

**CHINA – MEASURES AFFECTING FINANCIAL INFORMATION SERVICES AND
FOREIGN FINANCIAL INFORMATION SUPPLIERS**

Request for Consultations by the European Communities

The following communication, dated 3 March 2008, from the delegation of the European Communities to the delegation of China and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The European Communities hereby requests consultations with the People's Republic of China ("China") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the *General Agreement on Trade in Services* ("GATS") and Article 64.1 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* ("TRIPS Agreement"), in respect of the provisions of Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT"), with respect to measures affecting financial information services and foreign financial information services suppliers in China.

1. Measures at issue

The measures at issue include, but are not limited to:

- The *Notice Authorizing Xinhua News Agency to Implement Centralized Administration over the Release of Economic Information in the People's Republic of China by Foreign News Agencies and their Subsidiary Information Institutions*, issued by the State Council on 31 December 1995 as Circular No. 1 of 1996 ("the Circular");
- the *Decision on Establishing Administrative Permission for the Administrative Examination and Approval of Items that Must Be Retained*, issued by State Council Order No. 412 on 29 June 2004;
- the *Measures for Administering the Release of News and Information in China by Foreign News Agencies* ("the 2006 Measure"), issued by Xinhua News Agency on 10 September 2006;
- the *Catalogue of Industries for Guiding Foreign Investment (Revised 2007)* issued by the State Council in October 2007 and promulgated by Order No. 57 of National Development and Reform Commission and the Ministry of Commerce ("the Catalogue");

- the *Decisions of the State Council regarding Entrance of Non-Public Capital into Cultural Industries*, promulgated by the State Council on 13 April 2005;
- the *Several Opinions on Introducing Foreign Investment into the Cultural Sector*, issued by the Ministry of Culture on 6 July 2005;
- the *Opinion on Foreign Investment in Cultural Industries*, promulgated by the Ministry of Culture on 5 August 2005;
- the *Detailed Rules on the Approval and Control of Resident Representative Offices of Foreign Enterprises*, issued by MOFTEC on 13 February 1995;
- the *Procedures of the State Administration for Industry and Commerce of China for the Registration and Administration of Resident Representative Offices of Foreign Enterprises*, of 5 March 1983;
- the *Rules for Internet Information services*;
- the *Administrative Rules for Internet News Information Services* promulgated by State Council Information Office and Ministry of Information Industry on 25 September 2005.

Foreign financial information suppliers are considered and treated as news agencies in China. Thus, financial information services fall within the category of services sectors in which foreign investment is prohibited, and due to this fact, foreign financial information suppliers are therefore not permitted to set up a commercial presence in a form other than that of a representative office.

The "Xinhua News Agency" is the State news agency in China, but it also acts as the regulatory authority for foreign news agencies and for foreign financial information providers. Xinhua is therefore responsible for the examination and approval procedure in respect of foreign financial information providers. As a result, financial information providers are subject to the 2006 Measure and need the approval of Xinhua to operate. They can only operate through an agent designated by Xinhua and are not allowed to directly solicit subscriptions for their services. Moreover, potential users wishing to subscribe to their services are only allowed to do so through a designated entity only.

As part of the measures at issue, Xinhua News Agency has only designated the China Economic Information Service (CEIS), a branch of Xinhua, as agent under the September 2006 Measure. From 2007 onwards, it has made the renewal of foreign financial information suppliers licences conditional upon the signature of agent agreements with CEIS.

- (1) Foreign financial information suppliers are subject to further operational requirements, including the approval by Xinhua of any change in their scope of business, transmitting means, etc, and are also subject to the obligation of annual reporting on their activities to Xinhua. As part of the annual review process, foreign financial information providers are required to provide to Xinhua's Foreign Information Administration Center (FIAC) valuable and confidential commercial information on both their services and their customers. Similarly, their clients are required to submit all contractual information to FIAC upon signing the contracts for the supply of financial information services.

- (2) The 2006 Measure replaced the "Methods for the Exercise of Administration over Publication in China of Economic Information by Foreign News Agencies and their Information Subsidiaries", promulgated by Xinhua on 15 April 1996 on the basis of the Circular. The Circular had been clarified, as far as European Communities' providers of financial information services are concerned, by an Exchange of Letters of 10 November 1997 between Xinhua and the EC. On this basis, Xinhua's FIAC would not intervene in the transactions between European Communities' financial information providers and their customers, would guarantee the confidentiality of any information submitted to it, would not require details of the financial transactions between financial information providers and customers, and would approve licence applications within 20 working days after submission of a limited number of documents describing their functioning and operations in China. Foreign financial information suppliers have operated and developed their activities in China in accordance with the relevant licences granted on the basis of these rules, which were renewed annually until 2006.

As part of the measures at issue, on 20 June 2007, Xinhua launched "Xinhua 08", a financial information provider which supplies services on a commercial basis and in competition with other service suppliers. Neither Xinhua 08, nor other domestic financial information suppliers, are subject to the requirement to supply their services through an agent or intermediary or to any other equivalent requirement.

In respect of the measures referred to in this section, this request also covers any amendments, replacements, extensions, implementing measures or any other related measure.

2. China's commitments

China's GATS schedule of commitments includes in the horizontal section a standstill provision ("the standstill provision") with regard to mode 3 with the following wording: *"The conditions of ownership, operation and scope of activities, as set out in the respective contractual or shareholder agreement or in a licence establishing or authorizing the operation or supply of services by an existing foreign service supplier, will not be made more restrictive than they exist as of the date of China's accession to the WTO."* Moreover, the horizontal section does not include any general restriction applying to the establishment of foreign invested enterprises. However, it does indicate that the establishment of branches by foreign enterprises is unbound, unless otherwise indicated in the specific sub-sectors.

Also, China's GATS schedule of commitments in sector 7 "Financial Services", sub-sector B "Banking and other financial services", subsection (k), shows no limitations with respect to the provision of financial information services through supply modes 1, 2 and 3. With regard to mode 3, the schedule indicates that criteria for authorization are solely prudential, and also that "branches of foreign institutions are permitted".

In consequence, China has full GATS commitments with regard to the provision and transfer of financial information for modes 1, 2 and 3, coupled with a standstill commitment in respect of mode 3 with regard to the conditions of ownership, operation and scope of activities of foreign service suppliers that applied at the time of China's WTO accession.

Moreover, paragraph 309 of China's Accession Working Party Report (WT/ACC/CHN/49) states that *"China confirmed that for the services included in China's Schedule of Specific Commitments, relevant regulatory authorities would be separate from, and not accountable to, any service suppliers"*

they regulated, except for courier and railway transportation services. For these excepted sectors, China would comply with other relevant provisions of the WTO Agreement and the Draft Protocol. The Working Party took note of these commitments." This paragraph is referred to in paragraph 342 of the Working Party Report. As a result, the Chinese commitment contained therein is included in the Protocol of Accession (WT/L/432), and forms therefore integral part of the Marrakesh Agreement Establishing the WTO.

3. Legal basis

The European Communities considers that the measures at issue appear to be inconsistent with China's obligations under the GATS, the TRIPS Agreement and China's Protocol of Accession. In particular, and as a result of the measures above, China appears to be acting inconsistently with the following provisions:

- Article XVI:2(a) GATS, by limiting the number of service suppliers in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test.
- Article XVI:2(e) GATS, by not allowing foreign financial information suppliers to establish in a legal form other than representative office.
- Article XVII GATS, by imposing discriminatory requirements that result in less favourable treatment of foreign services and foreign financial information suppliers, in particular by requiring them to supply their services through a designated agent, whereas domestic suppliers are not subject to any equivalent requirement; and by refusing to renew the necessary licence to foreign suppliers of financial information services in 2007, thus modifying the conditions of competition in favour of domestic services and service suppliers.
- The standstill provision in China's GATS schedule of commitments, by substantially worsening the conditions of operation and scope of activities as set out in the relevant licences authorizing the operation of supply of services by existing foreign service suppliers.
- In the alternative, Article XVIII GATS in respect of the standstill provision in China's GATS schedule of commitments.
- The commitment undertaken by China in paragraph 309 of its Accession Working Party Report, according to which relevant regulatory authorities would be separate from, and not accountable to, any service suppliers they regulated, which is included in China's Protocol of Accession (WT/L/432) and forms therefore integral part of the Marrakesh Agreement establishing the World Trade Organization.
- Article 39.2 of the TRIPS Agreement, by not ensuring the possibility for financial information services suppliers of preventing secret and commercially valuable information lawfully within their control which they have tried to protect from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices.

The measures cited in this request for consultations also appear to nullify or impair the benefits accruing to the European Communities directly or indirectly under the cited agreements.

The European Communities reserves the right to address additional issues regarding the above matters in the course of the consultations.

The European Communities looks forward to receiving China's reply to this request for consultations and to fixing a mutually convenient date for consultations in Geneva.
