

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 30 August 2005, from the delegation of Japan is being circulated to the 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. Japan appreciates that China's liberalization efforts are on-going taking into account the WTO commitments made at the time of China's accession. However, through the domestic consultation with industries, Japan now realized that it should shed more light on the operational and regulatory aspects, including licensing requirements and procedures to see whether the commercial interests that are legitimately expected have been realized in real terms. Japan also wishes China to ensure that, in accordance with paragraph 5 (a) of Article VI of the GATS, domestic regulations are:

- (a) based on objective and transparent criteria,
- (b) not more burdensome than necessary to ensure the quality of the service, and
- (c) in case of licensing procedures, not in themselves a restriction on the supply of the service.

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

I. LEGAL SERVICES

3. China explained in the last TRM that there was no quantitative restriction on foreign legal service suppliers. Then, there is no longer clear legitimate reason to maintain Paragraph 3 of Article 7 of "the Management Regulations on Foreign Law Firms in China (Regulation No.338)". **Therefore, Japan requests China to remove this clause.**

II. ARCHITECTURAL AND ENGINEERING SERVICES

4. According to "the Regulations on Administration of Foreign-Invested Construction and Engineering Design Enterprises" and "the Regulations on Management of Foreign-funded Urban

Planning Service Enterprises" (Decree No.114 and 116 of the Ministry of Construction), foreign construction service enterprises and architectural and engineering design service enterprises need to satisfy qualification requirements, such as minimum capital, number of engineers and foreign and domestic engineer-ratio. Some of these requirements raise doubts concerning their consistency with Article VI:5 of the GATS and China's WTO commitments, in particular, in relation to Article XVII of the GATS. In this light, **Japan would like China to explain how the requirements of foreign professionals ratios, "one-fourth for a wholly foreign-owned enterprise and one-eighth for a Sino-foreign joint venture or a Sino-foreign cooperatively managed enterprise" in Article 15 of Decree No. 114 and "25%" in Article 6 of Decree No. 116, are consistent with China's WTO commitments.** Japan also considers that these requirements are more burdensome than necessary and requests China to abolish the requirements.

III. COMPUTER AND RELATED SERVICES

5. Japan has been informed that China bans consultancy service related to the installation of computer hardware through call center by foreign suppliers. Japan believes that this service is classified under "Computer and related services", more specifically, "Consultancy services related to the installation of computer hardware (CPC 841)" where China has no reservation on Mode 1, 2 and 3. **Japan requests China to duly comply with this commitment.**

IV. COMMUNICATION SERVICES: TELECOMMUNICATION

6. "The Telecommunications Act", a basic law on operating telecommunications business, remains to be constituted. Due to the lack of the law, telecommunications operators are facing difficulties initiating and expanding their businesses in Chinese market despite China's WTO commitments. **Japan urges China to explain the time schedule of constituting the act and the outline of the act.**

7. With regard to the restriction on resale of telecommunications services, China stated in the last TRM that this restriction also applied to domestic operators, and given the actual development level of China's telecommunications market, it was still premature to remove this restriction. However, Japan firmly believes that this restriction does not comply with China's WTO commitments because there is no reservation for the resale. Even if this restriction is applied to both the domestic and foreign operators in a non-discriminatory manner, this ensures only the consistency with "National Treatment," not "Market Access". **Therefore, Japan requests that China comply with its commitments and abolish this restriction.**

8. In China, it is acknowledged that some foreign operators were instructed orally to satisfy additional requirements that are not stipulated in the relevant laws and regulations when they applied for licenses. **Japan requests China to abstain from such discretionary administration and make licensing criteria publicly available.**

9. Japan understands that the terms and conditions of interconnections regarding the leased circuit, frame relay and IP-VPN, etc. are not made publicly available because "the Regulation on the Interconnections between Public Telecommunication Networks" (Decree 9 of the Ministry of Information Industry) does not stipulate them. **Japan requests that China amend the regulations in order to ensure the transparency of interconnection arrangements.**

10. With regard to the international gateway for providing international telecommunications services, China stated in the last TRM that China made no commitment in this regard. However, according to the GATS, with respect to sectors where commitments are undertaken, each Member has the right to maintain or adopt measures inconsistent with "Market Access" or "National Treatment" only when such measures are inscribed as reservation in the Specific Commitment. International

gateway is an inevitable part of telecommunications network to provide telecommunications services. Therefore, unless a specific reservation is inscribed in the Specific Commitment, the international gateway is not excluded with respect to sectors where commitments are undertaken. Although there is a footnote mentioning "all international telecommunications services are required to go through gateways established with the approval of China's telecommunications authority" in China's WTO commitments, this footnote by no means excludes the international gateway from commitments. Therefore, Japan firmly believes that China made commitment regarding the international gateway. **If China still insists that no commitment was made in this regard, Japan would like China to explain the detailed reason.**

11. In addition, Japan would like to point out that the Administrative Measures on International Gateways (Decree 22 of the Ministry of Information Industry), which stipulates that the construction, operation and maintenance of the international gateway stations are permitted only to the Chinese state-owned enterprises, is inconsistent with "National Treatment." According to the GATS, each Member shall specify conditions and qualifications on "National Treatment". Although there is a footnote mentioning "all international telecommunications services are required to go through gateways established with the approval of China's telecommunications authority" in China's WTO commitments, this footnote by no means reserves this measure inconsistent with "National Treatment", which excludes foreign service suppliers from the construction, operation and maintenance of the international gateway. **Thus, Japan requests China to abolish this measure and urges China to comply with its WTO commitments.**

V. CONSTRUCTION AND RELATED ENGINEERING SERVICES

12. After the establishment of "the 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 requests China to maintain the system under Decree No.32, which permits foreign construction enterprises without local presence to undertake construction projects on a project-by-project basis.**

13. Wholly foreign-owned enterprises are allowed to undertake only four types of construction projects as set out in China's WTO commitments. In addition to this limitation, the foreign construction enterprises need to be qualified by the Chinese authority, and are subject to requirements such as the minimum capital and the number of engineers according to "the Regulations on Administration of Foreign-Invested Construction Enterprises" that came into force in December 2002. In particular, plant construction requires a lot of qualification requirements such as those for roadway civil works and for construction houses. They should be comprehensively included in the qualification for the plant contractor. **Japan believes these requirements constitute substantial barriers to foreign construction enterprises and hence requests that China ease or abolish these qualification requirements.** Japan is still concerned whether these requirements are compatible with the GATS Articles VI:5 and XVII. **With respect to Circular No. 159 of the Ministry of Construction, Japan would like China to confirm that it regards foreign experience of a foreign contractor as valid in fulfilling requirements not only for new application for a qualification certificate, but also for renewal or reviewing of the certificate.**

VI. DISTRIBUTION SERVICES

14. **Japan requests China to ensure "the Measures for the Administration of Foreign Investment in Commercial Fields", which was promulgated on 16 April 2004 and came into force on 1 June 2004, to be administered consistently with WTO agreements.**

15. With regard to "the Measures for the Administration of Foreign Investment in Commercial Fields", **Japan believes licensing requirements in the measures are unclear and requests China to make the requirements publicly available.**

VII. TOURISM AND TRAVEL RELATED SERVICES

16. The Japanese tourism industry has difficulties in establishing branches in China since requirements and time-frame for the application process are unclear. In the last TRM, China stated that the laws and regulations on branches of foreign enterprises were under formulation. **Japan would like to know the progress of the formulation of such laws and regulations.**

17. In China's WTO commitments, foreign-owned (including joint venture) travel agencies and tour operators are not allowed to deal with Chinese traveling abroad. However, it seems that not only Chinese but also other nationals traveling abroad are not allowed to be dealt with by foreign operators at the operational level. **Japan would like China to clarify whether foreign operators can handle foreigners' outbound travel.**

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

18. On the occasion of the accession to the WTO, China enacted "the Regulations of the People's Republic of China on International Maritime Transportation" which entered into force on 1 January, 2002. According to the Regulation, any foreign shipping company that intends to engage in international liner services to and from China shall be registered with the Ministry of Communications. The Article 17 of the Regulation provides that:

- To be engaged in international liner services, an application shall be submitted to the competent communications department of the State Council;
- **The competent communications department of the State Council shall complete examination and verification within 30 days from the date of receipt of the application for international liner services.** If the application documents are authentic and complete, registration shall be granted and the applicant shall be notified of the result;
- If the application documents are unauthentic and incomplete, no registration shall be granted and the applicant shall be notified in writing and given the reasons therefore.

19. On 27 April 2005 a Japan-Sino joint venture incorporated under Japanese law applied to the Ministry of Communications for registration, according to the provision of the Regulation in order to start international liner services between Shimonoseki and Shanghai. Even after 30 days passed thereafter, the Ministry did not notify the applicant of a result or any reason why registration is not granted. As a result, the Japanese company was not able to start international liner services between Shimonoseki and Shanghai as originally scheduled. In China's WTO commitments, no reservation was made to the market access of mode 1 regarding the international maritime transport services including passenger transportation. Japan understands that market access for international maritime transport services of a foreign shipping company is substantially hampered by such action of Chinese government by not notifying the applicant of the result and reason within the 30 day deadline clearly stipulated in the Regulation. **Japan requests Chinese government to notify an applicant of the result and reason immediately in writing according to the Regulation.**

20. In China's WTO commitments, when a foreign company establishes a maritime transport company in China, foreign investment shall not exceed 49% of the total registered capital of a joint venture. In the last TRM, China stated that, based on the principle of reciprocity, if there is a bilateral agreement with China, "the wholly-foreign-owned shipping company is permitted." In relation to this, "The interim provisions on examination and approval of wholly-foreign-owned shipping companies" provides a special arrangement for the establishment of the wholly-foreign-owned shipping company under the special conditions including "more than 15 years experience as a marine transport enterprise", "representative office in China more than three years", "the existence of a scheduled entering of a port where the wholly-foreign-owned shipping company is planned to be located" and "the increase in paid-in capital of the wholly-foreign-owned shipping company each time it opens a branch." **The third condition, "the existence of a scheduled entering of a port where the wholly-foreign-owned shipping company is planned to be located", constitutes substantial barriers to supply services for customers who reside in the inner part of China. Japan would like to know China's views on this point, in particular, in light of Article VI:5 of the GATS.**
