

WORLD TRADE ORGANIZATION

S/C/N/208
16 December 2002

(02-6934)

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:

2001/03/15

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

Ministry of Foreign Trade and Economic Co-operation

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:

Law of the People's Republic of China on Sino-Foreign Equity Joint Venture
Full text English translation of the law is attached.¹ 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

Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures

(Amended at the Third Session of the Seventh National People's Congress on April 4, 1990, and revised in accordance with the Decision of the Fourth Session of the Ninth National People's Congress Regarding the Revision of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures on March 15, 2001).

Article 1 With a view to expanding international economic cooperation and technological exchange, the People's Republic of China shall permit foreign companies, enterprises, other economic organizations or individuals (hereinafter referred to as "the foreign parties") to establish equity joint ventures together with Chinese companies, enterprises or other economic organizations (hereinafter referred to as "the Chinese parties") within the territory of the People's Republic of China, under the principle of equality and mutual benefit and subject to approval by the Chinese Government.

Article 2 The Chinese Government shall protect, according to law, the investment, entitled profits and their other lawful rights and interests of the foreign party in an equity joint venture, pursuant to the agreement, contract and articles of association approved by the Chinese Government.

All activities of an equity joint venture shall comply with the provisions of the laws and regulations of the People's Republic of China. The state shall not nationalize or requisition any equity joint venture. Under special circumstances as required by public interest, an equity joint venture may be requisitioned under legal procedures and appropriate compensations shall be made.

Article 3 The equity joint venture agreement, contract and articles of association signed by the parties to the venture shall be submitted to competent state departments in charge of foreign economic relations and trade (hereinafter referred to as the examination and approval authorities) for examination and approval. The examination and approval authorities shall decide whether to approve or disapprove the venture within three months. When approved, the equity joint venture shall register with the competent state authorities responsible for industry and commerce administration, obtain a business license and start operations.

Article 4 An equity joint venture shall take the form of a limited liability company. The proportion of the investment of the foreign party in an equity joint venture shall be, in general, no less than 25 percent of the registered capital. The parties to the venture shall share the profits, risks and losses in proportion to their contributions to the registered capital.

If any of the parties wishes to assign its registered capital, it must obtain the consent of the other parties to the venture.

Article 5 The parties to an equity joint venture may make their investment in cash, in kind or in industrial property rights, etc.

The technology and equipment contributed by a foreign party as its investment must be actually advanced technology and equipment that meet China's needs. In case of losses caused by a foreign party in its deceptive conduct through the intentional provision of outdated technology and equipment, it shall compensate for the losses. The investment made by a Chinese party may include the right to the use of a site provided for the equity joint venture during the period of its operation. Where the right to the use of the site is not taken as a part of the Chinese Party's investment, the equity joint venture shall pay the Chinese Government for its use.

The above-mentioned investment shall be specified in the contract and articles of association of the equity joint venture, and their value (excluding that of the site) shall be assessed by all parties to the joint venture.

Article 6 An equity joint venture shall have a board of directors; the number of the directors thereof from each party and the composition of the board shall be stipulated in the contract and articles of association after consultations among the parties to the venture; such directors shall be appointed and replaced by the relevant parties. The chairman and the vice chairman (vice chairmen) shall be determined through consultations by the parties to the venture or elected by the board of directors. If the Chinese side or the foreign side assumes the office of the chairman, the other side shall assume the office(s) of the vice chairman (vice chairmen). The board of directors shall decide on important issues concerning the joint venture under the principle of equality and mutual benefit.

The functions and powers of the board of directors are, as stipulated in the articles of association of the equity joint venture, to discuss and decide on all major issues concerning the venture, namely, the venture's development plans, proposals for production and business operations, the budget for revenues and expenditures, the distribution of profits, the plans concerning manpower and wages, the termination of business, and the appointment or employment of the general manager, the deputy general manager(s), the chief engineer, the chief accountant and the auditors, as well as the determination of their functions, powers and terms of employment, etc. The offices of general manager and deputy general manager(s) (or factory manager and deputy manager(s)) shall be assumed by the respective parties to the venture.

The employment, dismissal, remuneration, welfare, labour protection and labour insurance, etc. of the staff members and workers of the equity joint venture shall be specified in contracts concluded in accordance with law.

Article 7 The staff and workers of an equity joint venture shall, in accordance with law, establish their trade union organization to carry out trade union activities and protect their lawful rights and interests.

An equity joint venture shall provide the necessary conditions for the venture's trade union to carry out its activities.

Article 8 The net profit of an equity joint venture shall be distributed among the parties to the venture in proportion to their respective contributions to the registered capital, after payment out of its gross profit of the equity joint venture of income tax, pursuant to the provisions of the tax laws of the People's Republic of China, and after deduction from the gross profit of a reserve fund, a bonus and welfare fund for workers and staff members and a business expansion fund, as stipulated in the articles of association.

An equity joint venture may, in accordance with provisions of relevant laws and administrative rules and regulations of the state on taxation, enjoy preferential treatment for reduction of or exemption from taxes.

A foreign party who reinvests its share of the net profit within the territory of China may apply for partial refund of the income tax already paid.

Article 9 An equity joint venture shall, upon presentation of its business license, open a foreign exchange account with a bank or any other financial institution which is permitted by the state administration for foreign exchange control to handle foreign exchange transactions.

A party to an equity joint venture shall handle its foreign exchange transactions in accordance with the Regulations on Foreign Exchange Control of the People's Republic of China.

An equity joint venture may, in its business operations, directly raise funds from foreign banks.

The various kinds of insurance coverage of an equity joint venture shall be provided by insurance companies established within the territory of China.

Article 10 In its purchase of required raw and semi-processed materials, fuels, auxiliary equipment, etc., necessary to its approved scope of business, an equity joint venture should purchases both on the domestic market and the international market in pursuant to the principle of equality and reasonable terms.

An equity joint venture shall be encouraged to market its products outside China. It may sell its export products on foreign markets directly or through associated agencies or China's foreign trade agencies. Its products may also be sold on the Chinese market. When necessary, an equity joint venture may set up branches and (or) subsidiaries outside China.

Article 11 The net profit which a foreign party receives as its share after performing its obligations under the law and the agreements or the contract, the funds it receives upon the expiration of the venture's term of operation or its early termination, and its other funds may be remitted abroad in accordance with foreign exchange control regulations and in the currency or currencies specified in the contract of the equity joint venture.

A foreign party shall be encouraged to deposit in the Bank of China the foreign exchange which it is entitled to remit abroad.

Article 12 The wages, salaries or other legitimate income earned by a foreign worker or staff member of an equity joint venture, after payment of the individual income tax under the Tax Law of the People's Republic of China, may be remitted abroad in accordance with foreign exchange control regulations.

Article 13 Based on different lines of trade and different circumstances, arrangements for the duration of equity joint ventures may be made differently through agreement by the parties to the venture. Equity joint ventures engaged in certain lines of trade shall specify their duration in the contracts, while equity joint ventures engaged in certain other lines of trade may choose to or not to specify their duration in the contracts. Where an equity joint venture has had its duration specified and the parties to the venture agree to extend the duration, the venture shall file an application for that purpose with the examination and approval authorities six months before its expiration. The examination and approval authorities shall, within one month after receipt of the application, decide on its approval or disapproval.

Article 14 In case of heavy losses, failure of a party to perform its obligations under the contract and the articles of association, or force majeure etc., the parties to the joint venture may terminate the contract through consultation and agreement, subject to approval by the examination and approval authorities and to registration with the competent state administration for industry and commerce. In cases of losses caused by a breach of contract, the financial responsibility shall be borne by the party that has breached the contract.

Article 15 Disputes arising between the parties to an equity joint venture which the board of directors has failed to settle through consultation may be settled through mediation or arbitration by an arbitration agency of China or through arbitration by another arbitration agency as agreed by the parties. The parties to an equity joint venture may start legal proceedings in a Chinese court, if no arbitration clause is provided in the equity joint venture contract and if no written agreement is concluded afterwards.

Article 16 This Law shall enter into force on the date of its promulgation.
