

COMMUNICATION FROM JAPAN

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

The following communication, dated 27 September 2006, 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 China's firm commitment to continuously improving the level of liberalization in accordance with the services schedule made at the time of accession. While regulatory framework has been accordingly upgraded, it seems that implementation does not keep pace with the upgraded regulations, particularly at local levels. Japan understands that this might be attributed to the fact that China is an immense country with 23 provinces and levels of development are diverse across these provinces. In this regard, Japan would like to reiterate that implementation at provincial level needs to be secured.

2. In particular, the process of examining applications for license is not standardized based on introduced regulations and some Japanese companies have been kept waiting for the outcome of the application process. Japan would like to remind China of paragraph 308 of the Working Party Report;

308. The representative of China also confirmed that upon accession China would ensure that China's licensing procedures and conditions would not act as barriers to market access and would not be more trade restrictive than necessary. In accordance with China's commitments under the WTO Agreement, the Draft Protocol and its Schedule of Specific Commitments, the representative of China confirmed that for those services included in China's Schedule of Specific Commitments, China would ensure that:

- (a) China's licensing procedures and conditions were published prior to becoming effective;*
- (b) In that publication, China would specify reasonable time frames for review and decision by all relevant authorities in China's licensing procedures and conditions;*
- (c) Applicants would be able to request licensing without individual invitation;*
- (d) Any fees charged, which were not deemed to include fees determined through auction or a tendering process, would be commensurate with the administrative cost of processing an application;*

(e) The competent authorities of China would, after receipt of an application, inform the applicant whether the application was considered complete under China's domestic laws and regulations and in the case of incomplete applications, identify the additional information that was required to complete the application and provide the opportunity to cure deficiencies;

(f) Decisions would be taken promptly on all applications;

(g) If an application was terminated or denied, the applicant would be informed in writing and without delay the reasons for such action. The applicant would have the possibility of resubmitting, at its discretion, a new application that addressed the reasons for termination or denial;

(h) If an application was approved, the applicant would be informed in writing and without delay. The licence or approval would enable the applicant to start the commercial operations upon registration of the company with SAIC for fiscal and other similar administrative purposes. This registration would be completed within 2 months of the submission of a complete file, as required by public SAIC regulations, and in accordance with China's Schedule of Specific Commitments;

(i) Where China required an examination to licence professionals, such examinations would be scheduled at reasonable intervals.

I. LEGAL SERVICES

3. The article 7 of “the Management Regulations on Foreign Law Firms in China (Regulation No. 338) stipulates the requirements to establish a representative office in China. Amongst these requirements, the paragraph 3 provides that there must be an actual need to establish a representative office in China to conduct legal service business. Japan believes that this requirement is a quantitative restriction which is not consistent with the market access commitment. In addition to the argument above, Japan would like to comment on the explanations made by China in the last TRM. China mentioned the two reasons to maintain the article. The first one is “principle of prudence,” which is to test the credential of foreign law firms with the aim of protecting customers. Japan believes that this explanation is not reasonable enough in that the credential of foreign law firms has nothing to do with local needs. The second one is “different economic development levels and the actual receptivity of legal services in China.” Most foreign law firms have established or are planning to establish in metropolitan areas such as Beijing and Shanghai. Further, foreign law firms should be blamed if they suffer the lack of needs as a result of recklessly embarking on business in the areas where there is no demand. For all these reasons, Japan would like China to review the article 7 to provide comfort to foreign law firms considering establishment of legal practice in China.

II. ARCHITECTURAL AND ENGINEERING SERVICES (CPC 8671, 8672, 8673, AND 8674)

4. Regarding the market access commitment in mode 3, “within five years after China’s accession to the WTO, wholly foreign-owned enterprises will be permitted”, Japan would like China to specify exactly when China will implement this commitment.

5. It is alleged that Chinese nationality is required to sit for the exam. If so, it is not in line with the commitment made in the national treatment column and Japan would like China to remove the nationality requirement.

6. Japan would like China to confirm that there is no need to form a joint venture to provide services in mode 1 and 2.

III. COMMUNICATION SERVICES: TELECOMMUNICATION

7. "Regulation on the Interconnections between Public Telecommunication Networks (Decree 9 of the Ministry of Information Industry)", does not govern leased circuits, frame relays and IP-VPN as China indicated in the last TRM. If there is no domestic law/regulation ensuring interconnection of leased circuits, frame relays and IP-VPN, Japan believes that China has not fully implemented commitment regarding the article 2.2 in the Reference Paper. If there is a law/regulation, please indicate the name of the law/regulation, quoting the number of provision ensuring interconnection of leased circuits, frame relays and IP-VPN. In addition, please indicate the name of law, the number of provisions requiring operators to disclose interconnection arrangements as is required under the article 2.4 of the Reference Paper.

8. Under the article 2.5 of the Reference Paper, a service supplier has recourse to an independent domestic body concerning interconnection disputes with major suppliers. Japan assumes that this is guaranteed by "the Regulation on the Interconnections between Public Telecommunication Networks (Decree 9 of the Ministry of Information Industry)." However, there is no provision indicating the name of the independent domestic body in charge of this dispute settlement mechanism. Japan would like China to explain whether a specific governmental body has been established, and if the body was already established, please indicate the names of the governmental body, the division/department in charge and related laws. If the body is not established, Japan believes that it is not in line with the article 2.5 of the Reference Paper.

9. China has made the reservation capping foreign capital participation up to 50% in value-added telecommunication services. However, it is reported that China requires 100% Chinese capital for the approval of licenses in practice. Japan would like to know whether this is indeed the case. Please explain about licensing requirements and procedures. Furthermore, according to the Para 308 (g) of Working Party Report, the applicant is informed in writing of the reasons for denial when an application for license is denied. Japan would like China to indicate whether this is always implemented.

IV. CONSTRUCTION AND RELATED ENGINEERING SERVICES

10. Direct contract on a project-by-project basis was abolished in return for the establishment of wholly owned foreign subsidiaries when China acceded to the WTO in 2001. However, the conditions to obtain higher grades after establishing a 100% subsidiary are burdensome (e.g. 200 technical engineers to obtain first class qualification) and the amount of contracting is considerably limited (i.e. contracting limit up to five times capital except special grade). Therefore, Japan would like China to review and relax these conditions.

11. This year several local governments (Tianjin city and Yantai city) in China promulgated the regulation which requires contractors to establish commercial presence incorporated in each local area. Each commercial presence needs to fulfill capital requirement and employment of technical managers. Japan would like China to remove this regulation which is not in line with the market access commitment.

12. In plant construction, a plant contractor needs to obtain multiple qualifications including qualifications for roadway civil works and construction houses. Japan considers that these requirements are more burdensome than necessary, and would like China to consider introduce a new qualification for the plant contractor.

V. DISTRIBUTION SERVICES

13. With regards to "the Measures for the Administration of Foreign Investment in Commercial Fields", Japan believes licensing procedures in the measures are unclear and requests China to make

the procedures publicly available and to provide licenses to foreign capital enterprises that fulfils the procedures as indicated in the paragraph 308 (a) of the Working Party Report.

14. According to the China's accession schedule of specific commitments on services (WT/ACC/CHN/49/Add.2), part of the reservations made in mode 3 of retailing services is as follows;

Foreign service suppliers will be permitted to engage in the retailing of all products, except for the retailing of books, newspapers and magazines within one year after accession, the retailing of pharmaceutical products, pesticides, mulching films and processed oil within three years after accession and retailing of chemical fertilizers within five years after accession.

None, within three years after accession, except for: retailing of chemical fertilizers, within five years after accession; and-those chain stores which sell products of different types and brands from multiple suppliers with more than 30 outlets. For such chains stores with more than 30 outlets, foreign majority ownership will not be permitted if those chain stores distribute any of the following products: motor vehicles (for a period of five years after accession at which time the equity limitation will have been eliminated), and products listed above and in Annex 2a of the Protocol of China's WTO Accession.

15. Japan would like to know whether chain stores with foreign majority ownership having more than 30 outlets can distribute books, newspapers and magazines one year after accession, the retailing of pharmaceutical products, pesticides, mulching films and processed oil three years after accession and retailing of chemical fertilizers five years after accession.

16. Japan would like to know the progress of drafting of the laws and regulations regarding the establishment of branches in distribution sector in relation to the third paragraph of the market access column in horizontal commitments, "The establishment of branches by foreign enterprises is unbound, unless otherwise indicated in specific sub-sectors, as the laws and regulations on branches of foreign enterprises are under formulation."

VI. TOURISM AND TRAVEL RELATED SERVICES

17. Japan would like to know the progress on "a prudential study on the timeframe for removing the restrictions on the establishment of branches of foreign travel agencies" that China mentioned in the last TRM.

18. In China, joint ventures or wholly foreign-owned travel agencies and tour operators are not permitted to engage in the activities of Chinese traveling abroad and to Hong Kong China, Macao China and Chinese Taipei. Japan would like to know the prospect of future liberalization in this field.
