

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

The following communication, dated 3 October 2002, has been received from the Permanent Mission of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

**TRANSITIONAL REVIEW MECHANISM PURSUANT TO PARAGRAPH 18 OF THE
PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA ("CHINA")**

Questions from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu
to China concerning Trade-Related Investment

1. Questions relating to the "*Law of the PRC on Chinese-Foreign Equity Joint Ventures*", the "*Law of the PRC on Foreign Capital Enterprises*", and the "*Law of the PRC on Chinese-Foreign Contractual Joint Ventures*".

- (a) According to paragraph 203 of its Working Party Report, China agreed that upon accession, it would comply fully with the TRIMs Agreement and would eliminate foreign-exchange balancing and trade-balancing requirements, local content requirements and export performance requirements. In 2002, based on its commitments, China already revised the *Law of the PRC on Chinese-Foreign Equity Joint Ventures*, the *Law of the PRC on Foreign Capital Enterprises* and the *Law of the PRC on Chinese-Foreign Contractual Joint Ventures* (or the *Three Capital Laws* for short). Meanwhile, enterprises still have doubts about the implementation of the *Three Capital Laws*.
- Please explain how the central government ensures that local governments comply with the new *Three Capital Laws*.
 - Please explain the procedures by which an enterprise can seek the protection of its rights if asked to follow the old *Three Capital Laws*, and please provide the relevant laws and regulations.
- (b) If an enterprise has put foreign-exchange balancing, trade-balancing, local content, export performance and similar restrictions into its contract or by-law of association based on the old wording of the *Three Capital Laws*, please clarify whether, according to the new *Three Capital Laws*, that enterprise has a right to amend its contract or by-law of association in order to match the new laws. What are the relevant amendment procedures and consultation channels? Please provide the relevant regulations and information.

2. Questions relating to the "*Guiding Industry Catalog of Foreign Investment*" (issued by MOFTEC, 11 March 2002).

- (a) According to paragraph 203 of China's Working Party Report, permission to invest, import licenses, quotas and tariff rate quotas shall be granted without regard to the existence of competing Chinese domestic suppliers. Furthermore, according to China's *Guiding Industry Catalog of Foreign Investment*, revised in 2002, the production of recordable CDs (including CD-R, CD-RW, DVD-R and DVD-ARM) is listed as an industry where foreign investment is encouraged, whereas it used to be listed as a restricted area. However, the production capacity of foreign enterprises is regulated under a notice entitled *Regarding Further Strengthen the Management of Duplicating CD* (Dept. of Central Advocating, Notice No. 7, 1996). We understand that this notice is intended to maintain the quantity of recordable CDs in China's CD industry. Please explain how this notice can be justified under the WTO framework.
- (b) In addition, in China's *Guiding Industry Catalog of Foreign Investment*, revised in 2002, cellular phone manufacturing is listed as an industry in which foreign investment is encouraged, whereas it used to be listed as a restricted area. However, permission to produce cellular phones by foreign-invested enterprises is regulated by State Council Notice No. 5, 1998, which places restrictions on production and the percentage of domestic sales. Please explain how China's State Council Notice No. 5, 1998, conforms with paragraph 203 of its Working Party Report, and how it can be justified. Please also provide details of current laws and regulations pertaining to the manufacture and domestic sale of cellular phones by foreign-invested enterprises.

3. Questions relating to the "*Regulations of the PRC on the Exploitation of On-Shore Petroleum Resources in Cooperation with Foreign Enterprises*" (State Council Order No. 317, 2001) and the "*Regulations of the PRC on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises*" (State Council Order No. 318, 2001).

According to paragraph 203 of its Working Party Report, China confirmed that the allocation of and granting of permission or rights for importation and investment would not be conditional upon performance requirements set by national or sub-national authorities or subject to secondary conditions. However, Article 18 of the *Regulations of the PRC on the Exploitation of On-Shore Petroleum Resources in Cooperation with Foreign Enterprises* and Article 14 of the *Regulations of the PRC on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises* indicate that joint venture enterprises with a foreign partner must accurately and in a timely manner report the state of their business in petroleum to their Chinese partners during the process of implementing their contracts. They must also accurately and in a timely manner obtain numerical data, records, samples, evidence, and other original data on each aspect of their petroleum business, and provide these data and samples, according to regulations, to the Chinese petroleum company, as well as various reports on technology, economics, finance, and administration. In addition, Article 19 of the *Regulations of the PRC on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises* stipulates that Chinese Offshore Petroleum Company has the right to dispatch personnel to participate in the general design or engineering design work being undertaken by the foreign operator in order to implement a petroleum contract. Please explain how the measures described above may be justified under China's WTO commitments, and how they conform to its Working Party Report.
