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Council for Trade in Services

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COMMUNICATION FROM THE EUROPEAN COMMUNITIES

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

The following communication, dated 11 November 2008, from the delegation of the European Communities is being circulated to the Members of the Council for Trade in Services.

1. The EC would like to transmit, in advance of the meeting of the Council for Trade in Services, the following questions and comments on the implementation by China of GATS agreement, its commitments listed in the Schedule of Specific Commitments and of related provisions of its accession Protocol.

2. In order to ensure effective review of the implementation by China of its commitments, the EC requests China to provide responses and relevant information to the following questions in advance of the meeting of the Council for Trade in Services in accordance with the paragraph 18 of the Protocol of Accession of China.

3. The EC reserves its right to raise additional questions, upon receipt of responses to its questions and comments by China, in accordance with paragraph 8 and paragraph IV.3 (a) of Annex 1A of the Protocol of Accession of China.

I. AIR TRANSPORT SERVICES

4. In the GATS Schedule accompanying its Protocol of Accession, China made commitments under GATS Article XVI and Article XVII for Mode 1 on Computer Reservation Systems (CRS). On 16 November 2007, the Council for Trade in Services addressed the annual review of the implementation by China of the WTO Agreement. On that occasion, China reported that the China General Administration of Civil Aviation had finished drafting the Interim Regulation on Approval and Administration of the Direct Access and Usage of Foreign Computer (Passenger) Reservation System by Sales Agents of Civil Air Transport Enterprises (draft New Regulation). On that occasion, China also reported that the Regulation had been submitted for approval, and the time for promulgation remained uncertain. The EC understands that this draft New Regulation has not yet been promulgated. In this respect, please could China:

- (a) Confirm that the draft New Regulation has not yet been approved;
- (b) Describe what steps are required for approval of the draft Interim Regulation;
- (c) Provide a definitive timeframe for the entry into force of the draft New Regulation;

- (d) If, for any reasons, a new draft is being elaborated, please provide a definitive timeframe for the entry into force of the draft New Regulation;

5. The EC understands that the draft New Regulation foresees a licensing procedure for direct access and use of foreign CRS by Chinese agents. However, the draft New Regulation reportedly does not fully liberalise the provision of CRS services. In this respect, could China please:

- (a) Confirm that the Interim Regulation foresees possibilities for direct access to and use of foreign CSR by Chinese travel agents;
- (b) Describe which licensing procedures will apply to foreign CRS providers, if any;
- (c) Describe which licensing procedures will apply to Chinese travel agents, if any,
- (d) Describe which licensing procedures will apply to Chinese Air Transport Enterprises, if any.
- (e) Describe the requirements that need to be fulfilled by any applicant (foreign CRS services suppliers, Chinese travel agents and/or Air Transport Enterprises)
- (f) Describe the scope of activities allowed under the draft New Regulation.

6. Please could China provide a copy of the draft New Regulation?

7. Pending the adoption of the draft New Regulation, please could China describe for period until the promulgation of the draft New Regulation:

- (a) How foreign CRS services suppliers may currently provide CRS services directly to travel agents in China as afforded by China's commitment in Mode 1(c) on CRS?
- (b) How foreign CRS services suppliers may provide CRS services directly to Chinese airlines in China as afforded by China's commitment in Mode 1(c) on CRS?
- (c) The requirements and the licensing procedure, if any that must be fulfilled by Chinese CRS services suppliers to operate in China?
- (d) The requirements and the licensing procedure, if any that must be fulfilled by Chinese travel agents to enable them to use Chinese CRS?

8. Foreign airlines have submitted applications for the use of foreign CRS at their designated travel agents in accordance with the Regulation 51/1995 presenting Provisional Administrative Measures on the Use of Computer Passenger Reservation System by Foreign Air Transportation Enterprises and Their Sales Agents in China. Please could China explain:

- (a) Why backfilling applications based in Article 6 of Regulation 51/1995 submitted by foreign airlines for the use of foreign CRS, despite approval being granted, have not allowed foreign CRS to provide CRS services directly to travel agents?
- (b) Why the 19 new applications submitted by foreign airlines in 2002 for the use of foreign CRS have not been answered, despite Regulation 51/1995 setting a time limit of sixty (60) days?

II. CONSTRUCTION SERVICES

9. In the GATS Schedule accompanying its Protocol of Accession, China made commitments under GATS Article XVI and Article XVII for Mode 3 with regard to construction sector. These commitments are implemented through series of measures. The EC would welcome clarifications on the following issues:

10. The implementing rules of the Decree 114 include measures which are provided on a temporary basis:

- (a) The possibility to use "temporarily" Chinese registered architects or engineers where relevant foreign professionals also qualified in China cannot be found;
- (b) The 6-month residency requirement may not be applied where foreign architects or engineers cannot "temporarily" satisfy it.

11. However, there is no guidance about how the "temporary" should be interpreted. The EC would welcome any clarification about when this uncertainty which undermines the value of these implementing rules will be addressed.

12. China's GATS commitments in construction services do not include specific limitations on numbers of foreign professional staff for foreign-invested enterprises as well as residency requirements; however the Decree 114 foresees such requirements. The EC would welcome a clarification.

13. China's GATS commitments in construction services do not mention any limitation as regards national treatment in Mode 3. However, the Notice No 73 on foreign personnel of construction enterprises foresees a three-month a year residency requirement. This was not removed by Circular 159. The EC would like to know when China intends to abolish these residency requirements.

14. Capital requirements providing safe guarantees by contractors in the construction sector are excessive and hinder effective use of companies' capital. The EC would like to know whether China is considering to relax the registered capital and net assets requirements and replace them with alternative financial instruments available - such as letters of guarantees, insurance bonds or bank guarantees.

15. Market access barriers are particularly felt in the dredging sub-sector which faces very specific constraints: practices de facto prevent foreign dredging companies from setting up foreign-invested entities in China, thus they try to operate as chartering companies, renting foreign dredging vessels to Chinese dredging companies. However, in such a case, and for the same project, a foreign company chartering a dredging vessel is subject to significantly higher taxes than a local dredging company directly importing a foreign dredging vessel, which hinders unfairly the competitiveness of foreign services suppliers. The EC would like to know whether China is considering to effectively open dredging services to the participation of foreign services suppliers.

III. DISTRIBUTION SERVICES

16. In the GATS Schedule accompanying its Protocol of Accession, China made commitments under GATS Article XVI and Article XVII for Mode 3 with regard to distribution services.

17. As regards the distribution of refined oil products in China, this is regulated by Measures for the Administration of the Refined Oil Market (Order of the Ministry of Commerce No.23 [2006]) and

the Notice Relevant Issues about the Business Operation of the Private Enterprises of Refined Oil Products (No. 602 [2008] of the National Development and Reform Commission). These acts foresee licensing procedures and criteria for wholesale and retail of refined oil products. In this respect, could China please list any other measures that apply to the provision of wholesale and retail services of oil products.

18. The criteria in the Order No 23 [2006] on Administration of the Refined Oil Market require long-term and stable supply of refined oil to both wholesalers and retailers. In case of wholesalers this can be achieved through owning a refinery, being an importer or having a long-term contract with a qualified importer or wholesaler. In this respect, could China please:

- (a) Inform the EC how many qualified importers and how many qualified wholesalers are there in China currently, including the state-trading companies.
- (b) Confirm that enterprises qualified for import of refined products that have been licensed to offer wholesale and/or retail services of refined oil products are allowed to distribute the refined oil that they have imported, without any obligation to sell the product to SinoPec or Petrochina. Clarify whether this is based on Order No 23 [2006] on Administration of the Refined Oil Market. If not, please provide the relevant Chinese legal basis.
- (c) Clarify the areas, if any, in which Chinese state-trading enterprises enjoy monopoly rights. Describe what measures has China put in place to ensure that the state-trading enterprises of refined oil who are also active in all levels of distribution services of refined oil and hence in direct competition with foreign wholesale and retail providers respect China's obligations under Article VIII of the GATS, in particular to ensure that the state-trading enterprises do not abuse their position to act in a manner inconsistent with China's distribution commitments.

19. As regards distribution of pharmaceutical products in China, China has taken (by 2008) full commitments on wholesale and commission agents services and limited commitments on retail services, and full commitments for selling products manufactured in China. The EC understands that foreign invested companies who wish to wholesale and retail imported products need to get approval from Ministry of Commerce and also the State Food and Drug Administration (SFDA). Could China please:

- (a) Clarify in which order the application has to be submitted to these authorities for approval;
- (b) Clarify in which legal act this has been established;
- (c) Clarify if wholesaler are allowed to outsource the warehousing of the imported goods and if not, whether China has considered introducing such a possibility;
- (d) Describe what measures it has taken to ensure the possibility for foreign invested companies to provide commission agents services for selling pharmaceutical goods.

20. As regards retailing services via Internet (e-commerce), Annex 2 of China's Accession Protocol in the Service Schedule states that "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". In the Transitional Review of 2007, China stated (S/C/M/90) that the retailing away from fixed outlets is "different from the value-added telecommunication services, which required an ICP license." However, to provide

retailing services over Internet (e-commerce) in China, an Internet Service Provider license authorized by the Ministry of Information Industry is required. The EC would welcome an explanation why a telecommunication licence is required for provision of distribution services.

IV. POSTAL & COURIER SERVICES, INCLUDING EXPRESS DELIVERY SERVICES

21. The EC raised on 16 November 2007, when the Council for Trade in Services addressed the annual review of the implementation by China of the WTO Agreement, a number of questions and comments with regard to the reform of postal law in China. The EC understands that the draft postal law has passed the first reading in the National Peoples Congress. Could China provide a clear timeframe for the entry into force of the new Postal Law?

22. Based on the information that has been circulated on the drafts of the postal law, the EC would like to raise a number of questions regarding this reform:

- (a) When China joined the WTO, it permitted foreign companies to provide express delivery services under government issued licenses, with a narrowly defined limitation on the delivery of private letters reserved to China Post. The Schedule of Specific Commitments on Trade in Services of China specifies the scope of commitments applying to all courier services that were not reserved at the time of accession. However, it seems that the new draft postal law would include a provision that would bar foreign invested express delivery services companies from delivering all documents, regardless of their weight, which is more limited than the reserved area at the time of accession. Can China confirm if this is the case or not and explain the reasons?
- (b) The draft postal law provides for a definition of express delivery referring only to time aspect but not on quality or price aspect. Can China explain how the definition is in line with international practices?
- (c) The draft postal law provides for new authorisation procedure. Can China confirm that companies authorised to provide services under current legislation:
 - (i) will be able to continue their activities in the same scope;
 - (ii) will not be required to go through additional authorisation/licensing procedures for the services they are already authorised to provide.

23. China issued on 12 September 2007 postal industry standards for express service, which it has confirmed, inter alia during its last Trade Policy Review, are voluntary. In this respect, can China please clarify if regional authorities have the right to impose the postal industry standards or parts thereof as mandatory or as precondition for authorisation?

24. In addition, China issued Implementing Measures in August 2008 requiring additional registration for express delivery service providers. In this respect, can China:

- (a) Explain why the registration was necessary in a situation where the provision of such services is already a licensed activity?
- (b) Provide information if any licensed service providers were not granted registration?

V. TELECOMMUNICATIONS

25. In the GATS Schedule accompanying its Protocol of Accession, China made commitments under GATS Article XVI and Article XVII for Mode 3 with regard to telecommunication services. The EC has raised on 16 November 2007 when the Council for Trade in Services addressed the annual review of the implementation by China of the WTO Agreement a number of questions and comments with regard telecommunication services, but has not received responses to all questions.

26. As regards basic telecommunication services, could China please:

- (a) Explain which are the requirements in China for the provision of basic services?
- (b) Confirm that China does not maintain a requirement for foreign investors to choose a Chinese joint-venture partner from the basic telecommunication sector, in accordance with paragraph 314 of the Working Party report?
- (c) Confirm that until present there is no single example of a foreign invested equity joint venture providing mobile or fixed services in China?

27. The Regulation on the Administration of Foreign Invested Telecommunications Enterprises sets minimum registered capital requirement (RMB two billion for a nationwide provider). This requirement is excessively high. Is a reduction of these requirements under consideration in China?

28. As regards value added telecommunication services, could China please:

- (a) Describe which measures it has taken in order to address the problems encountered by foreign companies entering the VAS market, in particular as regards the transparency of applicable procedures?
- (b) Can China confirm that only online data processing and transaction processing business; storage and forwarding services; and information services are allowed to be provided by foreign service suppliers?

29. Can China provide the EC with specific information on the organisation (staffing, powers vested) of its regulatory authority responsible for telecommunications and especially, on the requirements guaranteeing the independence of its regulator?
