. According to China's *Guidance Catalogue on Foreign-invested Enterprises*, an exclusively foreign-invested venture will be permitted to operate mobile voice and data services in basic telecommunications with no geographic restriction for a period of five years following China's accession, i.e. until 11 December 2006 at the latest. These statements imply that China will abolish the the upper bound limit on stocks invested by foreigners as well as the restriction on the geographic scope of the above telecom services on 11 December 2006, at the latest. We are very interested in learning more about China's schedule for implementing these plans and would appreciate any further information on this subject that China can provide.

4. Article 9 of PRCTEL stipulates that telecom businesses using new technology that is not listed in the "Telecommunication Services Classification Catalogue" (TSCC) should report this to the telecom authorities of PMM. Could China please describe in detail the procedures and regulations that should be followed once such businesses obtain their operating permits?

5. On 21 February 2003, China promulgated a new, modified TSCC, in which the final notation to basic telecommunication services indicates that some basic telecom services, such as paging services, are administrated in light of the value-added telecom services. Could China please identify for us the actual measures used to regulate such services and provide a description of the relevant provisions?

III. DISTRIBUTION SERVICES

6. According to China's phase-in commitments, within 3 years of accession foreign service suppliers may engage in the Commission Agent Services and Wholesale Trade Services of all imported and domestically produced products except chemical fertilizers, processed oil and crude oil, and no ownership, geographic and quantitative restrictions will apply. In addition, no ownership,

geographic and quantitative restrictions will apply to all services supplied by retailing services, with the exception of chemical fertilizers and chain stores with more than 30 outlets engaged in distributing specified products. No restrictions, either, will be imposed on franchise businesses.

7. In the process of implementing those commitments, China issued three important pieces of legislation, in April and June 2004. These include: the *Foreign Trade Law* (approved by the National People's Congress on 4 April and entered into force on 1 July 2004); the *Measures Governing Foreign Investment in Commercial Fields* (issued by the Ministry of Commerce on 16 April and which came into effect on 1 June, 2004); and the *Measures of Record-Filing Registering for Foreign Trade Dealers* (issued by the Ministry of Commerce on 25 June and effective from 1 July 2004). The issuing of these laws and measures implies a significant step forward in the opening-up of China's distribution services market.

8. In this connection, we would appreciate receiving further information and clarification concerning the following points:

- (a) Under Article 9 of the *Foreign Trade Law*, a foreign trade dealer that intends to engage in the import and export of goods and technology shall proceed with record-filing registration with the authority responsible for foreign trade under the State Council or agencies authorized by the authority. However, in the case where a foreign-invested enterprise already has the right to import materials for its own production and then exports products manufactured in China, is it still necessary for that enterprise to proceed with a record-filing registration?
- (b) If a foreign-invested enterprise intends to expand its business scope from the field of production into the field of commerce (such as retailing and wholesaling trade services), would it be sufficient for that enterprise to apply for an amendment to its original business registration or would it need to establish a new foreign-invested commercial enterprise as outlined in the *Measures Governing Foreign Investment in Commercial Fields*?
- (c) Article 7 of the *Measures Governing Foreign Investment in Commercial Fields* stipulates that under normal circumstances the operating period of a foreign-invested commercial enterprise shall be no more than 30 years. Would China please provide us with the rationale for this regulation and clarify whether an enterprise must apply for a new licence when the 30 years has expired?
- (d) Article 9 of the *Measures Governing Foreign Investment in Commercial Fields* stipulates that once approved, a foreign-invested commercial enterprise is permitted to engage in retailing services and wholesale trade services, and obtains the right to import and export products. Does such an enterprise then still need to make a record-filing registration in line with Article 2 of the *Regulations of Record-Filing Registering for Foreign Trade Dealers*?
- (e) Could China please provide information on the number of applications for Record-Filing Registration that have been approved since the *Measures of Record-Filing Registering for Foreign Trade Dealers* came into force. We are also interested in knowing whether there is a minimum capital requirement for individuals.

IV. EDUCATION SERVICES

9. China issued its *Regulations of the People's Republic of China on Chinese-Foreign Cooperation in Running Schools* on 1 March 2003. Article 25 of the *Regulations* states that the

president or the principal administrator of a Chinese-foreign cooperatively-run school shall be a person with People's Republic of China nationality and domiciled in the territory of China.

- (a) Would China please help us to understand the reasons for these requirements?
- (b) According to China's WTO commitments, "joint schools will be established, with foreign majority ownership permitted." It would be appreciated if China could please explain how the above-mentioned requirements under Article 25 are consistent with its "foreign majority ownership permitted" commitment.

10. China brought its *Implementing Rules of the People's Republic of China on Chinese-Foreign Cooperation in Running Schools* into effect from 1 July 2004. Article 7 of these *Implementing Rules* stipulates that a Chinese-foreign cooperatively-run school is neither allowed to set up internal subsidiaries, nor to set up another cooperatively-run institution. Given that no such limitation exists in China's WTO commitments, what is the justification for these above-mentioned requirements?

V. TRANSPORT SERVICES

11. In its accession commitments, China set the minimum registered capital requirement for a joint-venture freight forwarding agency at no less than US\$ 1 million. However, its *Notification on Issues Relating to the Experimental Establishment of Foreign-Invested Logistic Enterprises*, effective from 20 July 2002, stipulates that only foreign enterprises having more than US\$ 5 million registered capital will be permitted. We could not find any explanation for this requirement in China's responses to questions in 2003 (S/C/M/69), nor an explanation of how it is consistent with its commitments. It would be appreciated if China could provide further clarification.

12. We welcome China's *Administrative Regulations of Foreign-invested International transport Business* that came into effect on 1 June 2004. These *Administrative Regulations* state that foreign service suppliers are permitted to establish joint ventures to provide maritime cargo-handling services, container stations and depot services. Article 5, however, states that the foreign equity share in such a joint venture shall be no more than 49%. We would therefore be grateful for an explanation from China as to how this is consistent with the statement in its commitments "with foreign majority ownership permitted".
