

## COMMUNICATION FROM JAPAN

### Transitional Review Mechanism in connection with Paragraph 18 of the Protocol on the Accession of the People's Republic of China

The following communication has been received from the delegation of Japan with the request that it be circulated to 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 welcomes that, in the second year after accession, implementation by China of its commitments on trade in services has progressed and is entering into a cruising phase. It appreciates efforts by China for developing and improving necessary regulatory framework and smoothly implementing phase-in commitments. In a transitional period of evolving regulations, the importance of regulatory transparency, predictability, stability and consistency is paramount; the value of market access commitments and the efforts to implement them could be easily clouded out by a shortness of such elements either in regulations themselves or in their application. The transitional review mechanism could be useful for making those transitional efforts more efficient and productive, and it is a pleasure for Japan to contribute to this process.

2. In this context, China is further invited to take necessary steps to ensure regular and effective application of public comments procedures, well-in-advance publication of laws and regulations, avoidance of abrupt regulatory change, clear demarcation of departmental responsibilities, improvement in inter-departmental and central-provincial coordination and consistency, etc.

3. 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 Session Meeting of the Council for Trade in Services responses and relevant information to the following questions and comments.

4. Please refer to Japan's comments and questions on insurance and insurance-related services and banking services sent to the Committee on Trade in Financial Services.

### **I. PROFESSIONAL SERVICES**

5. For architectural and urban planning services, minimum capital and number-of-engineer requirements for office registration are currently in place. The level of those requirements is, it is felt by foreign service providers, overly burdensome.

## **II. COMPUTER AND RELATED SERVICES**

6. Japan has keen interest in China's compliance for its accession commitments in computer and related services and would like China to take it fully into account when introducing and applying its regulations for the services closely related to computer and related services. Japan would like to ask China to enhance the transparency in the scope of computer and related services so that service suppliers can be sure to what regulations they are not subject.

## **III. COMMUNICATION SERVICES: TELECOMMUNICATION SERVICES**

7. A Telecommunications Act is yet to be constituted, which represents a major obstacle for entering into and expansion of business in the Chinese market. This delegation appreciates further elaboration on the schedule of its enactment and on its provisions.

8. Article 17 of "the Regulations of the People's Republic of China on Telecommunications" provides that "Leading Telecommunication Services Providers" are identified or determined by the Ministry in the State Council in charge of information industry. This delegation seeks specific criteria or guidelines for such identification and a list of identified Leading Telecommunications Services Providers to be provided.

9. Article 22 of "the Regulations of the People's Republic of China on Telecommunications" provides that the calculation formula for interconnection fee etc. is decided by the Ministry in the State Council in charge of information industry. This delegation seeks details of current formula for interconnection fee, as well as information on a possible revision of that formula, including the gist of such revision.

10. The Telecommunication Services Classification List, which entered into effect on 1 April 2003, helps to enhance the transparency in the scope of telecommunication services, which require obtaining licenses. However, further explanations on the following two points are requested; (a) The Classification List includes some categories of services which may fall into the services categories other than the "2.C. Telecommunication Services" in the Services Classification List (MTN.GNS/W/120), such as call center services. Japan would like to seek clarification on whether the inclusion of such other services in "the Telecommunication Services Classification List" are fully consistent with its accession commitments on respective other services including "1.F. Business Services," given the possible implications of applying such regulations to these "other services." (b) It could work restrictively on new services made possible in future by a technological evolution, as such services might fail to find a suitable place among such strictly defined service categories. This delegation seeks specific information on how such future new services are administratively allowed before a revision of the List. It seeks a clarification of the last paragraph of Article 9, "the Regulations of the People's Republic of China on Telecommunications", and confirmation that the said paragraph covers supply of such services on commercial basis, as well as that a notification or simple reporting will suffice to enable a licensed service supplier to launch such services.

11. The efforts by the Ministry of Information Industry of China for expeditious development and improvement of regulatory framework in this sector are highly valued. Under such a rapidly evolving regulatory and business environment, some kind of a guideline for application or a market entry manual would render a substantial help to services providers, by offering a comprehensive guidance to regulations which need to be referred to; such examples might be found in the "Manual for Market Entry into Japanese Telecommunications Business" by MPHPT of Japan, which has been already handed to the Chinese Government, or various Filing Guidelines provided by US FCC. Noting that authentic guiding manuals for China's evolving regulatory environment are most awaited, this delegation wishes to learn if the Ministry of Information Industry of China has any plan for one.

#### **IV. CONSTRUCTION AND RELATED ENGINEERING SERVICES**

12. Japan understands that the establishment of wholly foreign-owned enterprises should be permitted well in time before the abolition of the Direct Contracting Scheme, if that abolition is to come into effect on 1<sup>st</sup> of this October as provided in Article 26, "Regulations on the Administration of Foreign Invested Construction Enterprises". Japan seeks updated information on the policy development in this aspect.

13. The criteria for the 4 types of construction project allowed to be undertaken by wholly foreign-owned enterprises as set out in China's Schedule are subject to administrative interpretation and discretion; it is vital that the scope of these projects not be overly restrictively implemented, and at least should not be narrower than that currently permitted to foreign enterprises under the Direct Contracting Scheme. Japan seeks China's assurance on this point.

14. The minimum engineer number requirements currently in place at least 300 engineers in one office for a certain category of construction enterprise constitute substantial barriers for foreign construction enterprises in establishing presence in Chinese market. Japan seeks China's view on a) how the requirement is compatible with GATS Article VI.5, and b) how these requirements are compatible with GATS Article XVII, when wholly foreign-owned enterprises are only allowed to undertake 4 types construction projects.

#### **V. DISTRIBUTION SERVICES**

15. (a) The phase-in commitments within 1 year after accession, on wholesale trade services (foreign minority ownership) are not duly implemented. Japan would like to know the reason why the revision of the relevant law, "Regulations on Investment of Foreign Distribution Business Enterprises" stated in 25 June 1999, is delayed as well as the schedule for revision.

(b) The phase-in commitments within 2 years after accession, on wholesale trade services (foreign majority ownership, no geographic or quantitative restrictions) and retailing services (foreign majority control, easing of geographical restrictions) should be duly implemented; Japan would like to know the specific schedule and related procedures for the implementation. It would like to reiterate its keen interests on liberalization of wholesale trade services and retailing services for motor vehicles.

(c) On processed and crude oil, the commitment of full liberalization of wholesale trade services in 5 years after accession and retailing services in 3 years should also be duly implemented.

16. It is reported that the Government of China has a plan to establish a "Law Controlling the Monopolization of Automobile Brands" to prohibit dealers from selling both imported and domestic cars. We would like to know if this is the case and, if so, ask China to provide the detail of such regulation. We believe that such regulation should not be introduced since, depending on its contents, it could violate the commitment that China took in its Schedule.

17. It is reported that in regards to the acquisition of the "Management Right to Passenger Vehicles" required for retail dealers in passenger vehicles, the Government of China plans to limit the scope of the management right either to domestic cars or imported cars. We would like to know if this is the case and, if so, ask China to provide the detail of such regulation. In addition, we would like China to publicize the criterion for granting the management right to passenger vehicles. We believe that such regulation should not be introduced since, depending on its contents, it could violate the commitment that China took in its Schedule.

## **VI. TRANSPORT SERVICES (MARITIME TRANSPORT SERVICES AND AUXILIARY SERVICES)**

18. On freight forwarding agency services, where the current commitments provide that within four years after accession, wholly-foreign owned subsidiaries will be permitted, Japan would like to know the plan and schedule for the implementation of this phase-in commitment.

19. The Regulations on International Maritime Transportation, which is administered by Ministry of Communications, provides that a non vessel operating common carrier (NVOCC) needs to pay as the surety bond, a sum of RMB 800,000 yuan (Article 8). Japan seeks from China a justification of this sum of surety bond in the light of GATS Article VI.5, particularly for being not more burdensome than necessary to ensure the quality of the services. It is interested to know whether there is any plan of revision, easing, or abolition of this requirement.

20. In China, the Regulations on International Maritime Transportation administered by Ministry of Communication cover NVOCC, while "Regulations concerning Foreign Investment in International Freight Forwarding Operations" administered by Ministry of Commerce covers freight forwarding agency services. Between these two regulations, the regulatory status is not quite evident with the services provided by a "person on whose behalf the bill of lading/any other document evidencing a contract of carriage of goods is issued and who is responsible for the carriage of goods pursuant to the contract of carriage" (para. 3 of note to the Draft Schedule on Maritime Transport Services), when it is provided, including as a part of multimodal transport, by service suppliers not operating vessels themselves, through carriage contracts with other vessel operators. Japan seeks information on clear demarcations of the scope of the two regulations, and which Ministry is in charge of the said services.

## **VII. CLOSER ECONOMIC PARTNERSHIP ARRANGEMENT BETWEEN HONG KONG, CHINA AND CHINA (CEPA)**

21. Japan expects the Arrangement duly notified to the Council for Trade in Services, and in the meantime, appreciates basic information on its services part, including its sectoral coverage.

22. Also, it also requests information on the rules of origin of services including criteria to be identified as "Hong Kong companies", as well as an assurance that the scope of "Hong Kong companies" provided in the Arrangement is no narrower than that defined by GATS Article XXVIII.

## **VIII. OTHERS - TRADING RIGHTS (REPORT OF THE WORKING PARTY, PARA. 83)**

23. The absence of trading rights often constitutes a major obstacle for service suppliers in developing and expanding their services in PRC, particularly when they find the necessity of importing from abroad certain facilities and equipments in establishing their business presence. An updated information and assurance on the schedule of allowing trading rights to foreign service suppliers, including following two points, are highly appreciated.

- (a) The phase-in commitments within 1 year after accession on trading rights (foreign minority ownership) is not duly implemented. Japan would like to know the reason why the revision of the relevant laws including "Foreign Trade Law of People's Republic of China" is unduly delayed as well as the schedule for their revision.
  - (b) The phase-in commitments within 2 years after accession, on trading rights (foreign majority ownership) should be duly implemented; Japan would like to know the specific schedule and related procedure for the implementation.
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