

WORLD TRADE ORGANIZATION

RESTRICTED

S/C/W/265

14 September 2005

(05-4015)

Council for Trade in Services

Original: English

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 12 September 2005, 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.

It is our understanding that, in accordance with the provisions of the WTO Agreement, China's Accession Protocol, the Report of the Working Party on China's Accession, and China's Schedule of Specific Commitments, upon its accession, China confirmed that it will publish a list of all organizations that were responsible for authorizing, approving or regulating service activities for each service sector, and it would publish in the official journal all of China's licensing procedures and conditions prior to becoming effective. China was also committed to ensuring that licensing procedures and conditions would not act as barriers to market access and would not be more trade restrictive than necessary. We recognize China's efforts to improve its business environment and its implementation of WTO commitments over the past few years, with the aim of further integrating with the global economy. In the interests of achieving this goal, it would be appreciated if China could provide further clarification, in its responses to our questions below, of certain aspects of its implementation of market access commitments in the Telecommunications and Tourism and Travel Services sectors as contained in its Schedule of Specific Commitments.

I. TELECOMMUNICATIONS SERVICES

1. We note that, since the year 2000, the Chinese government has promulgated and released several laws and regulations governing the telecommunications industry, including the China Telecommunications Regulations, the Administrative Regulations of Foreign-invested Telecommunications Business, the Catalogue of Telecommunications Services, the Administrative Regulations of Licenses for Telecommunications Services, and the Administrative Regulations of the Internet Services.

Apart from the above-mentioned telecommunications-related laws and regulations, please advise whether there are any others that apply to foreign firms interested in investing in telecommunications businesses in China? If so, it would be appreciated if China would kindly provide them to us.

2. In line with their WTO accession commitments, China issued the China Telecommunications Regulations in September, 2000. Are there any plans to revise the Regulations in the near future? As we understand that China is currently drafting Telecommunication Act. If so, could provide a reasonable period for comment to the appropriate authorities before promulgated, and also could we please be provided with a draft copy.
3. Upon accession to the WTO, China promised to follow the principle of “independent regulators”, as outlined in Article 5 of the Basic Telecommunications Reference Paper. According to that article, the regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services, and the decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

We would appreciate knowing how the Chinese government acts to ensure consistency with Article 5 of the Basic Telecommunications Reference Paper. Please provide a comprehensive list of the regulatory authorities and the scope of territories under the Ministry’s charge. In particular, what measures have been taken to make sure that the telecommunications regulatory authority is organizationally separated from State-run telecommunications operators and independent from their operations?

4. Articles 4 and 6 of the Administrative Regulations of Foreign-invested Telecommunications Business, state that the Ministry of Information Industry should follow “the relevant regulations” to clarify areas open to foreign investment, and the stake ratios of indigenous investors and foreign investors at different time of periods.

Could China please elaborate on what constitutes “the relevant regulations” and provide further information.

5. Provisions on the qualifications for a telecommunications operator, namely Articles 10 and 13 of the China Telecommunications Regulations and Articles 8 through 10 of the Administrative Regulations of Foreign-invested Telecommunications Business, mention that a major foreign investor must have “achievements and business experience”. We should be grateful for a precise definition of the term “achievements and business experience”.
6. According to the provision on interconnection dispute settlement in Article 2.5 of the WTO Telecommunications Reference Paper, an operator requesting interconnection with a major operator may have recourse, either at any time or after a reasonable period of time which has been made known publicly, to an independent domestic body to resolve disputes regarding the terms, conditions and rates for interconnection within a reasonable period of time, to the extent that these have not been established previously.

It would be appreciated if China would please:

- (i) Explain and provide the laws and regulations governing interconnection dispute settlement and unbundling network elements.
- (ii) Indicate whether fulfilment of the obligation to unbundle network elements is limited to predominant telecommunications operators or whether all telecommunications operators shall fulfil the obligation to unbundle network elements.
- (iii) Advise what length of period must pass after a compromise deadline before a competent authority may intervene in interconnection negotiations carried out by telecommunications operators.

Information on any further relevant provisions covering interconnection would also be appreciated.

7. According to the provision on universal service in Article 3 of the WTO Basic Telecommunications Reference Paper, any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided that they are administered in a transparent, non-discriminatory and competitively neutral manner, and are not more burdensome than necessary for the kind of universal service defined by the Member.

According to Article 44 of the China Telecommunications Regulations, telecommunications operators shall fulfil the related telecommunications universal service obligation pursuant to the “related regulations of the State”. The Administrative Regulations of Telecommunications Universal Service Cost Compensation shall be jointly enacted by the Ministry of Information Industry and the Ministry of Finance under the State Council as well as the competent authority in charge of prices control, and then be forwarded to the State Council for approval before its promulgation.

Could China please explain provide details of the contents of the “related regulations of the State”. Furthermore, have the Administrative Regulations of Telecommunications Universal Service Cost Compensation been enacted and promulgated? If yes, please provide the relevant data for our reference and, in the absence of any relevant regulations, please advise what is the schedule for their legislation?

II. TOURISM AND TRAVEL-RELATED SERVICES

8. According to Part 9.B of China’s Schedule of Specific Commitment on Services, within six years after accession, there are to be no restrictions on the establishment of branches by a joint-venture travel agency/tour operator and the requirement on registered capital of foreign-invested travel agency/tour operators is to be the same as that of Chinese travel agency/tour operators.

In view of the fact that it has been almost four years since China joined the WTO, could we please be advised of when the Regulations on Administration of Travel Agencies will be revised to contain the above commitments.

9. Could China please elaborate on the expected length of the trial period for the Provisional Regulations on the Establishment of Foreign-controlled and Wholly Foreign-owned Travel Agencies, and advise whether the relevant regulations will ultimately be included in the Regulations on Administration of Travel Agencies.
10. Article 30 of China’s Administrative Regulations on Travel Agencies regulates the qualification requirements for foreign tour operators. In addition to requirements consistent with its WTO commitments, there is a requirement that a foreign tour operator to be a member of the Chinese Tourism Services Association.

Could China please explain the details of the requirement, and please indicate, for example, whether it contains local residency or citizenship requirements? And also please provide details of qualifications and application procedures for becoming a member.
