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Council for Trade in Services

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COMMUNICATION FROM THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

Transitional Review Mechanism - People's Republic of China

Trade in Services

The attached paper has been received from the delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu with the request that it be circulated to Members of the Council for Trade in Services.

I. EXPRESS DELIVERY

1. According to Part 2.B of China's Schedule of Specific Commitments on Services, China agreed that upon accession, foreign service suppliers will be permitted to establish joint venture businesses in China. However, China has not yet formally announced the relevant regulations. Please indicate if there are any ways for foreign express delivery suppliers to provide services before the relevant regulations come into effect.

2. Please provide us with information on the permitted scope of business and the relevant regulations applying to foreign express delivery suppliers, for our reference, if any such regulations exist.

II. TELECOMMUNICATIONS SERVICES

1. According to Articles 1.1 and 1.2 of Annex 1, the Reference Paper of Part 2.C of China's Schedule of Specific Commitments on Services, China agreed that appropriate measures shall be maintained for the purpose of preventing suppliers from limiting competition. However, there are no corresponding concrete regulations listed in the *China Telecommunications Law and Administrative Regulations of Foreign-invested Telecommunications Business*. Please advise whether China has adopted the measures in some other laws, and if so, please provide us with information on the relevant laws, for our reference. Otherwise, please advise whether China intends to put the measures into the above-mentioned laws and regulations to comply with its WTO commitment.

2. In Articles 2.3, 2.4 and 2.5 of Annex 1, the Reference Paper outlines the regulations about "Public availability of the procedures for interconnection negotiations: *The procedures applicable for interconnection to a major supplier will be made publicly available*", "*Transparency of interconnection arrangements*" and "*Interconnection: dispute settlement*." However, *The China Telecommunications Law* does not regulate these clearly. Please explain how China will ensure that the relevant procedures will meet transparency goals and adhere to China's WTO commitment. Please also provide any other relevant information you might have.

3. *Articles 4 and 6 of China's Telecommunications Law and Administrative Regulations of Foreign-invested Telecommunications Business* states that the capital requirements from Chinese investors and foreign investors will be different according to different periods, and the approval of geographical coverage shall be made by the State Council Information Office in accordance with the relevant regulations. Please indicate what the relevant regulations are and explain whether those regulations are consistent with Article 2 of GATS.

4. *Articles 10 and 12 of China's Telecommunications Law and Articles 8, 9, and 10 of Administrative Regulations of Foreign-invested Telecommunications Business* state no objective criteria for the qualifications of conducting Basic Telecommunications and Valued-added Telecommunications business. However, paragraph 4(a) of Article 6 of GATS states "*based on objective and transparent criteria, such as competence and the ability to supply the service.*" Please explain how these regulations are consistent with GATS obligations.

5. *The Guiding Industry Catalogue of Foreign Investment* which enter into effect since April of 2002, states that foreign telecommunications investors will be permitted to hold 49% of shares in Mobile Voice and Data Services no later than December 11, 2004, and can wholly hold no later than December 11, 2006. However, China's commitment states that "*within three years after accession, foreign investment shall be no more than 49%*", and "*within five years after accession, there will be no geographic restriction*". Those regulations show that foreign ownership and geographic restriction will be removed no later than December 11, 2006. Please provide us with information on the progress of measures adopted and indicate if there are any further plans to expedite the liberalization.

III. DISTRIBUTION SERVICES

1. On June 25, 1999, China promulgated *The Experimental Regulations of Foreign Invested Commercial Enterprises*:

- (i) According to Parts 4.B and C of China's Schedule of Specific Commitments on Services, China permits foreign service suppliers to establish joint ventures to engage in Wholesale Trade Services and Retailing Services. However, pursuant to Article 5 of the *Regulations*, the foreign partners of jointly operated enterprises who intend to engage in wholesale and retail business are required to have sold more than US\$2.5 billion and US\$2 billion respectively during the three years before application, and shall have total assets of more than US\$300 million one year before application. Please explain the necessity of those requirements and how they comply with China's commitment.
- (ii) Also according to Part 4.B of China's Schedule of Specific Commitments on Services, "within two years after China's accession to the WTO, foreign majority ownership will be permitted". However, according to Paragraph 4, Article 6 of the *Regulations*, the Chinese partners in jointly invested enterprises that are managed as franchises and are engaged in wholesale are required to hold not less than 35% and 51% of the shares, respectively. Please explain the necessity of this requirement, and how it conforms to China's WTO commitment.
- (iii) According to Article 7 of the *Regulations*, when the foreign partner of a jointly invested enterprise signs a contract permitting the jointly invested enterprise's use of a trademark or business name or a technology transfer contract, the total amount of the fees received by the foreign partner may not exceed 0.3% of the total sales figure for the jointly invested enterprise for that year, and the fees may not be paid for more than 10 years. Please explain how this requirement is not a trade restriction activity

and will not become a kind of limitation. Please also explain the necessity of this requirement, and how it conforms to China's WTO commitment.

IV. TOURISM AND TRAVEL RELATED SERVICES

1. In accordance with Part 9.B of China's Schedule of Specific Commitments on Services, travel agencies and tour operators should comply with the following conditions:

- (a) They must be mainly engaged in the travel business;
- (b) Their annual worldwide turnover must exceed US\$40 million.

However, Article 30 of China's Administrative Regulations on Travel Agencies stipulates that a foreign tour operator of a foreign-invested travel agency must meet not only the above-mentioned two conditions but also be a member of Chinese Tourism Services Association. Please indicate the qualifications and applying procedure for becoming the member, and explain whether this requirement conforms to Article 6 of GATS.

2. According to Part 9.B of China's Schedule of Specific Commitments on Services, China agreed that: within 3 years of its accession, the registered capital of a joint venture travel agency and tour operator shall be no less than RMB 2.5 million and that foreign majority ownership will be permitted; within 6 years of China's accession, wholly foreign-owned subsidiaries will be permitted and geographic restrictions will be removed; the requirement on registered capital of a foreign-invested travel and tour operator will be made the same as that of a Chinese travel and tour operator. However, there is no relevant regulation in the Administrative Regulations on Travel Agencies. In order to comply with its commitment, does China have any plan to build the idea contained in its commitment into the Administrative Regulations?

3. According to Part 9.B of China's Schedule of Specific Commitments on Services, China agreed that within 6 years of its accession, there will be no restriction on the establishment of branches by a joint venture travel agency or tour operator. Article 32 of the Administrative Regulations, however, states that a foreign-invested travel agency is not allowed to establish branches. Please either revise this regulation to comply with China's WTO commitment, or explain how this regulation conforms to China's WTO commitment.

V. TRANSPORT SERVICES

1. Road Transport Services: the following questions are in response to the Administrative Measures on Foreign Enterprises Investing in Road Transport Services, promulgated by the Department of Transportation and MOFTEC on 20 November, 2001:

- (i) Article 3 of the above-mentioned Administrative Measures indicates that the opening schedules of the road transport services listed in that Article will be further announced by relevant foreign trade and economic authorities and transport authorities of the State Council. Please report on when China will announce the opening schedules. Will China provide a comment period before announcing the opening schedules in order to conform to its commitment?
- (ii) In the commercial presence part of Part 11.F of China's Schedule of Specific Commitments on Services, China agreed that within 1 year after China's accession, foreign majority ownership will be permitted, and that within 3 years after China's accession, wholly foreign-owned subsidiaries will be permitted. However, Article 6 of Administrative Measures on Foreign Enterprises Investing in Road Transport Services

only states that the proportion of foreign ownership is not allowed to be more than 49%. Please explain how this limitation conforms to China's WTO commitment.

- (iii) Article 16 of Administrative Measures on Foreign Enterprises Investing in Road Transport Services states that under normal circumstances, the operating period of a foreign-invested road transport enterprise is no more than 12 years. Meanwhile, the operating period of a foreign-invested road transport enterprise is 20 years, as long as more than 50% of its investment capital is invested in the basic construction of passenger and freight transport stations. In the same Article, after approval by the original evaluating agency, a foreign-invested road transport enterprise can apply to extend its operating period but by no more than 20 years. Please explain how China intends to bring this Article into conformity with its WTO commitment and with Article 6.4 of GATS.

2. Freight-forwarding agency services:

- (i) The following questions related to the Notification Regarding Administration of Delivery Letters and Letter-Like Objects Going Inwards or Outwards Across China's Border, issued by the Department of the Information Industry, MOFTEC, the Bureau of the National Post Office in December 2001 and additional statements concerning the Notification issued on 5 September of this year (2002).
 - (a) The second supplemental statement stipulates that, with authorization by the Bureau of the National Post Office, international freight-forwarding agencies may handle the sending and delivery of letters and letter-like objects going inward or outward across China's national borders. However, private letters and documents of a political party or governmental and military agencies at the county level and higher, are excepted. Please explain the definition of "private letters," why this regulation is necessary, and how it conforms to China's WTO commitment.
 - (b) The fourth supplemental statement stipulates that an enterprise conducting international freight-forwarding agency services handling the sending and delivery of letters and letter-like objects, must adhere to the relevant laws of China as well as respect the legal rights of, and maintain fair competition with other both enterprises and consumers in the same industry. Please explain what "the relevant laws" are, and provide the relevant material for our reference. Also, please explain why the undue administrative powers that these regulations give to governing agencies do not form a hindrance to trade.
- (ii) The Notification on Issues Relating to the Experimental Establishment of Foreign-Invested Logistics Enterprises, taking effect from 20 July of this year, allows offshore investors to conduct international logistics business in the form of Chinese-foreign joint ventures or Chinese-foreign cooperation, and to provide international freight-forwarding agency services:
 - (a) In Part 11.H of China's Schedule of Specific Commitments on Services, China agreed that the minimum registered capital of the joint venture shall be US\$1 million and that within 1 year after China's accession, foreign majority ownership will be permitted. However, Point 4 of the Notification states that only foreign enterprises having more than US\$5 million registered capital will be permitted, and that foreign investors can hold no more than 50% of shares. There are explicit differences between China's commitment and the

Notification. Could China please say when it will amend the relevant regulations in order to conform to its WTO commitment.

- (b) According to Part 11.H of China's Schedule of Specific Commitments on Services, China agreed that after 1 year operating in China, a joint venture can set up branches when the registered capital of both sides has been provided. However, Point 10 of the Notification indicates that foreign enterprises, following "the current relevant regulations", can apply for setting up branches at other domestic locations. Please explain what "the current relevant regulations" are, and how they conform to China's WTO commitment.
 - (c) Point 12 of the Notification lists the experimental areas regulated by MOFTEC. At present, experimental areas include four cities (Beijing, Tianjin, Shanghai and Chongqing), three provinces (Zhejiang, Jiangsu and Guangdong) as well as the Shenzhen Special Economic Zone. However, China's WTO commitment imposes no geographic restrictions on international freight-forwarding agencies. Please explain the necessity for this regulation and what the timetable is for lifting the geographic restrictions.
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