

WORLD TRADE ORGANIZATION

S/C/N/218
24 December 2002

(02-7096)

Council for Trade in Services

Original: English

NOTIFICATION PURSUANT TO ARTICLE III:3 OF THE GENERAL AGREEMENT ON TRADE IN SERVICES

The following notification has been received from the delegation of the People's Republic of China.

1. Member notifying:

The People's Republic of China

2. Notification under:

Article III, paragraph 3 of the General Agreement on Trade in Services

3. Date of entry into force/duration:

1999/6/25

4. Agency responsible for implementation and enforcement of the measure:

State Economic and Trade Commission
Ministry of Foreign Trade and Economic Co-operation

For those phase-in products specifically provided for in the Market Access Column of the distribution sector of the Schedule, other relevant authorities may also be involved.

5. Complete description of the measure* indicating the modes of supply covered, the effect on trade in services (e.g., restrictions/liberalization measures) and the impact of the measure on commitments in the Member's schedule and Article II (MFN) exemption list, if relevant:

Measures on the Trial of Foreign-Invested Merchandising Enterprises

Full text English translation of the measures is attached¹. The English translation is for reference only and the Chinese version shall be authentic.

6. Members specifically affected, if any:

All Members

7. The texts are available from:

- Enquiry point ☒
- WTO Secretariat ☒
- Other sources (address, fax and telephone of other body) ☐

* Including international agreements, recognition measures or other types.

¹ In English only.

Measures on the Trial of Foreign-Invested Merchandising Enterprises

(Promulgated by the State Economic and Trade Commission and the Ministry of Foreign Trade and Economic Cooperation on June 25th, 1999).

Article 1 These Measures are formulated in order to further open up China to the outside world, to accelerate the reform and development of the merchandising enterprises, to promote the construction of the domestic market, and to ensure the healthy and orderly expansion of the trial experiment of utilizing foreign investment in the merchandising sector, and in accordance with the Law of the People's Republic of China on Sino-foreign Joint Equity Enterprises and other relevant laws and regulations.

Article 2 These Measures apply to Sino-foreign joint equity merchandising enterprises and Sino-foreign co-operative merchandising enterprises (referred to as "jointly operated merchandising enterprises"), which are jointly established within the territory of China by foreign and Chinese companies and enterprises. Establishment of solely foreign-owned merchandising enterprises are not allowed in China for the time being.

Article 3 A jointly operated merchandising enterprise must comply with the merchandising business development plan of the city where it is located and be able to bring in advanced sales techniques and management experience, to promote the modernization of merchandising businesses, to facilitate the export of domestic products, and to produce economic efficiency and social benefits.

Article 4 The State Council takes charge of determination of areas in which jointly operated merchandising enterprises may be established. At present, these areas are limited to the capital cities of provinces and autonomous regions, municipalities directly under the central government, municipalities specifically listed in the State economic plan and the Special Economic Zones (referred to as the "trial areas").

Article 5 Investors of jointly operated merchandising enterprises must meet the following conditions:

- (1) The foreign partner or the major foreign investor among the foreign partners (referred to as the "foreign partner") must be an enterprise that possesses relatively strong financial strength, has advanced merchandising management experience, marketing techniques, a wide international sales network, an established reputation and a successful business record, and be able to facilitate the export of Chinese products through the jointly operated merchandising enterprise which is intended to be established. The foreign partner applying to set up a jointly operated retail business enterprise must have an average annual sales volume of more than USD 2 billion for the three (3) years prior to the application, and have assets of more than USD 300 million for the year prior to the application. The foreign partner applying to set up a jointly operated wholesale business enterprise must have a average annual sales volume of more than USD 2.5 billion for the three (3) years prior to the application, and have assets of more than USD 300 million for the year prior to the application.
- (2) The Chinese partner or the major Chinese investor among the Chinese partners (referred to as the "Chinese partner") must operate a circulation enterprise which possesses relatively strong financial strength and management capacity, and has assets of more than 50 million yuan (or 30 million yuan for those in central and western regions of China) for the year prior to the application. Where the Chinese partner is a merchandising enterprise, it must have an average annual sales volume of more than 300 million yuan (or 200 million yuan for enterprises located in the central or western regions of China) for the three (3) years prior to the application. Where the Chinese partner is a foreign trade enterprise, it must have an annual self-operated import/export sales volume of more than USD 50 million (of which more than

USD 30 million are from exports) on average for the three (3) years prior to the application.

- Article 6** A jointly operated merchandising enterprise shall meet the following conditions:
- (1) Comply with relevant laws, regulations and relevant provisions.
 - (2) Comply with merchandising business development plan of the city where it is located.
 - (3) Where the jointly operated merchandising is engaged in retail business, it must have a registered capital of no less than 50 million yuan, or no less than 30 million yuan if the enterprise is located in the central or western regions. Where it is a jointly operated merchandising enterprise engaged in wholesales business, it must have a registered capital of no less than 80 million yuan, or no less than 60 million yuan if the enterprise is located in the central or western regions.
 - (4) If the jointly operated merchandising enterprise conducts its business through more than three (3) chain-stores (except those convenient stores, specialized stores and stores for monopolized commodities), the ratio of investment contribution by the Chinese partner must constitute at least 51 per cent of the total investment. Where a jointly operated merchandising enterprise has a sound operation record, its foreign partner has purchased large quantities of Chinese products and the enterprise is able to increase exports of domestic Chinese products through the foreign partner's global sales network, the foreign partner in the jointly operated chain store merchandising enterprise may, subject to the approval of the State Council, be permitted to hold controlling shares of the said enterprise. For a jointly operated merchandising enterprise with three (3) chain-stores or fewer and other convenient stores, specialized stores and stores for monopolized commodities which operate in the form of chain-stores, the ratio of investment contribution by the Chinese partner must not be less than 35 per cent of the total investment. For a jointly operated merchandising enterprise conducting wholesale business (including retailers engaging in wholesale business simultaneously), the ratio of investment contribution by the Chinese partner must reach 51 per cent or more of the total investment.
 - (5) Branches of jointly operated merchandising enterprises are only permitted to operate under the direct chain-store operation method according to which the foreign partner and the Chinese partner have a direct investment and direct control. Other forms of chain-store operation methods such as free chain stores or franchise chain-store, etc, are not allowed to develop at present.
 - (6) The period of operation for a jointly operated merchandising enterprise should not exceed thirty (30) years, and not exceed forty (40) years where the enterprise is located in central or western regions of China.

Article 7 Where a foreign partner signs a contract with a jointly operated merchandising enterprise for the use of the foreign partner's trademark and trade name or for the transfer of technology, the total amount of relevant fees charged by the foreign partner should not exceed 0.3 per cent of the total annual sales volume (not including value-added tax) of the jointly operated merchandising enterprise, and the period for the collection of such fees should not be longer than ten (10) years.

Article 8 The following procedures shall be carried out when applying for the establishment of a jointly operated merchandising enterprise:

The Chinese partner should submit a feasibility study report (serving as a project proposal) and other relevant documents to the local economic and trade commission (the economic commission, and the planning and economic commission, the same hereinafter). The local economic and trade commission will, jointly with the local departments in charge of domestic trade, submit the feasibility study report and other documents to the State Economic and Trade Commission in accordance with

prescribed procedures. The State Economic and Trade Commission will, upon consultation with the MOFTEC, conduct a final review and grant approval. After the feasibility study report (serving as a project proposal) has been approved, the local foreign trade and economic cooperation department shall submit the contract and the articles of association to the MOFTEC in accordance with prescribed procedures. The MOFTEC will conduct final examination of and approval for the contracts and articles of association. Where approval for the establishment of a jointly operated merchandising enterprise has been granted, the jointly operated merchandising enterprise must, with the Foreign Investment Enterprise Approval Certificate issued by the MOFTEC, carry out the registration procedures with the state industrial and commerce department within one (1) month from the date of receipt of the approval certificate.

Article 9 When applying for the establishment of a jointly operated merchandising enterprise, the following documents must be submitted:

- (1) Application documents for the examination and approval of feasibility study which include:
 - (i) the feasibility study report (serving as the project proposal) prepared jointly by all the joint operation parties;
 - (ii) the bank creditworthiness certificate, the registration certificates (photocopies), and the identification certificates of the legal representatives (photocopies) of all joint operation parties;
 - (iii) the assets/debts statement and revenue-loss statement of joint operation parties for the past three (3) years audited by certified accountants;
 - (iv) (where the Chinese partner uses state-owned assets as investment contribution), the confirmation document for the appraisal report made by a state-owned assets management department on the state-owned assets to be used by the Chinese partner for investment;
 - (v) a list of commodities which the proposed jointly operated merchandising enterprise will operate; and
 - (vi) other relevant documents.
- (2) Application documents for examination and approval of contracts and articles of association include:
 - (i) application documents for examination and approval of the feasibility study and the approval document;
 - (ii) contracts and articles of association of the proposed jointly operated merchandising enterprise, jointly signed by representatives authorized by the joint operation parties;
 - (iii) a list of import and export commodities;
 - (iv) a list of the members of the board of directors of the jointly operated merchandising enterprise intended to be established, and letters for the appointment of directors by the joint operation parties;
 - (v) the notification of preliminary approval of the name of the intended enterprise, issued by the State Administration of Industry and Commerce; and
 - (vi) other relevant documents.

Article 10 Where a state-owned circulation enterprise invests in jointly operated merchandising enterprise, it must, in accordance with the provisions of the Management Measures for the Appraisal of State-owned Assets, have its tangible and intangible assets to be used as its contribution scientifically and fairly appraised by an asset appraisal agency certified by the state owned assets management department. The appraisal result shall, upon the confirmation of the state-owned asset management department at the provincial level and above, be the basis for the valuation of the state-owned asset to be invested.

Article 11 Where an established jointly operated merchandising enterprise applies to simultaneously operate a wholesale business, to set up branches or to change business partners, the MOFTEC will, upon the consent of the State Economic and Trade Commission, examine and approve the application. Application for any other alterations of a jointly operated merchandising enterprise will be submitted to the original approving authority in accordance with relevant provisions on foreign-invested enterprises. When making an application, the jointly operated merchandising enterprise must submit the following documents.

- (1) An application;
- (2) A report on the operational status of the enterprise;
- (3) A capital verification report;
- (4) Reports on the enterprise's export situation and their evidence;
- (5) Relevant resolutions of the board of directors;
- (6) Agreement on the alteration of the contracts and the articles of association; and
- (7) Other relevant documents.

The jointly operated merchandising enterprise must carry out registration procedures with the State Administration of Industry and Commerce within a month from the date the altered contracts and articles of association have been approved.

Article 12 Business scope of jointly operated merchandising enterprises:

- (1) The business scope of jointly operated merchandising enterprises engaged in retail business includes:
 - (i) conducting retail businesses (including those operating on commission or on consignment);
 - (ii) organizing the export of domestic products;
 - (iii) conducting import and export business for self-managed commodities; and
 - (iv) providing auxiliary services.
- (2) The business scope of jointly operated merchandising enterprises engaged in wholesale business.

Conducting domestic wholesale of domestic products and imported products under self management, and organizing the exporting of domestic products.

Article 13 A jointly operated merchandising enterprise engaged in a retail business may, upon approval, operate a wholesale business simultaneously.

Article 14 A jointly operated merchandising enterprise must not be involved in an import and export agency business.

Article 15 When dealing with commodities that are governed by special state regulations, or dealing with import and export commodities that are subject to quotas or license controls, a jointly operated merchandising enterprise must carry out the procedures for examination and approval in accordance with the relevant provisions of the State.

The total amount of annual commodity imports of a jointly operated merchandising enterprise must not exceed 30 per cent of the sales volume of the same year of the said enterprise.

Article 16 Jointly operated merchandising enterprises must abide by the laws and regulations of the People's Republic of China, and be subject to the jurisdiction of the Chinese laws and regulations. Chinese laws and regulations protect the normal operation and legal rights of jointly operated merchandising enterprises.

Any violation of Chinese laws and regulations by a jointly operated merchandising enterprise will be handled in accordance with the laws and regulations of China.

Article 17 All regions must strictly implement the provisions of these Measures in the establishment of jointly operated merchandising enterprises. Violation of the provisions of these Measures will be jointly investigated into and punished by the State Economic and Trade Commission, the MOFTEC and the State Administration of Industry and Commerce. The economic and trade commissions and the foreign trade and economic cooperation departments in all regions shall, in conjunction with other relevant department, pursue the trial in a timely fashion, conscientiously summaries the trial experience, and properly resolve problems arising from the trial.

Article 18 The State Economic and Trade Commission, the MOFTEC, the State Administration of Industry and Commerce or its authorized bodies are responsible for the supervision and administration of the foreign-invested merchandising enterprises.

Article 19 Investors from Hong Kong, Macao and Taiwan intending to establish jointly operated merchandising enterprises in China's mainland shall refer to these Measures.

Article 20 The State Economic and Trade Commission and the MOFTEC are responsible for the interpretation of these Measures.

Article 21 These Measures shall take effect as of the date of promulgation.
