

# WORLD TRADE ORGANIZATION

S/C/N/219  
24 December 2002

(02-7097)

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:**

2001/12/10

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

Ministry of Culture

Ministry of Foreign Trade and Economic Cooperation

**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 for Administration of Sino-Foreign Contractual Distribution Ventures of Audio-Visual Products

Full text English translation of the administrative measures is attached<sup>1</sup>. 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.

<sup>1</sup> In English only.

## **Measures for Administration of Chinese Foreign Contractual Distribution Ventures of AudioVisual Products**

(Promulgated by the Ministry of Culture and the Ministry of Foreign Trade and Economic Cooperation on December 10, 2001)

**Article 1** These Measures are formulated in accordance with the Law of the People's Republic of China on Chinese Foreign Contractual Joint Ventures, the Regulations on Administration of Audio Visual Products and other laws and regulations with a view to expanding foreign cultural exchange and economic cooperation and enhancing the administration of Chinese foreign contractual distribution ventures of audiovisual products.

**Article 2** These Measures shall be applicable to the establishment of Chinese foreign contractual distribution ventures of audiovisual products within the territory of the People's Republic of China.

Chinese foreign contractual distribution ventures of audiovisual products, as used in these Measures, refer to the ventures jointly established by foreign enterprises, other economic organizations or individuals (hereinafter referred to as the foreign partners) with Chinese enterprises or other economic organizations (hereinafter referred to as the Chinese partners) within Chinese territory, on the basis of the principles of equality and mutual benefits and upon the approval of the relevant departments of Chinese Government, which is engaged in the business of wholesale, retail or rental of audiovisual products.

Audio Visual products, as used in these Measures, refer to audio tapes, video tapes, gramophone records, compact discs, laser discs, etc, which have recorded contents.

**Article 3** Chinese foreign contractual distribution ventures of audiovisual products must abide by the relevant laws and regulations and disseminate the ideological, ethical, scientific, technological and cultural knowledge conducive to economic development and social progress.

**Article 4** The legitimate business operation activities of a Chinese foreign contractual distribution ventures of audiovisual products and the lawful rights and benefits of both the Chinese and foreign venturers are protected by Chinese law.

**Article 5** The Ministry of Culture and the Ministry of Foreign Trade and Economic Cooperation (hereinafter referred to as the MOFTEC) shall be responsible for the examination, approval, supervision and administration of Chinese foreign contractual distribution ventures of audiovisual products.

The administrative departments of culture and the administrative departments of foreign trade and economic cooperation under the local people's governments at or above the county levels shall, according to the division of their functions and duties, be responsible for the daily supervisions and administration of Chinese foreign contractual distribution ventures of audiovisual products within their own administrative areas.

**Article 6** The establishment and development of Chinese foreign contractual distribution ventures of audiovisual products shall be in conformity to the development program for audiovisual market.

**Article 7** Both the Chinese and foreign venturers applying to establish a Chinese foreign contractual distribution ventures of audiovisual products shall be capable of running a distribution venture of audiovisual products, have the ability to independently bear civil liability, and also have no law breaking record in last three years prior to the application.

**Article 8** A Chinese foreign contractual distribution venture of audiovisual products shall satisfy the following requirements:

- (1) being qualified as an independent legal person;
- (2) meeting the conditions of the State regarding the establishment of a distribution ventures of audiovisual products;
- (3) having the funds commensurate with the scale of its business operation;
- (4) the proportion of the rights and benefits enjoyed by the Chinese venturer in the contractual joint venture shall not be less than 51 per cent;
- (5) the term of cooperation shall be no longer than 15 years.

**Article 9** Where a Chinese foreign contractual distribution venture of audiovisual products applies to engage in the business of chain marketing of audiovisual products or to market audiovisual products by means of information network, it shall go through the examination and approval formalities pursuant to the provisions of the State on the chain marketing of audiovisual products and on the marketing of audiovisual products by means of information network.

**Article 10** Where the Chinese venturer contributes state-owned assets as the condition for cooperation, it shall obtain the approval from the state-owned assets administration department at the next higher level, and shall, pursuant to the relevant provision on the appraisal of state-owned assets, have the state-owned assets to be contributed as the condition for cooperation appraised by an appraisal institution confirmed by the state-owned assets administration department.

**Article 11** A Chinese foreign contractual distribution venture of audiovisual products shall be established in accordance with the following procedures:

- (1) the Chinese venturer shall submit an application to the administrative department of culture of the province, autonomous region or municipality directly under the Central Government at the place where the proposed Chinese foreign contractual distribution venture of audiovisual products is to be located, the administrative department of culture of the province, autonomous region or municipality directly under the Central Government shall, upon examination and consent, forward the application to the Ministry of Culture for examining and approving the project. The Ministry of Culture shall make a decision of approval or disapproval within 60 working days; if no approval is granted, the reasons therefor shall be stated in writing.
- (2) the Chinese venturer shall, within six months from the date of approval of the project by the Ministry of Culture, submit an application to the administrative department of foreign trade and economic cooperation of the province, autonomous region or municipality directly under the Central Government at the place where the proposed Chinese foreign contractual distribution venture of audiovisual products is to be located for establishing a Chinese foreign contractual distribution venture of audiovisual products, the administrative department of foreign trade and economic cooperation of the province, autonomous region or municipality directly under the Central Government shall, upon examination and consent, forward the application to the MOFTEC for examination and approval. The MOFTEC shall make a decision of approval or disapproval within 60 working days; if the application is approved, an "Approval Certificate for Foreign Funded Enterprise" shall be issued to the applicant; if no approval is granted, the reasons therefor shall be stated in writing.
- (3) the Chinese venturer shall, within 30 days from the date of receipt of the "Approval Certificate for Foreign Funded Enterprise" issued by the MOFTEC and on behalf of the Chinese foreign contractual distribution venture of audiovisual products to be established, apply to the Ministry of Culture for a "License for Dealing in Audio Visual Products" by presenting the document of the Ministry of Culture for approving the project and the "Approval Certificate for Foreign Funded Enterprise" issued by the MOFTEC.

- (4) the Chinese venturer shall, within 30 days from obtaining the “License for Dealing in Audio Visual Products” issued by the Ministry of Culture and by presenting the “License for Dealing in Audio Visual Products” and the “Approval Certificate for Foreign Funded Enterprise”, go through the registration procedures pursuant to the provisions on industry and commerce administration for obtaining a “Business License for Enterprise as Legal Person”.

**Article 12** When making an application to the administrative department of culture for launching the project, the Chinese venturer shall submit the following documents:

- (1) an application for launching the project;  
The application shall clearly specify the name, address, business scope, resource and volume of the invested capital, etc. of the Chinese foreign contractual distribution venture of audiovisual products to be established.
- (2) the project proposal or feasibility study report jointly complied or consented by both Chinese and foreign venturers;
- (3) the business licenses or registration certificates and the credit-worthiness certificates of both Chinese and foreign venturers, and the valid identity certificates of their legal representatives;
- (4) (if the Chinese venturer contributes state-owned assets as the condition for cooperation) the document of the state-owned assets administration department confirming the appraisal report on the state-owned assets to be contributed by the Chinese venturer;
- (5) other materials as required by the Ministry of Culture.

**Article 13** When making an application to the administrative department of foreign trade and economic cooperation for the establishment, the Chinese venturer shall submit the following documents:

- (1) an application for the establishment;
- (2) the project proposal or feasibility study report jointly complied or consented by both Chinese and foreign venturers and approved by the Ministry of Culture;
- (3) the approval document of the Ministry of Culture for launching the cooperation project;
- (4) the contract and articles of association of the proposed Chinese foreign contractual distribution venture of audiovisual products signed by the representatives authorized by both Chinese and foreign venturers;
- (5) (if the Chinese venturer contributes state-owned assets as the condition for cooperation) the document of the state owned assets administration department confirming the appraisal report on the state-owned assets to be contributed by the Chinese venturer;
- (6) the business licenses or registration certificates and the credit worthiness certificates of both Chinese and foreign venturers, and the valid identity certificates of their legal representatives;
- (7) the notification of advance approval of the name of the contractual joint venture to be established;
- (8) the namelist of the candidates for chairman, vice chairmen and directors of the contractual joint venture or for president, vice presidents and committee members of its joint management committee, which is determined through consultation by both Chinese and foreign venturers;
- (9) other materials as required by the MOFTEC.

**Article 14** With regard to any significant alteration of a Chinese foreign contractual distribution venture of audiovisual products, including the alteration of investor, adjustment to the proportion of rights and benefits, alteration of the volume of investment or condition for cooperation, alteration of

business scope, alteration of the term of operation and the establishment of a branch, it shall go through the examination and approval procedures as provided for in Article 11 of these Measures.

Any other alteration of a Chinese foreign contractual distribution venture of audiovisual products shall be reported to the MOFTEC for approval or for the record according to the provisions on foreign funded enterprises. If a Chinese foreign contractual distribution venture of audiovisual products changes its address, legal representative or principal responsible persons, or terminates its business activities upon the expiration of the term of operation, it shall also report the matter to the Ministry of Culture for the record within 30 days.

**Article 15** Chinese foreign contractual distribution ventures of audiovisual products must keep their business activities of audiovisual products within the approved scope of business.

**Article 16** The "License for Dealing in Audio Visual Products" of a Chinese foreign contractual distribution venture of audiovisual products shall be checked once every two years by the Ministry of Culture.

**Article 17** Chinese foreign contractual distribution ventures of audiovisual products shall be subject to the supervision and administration of administrative departments of culture according to the provisions of the State on dealing in audiovisual products.

**Article 18** Chinese foreign contractual distribution ventures of audiovisual products shall be subject to the supervision and administration of the Chinese departments concerned according to the relevant provisions of the State on foreign-funded enterprises.

**Article 19** Chinese foreign contractual distribution ventures of audiovisual products shall deal in neither any audiovisual product containing the contents prohibited by the State from dissemination, nor any audiovisual product published by a non-audiovisual publishing unit or reproduced by a non-audiovisual reproduction unit, nor any audiovisual product imported without approval of the Ministry of Culture, nor any audiovisual product infringing upon other person's copyright.

**Article 20** No Chinese foreign contractual distribution ventures of audiovisual products may engage in the import of audiovisual products.

**Article 21** Those who establish Chinese foreign contractual distribution ventures of audiovisual products or exploit foreign investment by other means in the business of distribution of audiovisual products without approval of the Ministry of Culture and the MOFTEC shall be punished by the Chinese departments concerned according to law, and the persons responsible therefor shall be investigated for liability.

**Article 22** The establishment of distribution ventures of audiovisual products in China's other provinces, autonomous regions or municipalities directly under the Central Government by investors for the Hong Kong Special Administrative region, the Macao Special Administrative Region or Taiwan shall be *mutatis mutandis* governed by these Measures.

**Article 23** These Measures shall be interpreted by the Ministry of Culture and the MOFTEC.

**Article 24** These Measures shall be effective as of January 10, 2002.

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