

COMMUNICATION FROM JAPAN

Transitional Review Mechanism Pursuant to Paragraph 18 of
the Protocol of Accession of the People's Republic of China ("China")

The following communication, dated 26 October 2007, from the delegation of Japan, is being circulated to the Members of the Council for Trade in Services.

Questions and Comments from Japan on the Implementation by China
of its Commitments on Trade in Services

1. Japan appreciates China's commitment to improve continuously the level of liberalization in accordance with the services schedule made at the time of accession. Japan believes that liberalization in the services sector will not only enhance the efficiency of the sector, but also contribute to China's overall economic growth. While regulatory framework has been accordingly upgraded, it seems that implementation does not keep pace with the upgraded regulations. In this regard, Japan would like to reiterate that implementation of China's commitment needs to be secured. Japan also continues to encourage China to make further efforts to enhance regulatory transparency, thus maximizing the benefits of liberalization. Japan is of the view that there are still rooms for further improvements in this area, in view of China's commitment to transparency as described in the Report of the Working Party on the Accession of China.

2. In accordance with paragraph 18 of the Protocol of Accession of the People's Republic of China, which states that "China shall provide relevant information to each subsidiary body in advance of the review" and in the spirit of cooperation to render the TRM process most efficient and effective, Japan requests China to provide, in advance of the Regular Meeting of the Council for Trade in Services, responses and relevant information to the following questions and comments.

. **POSTAL/COURIER SERVICES**

3. According to China's accession schedule, China committed "CPC75121, except for those currently specifically reserved to Chinese postal authorities by law". Could China clarify when "currently" refers to? Does "currently" means December 11, 2001 when the Chinese schedule came into effect? Could China clarify specifically and comprehensively what exactly are the exceptional services that are monopolized by Chinese postal authorities, as well as the relevant laws and regulations conferring such reservation to Chinese postal authorities?

4. Japan understands that Article 8 of the Postal Law (enforced on January 1, 1987) stipulates that Chinese postal authorities shall monopolize services of delivering correspondence and other articles that have the nature of correspondence. On the other hand, Article 8 also stipulates that the

above provision does not apply if the State Council decides otherwise. Japan would like to know, if any, the details of such a decision specifically and comprehensively.

5. Japan understands that China is revising the Postal Law. Could China clarify to what extent there would be a change, if any, with respect to the scope of the monopoly of China Post Group as a result of the revision? Does such a revision affect Chinese commitment under the current schedule?

6. Japan understands that "Measures Governing Foreign-Funded International Freight Forwarding Agent Enterprises (enforced on December 11, 2005)" stipulates the conditions of the entry of wholly foreign-owned enterprises into the courier service market in China. This law classifies international freight forwarding business into eight categories. For seven categories, approval from the Ministry of Commerce is required when foreign services suppliers acquire licenses. However, for international express (excluding delivery of personal letters and official documents of the party, government, and military at and above the province level), foreign services suppliers need approvals from the provincial administrative department as well as from the Ministry of Commerce. Could China clarify the reason why international express is treated differently and is subject to more strict conditions? The international express does not cover the delivery service of personal letters and official documents of the party, government, and military at and above the province level. Japan would like to know why and how personal letters are distinguished from other letters (for example, letters for commercial use) in China.

II. TELECOMMUNICATION SERVICES

7. China has committed to all provisions of the Reference Paper, and has also committed to develop a domestic system concerning Interconnection in article 2 of the Reference Paper. Furthermore, at the last TRM, China explained that the Chinese domestic law, "Regulation on the Interconnections between Public Telecommunication Networks (Decree 9 of the Ministry of Information Industry)", does include Leased circuits, Frame relays and IP-VPN, though these are not clearly stipulated in this law.

8. Therefore, Japan would like to seek confirmation that Leased circuits, Frame relays and IP-VPN are included in "Other networks that the Ministry of Information Industry defines" stipulated under paragraph 8 of Article 2 of "Regulation on the Interconnections between Public Telecommunication Networks (Decree 9 of the Ministry of Information Industry)". Moreover, it would be much appreciated if China provides the legal document on what "the Ministry of Information Industry defines" under paragraph 8 of Article 2 of this regulation.

9. If there is no legal document related to paragraph 8 of Article 2 of this regulation, Japan would like to ask whether China has a intention to establish legal basis for restrictions at an early stage in order to ensure fairness and transparency in the information telecommunication markets.

10. China has reserved the right to place a limit on foreign capital participation of 49% in basic telecommunication services and of 50% in value-added telecommunication services. Japan would like to ask the following two questions on this point.

- (a) Internet data centre services are defined as First value-added telecommunication services in "Classification List for Telecommunication Services" which was amended in February 2003. Similarly, internet connection services are defined as Second value-added telecommunication services in the same "Classification List". Japan would like to know, under Chinese domestic law, whether foreign enterprises are able to undertake these services provided that the foreign capital participation is less than 50%. Furthermore, could China clarify whether or not these services are included in

the sub-sectors which have already been committed to at the time of China's accession to the WTO?

- (b) Japan requests more information on what services foreign enterprises are able to undertake and what services they are not able to undertake. With regard to the latter case, could China provide the legal document which stipulates the reasons why foreign enterprises are not able to undertake these services?

11. China has committed to the Reference Paper, and provision 2.4 of the Reference Paper stipulates that "a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer". For the implementation of this commitment, it is required to guarantee public availability of rules for interconnection by disclosing them. In this regard, Japan would like to ask the following two questions.

- (a) According to article 18 of the "Regulation on Telecommunications" and article 7 in "Regulation on the Interconnections between Public Telecommunication Networks (Decree 9 of the Ministry of Information Industry)", dominant telecommunication business operators are required to establish rules for interconnection and implement these rules after permission. Could China explain whether these rules for interconnection are disclosed to the public in consistent with the Reference Paper which China has committed to? If this is the case, Japan would request information on where to obtain appropriate documents on these rules as well as the name of the law and the article number that oblige operators to disclose them for interconnection.
- (b) If these rules for interconnection are not disclosed to the public, does China have intention to disclose these rules for interconnection by establishing law which stipulates such obligation?

12. Could China provide details on the present situation, future procedures and schedule for the establishment of the Telecommunication Law?

13. China has made certain reservations on the right to place restriction on foreign capital participation in telecommunications business in the Chinese schedule, such as, e.g., "...Foreign investment in joint ventures shall be no more than (30/49/50) per cent...". China also uses similar description in the present offer. Since Japan can not find the restrictions on indirect shareholding in these reservations, Japan understands that these reservations do not include indirect shareholding. Could China confirm this?

III. CONSTRUCTION AND RELATED ENGINEERING SERVICES

14. Upon China's WTO accession in 2001, China committed to permit the establishment of wholly foreign-owned enterprises in return for the abolishment of direct contract on a project-by-project basis.

15. However additional requirements were introduced. For example, when the foreign construction enterprises are examined to be qualified as Grade A enterprises, they are subject to requirements such as the minimum capital and number of engineers (no less than 300 qualified persons and 200 technical engineers, contracting limit up to 5 times the capital).

16. As a result of the above requirement, although the establishment of wholly foreign-owned enterprises has been admitted, the scope of the projects that could be undertaken by foreign companies was narrowed than before.

17. Furthermore, qualification requirement for Super Grade was revised this March, imposing construction companies to meet additional condition listed below:

- establishment of research institute
- acquisition of 8 or more patent rights
- average 500 million Yuan of bank credit
- tax payment of over 50 million Yuan

18. These additional requirements constitute substantial barriers against foreign construction enterprises in establishing presence in Chinese market. Under the new regulation, foreign companies are virtually restricted from obtaining the grade corresponding to their abilities.

19. Japan considers that, China should ease or abolish the restrictions on the types of projects undertaken by foreign companies and, where appropriate, to permit foreign construction enterprises without local presence to undertake construction projects.

IV. DISTRIBUTION SERVICES

20. Japan appreciates that China has undertaken commitments under GATS Article XVI and Article XVII for Mode 3 on Distribution Services, especially the approval of wholly foreign-owned enterprises (except those dealing in certain products) by the Ministry of Commerce. Regarding internet retailing, however, it is uncertain whether approval of wholly foreign-owned enterprises is permitted under the Regulation on Telecommunications promulgated in September 2000 and the Classified Catalogue of Telecommunication Operations issued by the Ministry of Information Industry. An ICP license is not approved unless the enterprise has domestic capital of at least 51% under these regulations. According to China's accession schedule of specific commitments on services (WT/ACC/CHN/49/Add.2), however, China has committed to allow wholly foreign-owned enterprises to engage in commission agents' and wholesale services with exclusion of certain products and retailing services with exclusion of those dealing in certain products within five years after China's accession to the WTO. Therefore, wholly foreign-owned enterprises should be permitted to engage in internet retailing without any limitation on the participation of foreign capital. If this is not the case, and if an ICP license is required to internet retailing, how would China justify this situation vis-à-vis China's commitments.

V. TOURISM AND TRAVEL RELATED SERVICES

21. Could China explain whether it has already taken legal measures to implement its commitments, e.g., "None within six years after accession, there will be no restriction on the establishment of branches of the joint venture travel agency/tour operator and the requirement on registered capital of foreign-invested travel agency/tour operator will be the same as that of Chinese travel agency/tour operator."?
