Retail

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Introduction:

The growth in China's retail sector has been well documented. However, the market still faces several problems that are preventing it from reaching its full potential. Many regulatory policies treat foreign-invested retailers unfairly and thus restrict competition in the market. The effect of these restrictions can be seen in prices, product safety, and corporate social responsibility. Lehman, Lee & Xu believes that fully opening the market to foreign investors is of the utmost importance.

Developments:

Between 2008 and 2009 retail consumption in China increased by nearly seventeen percent. Despite the global downturn, growth is expected to continue in 2010 by a rate of nearly ten percent. After China's accession to the WTO, many restrictions previously imposed on foreign-invested retailers were removed. Nearly twenty percent of the top one hundred retailers in 2008 were foreign. Additionally, the number of foreign-invested retailers increased by 13.1 percent between 2007 and 2008.

In 2008, the Foreign Investment Administration Department announced a regulation that decentralized store opening approvals. This regulation has simplified the approval procedures for new foreign-invested retail stores. It also reduced operating costs and streamlined the examination and approval process. Despite this simplification, discriminatory treatment and a lack of transparency still exist in many areas, which discourages many foreign-investors from establishing or expanding operations in China

Issues:

There are several issues facing foreign-invested retailers in China. For example, retailers with more than thirty stores selling pharmaceuticals, grains, vegetable oil, sugar, cotton or other various commodities cannot be more than forty-nine percent foreign owned. A second example can be found in the tobacco industry. The 2007 Administrative Measures for Tobacco Monopoly License prevents foreign businesses from operating in the wholesale or retail tobacco industries. Restrictions also apply to the sale of publications and audiovisual products. In order to sell publications a foreign firm must have legal representatives in China. Audiovisual products are only allowed to be sold by Sino-foreign cooperative enterprises that are at least fifty-one percent domestically owned.

Another major restriction imposed on foreign invested retailers can be found in commercial zoning regulations. Prior to opening a new site, foreign retailers are required to gain a certificate of approval from local government through a public hearing process that often takes three months or more to complete. Furthermore, many local governments do not have complete zoning regulations, which makes compliance extremely difficult, and in some cases, impossible. Domestic retailers are not required to gain such approval prior to submitting their application to MOFCOM. This policy goes against China's WTO commitments, which requires all geographic limits on foreign retailers to be removed.

Arguably the most burdensome regulation for foreign investors is the registered capital requirement. Article 7 of the Measures on the Administration of Foreign Investment in Commercial Sectors requires the minimum registered capital to comply with the Company Law. The Company Law states a minimum of between 30,000 RMB and 500,000 RMB depending on the industry. However, MOFCOM often requires a minimum registered capital of nearly ten times the figures stated in the Company Law for foreign investors, while adhering to company law for domestic firms.

Lehman, Lee & Xu advocates a removal of the aforementioned restrictions and non-discriminatory enforcement of Article 7 in order to fully open the Chinese retail market and provide consumers with the widest array of choices.

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