

WORLD TRADE ORGANIZATION

RESTRICTED

S/C/W/259

2 August 2005

(05-3471)

Council for Trade in Services

Original: English

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

China's Transitional Review Mechanism 2005

The following communication, dated 27 July 2005, from the delegation of the European Communities is being circulated to the members of the Council for Trade in Services

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1. The EC is transmitting comments and questions in advance of the meeting of the Council for Trade in Services of September, in order for the Chinese authorities to have sufficient time to provide complete replies.
 2. Once the information to be provided by China in accordance with paragraph 8 and paragraph IV.3 (a) of Annex 1A of its accession protocol has been received, the EC might come back with additional questions.
 3. The EC's comments and questions relate to the following items: legal services; express delivery services; telecommunications; construction, architectural and engineering services; financial services; tourism; distribution services; air transport services.

I. LEGAL SERVICES

4. The EC recognises the ongoing efforts of China in implementing its WTO commitments in the area of the legal services. However, two main issues still need to be addressed by Chinese authorities.
 - (a) Severe and burdensome conditions are imposed on foreign firms, such as the need to start legal services operation, a feasibility study, a 9 month examination approval period, 3 years of consecutive practice before establishing an additional office, 1 partner per office. These requirements constitute a de facto ENT. Could China please indicate when it intends to remove these requirements, in accordance with its WTO commitments?
 - (b) The very broad definition of "Chinese legal affairs", on which foreign law firms are not allowed to provide opinions, contrasts with the restrictive scope of "information on the impact of the Chinese legal environment", the area of interest for the European law firms. Could China please delimit the precise ambit of "Chinese legal affairs", and provide a definition and content of "information on the impact of the Chinese legal environment"?

II. EXPRESS DELIVERY SERVICES

5. The draft Chinese postal law dated July 19, 2004, raised a number of questions in regard to China's WTO commitments, both specifically in the courier sector, and horizontally. In the absence of any new draft law submitted by China since then, the EC would like to reiterate its comments about the revision of the postal law, on which it would be grateful to receive detailed replies:

- (a) The draft law seems to include express delivery of addressed letters weighting less than 350 gr. in the reserved area. China's current commitments under courier services, which cover express delivery, do not mention a threshold and express delivery operators have, until now, been able to handle letters. The EC would be grateful if China could please confirm that express delivery of letters weighting less than 350 gr. will not be included in the scope of the monopoly, and that the new postal law will provide a suitable definition of express delivery in line with international practice, for instance by adding a reasonable price criterion to the weight criterion used to define the monopoly.
- (b) A new provision (article 94 paragraph 2), would forbid the operation of delivering letters, printed matters and parcels except in the form of express delivery service. China's WTO commitments cover all courier services listed under CPC 75121, which includes inter alia the handling of parcels and newspapers, periodicals and magazines. Furthermore, these commitments do not mention national treatment limitations other than foreign-equity caps. Could China please confirm that article 94 paragraph 2 will be removed in the final draft law?
- (c) The proposed provisions on licensing procedure for express delivery operators have also been modified. Whether the procedure will be centralised or decentralised is not clear from the text. The impartiality of the regulator and its independence from China Post do not appear to be clarified. Could China please confirm that it will ensure (i) that existing licences will be grandfathered? (ii) that the licensing procedure will be managed at central level for foreign or foreign-owned operators? (iii) that the impartiality of the licensing procedure will be guaranteed, for instance by ensuring the independence of the regulator from all operators, including China Post and its subsidiaries?
- (d) Several proposed provisions granting China Post and its subsidiaries a preferential treatment have been maintained or introduced, even for activities which could be understood as being outside the scope of the universal service and opened to competition. They include exemption of business tax, State compensation of losses, specific liability regime and exemption from licensing for express delivery of addressed letters. China's current commitments in courier services do not mention national treatment limitations other than foreign-equity caps. Could China please confirm that it will ensure, in the final draft law, that foreign and foreign-owned operators shall have no less favourable treatment than China Post and its subsidiaries for their activities

6. When would China submit a new draft postal law that takes account of the above-mentioned comments?

III. TELECOMMUNICATIONS

7. The EC thanks China for its explanations on interconnections.

8. The EC however still notes that, for the establishment by foreign investors of joint-ventures in the so-called “basic” telecom sector, there is a requirement to venture with a main Chinese partner in the telecom sector. This requirement appears to be in contravention with China’s commitments set forth under the Working Party report. How and when would China bring its regulation in line with its WTO commitments, as well as with the current practice in many countries where new entrants come from other sectors of the economy?

9. Isn’t China de facto limiting the number of operators to those already on the “basic” market by restricting the choice for JV partners to those operators?

10. So long as the joint-venture itself has experienced personnel (who can be local experienced personnel hired by the joint venture), it will be able to carry out its missions and serve adequately the consumer. Why should the Chinese partner have personnel experienced in the telecom sector, as per article 8 of the regulation on foreign-invested enterprises?

11. In the area of “value-added” telecom services, could China please confirm that foreign service suppliers can provide the same value-added services as domestic operators on a national treatment basis?

12. China explained in its answers to the 2004 TRM that one of the objectives of its regulation is “to ensure the healthy development of the telecom industry”. Could China please explain what does “the healthy development of the telecom industry” mean?

13. Finally on the issue of joint-ventures, what is the rationale for the minimum capital requirements? How have they been computed? Are domestic operators submitted to the same capital requirements?

14. Separately, the EC would still like to know what are the functions of local regulatory bodies apart from licensing functions?

IV. CONSTRUCTION, ARCHITECTURAL AND ENGINEERING SERVICES

15. The EC continues to be concerned by the lack of openness of China's construction and construction design markets. Last year, the EC had expressed appreciation for China's first efforts to take into consideration its deep concerns as regards regulations in these sectors. The EC had in particular taken note of the changes to Decree 113, regulating the establishment in China of foreign invested construction companies, through the publication in September by the Ministry of Construction of a circular (Jian-Shi 2004-159).

Since then however, the situation applying to foreign construction and construction design companies has not improved.

16. First, the EC would like to know when Decree 114, which regulates the field of foreign invested construction and engineering design enterprises, shall be revised (see notably comment on residency requirements below). The EC would also appreciate to be informed about the planned timetable for the issuance of draft implementing rules for Decree 114, which, despite having been announced since years, have yet to be issued for consultation. Finally, the EC would appreciate the prompt review of constraints on foreign architects and engineers, as has been done in the construction sector through Circular 159.

17. Second, the EC would like to be informed on the dates of publication and entry into force of Circular 200 on project management in the construction sector, and of the conditions applying to cross-border supply of integrated engineering services, including construction project management.

18. Third, excessive capital requirements, which represent a significant barrier for foreign construction companies, have not been lowered. When please does China intend to solve this particular issue?

19. Fourth, questions left unanswered by Circular 159, notably as regards residency requirements, have not yet been addressed. Could China please confirm when it intends to bring its regulations in full conformity with its GATS commitments? In particular, when will China abolish the minimum residency requirement for foreign personnel of 3 months a year, which is imposed in point IV.5 of Notice No. 73 for construction enterprises, and of 6 months a year for construction and engineering design enterprises, which is imposed under Article 16 of Decree No. 114?

V. FINANCIAL SERVICES

20. Please refer to the comments and questions sent on banking and securities services to the Committee on Trade in Financial Services.

VI. TOURISM

21. The EC understanding is that the Regulations on Administration of Travel Agencies dated 11 December 2001 establish, in article 11, an economics needs test (ENT) for the authorisation of new travel agencies. This market access limitation is not reflected in China's GATS schedule of commitments. This has been raised to the attention of the Chinese authorities in several occasions, including the 2003 and 2004 TRM processes.

22. Would China please provide Members with information about its plans for aligning the regulation of travel agencies with China's GATS commitments in the sector?

VII. DISTRIBUTION

23. The Chinese authorities produced in 2004 legislation affecting the distribution sector in order to implement the corresponding phase of market liberalisation in line with China's GATS commitments. In particular, a text of "Measures for the Administration of Foreign Investment in the commercial sector" was approved in April 2004, being effective as of June. Several questions remain about this legislation and how the adjustment to subsequent phases of trade liberalisation will be done.

24. This law affects, among others, retail distribution services of several products for service suppliers with more than 30 stores. The law indicates 49% foreign ownership until December 2006 for distribution of books, pharmaceutical, and other products. Although this is currently in line with China's GATS commitments, the situation will change as of January 2007, when China's WTO commitments to allow full foreign control will apply. Would China please explain how it is planning to manage this transition?

25. Authorisations of 100% foreign-owned distribution companies are subject to specific administrative procedures and requirements. Would China please confirm that national service suppliers are subject to the same administrative procedures, i.e., that this measure be applied on a national treatment basis?

26. The law establishes that the business term of foreign-owned companies should not be longer than 30 years (40 years in Central/Western China). Would China please confirm that national service suppliers are subject to the same limitations, i.e., that this measure be applied on a national treatment basis? (Note that this question does not pertain to land use, but to the possible legal existence/continuity of companies for a concrete period beyond 30/40 years, or an indefinite period).

VIII. AIR TRANSPORT

27. In relation to China's commitments under the GATS for the provision of Computer Reservations Services (CRS), the EC notes that a regulation is under preparation to cover this area. CRS providers need certainty about the legal environment under which they are operating, and a guarantee on their scope of business and on non-discriminatory principles to be applied. Could China please update Members on the progress of legislation that will create a legal framework for the sector?
