

COMMUNICATION FROM JAPAN

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

The following communication, dated 4 November 2008, 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 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 the 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 the 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 is still room 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 on the 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.

I. OTHER BUSINESS SERVICES (ADVERTISING SERVICES)

3. According to the China's services schedule, China has undertaken commitments to establish wholly foreign-owned subsidiaries in Mode 3 under the GATS Article XVI on Advertising Services within four years after accession. In addition, China has committed to the National Treatment without any limitations in Mode 3 based on Article XVII. It is permitted for the foreign advertising service suppliers to establish wholly foreign-owned companies. On the other hand, however, those companies are required to fulfill certain conditions such as: i) mainly operating the advertising services, ii) having three years experience after establishment under the *Regulations on Foreign Investment in Advertising Firms* entered into force on 1 October. In this regard, Japan would like to ask China to explain the consistency of these measures with the China's commitments in Advertising Services.

II. TELECOMMUNICATION SERVICES

4. In the GATS Schedule accompanying its Protocol of Accession, China made commitments to a substantial number of subsectors in telecommunication services including voice telephone services in basic telecommunications and did not prohibit the resale of those service areas. On the other hand, however, in reality, foreign operators have difficulties entering the Chinese telecommunications market mainly due to uncertainty of concrete conditions on foreign operators' providing telecommunication services including resale services. It is essential to ensure transparency regarding conditions that foreign suppliers are required to fulfill for entry into the telecommunications market including resale services when they initially challenge overseas telecommunications markets. Therefore, we would like China to improve the market environment for promoting foreign operators' entry into the subsectors on which China made a commitment in WTO, by fully excluding discretionary administration procedures such as requiring additional conditions orally and explicitly notifying foreign operators of all the requirements for market entry.

5. When foreign suppliers enter the Chinese telecommunication market, a certain amount of registered capital is required according to Article 5 of *the Regulation on the Administration of Foreign Invested Telecommunications Enterprises*. Concerning this minimum capital requirement, Japan welcomes China's lowering of the required amount in September 2008. However, it is still recognized as excessively high, especially for basic telecommunication (RMB 1 billion). In last year's Review, China stated that: "minimum capital requirements applied equally to domestic and foreign telecommunications enterprises and thus complied with the national treatment obligation; the telecommunications sector was capital-intensive and each WTO Member had its own minimum capital requirements in line with its actual situation; and there was no unified requirement in this regard." Contrary to these statements, however, the minimum capital requirement in other Members is not as high as China's. Furthermore, other Members allow foreign telecommunications operators to enter markets such as resale with relatively small capital outlay. Therefore, the reasons explained by China are not always supportable. Therefore, we would like to ask China to further lower currently required minimum capital amounts so that the liberalization of the market would be further promoted.

6. 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 telecommunications business operators are required to establish rules for interconnection and implement these rules after receiving permission. Could China explain whether these rules for interconnection are disclosed to the public consistently with the Reference Paper to which China has committed? If this is the case, Japan would request information on places where appropriate documents on these rules are available as well as the name of the law and the article number that obliges operators to disclose such rules for interconnection.
- (b) If these rules for interconnection are not disclosed to the public, does China have the intention to establish a law that obliges operators to disclose these rules for interconnection?

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

8. China has made certain reservations on the right to place restrictions on foreign capital participation in the 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 a similar description in the present offer. Since Japan cannot find the restrictions on indirect shareholding in these reservations, Japan understands that these reservations do not include indirect shareholding. China’s confirmation would be appreciated in this regard. In addition, Japan would like to ask China to provide an update on the number and foreign affiliation of basic and value-added service suppliers operating in the Chinese telecommunications market.

III. CONSTRUCTION AND RELATED ENGINEERING SERVICES

9. Upon China’s WTO accession in 2001, China committed to permit the establishment of wholly foreign-owned enterprises, instead of the former system to issue construction permission of direct contract on a project-by-project basis. We understand that this measure took effect in 2002. However, additional conditions for employment and minimum capital were imposed for establishment of foreign enterprises. In addition to such requirements, construction works that can be undertaken by foreign enterprises are limited to four sections of works, and the ceiling of contract value is restricted to 5 times the capital of the enterprise.

10. Elimination of the foreign capital limitation can be evaluated for promoting free trade. However, we have to point out that the above mentioned requirements become obstacles to market access regardless of their apparent intention to create open market. Under such circumstances, foreign construction enterprises are not able to acquire the construction permission, even though they are fully capable of obtaining them, and are not able to demonstrate their expertise in the construction site.

11. We would like to raise the matter of “constructor (jian zao shi)”. In order to foster a healthy market and ensure quality of construction works, China introduced “constructor (jian zao shi)” to be assigned to every project site. As a transitional measure for its introduction, China issues “provisional constructor (jian zao shi)” licenses for those who have “project manager (xiang mu jing li)” licenses. In order to issue a “provisional constructor (jian zao shi)” license, it is required to submit a “Certificate for project manager qualification”.

12. However, it is noted that this certificate will not be issued to foreigners. As a result, foreign service suppliers are not be able to obtain a certificate for “provisional constructor (jian zao shi)” for “project manager (xiang mu jing li)”, thus, creating a barrier for entry into the market.

13. Furthermore, in registering a company, some local governments imposed requirements of minimum floor area of an office. We believe that such requirements have no relevance to business operating competence of the company.

14. Apparently, China provides the same market condition for both foreign and domestic construction companies, but, in the actual market, foreign enterprises are treated unfairly and suffer from discriminatory policies.

15. We request China to provide a reasonable explanation for the rationale of those measures and their consistencies with China’s commitments. We also request China to eliminate or relax the restrictive regulation on awarding construction works, or to undo the abolishment of direct contract.

IV. DISTRIBUTION SERVICES

16. Japan appreciates China's deregulation of the distribution market after accession to the WTO. On the other hand, there are still some restrictions on China's distribution market. Japan would like to confirm how China does implement China's Distribution Services commitments.

17. The following two items are permitted to distribute by foreign service suppliers under China's commitments. However, the service of supply is prohibited.

- (a) Foreign service suppliers are prohibited from distributing and importing household use game machine and software based on "Circular on Special Administration Proposal for Video Games Operational Places" (*Promulgated by Decree No. 44 of the State Council of the People's Republic of China in 2000*),,
- (b) Foreign service suppliers are prohibited from distributing commercial secret code products without an authorization of the National Commission on Encryption Code Regulations (NCECR) under the Article VI of "*Regulation Of Commercial Encryption Codes (China State Council Directive No. 273)*".

18. In this regard, Japan would like to ask China to explain the consistency of these measures with China's commitments in the Distribution Services sector under the GATS.

19. Regarding the retailing services through internet in China, an ICP license authorized by the Ministry of Information Industry is required. According to China's statement in the last Review, the retailing without fixed outlets on distribution services is "different from the value-added telecommunication services, which required an ICP license." (S/C/M/90).

20. In addition, China also pointed out that the definition of the retailing without fixed outlets on distribution services is stipulated in Annex 2 of China's Accession Protocol in the Service Schedule as below;

Retailing services consist of the sale of good/merchandise for personal or household consumption either from a fixed location (e.g. store, kiosk, etc) or away from fixed location and related subordinated services.

21. In the light of China's commitments for retailing services, Japan would like to ask China to explain the consistency of this ICP license requirement for the retailing services through internet that *consists of the sale of good/merchandise for personal or household consumption away from fixed location* with the China's commitments in the Distribution Services under the GATS.
