

**Working Party on the
Accession of China**

**DRAFT REPORT OF THE WORKING PARTY
ON THE ACCESSION OF CHINA TO THE WTO¹**

Revision

Following the Chairman's remarks at the conclusion of the Fourteenth Meeting of the Working Party on 8 December 2000, this further revision of the Draft Report of the Working Party on the Accession of China to the WTO is being circulated on the Chairman's own responsibility. This revision takes into account developments during the Fourteenth Meeting and is submitted to the Working Party for the purpose of facilitating further discussions.

**Groupe de travail de
l'accession de la Chine**

**PROJET DE RAPPORT DU GROUPE DE TRAVAIL DE
L'ACCESSION DE LA CHINE À L'OMC¹**

Révision

Suite aux remarques formulées par le Président à l'issue de la quatorzième réunion du Groupe de travail le 8 décembre 2000 à l'OMC, cette nouvelle révision du projet de rapport du Groupe de travail de l'accession de la Chine à l'OMC est distribuée sous la responsabilité du Président. Cette révision tient compte des faits nouveaux intervenus au cours de la quatorzième réunion du Groupe de travail et est soumise au Groupe pour faciliter la suite des débats.

**Grupo de Trabajo sobre la
Adhesión de China**

**PROYECTO DE INFORME DEL GRUPO DE TRABAJO
SOBRE LA ADHESIÓN DE CHINA A LA OMC¹**

Revisión

Como consecuencia de las observaciones formuladas por el Presidente al concluir la decimocuarta reunión del Grupo de Trabajo del 8 de diciembre de 2000, se distribuye esta nueva revisión del proyecto de informe del Grupo de Trabajo sobre la Adhesión de China a la OMC bajo la responsabilidad del Presidente. La presente revisión tiene en cuenta los nuevos acontecimientos que se han producido durante la decimocuarta reunión y se somete al Grupo de Trabajo con el fin de facilitar la continuación de los debates.

¹ In English only./En anglais seulement./En inglés solamente.

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I. INTRODUCTION

1. At its meeting on 4 March 1987, the Council established a Working Party to examine the request of the Government of the People's Republic of China ("China") (L/6017, submitted on 10 July 1986) for resumption of its status as a GATT contracting party, and to submit to the Council recommendations which may include a Draft Protocol on the Status of China. In a communication dated 7 December 1995, the Government of China applied for accession to the Agreement Establishing the World Trade Organization ("WTO Agreement") pursuant to Article XII of the WTO Agreement. Following China's application and pursuant to the decision of the General Council on 31 January 1995, the existing Working Party on China's Status as a GATT 1947 Contracting Party was transformed into a WTO Accession Working Party, effective from 7 December 1995. The terms of reference and the membership of the Working Party are reproduced in document WT/ACC/CHN/2/Rev.8.

2. The Working Party on China's Status as a Contracting Party met on 20 occasions between 1987 and 1995 under the Chairmanship of H.E. Mr. Pierre-Louis Girard (Switzerland). The Working Party on China's Accession to the WTO Agreement met on _____ and _____ under the same Chairman.

1. Documentation provided

3. The Working Party had before it, to serve as a basis for its discussion, a Memorandum on China's Foreign Trade Regime (L/6125) and questions posed by members of the Working Party on the foreign trade regime of China, together with replies of the Chinese authorities thereto. In addition, the Government of China made available to the Working Party a substantial amount of documentation, which is listed in document WT/ACC/CHN/23.

2. Introductory statements

4. In statements to the GATT 1947 Working Party and subsequently to the Working Party on China's Accession to the WTO, the representative of China stated that China's consistent efforts to resume its status as a contracting party to GATT and accession to the WTO were in line with its objective of economic reform to establish a socialist market economy as well as its basic national policy of opening to the outside world. China believed that its WTO accession would increase its economic growth and enhance its economic and trade relations with WTO Members.

5. Members of the Working Party welcomed China's accession to the WTO and considered that its accession would contribute to a strengthening of the multilateral trading system, enhancing the

universality of the WTO, bringing mutual benefits to China and to the other Members of the WTO, and ensuring the steady development of the world economy.

6. The representative of China said that China had a territory of 9.6 million square kilometres and, at the end of 1998 a population of 1.25 billion. Since 1979, China had been progressively reforming its economic system, with the objective of establishing and improving the socialist market economy. The reform package introduced in 1994, covering the banking, finance, taxation, investment, foreign exchange ("forex") and foreign trade sectors, had brought about major breakthroughs in China's socialist market economy. State-owned enterprises had been reformed by a clear definition of property rights and responsibilities, a separation of government from enterprise, and scientific management. A modern enterprise system had been created for the state-owned sector, and the latter was gradually getting on the track of growth through independent operation, responsible for its own profits and losses. A nation-wide unified and open market system had been developed. An improved macroeconomic regulatory system used indirect means and market forces to play a central role in economic management and the allocation of resources. A new tax and financial system was functioning effectively. Financial policy had been separated from commercial operations of the central bank, which now focussed on financial regulation and supervision. The exchange rate of the Chinese currency Renminbi (also "RMB") had been unified and remained stable. The Renminbi had been made convertible on current account. Further liberalization of pricing policy had resulted in the majority of consumer and producer products being subject to market prices. The market now played a much more significant role in boosting supply and meeting demand.

7. The representative of China further noted that as a result, in 1999, the Gross Domestic Product (GDP) of China totaled RMB 8.2054 trillion yuan (approximately US\$ 990 billion). In 1998, the net per capita income for rural residents was RMB 2,160 yuan (approximately US\$ 260), and the per capita dispensable income for urban dwellers was RMB 5,425 yuan (approximately US\$ 655). In recent years, foreign trade had grown substantially. In 1999, total imports and exports of goods reached US\$ 360.65 billion, of which exports stood at US\$ 194.93 billion, and imports, US\$ 165.72 billion. Exports from China in 1998 accounted for 3.4% of the world's total.

8. The representative of China stated that although important achievements had been made in its economic development, China was still a developing country and therefore should have the right to enjoy all the special and preferential treatment accorded to developing country Members pursuant to the WTO Agreement.

9. Some members of the Working Party indicated that because of the significant size, rapid growth and transitional nature of the Chinese economy, a pragmatic approach should be taken in

determining China's need for recourse to transitional periods and other special provisions in the WTO agreements available to developing country WTO Members. Each agreement and China's situation should be carefully considered and specifically addressed.

10. At the request of interested members of the Working Party, the representative of China agreed that China would undertake bilateral market access negotiations with respect to industrial and agricultural products, and initial commitments in services.

11. Some members of the Working Party stated that in addition to undertaking market access negotiations in goods and services, close attention should also be paid to China's multilateral commitments, in particular China's future obligations under the Multilateral Agreements on Trade in Goods and the General Agreement on Trade in Services ("GATS"). This was of vital importance to ensure that China would be able to take full benefit of WTO membership as quickly as possible, as well as to ensure that the value of any market access conditions undertaken were not adversely affected by inconsistent measures such as some types of non-tariff measures.

12. The representative of China stated that the achievement of balance between rights and obligations was the basic principle in its negotiation of WTO accession.

13. Some members of the Working Party expressed concern over discrepancies in statistical information supplied by the Government of China on trade volume/value. Members and China pursued this issue separately in an Informal Group of Experts on Export Statistics.

14. The Working Party reviewed the foreign trade regime of China. The discussions and commitments resulting therefrom are contained in paragraphs ... below and in the Draft Protocol of Accession ("Draft Protocol") and in China's Schedules annexed to the Draft Protocol.

II. ECONOMIC POLICIES

1. Non-discrimination (including national treatment)

15. Some members expressed concern regarding the application of the principle of non-discrimination in relation to foreign individuals and enterprises (whether wholly or partly foreign funded). Those members stated that China should enter a commitment to accord non-discriminatory treatment to all foreign individuals and enterprises and foreign-funded enterprises in respect of the procurement of inputs and goods and services necessary for production of goods and the conditions under which their goods were produced, marketed or sold, in the domestic market and for export. In addition, those members said that China should also enter a commitment to guarantee non-discriminatory treatment in respect of the prices and availability of goods and services supplied by

national and sub-national authorities and public or state enterprises, in areas including transportation, energy, basic telecommunications, other utilities and factors of production.

16. Some members of the Working Party also raised concerns over China's practice of conditioning or imposing restrictions upon participation in the Chinese economy based upon the nationality of the entity concerned. Those members in particular raised concerns over such practices in relation to the pricing and procurement of goods and services, and the distribution of import and export licences. Members of the Working Party requested that China enter into a commitment not to condition such practices on the nationality of the entity concerned.

17. In response, the representative of China emphasized the importance of the commitments that the government was undertaking on non-discrimination. The representative of China noted, however, that any commitment to provide non-discriminatory treatment to Chinese enterprises, including foreign-funded enterprises, and foreign enterprises and individuals in China, would be subject to other provisions of the Draft Protocol and, in particular, would not prejudice China's rights under the GATS, China's Schedule of Specific Commitments or commitments undertaken in relation to trade-related investment measures.

18. The representative of China further confirmed that China would provide the same treatment to Chinese enterprises, including foreign-funded enterprises, and foreign enterprises and individuals in China. China would eliminate dual pricing practices as well as differences in treatment accorded to goods produced for sale in China in comparison to those produced for export. The Working Party took note of these commitments.

19. The representative of China confirmed that, consistent with China's rights and obligations under the WTO Agreement and the Draft Protocol, China would provide non-discriminatory treatment to all WTO Members, including Members of the WTO that were separate customs territories. The Working Party took note of this commitment.

20. Members of the Working Party expressed concern about certain provisions of Chinese laws, regulations, administrative notices and other requirements which could, directly or indirectly, result in less favourable treatment of imported products in contravention of Article III of the General Agreement on Tariffs and Trade ("GATT 1994"). Such requirements included product registration and certification, internal taxation, price and profit controls and all distinct forms of licensing for imports, and distribution or sale of imported goods. Even where such requirements existed in relation to domestically produced goods, Members re-iterated that any *de facto* or *de jure* less favourable treatment of imported goods had to be eliminated in order to ensure full conformity with the principle of national treatment.

21. Some members of the Working Party drew China's attention to the variety of types of requirements which could contravene GATT Article III. Specific reference was made to the procedures, charges and conditions for granting of business licences, whether to import, distribute, re-sell or retail goods of non-Chinese origin. Reference was also made to taxes and fiscal provisions whose impact depended, directly or indirectly, upon the Chinese or non-Chinese origin of the goods imported or traded. Those members drew the attention of China to its obligation to ensure that product testing and certification requirements, including procedures for *in situ* inspections, posed no greater burden – whether financial or practical - on goods of non-Chinese origin than on domestic goods. Those members underlined that conformity assessment procedures and standards, including safety and other compliance requirements, had to respect the terms of the WTO Agreement on Technical Barriers to Trade ("TBT Agreement") as well as GATT Article III.

22. The representative of China confirmed that the full respect of all laws, regulations and administrative requirements with the principle of non-discrimination between domestically produced and imported products would be ensured and enforced by the date of China's accession to the WTO unless otherwise provided in the Draft Protocol or Draft Report. The representative of China declared that, by accession, China would repeal and cease to apply all such existing laws, regulations and other measures whose effect was inconsistent with WTO rules on national treatment. This commitment was made in relation to final or interim laws, administrative measures, rules and notices, or any other form of stipulation or guideline. The Working Party took note of these commitments.

23. In particular, the representative of China confirmed that measures would be taken at national and subnational level, including repeal or modification of legislation, to provide full GATT national treatment in respect of laws, regulations and other measures applying to internal sale, offering for sale, purchase, transportation, distribution or use of the following:

- After sales service (repair, maintenance and assistance), including any conditions applying to its provision, such as the MOFTEC 3rd Decree of 6 September 1993, imposing mandatory licensing procedures for the supply of after-sales service on various imported products;
- Pharmaceutical products, including regulations, notices and measures which subjected imported pharmaceuticals to distinct procedures and formulas for pricing and classification, or which set limits on profit margins attainable and imports, or which created any other conditions regarding price or local content which could result in less favourable treatment of imported products;
- Cigarettes, including unification of the licensing requirements so that a single licence authorized the sale of all cigarettes, irrespective of their country of origin, and elimination of

any other restrictions regarding points of sale for imported products, such as could be imposed by the China National Tobacco Corporation ("CNTC"). It was understood that in the case of cigarettes, China could avail itself of a transitional period of two years to fully unify the licensing requirements. Immediately upon accession, and during the two year transitional period, the number of retail outlets selling imported cigarettes would be substantially increased throughout the territory of China;

- Spirits, including requirements applied under China's "Administrative Measures on Imported Spirits in the Domestic Market", and other provisions which imposed distinct criteria and licensing for the distribution and sale of different categories of spirits, including unification of the licensing requirements so that a single licence authorized the sale of all spirits irrespective of their country of origin;
- Chemicals, including registration procedures applicable to imported products, such as those applied under China's "Environmental Control Regulations for Initial Imports of Chemical Products and Imports and Exports of Toxic Chemical Products";
- Boilers and pressure vessels, including certification and inspection procedures which had to be no less favourable than those applied to goods of Chinese origin, and fees applied by the relevant agencies or administrative bodies, which had to be equitable in relation to those chargeable for like products of domestic origin.

The representative of China stated that in the cases of pharmaceuticals, spirits and chemicals cited above, China would reserve the right to use a transitional period of one year from the date of accession in order to amend or repeal the relevant legislation. The Working Party took note of these commitments.

2. Monetary and Fiscal Policy

24. The representative of China stated that through the reform and opening up in the last two decades, China had established a fiscal management system which was compatible with the principles of a market economy. With respect to fiscal revenue, a taxation system with a value-added tax as the main element had been established since the taxation reform in 1994. With respect to fiscal expenditure, over recent years the government had, in line with the public fiscal requirement generally exercised by market economies, strengthened its adjustment of the structure of expenditure and given priority to public needs so as to ensure the normal operations of the government.

25. The representative of China further stated that in recent years, while pursuing proactive fiscal policy, China had implemented proper monetary policy and had taken a series of adjusting and reform

measures which included lowering the interest rate for loans from financial institutions, improving the system of required deposit reserves and lowering the ratio of required reserves, positively increasing the input of base money and encouraging the commercial banks to expand their credit.

26. In respect of future fiscal policy, the Government of China would further improve its taxation system and would continue to improve the efficiency of fiscal expenditure through implementing reform measures such as sectoral budget, centralized payment by the national treasury and zero base budget, as well as improving management of fiscal expenditure. With respect to future monetary policy, the central bank would continue to pursue a prudent policy, maintain the stability of RMB, promote interest rate liberalization and establish a modern commercial banking system.

3. Foreign Exchange and Payments

27. Some members of the Working Party raised concerns about China's use of forex controls to regulate the level and composition of trade in goods and services. In response, the representative of China stated that its system of forex had undergone rapid change and that China was now a member of the International Monetary Fund ("IMF"). Significant moves had been taken to reform, rationalize and liberalize the forex market. The practice of multiple exchange rates in swap centres had been abolished. China had already unified its forex market and removed many of the restrictions on the use of forex.

28. Outlining the historical development of China's forex reform, the representative of China stated that the purpose of China's forex reform was to reduce administrative intervention and increase the role of market forces. From 1979, a forex retention system was applied in China, although forex swap was gradually developing. In early 1994, official RMB exchange rates were unified with the market rates. The banking exchange system was adopted and a nationwide unified inter-bank forex market was established, with conditional convertibility of the Renminbi on current accounts. Since 1996, foreign investment enterprises ("FIEs") were also permitted into the banking exchange system, and the remaining exchange restrictions on current accounts were eliminated. On 1 December 1996, China had formally accepted the obligations of Article VIII of the IMF's Articles of Agreement, removing exchange restrictions on current account transactions. Accordingly, since then the Renminbi had been fully convertible on current accounts. It was confirmed by the IMF in its Staff Report on Article IV Consultations with China in 2000 that China had no existing forex restrictions for current account transactions.

29. The representative of China stated that the State Administration of Foreign Exchange ("SAFE") was under the auspices of the People's Bank of China ("PBC"), and was the administrative organ empowered to regulate forex. Its main functions were to monitor and advise on balance-of-

payments and forex matters. SAFE was also required to draft appropriate regulations and monitor compliance. He further noted that domestic and foreign banks, and financial institutions could engage in forex business, with the approval of the PBC.

30. In response to requests from members of the Working Party for further information, the representative of China added that for forex payments under current accounts, domestic entities (including FIEs) could purchase forex at market exchange rates from designated banks or debit their forex accounts directly upon presentation of valid documents. For payments such as pre-payment, commission, etc., exceeding the proportion or limit, the entities could also purchase forex from the banks upon meeting the *bona fide* test administered by SAFE. Forex for personal use by individuals could be purchased directly from the banks upon presentation of valid documents (within a specified limit). For amounts exceeding the limit, individuals able to prove their need for additional forex could purchase it from the banks. He also noted that current account forex receipts owned by domestic entities had to be repatriated into China, some of which could be retained and some sold to the designated banks at market rates. A verification system for forex payment (imports) and forex receipt (exports) had also been adopted.

31. Concerning the exchange rate regime in particular, the representative of China noted that since the unification of exchange rates on 1 January 1994, China had adopted a single and managed floating exchange rate regime based on supply and demand. PBC published the reference rates of RMB against the US dollar, the HK dollar and Japanese yen based on the weighted average prices of forex transactions at the interbank forex market during the previous day's trading. The buying and selling rates of RMB against the US dollar on the inter-bank forex market could fluctuate within 0.3% of the reference rate. For the HK dollar and Japanese yen, the permitted range was 1%. Designated forex banks could deal with their clients at an agreed rate. Under such contracts the exchange rate of the US dollar was required to be within 0.15% of the reference rate, whereas for the HK dollar and Japanese yen, the permitted range was 1%. The exchange rates for other foreign currencies were based on the rates of RMB against the US dollar and cross-exchange rates of other foreign currency on the international market. The permitted margin between the buying and selling rate could not exceed 0.5%.

32. The representative of China further noted that since 1 January 1994, designated forex banks had become major participants in forex transactions. On 1 April 1994, the China Foreign Exchange Trading System was set up in Shanghai and branches were opened in dozens of cities. The Shanghai Foreign Exchange Trading System had adopted a system of membership, respective quotation, concentrated trading and forex market settlement. Designated forex banks dealt on the inter-bank market according to the turnover position limit on banking exchange stipulated by SAFE and covered

the position on the market. Depending on its macro-economic objectives, the PBC could intervene in the forex open market in order to regulate market supply and demand, and maintain the stability of the RMB exchange rate.

33. The representative of China noted that since 1 July 1996, forex dealing of the FIEs was carried out through the banking exchange system. He further noted that to encourage foreign direct investment, China had granted national treatment to FIEs in exchange administration. Accordingly, FIEs were allowed to open and hold forex settlement accounts to retain receipts under current accounts, up to a maximum amount stipulated by SAFE. Receipts in excess of the maximum amount were required to be sold to designated forex banks. No restrictions were maintained on the payment and transfer of current transactions by FIEs, and FIEs could purchase forex from designated forex banks or debit their forex accounts for any payment under current transactions, upon the presentation of valid documents to the designated forex banks or SAFE for the bona fide test. FIEs could also open forex accounts to hold foreign-invested capital, and they could sell from these accounts upon the approval of SAFE. FIEs could also borrow forex directly from domestic and overseas banks, but were required to register with SAFE afterwards, and obtain approval by SAFE for debt repayment and services. FIEs could make payments from their forex accounts or in forex purchased from designated forex banks after liquidation, upon approval by SAFE according to law.

34. The representative of China further noted that the laws and regulations mentioned above were: Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture; Law of the People's Republic of China on Chinese-Foreign Contractual Joint Venture; Regulations on the Exchange System of the People's Republic of China; and Regulations on the Sale and Purchase of and Payment in Foreign Exchange.

35. Some members of the Working Party stated that China should undertake appropriate commitments on its reform of forex.

36. In response, the representative of China stated that China would implement its obligations with respect to forex matters in accordance with the provisions of the WTO Agreement and related declarations and decisions that concerned the IMF. The representative further confirmed China's acceptance of the obligations of Article VIII of the IMF's Articles of Agreement, which provided that "no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions". He stated that, in accordance with these obligations, and unless otherwise provided for in the IMF's Articles of Agreement, China would not resort to any laws, regulations or other measures, including any requirements with respect to contractual terms, that would restrict the availability to any individual or enterprise of forex for

current international transactions within its customs territory to an amount related to the forex inflows attributable to that individual or enterprise. He stated, moreover, that China would not subject individual requests for forex for the making of payments and transfers for current international transactions, including the issuance of credit or credit guarantees for current international transactions (e.g., letters of credit; direct loans; guarantees of loans by financial institutions or other entities; or insurance of financing by financial institutions or other entities), to any form of approval or restriction (including a requirement for the presentation of an invoice), in a manner inconsistent with its obligations under the IMF's Articles of Agreement. The Working Party took note of these commitments.

37. In addition, the representative of China stated that China would provide information on exchange measures as required under Article VIII, Section 5 of the IMF's Articles of Agreement, and such other information on its exchange measures as was deemed necessary in the context of the transitional review mechanism. The Working Party took note of this commitment.

4. Balance-of-Payments Measures

38. Some members of the Working Party stated that China should apply balance-of-payments ("BOPs") measures only under the circumstances provided for in the WTO Agreement and not as a justification for imposition of restrictions on imports for other protectionist purposes. Those members stated that measures taken for BOPs reasons should have the least trade disruptive effect possible and should be limited to temporary import surcharges, import deposit requirements or other equivalent price-based trade measures, and those measures should not be used to provide import protection for specific sectors, industries or products.

39. Those members further stated that any such measures should be notified pursuant to the Understanding on the Balance-of-Payments Provisions of the GATT 1994 ("BOPs Understanding") and to the General Council not later than the imposition of the measures, together with a time schedule for their elimination and a programme of external and domestic policy measures to be used to restore BOPs equilibrium. Those members also stated that following deposit of such a notification, the Committee on Balance-of-Payments Restrictions ("BOPs Committee") should meet to examine the notification. It was noted that paragraph 4 of the BOPs Understanding would be available to China in the case of "essential products". Some members stated that the BOPs Committee should review the operation of any BOPs measures taken by China, if so requested by China or a WTO Member.

40. Some other members considered that, in respect of measures taken for BOP purposes, China should enjoy the same rights as those accorded to other developing country WTO Members, as provided in GATT Article XVIII:B and the BOPs Understanding.

41. In response, the representative of China stated that China considered that it should have the right to make full use of WTO BOPs provisions to protect, if necessary, its BOPs situation. He confirmed that China would fully comply with the provisions of the GATT 1994 and the BOPs Understanding. Further to such compliance, China would give preference to application of price-based measures as set forth in the BOPs Understanding. If China resorted to measures that were not price-based, it would transform such measures into price-based measures as soon as possible. Any measures taken would be maintained strictly in accordance with the GATT 1994 and the BOPs Understanding, and would not exceed what was necessary to address the particular BOPs situation. The representative of China also confirmed that measures taken for BOPs reasons would only be applied to control the general level of imports and not to protect specific sectors or industries. The Working Party took note of these commitments.

5. Investment Regime

42. The representative of China stated that since the inception of the reform and opening up policy in the late 1970's, China had carried out a series of reforms of its investment regime. The highly centralized investment administration under the planned economy had been progressively transformed into a new pattern of diversification of investors, multi-channelling of capital sources and diversification of investment modalities. The government encouraged foreign investment into the Chinese market and had uninterruptedly opened and expanded the scope for investment. At the same time, the Government of China also encouraged the development of the non-state-operated economy and was speeding up the opening of areas for non-state investment. With China's programme in the establishment of its market economy, the construction projects of various enterprises utilizing free capital and financed by the credit of the enterprise would be fully subject to the decision-making of the enterprise concerned and at their own risk. The commercial banks' credit activities to all kinds of investors would be based on their own evaluation and decision-making, and would be at their own risk. The business activities of intermediate investment agencies would be fully subject to the market and would provide service at the instruction of the investors. These agencies would break up their administrative relations with government agencies and the service activities financed by the government would also be subject to the terms and conditions agreed in the contracts concerned.

43. The representative of China further stated that China had promulgated investment guidelines and that the Government of China was in the process of revising and completing these guidelines. Responding to concerns raised by certain members of the Working Party, he confirmed that these

investment guidelines and their implementation would be in full conformity with the WTO Agreement.

6. State-Owned and State-Invested Enterprises

44. The representative of China stated that the state-owned enterprises of China basically operated in accordance with rules of market economy. The government would no longer directly administer the human, finance and material resources, and operational activities such as production, supply and marketing. The prices of commodities produced by state-owned enterprises were decided by the market and resources in operational areas were fundamentally allocated by the market. The state-owned banks had been commercialized and lending to state-owned enterprises took place exclusively under market conditions. China was furthering its reform of state-owned enterprises and establishing a modern enterprise system.

45. In light of the role that state-owned and state-invested enterprises played in China's economy, some members of the Working Party expressed concerns about the continuing governmental influence and guidance of the decisions and activities of such enterprises relating to the purchase and sale of goods and services. Such purchases and sales should be based solely on commercial considerations, without any governmental influence or application of discriminatory measures. In addition, those members indicated the need for China to clarify its understanding of the types of activities that would not come within the scope of Article III:8(a) of GATT 1994. For example, any measure relating to state-owned and state-invested enterprises importing materials and machinery used in the assembly of goods, which were then exported or otherwise made available for commercial sale or use or for non-governmental purposes, would not be considered to be a measure relating to government procurement.

46. The representative of China emphasized the evolving nature of China's economy and the significant role of FIEs and the private sector in the economy. Given the increasing need and desirability of competing with private enterprises in the market, decisions by state-owned and state-invested enterprises had to be based on commercial considerations as provided in the WTO Agreement.

47. The representative of China further confirmed that China would ensure that all state-owned and state-invested enterprises would make purchases and sales based solely on commercial considerations, e.g. price, quality, marketability and availability, and that the enterprises of other WTO Members would have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, the Government of China would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, including the quantity, value or country of origin of any goods purchased or sold, except

in a manner consistent with the WTO Agreement. The Working Party took note of these commitments.

48. The representative of China confirmed that, without prejudice to China's rights in future negotiations in the Government Procurement Agreement, all laws, regulations and measures relating to the procurement by state-owned and state-invested enterprises of goods and services for commercial sale, production of goods or supply of services for commercial sale, or for non-governmental purposes would not be considered to be laws, regulations and measures relating to government procurement. Thus, such purchases or sales would be subject to the provisions of Articles II, XVI and XVII of the GATS and Article III of the GATT 1994. The Working Party took note of this commitment.

49. Certain members of the Working Party expressed concern about laws, regulations and measures in China affecting the transfer of technology, in particular in the context of investment decisions. Moreover, these members expressed concern about measures conditioning the receipt of benefits, including investment approvals, upon technology transfer. In their view, the terms and conditions of technology transfer, particularly in the context of an investment, should be agreed between the parties to the investment without government interference. The government should not, for example, condition investment approval upon technology transfer.

50. The representative of China confirmed that China would only impose, apply or enforce laws, regulations or measures relating to the transfer of technology, production processes, or other proprietary knowledge to an individual or enterprise in its territory that were not inconsistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") and the Agreement on Trade-Related Investment Measures ("TRIMs Agreement"). China confirmed that the terms and conditions of technology transfer, production processes or other proprietary knowledge, particularly in the context of an investment, would only require agreement between the parties to the investment. The Working Party took note of these commitments.

7. Pricing Policies

51. Some members of the Working Party noted that China had made extensive use of price controls, for example in the agricultural sector. Those members requested that China undertake specific commitments concerning its system of state pricing. In particular, those members stated that China should allow prices for traded goods and services in every sector to be determined by market forces, and multi-tier pricing practices for such goods and services should be eliminated. Those members noted, however, that China expected to maintain price controls on the goods and services listed in Annex 4 to the Draft Protocol, and stated that any such controls should be maintained in a

manner consistent with the WTO Agreement, in particular Article III of the GATT 1994 and Annex 2, paragraphs 3 and 4, of the Agreement on Agriculture. Those members noted that except in exceptional circumstances, and subject to notification to the WTO Secretariat, price controls should not be extended to goods or services beyond those listed in Annex 4, and China should make its best efforts to reduce and eliminate those controls. They also asked that China publish in the appropriate official journal the list of goods and services subject to state pricing and changes thereto.

52. Members expressed the view that price controls and state pricing in China also encompassed "guidance pricing" and regulation of the range of profits that enterprises could enjoy. Such policies and practices would also be subject to China's commitments. In their view, price controls should be adopted only in extraordinary circumstances and should be removed as soon as the circumstances justifying their adoption were addressed.

53. The representative of China said that China currently applied a mechanism of market-based pricing under macro-economic adjustment. He noted that national treatment was applied in the areas of government pricing for all imported goods. There were presently three types of prices: government price, government guidance price and market-regulated price. The government price was set by price administration authorities and could not be changed without the approval of these authorities. Products and services subject to government pricing were those having a direct bearing on the national economy and the basic needs of the people's livelihood, including those products that were scarce in China.

54. He added that the government guidance price mechanism was a more flexible form of pricing. The price administration authorities stipulated either a basic price or floating ranges. The floating range of guidance pricing was generally 5% to 15%. Enterprises could, within the limits of the guidance and taking into account the market situation, make their own decisions on prices. With market-regulated prices, enterprises were free to set prices in accordance with supply and demand to the extent permitted by generally applicable laws, regulations and policies concerning prices.

55. The representative of China stated that in formulating government prices and government guidance prices, the following criteria were taken into account: normal production costs, supply and demand situation, relevant government policies and prices of related products. When fixing prices of consumer goods, consideration was given to the limits of consumers' purchasing power. He noted that due to the continued reform of China's price system, the share of government prices had dropped substantially and that of market-regulated prices had increased; of social retailing products, the share of government prices was about 4%, that of government guidance prices 1.2%, and that of market-regulated prices 94.7%. For agricultural products, the share of government prices was 9.1%,

government guidance prices 7.1%, and market-regulated 83.3%. For production inputs, the share of government prices was 9.6%, that of government guidance prices 4.4%, and market-regulated prices 86%. The share of directly government-controlled prices had been much reduced. The Government of China considered that China's price system was becoming increasingly rationalized, creating a relatively fair marketplace for all enterprises to compete on an equal footing.

56. The representative of China recalled that Annex 4 of the Draft Protocol contained a comprehensive listing of all products and services presently subject to government guidance pricing and government pricing.

57. The representative of China confirmed that it would publish in the official journal the list of goods and services subject to state pricing and changes thereto, together with price-setting mechanisms and policies. The Working Party took note of these commitments.

58. The representative of China confirmed that the official journal providing price information was the Pricing Monthly of the People's Republic of China, published in Beijing. It was a monthly magazine listing all products and services priced by the State. He further stated that China would continue to further its price reform, adjusting the catalogue subject to state pricing and further liberalize its pricing policies.

59. The representative of China further confirmed that price controls would not be used for purposes of affording protection to domestic industries or services providers. The Working Party took note of this commitment.

60. In addition, the representative of China confirmed that China would apply its current price controls and any other price controls from the entry into force of the Draft Protocol in a WTO-consistent fashion, and would take account of the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994. The Working Party took note of these commitments.

8. Competition Policy

61. The representative of China noted that the Government of China encouraged fair competition and was against acts of unfair competition of all kinds. The Law of the People's Republic of China on Combating Unfair Competition, promulgated on 2 September 1992 and implemented on 1 December 1992, was the basic law to maintain the order of competition in the market. In addition, the Price Law, the Law on Tendering and Bidding, the Criminal Law and other relevant laws also contained provisions on anti-monopoly and unfair competition. China was now formulating the Law on Anti-Monopoly.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

1. Structure and Powers of the Government

62. The representative of China informed members of the Working Party that in accordance with the Constitution and the Law on Legislation of the People's Republic of China, the National People's Congress was the highest organ of state power. Its permanent body was its Standing Committee. The National People's Congress and its Standing Committee exercised the legislative power of the State. They had the power to formulate the Constitution and laws. The State Council, *i.e.*, the Central People's Government of China, was the executive body of the highest organ of state power. The State Council, in accordance with the Constitution and relevant laws, was entrusted with the power to formulate administrative regulations. The ministries, commissions and other competent departments (hereinafter referred to as "departments") of the State Council could issue departmental rules within the jurisdiction of their respective departments and in accordance with the laws and administrative regulations. The provincial people's congresses and their standing committees could adopt local regulations. The provincial governments had the power to make local government rules. The National People's Congress and its Standing Committee had the power to annul the administrative regulations that contradicted the Constitution and laws as well as the local regulations that contradicted the Constitution, laws and administrative regulations. The State Council had the power to annul departmental rules and local government rules that were inconsistent with the Constitution, laws or administrative regulations. The Government of China believed that these features of the Chinese legal system would ensure an effective and uniform implementation of the obligations after China's accession.

63. The representative of China stated that China had been consistently performing its international treaty obligations in good faith. According to the Constitution and the Law on the Procedures of Conclusion of Treaties, the WTO Agreement fell within the category of "important international agreements" subject to the ratification by the Standing Committee of the National People's Congress. China would ensure that its laws and regulations pertaining to or affecting trade were in conformity with the WTO Agreement and with its commitments so as to fully perform its international obligations. For this purpose, China had commenced a plan to systematically revise its relevant domestic laws. Therefore, the WTO Agreement would be implemented by China in an effective and uniform manner through revising its existing domestic laws and enacting new ones fully in compliance with the WTO Agreement.

64. [In response to questions from some members of the Working Party, the representative of China stated that pursuant to Article 142 of the General Principles of Civil Law, if any international treaty concluded or acceded to by China contained provisions differing from those in China's civil

laws, the provisions of the international treaty would apply, unless the provisions were ones on which China had announced reservations for ratification. Upon ratification by the National People's Congress, the WTO Agreement would have the status of domestic law.]

2. Authority of Sub-Central Governments

65. Several members of the Working Party raised concerns about the continued presence of multiple trade instruments used by different levels of government within China. Those members considered that this situation resulted in a lessening of the security and predictability of access to the Chinese market. These Members raised specific concerns regarding the authority of sub-national governments in the areas of fiscal, financial and budgetary activities, specifically with respect to subsidies, taxation, trade policy and other issues covered by the WTO Agreement and the Draft Protocol. In addition, some members expressed concerns about whether the central government could effectively ensure that trade-related measures introduced at the sub-national level would conform to China's commitments in the WTO Agreement and the Draft Protocol.

66. The representative of China stated that sub-national governments had no autonomous authority over issues of trade policy to the extent that they were related to the WTO Agreement and the Draft Protocol. The representative of China further confirmed that the central government would ensure that China's laws, regulations and other measures, including those of local governments at the sub-national level, conformed to China's obligations undertaken in the WTO Agreement and the Draft Protocol. The Working Party took note of this commitment.

3. Uniform Administration of the Trade Regime

67. Members of the Working Party stated that it should be made clear that China would apply the requirements of the WTO Agreement and its other accession commitments throughout China's entire customs territory, including border trade regions, minority autonomous areas, Special Economic Zones ("SEZs"), open coastal cities, economic and technical development zones and other special economic areas and at all levels of government.

68. Some members of the Working Party raised concerns in relation to the uniformity of administration of the foreign trade and economic regime within China. In particular, those members raised concerns about measures taken by sub-national authorities in China. In this regard, the representative of China confirmed that the central government would ensure that China's laws, regulations and other measures, including local regulations, rules and other measures of government agencies of the sub-national level conformed to the obligations undertaken by China in the WTO Agreement and the Draft Protocol. This included all fiscal, financial and budgetary activities performed by the sub-central governments. The Working Party took note of this commitment.

69. Those members of the Working Party also raised concerns about whether China's central government would be sufficiently informed about non-uniform practices and would take necessary enforcement actions. Those members stated that China should establish a mechanism by which any concerned person could bring to the attention of the central government cases of non-uniform application of the trade regime and receive prompt and effective action to address situations in which non-uniform application was established.

70. The representative of China confirmed that the provisions of the WTO Agreement, including the Draft Protocol, would be applied uniformly throughout its customs territory, including in SEZs and other areas where special regimes for tariffs, taxes and regulations were established and at all levels of government. The Working Party took note of this commitment.

71. In response to questions from Members, the representative of China confirmed that laws, regulations and other measures included decrees, orders, directives, administrative guidance and provisional and interim measures. He stated that in China, local governments included provincial governments, including autonomous regions and municipalities directly under the central government, cities, counties and townships. The representative of China further stated that local regulations, rules and other measures were issued by local governments at the provincial, city and county levels acting within their respective constitutional powers and functions and applied at their corresponding local level. Townships were only authorized to implement measures. Special economic areas were also authorized to issue and implement local rules and regulations.

72. The representative of China further confirmed that the mechanism established pursuant to Section 2(A) of the Draft Protocol would be operative upon entry into force of the Draft Protocol. All individuals and entities could bring to the attention of central government authorities cases of non-uniform application of China's trade regime, including its commitments under the WTO Agreement and the Draft Protocol. Such cases would be referred promptly to the responsible government agency, and when non-uniform application was established, the authorities would act promptly to address the situation utilizing the remedies available under China's laws, taking into consideration China's international obligations and the need to provide a meaningful remedy. The individual or entity notifying China's authorities would be informed promptly in writing of any decision and action taken. The Working Party took note of these commitments.

4. Judicial Review

73. Some members of the Working Party stated that China should designate independent tribunals, contact points, and procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of general

application referred to in Article X:1 of the GATT 1994, including administrative actions relating to import or export licences, non-tariff measures and tariff-rate quota administration, conformity assessment procedures and other measures. These members sought explicit confirmation that certain types of measures, such as decisions relating to standards and chemical registration, would be subject to judicial review. Some members of the Working Party also stated that the administrative actions subject to review should also include any actions required to be reviewed under the relevant provisions of the TRIPS Agreement and the GATS. These members stated that such tribunals should be independent of the agencies entrusted with administrative enforcement of the matter and should not have any substantial interest in the outcome of the matter.

74. Those members of the Working Party stated that such review procedures should include the opportunity for appeal, without penalty, by individuals or enterprises affected by any administrative action subject to review. If an initial right of appeal were to an administrative body, there should be an opportunity to choose to make a further appeal to a judicial body. Any decision by any appellate body and the reasons therefore would be communicated in writing to the appellant, together with notification of any right to further appeal.

75. The representative of China confirmed that it would revise its relevant laws and regulations so that its relevant domestic laws and regulations would be consistent with the requirements of the WTO Agreement and the Draft Protocol on procedures for judicial review of administrative actions. He further stated that the tribunals responsible for such reviews would be impartial and independent of the agency entrusted with administrative enforcement, and would not have any substantial interest in the outcome of the matter. The Working Party took note of this commitment.

76. In response to questions from members of the Working Party, the representative of China confirmed that administrative actions related to measures covered under Article X:1 of the GATT 1994 included those relating to national treatment, conformity assessment, the regulation, control, supply or promotion of a service, including the grant or denial of a licence to provide a service and other matters, and that such administrative actions would be subject to the procedures established for prompt review under Section 2(D) of the Draft Protocol, and information on such procedures would be available through the enquiry point that China would establish upon accession. The Working Party took note of these commitments.

IV. POLICIES AFFECTING TRADE IN GOODS

A. TRADING RIGHTS

[To be completed]

B. IMPORT REGULATION

1. Ordinary Customs Duties

77. Members of the Working Party welcomed China's decision to bind tariffs for all products in its schedule on market access for goods. This action would increase the certainty and predictability of this aspect of China's trade regime. Members also noted the substantial unilateral tariff reductions made in many sectors by China in recent years.

78. The representative of China provided members of the Working Party with a copy of the Customs Import and Export Tariff of the People's Republic of China ("Customs Tariff") and related laws and regulations. He noted that the Customs Tariff of China was a charge imposed on imported goods. The purpose of levying tariffs was twofold: (a) to regulate imports so as to promote and support domestic production; and (b) to serve as an important source of revenue for the treasury of the central government. China's tariff policy was to promote economic reform and opening of the economy. The basic principles for establishing duty rates were as follows. Duty-free or low duty rates were applied to imported goods which were needed for the national economy and the people's livelihood but which were not produced sufficiently domestically. Import duty rates on raw materials were generally lower than those on semi-manufactured or manufactured products. For parts or components of machinery, equipment and instruments which were not produced domestically, or at a sufficiently high standard, the import duty was lower than the duty on finished products. Higher duty rates were applied to products which were produced domestically or which were considered non-essential for the national economy and the people's livelihood. A higher duty was applied to imported products, the equivalent of which were produced domestically and the local manufacturer of which needed protection.

79. The representative of China said that China had adopted the Harmonized Commodity Description and Coding System (HS) as from 1 January 1992 and joined the International Convention on the Harmonized Commodity Description and Coding System in the same year. There were 21 sections, 97 chapters and 7062 eight-digit tariff headings based on the six-digit HS'96 version in the Customs Tariff for the year 2000. Tariff rates were fixed by the State Council. Partial adjustment to the duty rates was subject to deliberation and final decision by the State Council Tariff Commission. The simple average of China's import duties in 2000 was 16.4%. Among the 7062 tariff headings, tariff rates for 525 headings were below 5%, 1488 were between 5% (inclusive) and 10% (exclusive), 2022 between 10% (inclusive) and 15% (inclusive) and 3027 were above 15%. Information on tariff rates for specific products and import statistical data for recent years had been provided to the Working Party.

80. He also noted that currently there were two columns of import duty rates: general rates and preferential rates. The preferential rates applied to imports originating in countries and regions with which China had concluded reciprocal tariff agreements, whereas the general rates applied to imports from other sources.

81. The representative of China confirmed that upon accession China would participate in the Information Technology Agreement ("ITA") and would eliminate tariffs on all information technology products as set out in China's schedule. Furthermore, upon accession, China would eliminate all other duties and charges for ITA products. The Working Party took note of these commitments.

82. Certain members of the Working Party expressed particular concerns about tariff treatment in the auto sector. In response to questions about the tariff treatment for kits for motor vehicles, China confirmed that it had no tariff lines for completely knocked-down kits for motor vehicles or semi-knocked down kits for motor vehicles. If China created such tariff lines, the tariff rates would be no more than 10%. The Working Party took note of this commitment.

83. China undertook bilateral market access negotiations on goods with members of the Working Party. The results of those negotiations were contained in the Schedule of Concessions and Commitments on Goods and formed Annex 10 to the Draft Protocol.

2. Other Duties and Charges

84. The representative of China confirmed that China had agreed to bind at zero other duties and charges in its Schedule of Concessions and Commitments, pursuant to Article II:1(b) of the GATT 1994. The Working Party took note of that commitment.

3. Rules of Origin

85. Some members of the Working Party requested information about the adoption and application of rules of origin in China, whether in the context of free trade agreements or otherwise, and also requested China to confirm that its rules of origin for both preferential and non-preferential trade complied fully with the WTO Agreement on Rules of Origin.

86. The representative of China noted that the criteria for making the determination of substantial transformation was: (a) change in tariff classification of a four-digit tariff line in the Customs Tariff; or (b) the value-added component was 30% or more in the total value of a new product.

87. He further noted that under current arrangements, and in accordance with the criteria outlined above, when an imported product was processed and manufactured in several countries, the country of

origin of the product was determined to be the last country in which the product underwent substantial transformation. The rules of origin applied for statistical purposes were the same. However, for statistical purposes, the General Customs Administration ("Customs") also recorded countries of consumption and trading countries.

88. The representative of China stated that China's rules of origin for import and export were non-preferential rules of origin. Once the international harmonization of non-preferential rules of origin was concluded, China would fully adopt and apply the internationally harmonized non-preferential rules of origin. A mechanism that met the requirements of Articles 2(h) and 3(f), and Annex II, paragraph 3(d) of the Agreement, which required provision upon request of an assessment of the origin of an import or an export and outlined the terms under which it would be provided, would be established in China's legal framework by the date of accession. The Working Party took note of these commitments.

89. The representative of China further stated that China would not use the rules of origin as an instrument to pursue trade objectives directly or indirectly. He also confirmed that China would apply rules of origin equally for all purposes. The Working Party took note of these commitments.

90. The representative of China confirmed that from the date of accession, China would ensure that its laws, regulations and other measures relating to rules of origin would be in full conformity with the WTO Agreement on the Rules of Origin and that it would implement such laws, regulations and other measures in full conformity with that Agreement. The Working Party took note of this commitment.

4. Fees and Charges for Services Rendered

91. Members of the Working Party noted that as a condition of accession, China should undertake a commitment to ensure conformity of Customs fees and charges with Article VIII of the GATT 1994. The representative of China confirmed that China would comply with Article VIII of GATT 1994 in this regard. The Working Party took note of this commitment.

5. Application of Internal Taxes to Imports

92. Some members of the Working Party expressed concern that some internal taxes applied to imports, including a value-added tax ("VAT") were not administered in conformity with the requirements of the GATT 1994, particularly Article III. Those members of the Working Party noted that China appeared to permit the application of discriminatory internal taxes and charges to imported goods and services, including taxes and charges applied by sub-national authorities. Those members

requested that China reaffirm that all such internal taxes and charges would be in conformity with the requirements of the GATT 1994.

93. In response, the representative of China noted that there were three major types of taxes levied on products and services: (a) VAT levied on goods and services for processing, maintenance and assembling; (b) the Consumption Tax on some selected consumer products; and (c) the Business Tax on providing services, transferring intangible assets and selling real estate. Both the VAT and the Consumption Tax were applicable to entities importing goods. VAT and the Consumption Tax on imported goods were collected by Customs at the point of entry. He noted that VAT was reimbursed once goods were exported. Exported goods were exempted from the Consumption Tax.

94. He further noted that the State Council determined all policies concerning the levying of VAT and the Consumption Tax, adjustment of tax types and tax rates (tax value), as well as the tax exemption of VAT, the Consumption Tax and the Business Tax. The laws and regulations were interpreted and implemented by the Ministry of Finance and the State Administration of Taxation. VAT and the Consumption Tax were levied and administered by the State competent departments of taxation, while the Business Tax was collected and administered by the local competent departments of taxation.

95. The representative of China confirmed that from the date of accession, China would ensure that its laws, regulations and other measures relating to internal taxes and charges levied on imports would be in full conformity with its WTO obligations and that it would implement such laws, regulations and other measures in full conformity with those obligations. The Working Party took note of this commitment.

6. Tariff Exemptions

96. The representative of China stated that the tariff exemption policy of China was developed and implemented in accordance with the Customs Law of the People's Republic of China and the Regulations of the People's Republic of China on Import and Export Duties. The coverage of specific tariff reduction or exemption was provided for by the State Council. All the tariff reductions and exemptions were applied on an MFN basis.

97. The representative of China noted that in accordance with international practices and provisions of China's Customs Law, import duty reductions or exemptions were available for the following goods:

- (a) A consignment of goods, on which customs duties were estimated below RMB 10 yuan;

- (b) advertising articles and samples, which were of no commercial value;
- (c) goods and materials, which were rendered gratis by international organizations or foreign governments;
- (d) fuels, stores, beverages and provisions for use en route loaded by any means of transport, which were in transit across the border;
- (e) exported goods being replaced;
- (f) goods damaged prior to Customs release;
- (g) goods covered by international treaties providing for tariff reductions and exemptions which China had entered into or acceded to;
- (h) goods temporarily imported;
- (i) goods imported under inward processing programmes;
- (j) goods imported at zero cost for replacement purposes;
- (k) domestic- or foreign-funded projects encouraged by China;
- (l) articles for scientific research, education and the disabled.

He noted that goods so imported were required to be put under Customs supervision and control. The Customs duty was required to be recovered if such goods were sold, transferred or used for other purposes during the time period of supervision and control.

98. Some members of the Working Party expressed concerns over the availability and application of tariff reductions and exemptions for a variety of enterprises and other entities, including state trading enterprises, state-owned enterprises, foreign-invested enterprises and not-for-profit entities. Similar concerns also existed for exemptions from application of other duties, taxes and charges. These members noted the negative effect such reductions or exemptions could have on revenues and predictability and certainty in application of tariff and other trade measures.

99. The representative of China confirmed that upon entry into force of the Draft Protocol, China would adopt and apply tariff reductions and exemptions so as to ensure MFN treatment for imported goods. The Working Party took note of this commitment.

7. Tariff Rate Quotas

100. Several members of the Working Party expressed concern over the lack of transparency, uniformity and predictability of China's administration of its tariff rate quota (TRQ) regime. Those members requested that China enter a commitment to administer TRQs in a simple, transparent, timely, predictable, uniform, non-discriminatory, and non-trade restrictive manner, and in a way that would not cause trade distortions. Those members asked that China ensure that its TRQ arrangements be no more administratively burdensome than absolutely necessary, and also expressed the hope that China would move as quickly as possible to a market-based TRQ allocation process.

101. Those members of the Working Party also raised concerns regarding the administration of China's TRQ system and the practices of state trading enterprises in relation to importing such products. These concerns included the current lack of transparent regulations for administering TRQs; use of administrative guidance; distortions introduced into the market due to allocations based on government determinations of subnational supply and utilization rather than consumer preferences and end-user demand; failure to establish and publish annual TRQ quantities; trade-restrictive and non-competitive practices of state trading enterprises; and general uncertainty, inconsistency and discrimination in trade of bulk commodities. Those members expressed similar concerns about the operation of China's TRQ system for products subject to designated trading. Those members requested that China reduce tariffs for commodities subject to TRQs, enter into access commitments for these commodities, improve the administration of the TRQ regime, and ensure that trade would not be distorted by unjustified government regulation. Certain members of the Working Party also requested that a number of specified products be removed from China's TRQ system and that, upon import, these products be subject only to tariffs.

102. The representative of China noted that in 1996, for the first time, China published a list of import products subject to TRQs, together with the tariff rates applicable to imports both in and out quota. Allocation of TRQ was based on historical performance and state trading administration, although China had also tried several other ways of administration, including import at applied tariff rates, first-come-first-served at the point of entry, and bonded import which was strictly monitored by Customs. China was trying to simplify the TRQ administration regime and procedures in a bid to facilitate use, enhance efficiency and implement further reform.

103. The representative of China further noted that, in undertaking market-oriented reform in the agricultural sector, China had made progress in freeing agricultural products from state pricing and in guiding farmers to adjust the structure of agricultural production based on the demands of the market. In connection with that reform process, in the bilateral negotiations with Members, China committed that as soon as it became a Member of the WTO, it would eliminate TRQs on a number of products

and subject these only to tariffs. The products concerned were barley, soybeans, rapeseed, peanut oil, sunflower seed oil, corn oil, and cottonseed oil. In addition, China would replace quantitative import restrictions on sugar, cotton and three types of fertilizers (DAP, NPK and urea) by TRQs. The Working Party took note of these commitments.

104. The representative of China stated that from entry into force of the Draft Protocol, China would ensure that TRQs were administered on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified timeframes, administrative procedures and requirements that would provide effective import opportunities; that would reflect consumer preferences and end-user demand; and that would not inhibit the filling of each TRQ. China would apply TRQs fully in accordance with WTO rules and principles and with the provisions set out in China's Schedule of Concessions and Commitments on Goods. The Working Party took note of these commitments.

105. The representative of China confirmed that for the goods listed in Annex 2 of the Draft Protocol that were subject to a TRQ, China would also apply the provisions of its Schedule relating to TRQ administration and related commitments in the Draft Protocol, including the grant of trading rights to non-state trading entities to import the TRQ allocations set aside for importation by such entities. For products in Annex 2 of the Draft Protocol that were subject to designated trading, China confirmed that it would ensure that additional enterprises granted trading rights in accordance with China's commitments to phase out designated trading would not be disadvantaged in the allocation of TRQ. The Working Party took note of these commitments.

106. Some members of the Working Party expressed the view that allocation decisions were based, in large part, on government-determined provincial supply and utilization rather than on commercial market criteria that reflected consumer preferences and end-user demand. Those members expressed concern that China's stated intention to allocate quota to sub-central authorities and to authorize those authorities to then allocate that quota to end-users in separate processes would add an unnecessary, burdensome step in the procedures and reduce the likelihood that quotas would be filled. Further, those members stated that China's stated intention with regards to TRQ procedures would not be consistent with China's commitments to uniform administration of its trade regime. Those members sought confirmation that China would not establish a separate process of allocation to sub-central authorities, as well as confirmation that all allocation and reallocation decisions would be made by a single, central authority in China.

107. The representative of China confirmed that the role of sub-central bodies would be limited to purely administrative operations, such as receiving applications from end-users and forwarding them to the central authority; receiving queries and transmitting these to the central authority; reporting on

allocation and reallocation decisions made by the central authority and providing information regarding such allocations and reallocations upon request; checking the information in the applications to verify that it met the published criteria; notifying applicants of any deficiencies in their applications; and providing applicants with an opportunity to cure deficiencies in their applications. After the central authority decided on allocations of quota to end-users, the sub-central bodies would issue TRQ certificates accordingly. The representative of China also confirmed that China would administer a consistent national allocation (and reallocation) policy for TRQs, that it would not establish a separate process of allocation to sub-central authorities and that decisions regarding all allocations and reallocations to end-users would be made by a single, central authority. The Working Party took note of these commitments.

8. Quantitative Import Restrictions, including Prohibitions and Quotas

108. In response to requests for information from members of the Working Party, the representative of China noted that China prohibited or restricted the importation of certain commodities, including weapons, ammunition and explosives, narcotic drugs, poisons, obscene materials and those foodstuffs, medicines, animals and plants which were inconsistent with China's technical regulations [and standards] on food, medicines, animals and plants.

109. Some members of the Working Party noted that there were a large number of non-tariff measures in existence in China, both at the national and sub-national levels, which appeared to have a trade restrictive or trade distorting effect. Those members requested that China undertake a commitment to eliminate and not to introduce, re-introduce or apply non-tariff measures other than those specifically identified and subject to phased elimination in Annex 3 to the Draft Protocol. The representative of China confirmed that China would not introduce, re-introduce or apply non-tariff measures other than listed in Annex 3 of the Protocol unless justified under the WTO Agreement. The Working Party took note of this commitment.

110. Some members of the Working Party also raised concerns that many non-tariff measures were imposed by sub-national authorities in China on a non-transparent, discretionary and discriminatory basis. Those members of the Working Party asked that China undertake a commitment to ensure that non-tariff measures would only be imposed by the central government or by sub-national authorities with clear authorization from the central government. Actions lacking authorization from the national authorities should not be implemented or enforced. The representative of China clarified that only the central government could issue regulations on non-tariff measures and that these measures would be implemented or enforced only by the central government or sub-national authorities with authorization from the central government. He further stated that sub-national authorities had no right to formulate non-tariff measures. The Working Party took note of these commitments.

111. Some members of the Working Party noted that China had provided a list of non-tariff measures in respect of which China was prepared to commence phased elimination, contained in Annex 3 of the Draft Protocol. Those members stated that China should eliminate the measures listed in accordance with the schedule provided in Annex 3, during the periods specified in Annex 3. For measures subject to phased elimination, China should provide for growth in the quota over the relevant period specified in Annex 3. Those members also noted that the protection afforded by the measures listed in Annex 3 should not be increased or expanded in size, scope, or duration, nor any new measures be applied, unless justified under the provisions of the WTO Agreement.

112. Those members of the Working Party noted that all non-tariff measures administered by China, whether or not referred to in Annex 3 of the Draft Protocol, which were applied after China's accession to the WTO, should be allocated and otherwise administered in strict conformity with the provisions of the WTO Agreement, including Article XIII of the GATT 1994 and the Agreement on Import Licensing Procedures, including notification requirements.

113. The representative of China stated that China had modified Annex 3 on the basis of the comments raised by certain members of the Working Party. He confirmed that only the machinery and electronic products listed in Annex 3 were subject to specific tendering requirements and that these requirements would be administered pursuant to Chapter III of the Regulation entitled "Interim Measures for Import Administration of Machinery and Electronics Products" (approved by the State Council on 22 September 1993 and promulgated in Order No. 1 by the State Economic and Trade Commission and Ministry of Foreign Trade and Economic Cooperation on 7 October 1993). He also confirmed that Annex 3 contained all of the products subject to quotas, licences and such tendering requirements in China and that, during the relevant phase-out period, China would implement the growth rates for quotas as indicated in Annex 3. The Working Party took note of these commitments.

114. Some members of the Working Party requested information on how China would implement the quota and licensing requirements for products listed in Annex 3, in particular the procedures and criteria for grant of quota allocations and licensing during the phase-out period for these restrictions. Members expressed concern about requirements for obtaining a licence or quota allocation which often required approvals from various authorities within an organization as well as approval from both the central and sub-national level. Those members sought a transparent, streamlined system that would issue quota allocations and licences through a simple, consolidated approval process that would ensure full use of the quota and its equitable distribution among importers. Those members also requested information on how China would establish the value of imports for those products whose quota was established in terms of value of imports. The representative of China confirmed that the administration of quotas and import licenses would be consistent with the WTO Agreement, including

Article XIII of the GATT 1994 and the Agreement on Import Licensing Procedures. The allocation of quotas and issuance of import licenses would go through a simple and transparent procedure, so as to ensure the full utilization of quota. He further stated that the establishment of value of imports would be based on the information collected by the Customs authorities and provisions of the WTO Customs Valuation Agreement. For quota quantities specified in terms of value, China would determine the value of any shipment based on the c.i.f. ship value listed on the bill of lading. The Working Party took note of these commitments.

115. [The representative of China confirmed that the products currently covered under the HS categories listed in Annex 3 as of the date of accession were the only products that would be subject to these quotas during the agreed phase-out periods. Any non-tariff measures covering additional products would need to be justified under the WTO Agreement. Further, the representative of China stated that for products listed in Annex 3 as being subject to quota and licensing requirements, any entity [that will possess the right to trade in the quota year] [possessing the right to trade], including enterprises possessing trading rights to import such products or inputs for production purposes under a particular quota category, could apply for a quota allocation and licence to import products listed in Annex 3. The Working Party took note of these commitments.]

116. The representative of China further confirmed that for products listed in Annex 3, China's system for quota allocation and licensing would ensure that those entities with quota allocations would also receive any necessary import licence. This system would conform to WTO rules, including the WTO Agreement on Import Licensing Procedures, and would be transparent, timely, responsive to market conditions and would minimize the burden on trade. Applications for a quota allocation would need to be submitted to only one organization, at one level (central or sub-national) for approval. The relevant organization would then issue an import license based on the quota allocation, in most cases within 3 working days and, in exceptional cases, within a maximum of 10 working days after a request for the license. A license would be issued for the full amount of the quota and would be valid for the calendar year issued. Such license would be extended once, upon request, for up to 3 months, if the request was made before 15 December of the current quota year. Imports occurring under an extended license would be counted against the relevant quota amount for the year in which the allocation took place. The representative of China confirmed that the relevant organization for issuing quota allocations and licences, amount of quota, including the growth in quota provided for in Annex 3, the eight-digit tariff codes and full descriptions of all products covered by each quota and procedures for application for a quota allocation and license, including the beginning and end date of the application period and any other relevant procedures or criteria, would be published in the official journal referred to in paragraph 2(C)(2) of the Draft Protocol at least 21 days prior to the beginning of the application period. Such application period would be from 1-31

August. Quotas would be allocated to applicants no later than 60 days after closure of the application period. The Working Party took note of these commitments.

117. The representative of China stated that China would allocate the quota in accordance with the following criteria and procedures which would be published in advance and would be applied in conformity with WTO requirements, including the Agreement on Import Licensing Procedures. In applying these criteria, China would consider the need to allow for equitable participation by producers from WTO Members and take into account the need to maximize the potential for quota fill.

- If the relevant quota quantity exceeded total requests for quota allocations, all requests would be approved.
- In other cases, the criteria for allocation would be as follows:
 - Historical performance of applicants where relevant (in cases in which average imports over the 3-year period immediately prior to the year of China's accession, for which data is available, amounted to less than 75 percent of the relevant quota, other criteria would be more important);
 - Production or processing capacity, in the case of intermediate products and raw materials;
 - Experience and ability in producing, importing, marketing, or servicing in international markets, in the case of finished products or products destined for wholesale or retail distribution;
- In cases in which average imports over the 3-year period immediately prior to the year of China's accession, for which data is available, exceeded 75 percent of the relevant quota, applicants that had not previously been allocated quota would be allocated 10 percent of the total quota in the first year and the majority of any quota growth in any subsequent year.
- In other cases in the first year, twenty-five percent of the total quota would be allocated to applicants that had not previously been allocated quota, and in subsequent years, two-thirds of quota growth would be allocated to such firms, if quota fill remained below 75 percent.

- In all cases, a quota-holder that has fully utilized or contracted for its quota allocation shall, upon application, receive an allocation in the following year for a quantity no less than the quantity imported in the previous year. A quota-holder that does not import its full allocation will receive a proportional reduction in its quota allocation in the subsequent year unless the quantity is returned for reallocation by [1 September] [1 October].

The Working Party took note of these commitments.

118. The representative of China confirmed that all commercial terms of trade, including product specifications, product mix, pricing, and packaging, would be at the sole discretion of the quota holder, so long as the products are within the relevant quota category. Allocations would be valid for any article or mixture of articles subject to the same quota as specified in Annex 3 of the Draft Protocol. Allocations would be valid for a period of one calendar year from the opening of the quota import period. However, if the holder of a quota allocation had not contracted for import of the total quantity allocated to by [1 September] [1 October], the holder was to immediately return the unused portion of the allocation to the relevant authority which would reallocate the quota immediately, if unfilled requests were pending, or otherwise within 10 days after receipt of a request for an allocation. The relevant organization would publish notice of the availability of additional allocations after collecting any unused quotas returned by the quota holders. Licenses for goods imported under reallocated quota would be extended once, upon request, for up to 3 months, if the request was made before 15 December of the current quota year. Imports occurring under an extended license would be counted against the relevant quota amount for the year in which the re-allocation took place. The Working Party took note of these commitments.

9. Import Licensing

119. The representative of China confirmed that the list of all entities responsible for the authorization or approval of imports would be updated and republished in the official journal, the MOFTEC Gazette, within one month of any change thereto. The Working Party took note of this commitment.

120. In response to requests for additional information about its system of import licensing, the representative of China said that the import licensing system was administered without discrimination among countries or regions. In 1984, the State Council had promulgated the "Interim Regulations on Licensing System for Import Commodities", and MOFTEC and Customs had issued "Detailed Rules

for the Implementation of the Interim Regulations on Licensing System for Import Commodities". The Interim Regulations were uniformly implemented throughout China. In 1999, of the total import value of US\$ 165.7 billion, imports subject to licensing represented 8.45%, covering US\$ 14 billion. MOFTEC determined which products should be subject to import licensing according to the relevant provisions of the "Foreign Trade Law".

121. The representative of China further stated that in 1993, China had applied import restrictions to 53 product categories. By 1999, the number had been reduced to 35. Products covered were (1) Processed oil; (2) Wool; (3) Polyester fibre; (4) Acrylic fibres; (5) Polyester fillet; (6) Natural rubber; (7) Vehicles tyres; (8) Sodium cyanide; (9) Sugar; (10) Fertilizer; (11) Tobacco and its products; (12) Acetate tow; (13) Cotton; (14) Motor vehicles and their key parts; (15) Motorcycles and their engines and chassises; (16) Colour television sets and TV kinescope; (17) Radios, tape recorders and their main parts; (18) Refrigerators and their compressor; (19) Washing machines; (20) Recording equipment and its key parts; (21) Cameras and their bodies (without lenses); (22) Watches; (23) Air conditioners and their compressor; (24) Audio and video tape duplication equipment; (25) Crane lorries and their chassises; (26) Electronic microscopes; (27) Open-end spinning machines; (28) Electronic colour scanners; (29) Grain; (30) Vegetable oil; (31) Wine; (32) Colour sensitive material; (33) Chemical under supervision and control that were used for chemical weapon; (34) Chemicals used to produce narcotics; and (35) Laser disc production facilities. He also noted that in 1999, there were 13 commodity categories which were imported by the foreign trade companies designated by MOFTEC. These categories were as follows: (1) Processed oil; (2) Fertilizer; (3) Tobacco; (4) Vegetable oil; (5) Grain; (6) Natural rubber; (7) Wool; (8) Acrylic fibers; (9) Sugar; (10) Cotton; (11) Crude oil; (12) Steel; and (13) Plywood.

122. Concerning the granting and administration of import licences, the representative of China said that the examination and approval of the licence took two to three working days. Applications for import licences could be submitted to the Quota and Licence Administrative Bureau of MOFTEC, or Special Commissioner Offices in 16 provinces, or Commissions of Foreign Economic Relations and Trade of various provinces, autonomous regions, and municipalities directly under the central government and those with independent budgetary status. Licensing agencies authorized by MOFTEC could issue import licences on the basis of import documents submitted by the applicants, approved by the competent departments. A licence could not be bought, sold or transferred, and was valid for one calendar year. Import licences could be extended once for up to three months.

123. Some members of the Working Party expressed concern that China's Provisional Procedures for the Administration of Automatic Registration for the Import of Special Commodities (13 August 1994), in particular the criteria for approval of registration, would act as a restraint on

imports. The representative of China emphasized that the purpose of the registration system was only to gather statistical information. He confirmed that China would bring its automatic licensing system into conformity with Article 2 of the Agreement on Import Licensing Procedures upon entry into force of the Draft Protocol. The Working Party took note of this commitment.

124. Some members of the Working Party noted that enterprises and individuals seeking to import products subject to tariff quota administration requirements had to go through extensive procedures to receive a quota allocation and that the quota certificate would indicate whether the subject good was to be imported through a state trading enterprise or a non-state trading enterprise and would be valid for a certain period of time. Moreover, the entity importing the good would need trading rights. In the light of these multiple requirements, a quota allocation certificate should satisfy any import licensing requirement that might apply.

125. The representative of China confirmed that China would not require a separate import licence approval for goods subject to a TRQ allocation requirement but would provide any necessary import licence in the procedure that granted a quota allocation. If quota were reallocated pursuant to China's TRQ administration commitments, the provisions relating to licensing of such reallocated quantities would apply. The Working Party took note of this commitment.

10. Customs Valuation

126. Some members expressed concern regarding the methods used by China to determine duty-paying value of goods, in particular regarding the practice of using minimum or reference prices for certain goods, which would be inconsistent with the Agreement on Implementation of Article VII of the GATT 1994 ("Customs Valuation Agreement"). Other WTO-consistent means were available to Members doubting the veracity of declared transaction values.

127. In response, the representative of China stated that China had ceased to use and would not reintroduce minimum or reference prices as a means to determine customs value. The Working Party took note of this commitment.

128. The representative of China considered that there would not be situations where the "normal transaction value" could not be "ascertained" since the Customs Valuation Agreement provided several methods for valuation.

129. The representative of China recalled that the overwhelming majority of China's customs duties were *ad valorem* duties. The customs or duty-paying value of imported goods was assessed according to the c.i.f. price based on the transaction value, as defined in the Customs Valuation Agreement. If the transaction value of imported goods could not be determined, the duty-paying

value was determined based on other means provided for in the Customs Valuation Agreement. He also noted that the Customs Law provided for appeal procedures. In the event of a dispute over calculation of duty paid or payable with the Customs, the dissatisfied importer could apply to Customs for a reconsideration of the case. If the appeal was rejected the importer could sue at the People's Court.

130. The representative of China confirmed that, from the entry into force of the Draft Protocol, China would apply fully the Customs Valuation Agreement, including the customs valuation methodologies set forth in Articles 1 through 8 of the Agreement. In addition, China would apply the provisions of the Decision on the Treatment of Interest Charges in Customs Value of Imported Goods, and the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, adopted by the WTO Committee on Customs Valuation (G/VAL/5). In accordance with these latter provisions, only the cost of the carrier medium itself would be accounted for in determining the customs value of carrier media bearing software. The Working Party took note of these commitments.

11. Other Customs Formalities

131. The representative of China said that China joined the International Convention on the Simplification and Harmonisation of Customs System in 1988 and on 15 June 2000 signed the Protocol on the Amendment of the International Convention on the Simplification and Harmonisation of Customs System. The Customs authorities of China had only adopted such customs formalities as declaration, examination, levying of duties and release which were consistent with international practices.

12. Preshipment Inspection

132. The representative of China stated that, currently, there were trade and commerce inspection agencies (including joint-venture agencies) engaged in preshipment inspection. China committed itself to comply with the Agreement on Preshipment Inspection, and would regulate the existing trade and commerce inspection agencies and permit the qualified agencies to be engaged in preshipment inspection in line with the government mandate or the terms and conditions of commercial contracts.

133. Some members of the Working Party requested information on whether China used the services of a private preshipment inspection entity. The representative of China confirmed that China would ensure that, upon accession, any laws and regulations relating to preshipment inspection by any inspection agency, including private entities, would be consistent with relevant WTO agreements, in particular, the Agreement on Preshipment Inspection and the Customs Valuation Agreement. Moreover, any fees charged in connection with such preshipment inspection would be commensurate

with the service provided, in conformity with Article VIII:1 of the GATT 1994. The Working Party took note of these commitments.

13. Anti-Dumping, Countervailing Duties

[To be completed]

14. Safeguards

134. The representative of China stated that upon accession, China would implement its Regulation on Safeguard by which the future safeguard measures would be regulated. The drafting work of this regulation was still under way. The contents of this new regulation would be fully consistent with the Agreement on Safeguards. He noted that, at present, China was in the process of drafting safeguard legislation in accordance with Article 29 of the Foreign Trade Law and the Agreement on Safeguards. The Working Party took note of this commitment.

C. EXPORT REGULATIONS

1. Customs Tariffs, Fees and Charges for Services Rendered, Application of Internal Taxes to Exports

135. Some members of the Working Party raised concerns over taxes and charges applied exclusively to exports. In their view, such taxes and charges should be eliminated unless applied in conformity with GATT Article VIII or listed in Annex 6 to the Draft Protocol.

136. The representative of China noted that the majority of products were free of export duty, although 36 items, including tungsten ore, Ferrosilicon and some aluminum products, were subject to export duties. He noted that the duty-paying value of exported goods was the F.O.B. price of the goods.

2. Export Licensing and Export Restrictions

137. The representative of China confirmed that the list of all entities responsible for the authorization or approval of exports would be updated and republished in the official journal, the MOFTEC Gazette, within one month of any change thereto. The Working Party took note of this commitment.

138. The representative of China said that China applied its export licence system to certain agricultural products, resource products and chemicals. China's export licencing system was administered in accordance with the "Interim Procedures for the Export Licencing System". In 1992, there were 143 categories of products subject to export licencing which accounted for 48.3% of the total value of the China's exports, but by 1999, the total number of products subject to export

licensing had been reduced to 58 categories and 73 items with an export value of US\$ 18.5 billion, taking up only 9.5% of total exports. Export licences for these products were issued according to the stipulated commodity scope respectively by the Administrative Bureau of Quota and Licence (ABQL), the Special Commissioner Offices (SCO) located in 16 provinces and the Commissions of Foreign Economic Relations and Trade (COFTEC) of various provinces, autonomous regions, municipalities directly under the central government and those with independent budgetary status. The main criteria used in determining whether a product was subject to export licensing, as set down in the Foreign Trade Law, were: (1) maintenance of national security or public interests; (2) protection against shortage of supply in the domestic market or exhaustion of natural resources; (3) limited market capacity of importing countries or regions; or (4) obligations stipulated in international treaties. Export licensing was also used for statistical purposes.

139. He further noted that an application for an export licence had to be submitted to the licence issuing institutions authorized by MOFTEC, together with documents approving the export by the competent departments, and other relevant materials (such as the Export Qualification Certificate for the enterprises, export contract and so on). The procedures were the same for all export destinations. A decision on the request for an export licence normally took three working days. Licences were valid for six months and could be extended once. FIEs engaged in exporting products not produced by them were required to obtain export licences if the products to be exported were subject to the licensing requirement. If the products were not subject to licensing, customs clearance would be given after examination by Customs on the basis of export contracts and other relevant documents.

140. Certain members of the Working Party noted the conditions in the GATT 1994 in regard to non-automatic licensing and export restrictions. They pointed out that export prohibitions, restrictions and non-automatic licensing could only temporarily be applied under Article XI of the GATT 1994 to prevent or relieve critical shortages of foodstuffs or other products essential to an exporting WTO Member. Article XX of the GATT 1994 also allowed for restrictive export measures, but only if such measures were made effective in conjunction with restrictions on domestic production or consumption.

141. Members of the Working Party welcomed the steady reduction in the number products subject to export licensing in China. Certain members reiterated their request for the submission of a complete list of restrictions presently applied. These members expressed concern that the remaining number was still high, covering about 10 per cent of export trade, and requested that they be either reduced further or eliminated by the date of accession in order to achieve full compatibility with GATT requirements. Some members expressed particular concern about export restrictions on raw

materials or intermediate products that could be subject to further processing, such as tungsten ore concentrates, rare earths and other metals.

142. The representative of China confirmed that China would abide by WTO rules in respect of non-automatic export licensing and export restrictions. The Foreign Trade Law would also be brought into conformity with GATT requirements. Moreover, export restrictions and licensing would only be applied, after the date of accession, in those cases where this was justified by GATT provisions. The representative of China further confirmed that export restrictions on tungsten ore concentrates would be eliminated upon entry into force of the Draft Protocol. The Working Party took note of these commitments.

143. The representative of China stated that China prohibited export of narcotic drugs, poisons, materials containing State secrets, precious and rare animals and plants.

144. Some members of the Working Party expressed concern about China's restrictions on exports of silk. Certain other members expressed concern about export restrictions on other goods, in particular raw materials or intermediate products that could be subject to further processing, such as tungsten ore concentrates, rare earths and other metals. Members of the Working Party urged China to ensure that any such restrictions that were imposed or maintained complied with the terms of the WTO Agreement and the Draft Protocol.

145. The representative of China confirmed that upon entry into force of the Draft Protocol, restrictions on exports would be eliminated unless they could be justified under the WTO Agreement or the Draft Protocol. The Working Party took note of this commitment.

3. Export Subsidies

146. Some members of the Working Party noted that China had provided a list of prohibited subsidies falling within the scope of Article 3 of the SCM Agreement and a timetable for their elimination, in Annex 5b of the Draft Protocol. Those members considered this list to be incomplete.

147. The representative of China confirmed that it would eliminate all export subsidies, within the meaning of Article 3.1(a) of the SCM Agreement, by the time of accession, including fiscal or other financial measures referred to in Article 1 of the SCM Agreement which were contingent upon export performance. To this end, China would, by accession, cease to maintain all pre-existing export subsidy programmes and, upon accession, make no further payments or disbursements, nor forego revenue or confer any other benefit, under such programmes. This commitment covered subsidies granted at all levels of government, including tax exemptions, reductions, deferrals or forgiveness to

enterprises, which were contingent, in law or in fact, upon an obligation to export. The Working Party took note of this commitment.

148. On the same basis, the representative of China confirmed that China would eliminate, upon accession, all subsidies contingent upon the use of domestic over imported goods, within the meaning of Article 3.1(b) of the SCM Agreement. The Working Party took note of this commitment.

D. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

1. Taxes and Charges Levied on Imports and Exports

149. Some members of the Working Party expressed concern about the application of the VAT and additional charges levied by sub-central governments on imports. Non-discriminatory application of the VAT and other internal taxes was deemed essential.

150. The representative of China confirmed that from the entry into force of the Draft Protocol, China would ensure that its laws and regulations relating to all fees, charges or taxes levied on imports and exports would be in full conformity with its WTO obligations, including Articles I, III:2 and 4, and XI:1 of the GATT 1994, and that it would also implement such laws and regulations in full conformity with these obligations. The Working Party took note of this commitment.

2. Industrial Policy, including Subsidies

151. Some members of the Working Party expressed concern that the special features of China's economy, in its present state of reform, still created the potential for a certain level of trade-distorting subsidization; this could have an impact not only on access to China's domestic market, but also on the performance of Chinese exports in the markets of other WTO Members, and should be subject to effective SCM Agreement disciplines. In view of this, some members felt that it would be inappropriate for China to benefit from certain provisions of Articles 27 and 29. The representative of China, in turn, considered that certain provisions of these Articles should be available to China, and informed the Working Party of the efforts being undertaken, as part of its ongoing reform process, to reduce the availability of certain types of subsidies. China was committed to implementing the SCM Agreement in a manner that was fair and equitable to China and to other WTO Members. [In line with this approach, the representative of China stated his intention to reserve the right to benefit from the provisions of [Articles 27.10, 27.11, 27.12 and 27.15] of the SCM Agreement, while confirming that China would not seek to invoke [Articles 27.8, 27.9, 27.13 and 29.2] of the SCM Agreement. The Working Party took note of these commitments.]

152. Some members of the Working Party, in view of the special characteristics of China's economy, sought to clarify that when state-owned enterprises (including banks) provided financial

contributions, they were doing so as government actors within the scope of Article 1.1(a) of the SCM Agreement. The representative of China noted, however, that such financial contributions would not necessarily give rise to a benefit within the meaning of Article 1.1(b) of the SCM Agreement. He pointed out that China's objective was that state-owned enterprises, including banks, should be run on a commercial basis and be responsible for their own profits and losses. The Working Party took note of this commitment.

153. Some members of the Working Party, while understanding the difficulties involved in gathering information, raised concerns over the comprehensiveness of the subsidy notification which China had provided in Annex 5 to the Draft Protocol, as last modified on 31 May 2000. Some members of the Working Party explained that, as an illustration of the above, certain types of subsidies did not appear in Annex 5. Those members of the Working Party first identified state support through the banking system, notably government-owned banks, in the form of policy loans, the automatic roll-over of unpaid principal and interest, forgiven and non-performing loans, and the selective use of below-market interest rates. Some members also referred to unreported tax subsidies, investment subsidies and subsidies provided by sub-central governments, some of which favoured exporting firms. Other members mentioned subsidies granted to the telecommunications and shipbuilding sectors. The representative of China explained that, in common with many other Members, China had experienced difficulty in obtaining accurate data about all types of subsidies. He also indicated that China was attempting to reduce the availability of certain types of subsidies, in particular by reforming its tax system and making government-owned banks operate on a commercial basis. The representative of China stated that China would progressively work towards a full notification of subsidies, as contemplated by Article 25 of the SCM Agreement. The Working Party took note of this commitment.

154. Some members of the Working Party also raised concerns regarding the subsidies that China provided in connection with SEZs and other special economic areas. Some of these appeared to be contingent upon export performance or on the use of domestic goods. The representative of China noted that the main purpose of such subsidies was to promote regional development and foreign investment. He confirmed that China would, upon accession, eliminate any such subsidies which were inconsistent with the SCM Agreement. The Working Party took note of this commitment.

155. Some members of the Working Party requested information from China on the subsidies provided to the Chinese footwear industry that were contingent upon the use of domestic materials. In response, the representative of China explained that no such subsidy programme existed.
[.....]

156. Some members of the Working Party requested information from China on the Steel Import Substitution Programme, which appeared to provide export subsidies to the big four steel groups in China. In response, the representative of China explained that China did not collect VAT on imported and domestically-produced steel used as raw material by processing trade enterprises. Such a policy was consistent with WTO rules and identical to the practices of VAT rebate of many WTO Members, and thus should not be considered subsidies. [.....]

157. Some members of the Working Party requested information from China on the "China High-Tech Product Export Catalogue", which set forth central government export policies for the telecommunications, computer software, aviation and aerospace, lasers, pharmaceuticals, medical equipment, new materials and energy industries. In response, the representative of China explained that products listed in the Catalogue would be given full VAT rebate treatment, in contrast with partial VAT rebate applied to other exported products. Such policy was consistent with Article XVI of the GATT 1994 and relevant Annexes of the SCM Agreement. [.....]

3. Technical Barriers to Trade

[To be completed]

4. Sanitary and Phytosanitary Measures

158. Sanitary and Phytosanitary Measures Some members of the Working Party expressed concerns in relation to the use by China of sanitary and phytosanitary ("SPS") procedures as non-tariff barriers and raised specific instances where they considered that China's measures were not consistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"). These members sought assurances that China would not use SPS measures to restrict trade, that SPS measures would only be imposed to the extent necessary to protect human, animal or plant life or health, and that such measures would be based fully on scientific principles.

159. The representative of China stated that pursuant to the provisions of the SPS Agreement, China applied SPS measures only to the extent necessary to protect the life and health of human beings, animals and plants. He also noted that most of China's SPS measures were equivalent to international standards, guidelines and recommendations. China would not apply SPS measures in a manner which would act as a disguised restriction on trade. In accordance with the SPS Agreement, China would ensure that SPS measures would not be maintained without sufficient scientific evidence. The Working Party took note of these commitments.

160. Members expressed the view that China should apply the SPS Agreement from the date of China's accession and should ensure conformity with the SPS Agreement of all its laws, regulations

and practices relating to SPS measures. In response, the representative of China confirmed that China would fully apply the SPS Agreement from the date of accession and would ensure the conformity with the SPS Agreement of all of its laws, regulations and practices relating to SPS measures. The Working Party took note of these commitments.

161. Members of the Working Party noted that China's notification of laws, regulations and other SPS measures, referred to in the Draft Protocol, was provided in document WT/ACC/CHN/33. Members of the Working Party agreed that this notification did not prejudge the legal status under the WTO Agreement of the nature or effects of the notified laws, regulations and other measures. The representative of China also submitted an action plan for implementation of China's SPS commitments, circulated to the Working Party in WT/ACC/CHN/XX. The action plan outlined the steps that China was taking to ensure full implementation of the SPS Agreement, including revision of its laws, regulations and other measures.

162. The representative of China said that China had set up an SPS notification authority and an SPS enquiry point which would be notified to the SPS Committee. Laws, regulations, rules, standards and procedures relating to SPS measures, including inspection, had been published in publications such as the MOFTEC Gazette. Information could also be gathered from the SPS notification authority or from China's SPS enquiry point.

5. Trade-Related Investment Measures

163. The representative of China confirmed that upon accession, as set forth in the Draft Protocol, China would comply fully with the TRIMs Agreement, without recourse to Article 5 thereof, and would eliminate foreign-exchange balancing and trade balancing requirements, local content requirements and export performance requirements. Chinese authorities would not enforce the terms of contracts containing such requirements. The allocation, 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 covering, for example, the conduct of research, the provision of offsets or other forms of industrial compensation including specified types or volumes of business opportunities, the use of local inputs or the transfer of technology. Permission to invest, import licences, quotas and tariff rate quotas would be granted without regard to the existence of competing Chinese domestic suppliers. The Working Party took note of this commitment.

164. In the context of discussions on the government's Industrial Policy for the Automotive Sector, the representative of China confirmed that this policy would be amended to ensure compatibility with WTO rules and principles. The Working Party took note of this commitment.

165. The representative of China added that amendments would be made to ensure that all measures applicable to motor vehicle producers restricting the categories, types or models of vehicle permitted for production, would gradually be lifted. Such measures would be completely removed two years after accession, thus ensuring that motor vehicle producers would be free to choose the categories, types and models they produced. However, it was understood that category authorizations by the government could continue to distinguish between trucks and buses, light commercial vehicles, and passenger cars (including multi-purpose vehicles and sport utility vehicles). The Working Party took note of this commitment.

166. The representative of China confirmed that China also agreed to raise the limit within which investments in motor vehicle manufacturing could be approved at provincial government level only, from the current level of US\$ 30 million, to US\$ 60 million one year after accession, US\$ 90 million two years after accession, and US\$ 150 million four years after accession. The Working Party took note of this commitment.

167. With respect to the manufacture of motor vehicle engines, the representative of China also confirmed that China agreed to remove the 50% foreign equity limit for joint-ventures upon accession. The Working Party took note of this commitment.

6. State Trading Entities

168. Some members of the Working Party expressed concern that the activities of China's state trading enterprises were not sufficiently transparent and were not in accordance with WTO obligations. The representative of China indicated, however, that China's state trading enterprises had full management autonomy and responsibility for their own profits and losses and that China had undertaken broad and significant commitments to improve the transparency of state trading enterprises' operation and the measures relating to such operation.

169. The same members of the Working Party also stated that China should ensure that the import purchasing practices and procedures of state trading enterprises were fully transparent, and in compliance with the requirements of the WTO Agreement. They considered that China should also refrain from taking any measure to influence or direct state trading enterprises as to the quantity, value, or country of origin of goods purchased or sold, except in accordance with the requirements of the WTO Agreement. Those members also stated that as part of China's notification under the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, China should notify information on state trading, including, in the case of state trading of exported goods, domestic procurement prices, contract terms for delivery and financing terms and conditions.

170. In response, the representative of China stated that its state trading enterprises had full management autonomy and responsibility for their own profits and losses. However, some members of the Working Party again stated that China should undertake a commitment to ensure that all state trading enterprises complied with the requirements of the WTO Agreement. The representative of China noted that a list of products subject to state trading had been provided in Annex 2a of the Draft Protocol. He also confirmed that information on state trading enterprises, as required by the Draft Protocol, would be supplied, but stated that such notification should be without prejudice to the commercial interests of the state trading enterprises.

171. Members of the Working Party took note of the specific arrangements that would apply for fertilizers and crude and processed oil. A key feature of those arrangements related to the annual allocation of import quantities. The differences in the regimes that would apply to those products were noted, in particular in regard to the obligation on state enterprises trading in fertilizers to carry over to the next year any unused import quantities.

172. Some members of the Working Party requested assurances that, for oil products, quantities reserved for non-state traders would be allocated in such a manner that they would be fully utilized. In this respect, the representative of China confirmed that imports allocated to non-state traders of crude and processed oil, as specified in Annex 2a of the Draft Protocol, would be carried over to the next year if they were not fully utilized. In addition, the representative of China agreed that China would publish, on a quarterly basis, the requests for imports that had been made by non-state traders, as well as the licences granted, and would supply information relevant to such traders upon request. The Working Party took note of these commitments.

173. Some members of the Working Party noted that prior to accession, some enterprises in China were permitted to import goods for their production purposes, including those goods included in Annex 2a. The representative of China confirmed that, notwithstanding section 5, paragraph 1, of the Draft Protocol, non-state trading enterprises, including private enterprises, would still be permitted to import such goods for production purposes and that national treatment would be provided to such imports. The Working Party took note of these commitments.

174. Some members of the Working Party expressed concerns about supplies of raw materials in the textiles sector, and particularly in regard to supplies of silk, in the light of China's position as the major world supplier of silk, currently subject to state trading rights concerning exports.

175. In this regard, the representative of China confirmed that China would progressively abolish the system of state trading in respect of silk by measures increasing and extending trading rights, with the result that China would remove completely the silk products set out in numbers 10 and 11 of

Annex 2a-2 to the Draft Protocol (list of products subject to state trading on exports) and grant the right to trade in such products to all individuals and enterprises no later than 1 January 2005. Pending the implementation of this right, China undertook not to introduce any changes of a more restrictive nature to the existing structures in place for the supply of silk. The representative of China further confirmed that access to supplies of raw materials in the textiles sector would remain at conditions no less favorable than for domestic users, and gave his assurance that access to supplies of raw materials as enjoyed under existing arrangements would not be adversely affected following China's accession to the WTO. The Working Party took note of these commitments.

176. Members of the Working Party noted that domestic prices for most agricultural commodities in China were higher than world prices, and this differential allowed China's state trading enterprises to import at low prices and then mark up the price when selling the product to wholesalers and end-users. Some members expressed concern that this practice could become more widespread when access opportunities were created under TRQs. Those members were particularly concerned that mark-ups could be used to reduce the competitiveness of imported products and limit the range of qualities and grades available to end-users in China. The representative of China stated that currently state trading enterprises did not mark up imported products; instead, they only charged a nominal transaction fee. Consequently, China claimed that its practice was consistent with WTO obligations, did not result in any trade-distorting effect, and that under China's law limits existed on the fees that could be charged by state trading enterprises.

177. The representative of China stated that China would ensure that no price increase in respect to imports, in particular by state trading enterprises, would result in protection beyond that allowed in its Schedule of Concessions and Commitments on Goods or that was not otherwise justified under WTO rules. The Working Party took note of this commitment.

7. Special Economic Areas

178. Members of the Working Party noted that there was insufficient information available concerning special economic areas within China's customs territory, including border trade regions and minority autonomous areas, Special Economic Zones ("SEZs"), open coastal cities, economic and technical development zones and other areas where special regimes for tariffs, taxes and regulations had been established (collectively referred to as "special economic areas"), in particular their names, geographic boundaries, and relevant laws, regulations and other measures relating thereto.

179. In response, the representative of China stated that since 1979 China had established a number of special economic areas where more open policies were applied. They included five SEZs, 14 open coastal cities, six open cities along the Yangtze River, 21 provincial capital cities and 13

inland boundary cities. Those special economic areas enjoyed greater flexibility in utilizing foreign capital, introducing foreign technology and conducting economic cooperation overseas. At present, foreign investors were entitled to certain preferential treatment.

180. The representative of China further stated that FIEs located in SEZs or the Economic and Technical Development Zones of open coastal cities were entitled to a corporate income tax rate of 15% (the normal income tax was 33%). Profits remitted abroad by foreign investors were exempted from income tax. The preferential income tax rate of 15% was applicable to technology-intensive or knowledge-intensive items or projects with foreign investment of over US\$30 million, as well as enterprises that operated in the fields of energy, transport and port construction.

181. The representative of China noted that throughout the customs territory of China, a socialist market economy system was applied. In 1999, the foreign trade volume of SEZs accounted for nearly one fifth of the nation's total. The national laws and regulations on taxation were applicable to SEZs in a uniform manner.

182. In response to further requests for information, the representative of China indicated that there was no plan to establish any new SEZs. The special preferential tariff policies applied to SEZs had been eliminated. With the development of China's economic reform and opening up, China would implement its tariff policy uniformly throughout its customs territory. Members of the Working Party expressed concern that imported products introduced from these special economic areas into other parts of China's customs territory should be subject to the same treatment in the application of all taxes, import restrictions and customs duties and other charges as that normally applied to imports into the other parts of China's customs territory. The representative of China stated that China would undertake to ensure such non-discriminatory treatment. The Working Party took note of this commitment.

183. Some members of the Working Party also raised concerns as to whether the assistance provided to minority autonomous regions and other areas of economic poverty was consistent with WTO requirements. In response, the representative of China confirmed that China had a clear commitment to uniform administration of the trade regime within each such area and that, upon accession, China would ensure that such assistance would be implemented consistent with WTO obligations. The Working Party took note of this commitment.

184. Some members of the Working Party requested that China take steps to ensure that all products imported into the other parts of the customs territory of China from special economic areas would be subject to the same normal customs duties and charges as any other product imported into the customs territory of China. In particular, those members requested that China undertake a

commitment to apply all taxes, charges and measures affecting imports, including import restrictions and customs and tariff charges, that were normally applied to imports into the other parts of China's customs territory to all imported products, including physically incorporated components, entering China's customs territory from the special economic areas.

185. The representative of China confirmed that China would strengthen the uniform enforcement of taxes, tariffs and non-tariff measures on trade between its special economic areas and the other parts of China's customs territory. China further confirmed that statistics on trade between China's special economic areas and the other parts of its customs territory would be maintained and improved, and would be notified to the WTO on a regular basis. The Working Party took note of these commitments.

186. Some members of the Working Party requested that China notify the WTO Secretariat of all the relevant laws, regulations and other measures relating to its special economic areas. They asked that the notification list and identify all those special economic areas. Those members also requested that China notify the WTO Secretariat promptly, but in any case within 60 days, of any additions or modifications to its special economic areas, including notification of the laws, regulations and other measures relating thereto.

187. The representative of China confirmed that China would provide information in its notifications describing how the special trade, tariff, and tax regulations applied were limited to the designated special economic areas, including information concerning their enforcement. The Working Party took note of this commitment.

188. In response to concerns raised by some members of the Working Party, the representative of China confirmed that any preferential arrangements provided to enterprises located within the special economic areas would be provided on a non-discriminatory basis. The Working Party took note of this commitment.

8. Government Procurement

189. The representative of China stated that in order to promote China's government procurement, the Ministry of Finance promulgated the Interim Regulations on Government Procurement in April 1998. The Interim Regulations were stipulated in line with the spirit of the WTO Agreement on Government Procurement ("GPA") and on the basis of the relevant provisions of the United Nations Model Law on Procurement of Goods, Construction and Services while making reference to the laws and regulations of some WTO Members on government procurement. The policy and procedure regarding government procurement provided for therein were consistent with international practice.

China stuck to the fundamental principles of being open, fair, equitable, efficient and in the public interest when carrying out government procurement. At present, China was formulating the Government Procurement Law.

190. Some members of the Working Party stated that China should become a Signatory to the GPA and that prior to its accession to the GPA, China should conduct all government procurement, within the meaning of the Draft Protocol, in a transparent and non-discriminatory manner. Those members noted that China's public entities engaged exclusively in commercial activities would not be conducting government procurement and thus laws, regulations and other measures regulating these entities' procurement practices would be fully subject to WTO requirements.

191. The representative of China stated that China intended to become a Signatory to the GPA and that until such time, all government entities at the central and sub-central level would conduct their procurement in a transparent manner and provide all foreign suppliers with equal opportunity to participate in that procurement pursuant to the principle of MFN treatment. Such procurements would be subject only to laws, regulations, judicial decisions, administrative rulings of general application, and procedures (including standard contract clauses) which had been published and made available to the public. The Working Party took note of these commitments.

192. Noting China's intention to become a Signatory of the GPA, some members of the Working Party stated that China should, upon entry into force of the Draft Protocol, seek to become an observer to the GPA, and should initiate negotiations for membership in the Agreement by tabling an Appendix 1 offer within two years of accession. The representative of China responded that China would give serious consideration to this request.

9. Transit

193. The representative of China stated that the current regulation of transit in China, the Regulations of the Customs of the People's Republic of China on the Supervision and Administration of Transit Goods, was consistent with Article V of the GATT 1994.

10. Agricultural Policies

[To be completed]

11. Trade in Civil Aircraft

194. In response to questions from members of the Working Party, the representative of China indicated that China was not in a position to commit to joining the Agreement on Trade in Civil Aircraft at the present stage.

195. The representative of China confirmed that China would not impose any provisions of offsets or other forms of industrial compensation when purchasing civil aircraft, including specified types or volumes of business opportunities. Members of the Working Party took note of this commitment.

12. Textiles

196. Some members of the Working Party proposed and the representative of China accepted that the quantitative restrictions maintained by WTO Members on imports of textiles and apparel products originating in China that were in force on the date prior to the date of the accession of China to the WTO should be notified to the Textiles Monitoring Body ("TMB") as being the base levels for the purpose of application of Articles 2 and 3 of the WTO Agreement on Textiles and Clothing ("ATC"). For such WTO Members, the phrase "day prior to the date of entry into force of the WTO Agreement", contained in Article 2.1 of the ATC, should be deemed to refer to the day prior to the date of accession of China to the WTO. To these base levels, the increase in growth rates provided for in Articles 2.13 and 2.14 of the ATC should be applied, as appropriate, from the date of accession of China to the WTO. The Working Party took note of these commitments.

197. The representative of China agreed that the following provisions would apply to trade in textiles and clothing products until 31 December 2008 and be part of the terms and conditions for China's accession to the WTO:

- (a) In the event that a WTO Member believed that imports of Chinese origin of textiles and apparel products covered by the ATC were, due to market disruption, threatening to impede the orderly development of trade in these products, such Member could request consultations with China with a view to easing or avoiding such market disruption. The Member requesting consultations would provide China, at the time of the request, with a detailed factual statement of reasons and justifications for its request for consultations with current data which, in the view of the requesting Member, showed: (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption;
- (b) Consultations would be held within 30 days of receipt of the request. Every effort would be made to reach agreement on a mutually satisfactory solution within 90 days of the receipt of such request, unless extended by mutual agreement;
- (c) Upon receipt of the request for consultations, China agreed to hold its shipments to the requesting Member of textile or textile products in the category or categories subject to these consultations to a level no greater than 7.5 per cent (6 per cent for

wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made;

- (d) If no mutually satisfactory solution were reached during the 90-day consultation period, consultations would continue and the Member requesting consultations could continue the limits under subparagraph (c) for textiles or textile products in the category or categories subject to these consultations;
- (e) The term of any restraint limit established under subparagraph (d) would be effective for the period beginning on the date of the request for consultations and ending on 31 December of the year in which consultations were requested, or where three or fewer months remained in the year at the time of the request for consultations, for the period ending 12 months after the request for consultations;
- (f) No action taken under this provision would remain in effect beyond one year, without reapplication, unless otherwise agreed between the Member concerned and China.

The Working Party took note of these commitments.

13. Measures Maintained Against China

198. The representative of China stated that WTO Members should eliminate all discriminatory non-tariff measures maintained against Chinese exports from the date of China's accession to the WTO. In response, some members of the Working Party stated that, in their view, such measures did not need to be phased out until such time as China's foreign trade regime fully conformed to WTO obligations.

199. In light of the above, it was agreed that any prohibitions, quantitative restrictions or other measures maintained against imports from China in a manner inconsistent with the WTO Agreement would be listed in Annex 8 to the Draft Protocol. It was further agreed that all such measures would be phased out or otherwise dealt with in accordance with mutually agreed terms and timetables as specified in said annex.

14. Transitional Safeguards

[To be completed]

15. Transitional Review Mechanism

[To be completed]

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

A. GENERAL

1. Overview

200. The representative of China stated that China had made the protection of intellectual property rights an essential component of its reform and opening-up policy and socialist legal construction. The formulation of laws and regulations in this field could be traced back to the late 1970s. Since then, China had joined relevant international conventions and had actively participated in the activities sponsored by relevant international organizations. It had intensified its exchanges and cooperation with countries throughout the world in the field of IPR protection. As a result, notwithstanding the initial stage of its development, China's IPR protection system aimed at achieving world dimension and world standards. Lists of administrative rules concerning intellectual property rights currently in force in China are presented in Table A.

201. The representative of China stated that for accession to the WTO and compliance with the TRIPS Agreement, further amendments had been made to the Patent Law. The amendments to the Copyright Law and the Trademark Law, as well as relevant implementing rules covering different areas of the TRIPS Agreement, would also be accomplished upon China's accession to the WTO. The representative of China stated that laws adopted by the National People's Congress and administrative regulations, including implementing rules, issued by the State Council were applied and enforced by the people's courts. The Working Party took note of this commitment. The status of ongoing reforms and other relevant information is presented in Table B.

2. Responsible agencies for policy formulation and implementation

202. The representative of China said that, at present, different agencies were responsible for IPR policy formulation and implementation. The State Intellectual Property Office (SIPO) was responsible for patent approval; the Trademarks Office under the State Administration for Industry and Commerce (SAIC) was responsible for trademarks registration; the Copyright Office was responsible for copyright policy making; SAIC was responsible for anti-unfair competition, including the protection of trade secrets; the State Drug Administration (SDA) was responsible for administrative protection of pharmaceuticals; the General Customs Administration was responsible for border measures; the Ministry of Agriculture and the State Administration of Forestry were responsible for protection of plant varieties; the Ministry of Information Industry was responsible for the protection of layout designs of integrated circuits; the State Bureau of Quality and Technical Supervision and SAIC were responsible for combating counterfeiting activities. Other agencies like

the agency for press and publications, the people's courts and police were also involved in the protection of IPR in China.

3. Participation in international intellectual property agreements

203. The representative of China said that China became a member of the World Intellectual Property Organization in 1980; in 1985, China became a member of the Paris Convention for the Protection of Industrial Property; China was one of the first countries that signed the Treaty on Intellectual Property in Respect of Integrated Circuits, the negotiation of which was concluded in 1989; in 1989, China became a member of the Madrid Agreement Concerning the International Registration of Marks; in 1992, China became a member of the Berne Convention for the Protection of Literary and Artistic Works; in 1993, China became a member of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms; in 1994, China became a member of the Patent Cooperation Treaty; in 1994, China became a member of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks; in 1995, China became a member of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. In 1995, China applied for membership in the Protocols of the Madrid Agreement Concerning the International Registration of Marks; in 1996, China became a member of the Locarno Agreement on Establishing an International Classification for Industrial Designs; and in 1997, China became a member of the Strasbourg Agreement Concerning the International Patent Classification. Besides the above efforts, China participated in the TRIPS negotiations during the Uruguay Round and initialled the Final Act.

4. Application of national and MFN treatment to foreign nationals

204. Some members of the Working Party expressed concern that certain provisions of China's copyright and trademark laws, as well as China's Rules on Banning the Infringement of Business Secrets (23 November 1995) did not provide national treatment to foreign right-holders. The Rules on Banning Infringements of Business Secrets, for example, defined the "owner" of a trade secret as a "citizen, corporation, and other organization" and did not explicitly provide protection for foreign individuals or organizations. Some members of the Working Party further stated that national treatment should be fully applied, so that copyright enforcement action by local copyright bureaux involving foreign right-holders, would no longer require clearance by the National Copyright Administration in Beijing.

205. The representative of China responded that China's IPR laws provided that any foreigner would be treated in accordance with any agreement concluded between the foreign country and China,

or in accordance with any international treaty to which both countries were party, or on the basis of the principle of reciprocity. The representative of China further confirmed that China would modify relevant laws, regulations and other measures so as to ensure national and MFN treatment to foreign right-holders regarding all intellectual property rights across the board in compliance with the TRIPS Agreement. This would include adjustments of the clearance requirement mentioned in the previous paragraph to ensure national treatment. The Working Party took note of these commitments.

B. SUBSTANTIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

1. Copyright protection

206. The representative of China said that the Copyright Law was promulgated in 1990, which established the basic copyright protection system in China together with the Implementing Rules of the Copyright Law (30 May 1991), the Provisions on the Implementation of the International Copyright Treaty (25 September 1992) and other related laws and regulations. In principle, this system was in compliance with the international IPR treaties and practices. For the protection of copyright and neighbouring rights, not only civil and criminal liabilities but also administrative liabilities, were provided for in this system, hence the infringing activities could be curbed in a timely and effective manner and the legitimate rights of the right-holders could be protected.

207. Some members of the Working Party expressed concerns about the consistency of China's current law on the protection of copyright and related rights with the TRIPS Agreement. In particular, members noted the need to clarify the rights of performers and producers to bring them into conformity with the requirements of Article 14 of the TRIPS Agreement. In addition, improvements were needed with respect to enforcement of copyright to provide expressly for provisional measures to preserve evidence, including documentary evidence and for remedies sufficient to deter further infringements.

208. The representative of China responded that, realizing that there were some existing differences between China's copyright laws and the TRIPS Agreement, the amendment to the Copyright Law had been accelerated at present. The amendment would soon be submitted to the Standing Committee of the National People's Congress. The proposed amendments would clarify the payment system by broadcasting organizations which use the recording products and also include the following provisions: rental rights in respect of computer programs and movies, mechanical performance rights, rights of communication to the public and related protection measures, protection of database compilation, provisional measures, increasing the legitimate compensation amount and strengthening the measures against infringing activities. China's copyright regime including the Implementing Rules of the Copyright Law and the Provisions on the Implementation of the

International Copyright Treaty would be amended so as to ensure full consistency with China's obligations under the TRIPS Agreement. The Working Party took note of these commitments.

2. Trademarks, including service marks

209. The representative of China stated that the Trademark Law, its implementing rules and other relevant laws, administrative regulations and department rules constituted the existing trademark legal system in China. The objective of these laws was to provide protection to right-holders in line with the international conventions and prevailing practices regarding intellectual property rights, which was embodied both in the regulations on the substance and procedures for trademark registration and in the protection of trademark exclusive right. In order to protect the trademark exclusive right, China's Trademark Law contained not only civil and criminal liabilities but also administrative punishment against trademark infringers. This "double-track system" of the protection of trademark exclusive right could prevent trademark infringements in a timely and effective manner and protect the legitimate rights and interests of the holders of trademark exclusive rights, which had been appreciated by various parties. In recent years, China's judicial and administrative bodies had stepped up their efforts to protect trademark exclusive rights within their respective authorization. They had settled a great deal of cases that were influential, domestically and abroad, which provide adequate protection to the legitimate rights and interests of both Chinese and foreign holders of trademark exclusive right, thus receiving a positive response from domestic and foreign right-holders.

210. Some members of the Working Party reiterated concerns about whether certain provisions of China's Trademark Law provided national treatment to foreign trademark owners. They noted that China's law required foreign trademark owners to use designated trademark agents, while Chinese nationals were permitted to file directly with China's Trademarks Office. Members also noted that China's Trademark Law did not consider certain signs as eligible for protection as required under the TRIPS Agreement. These included names, letters, numerals and colours capable of distinguishing goods and services. In addition, if registrability of a trademark depends on use, China's Trademark Law should provide that a non-distinctive mark could qualify for registration when it has acquired distinctiveness based on use. Members also noted that it was not clear under China's law that actual use of a mark was not required before a party could file to register a mark.

211. Some members of the Working Party also raised concerns about the protection of well-known trademarks in China, in particular those not registered in China. China's laws and regulations did not specifically state the criteria for determining whether a mark was well-known and therefore members could not determine if it conformed to the requirements of Article 16 of the TRIPS Agreement. Moreover, while China had provided protection to "well-known trademarks" owned by Chinese nationals, such protection had, as yet, not been granted to the well-known trademarks of foreigners.

Members also noted that certain provisions of China's trademark law needed to be extended to unregistered well-known trademarks.

212. The representative of China stated that with the development of China's market economy and the further implementation of the TRIPS Agreement, China's legislative and law-enforcing bodies had also realized that their existing Trademark Law fell somewhat short of fulfilling the requirements of the TRIPS Agreement and the Paris Convention in a few aspects and were therefore preparing to amend the existing Trademark Law to fully meet the requirements of the TRIPS Agreement. Modifications would mainly be made to the following aspects: to include the trademark registration of three-dimensional symbols, combination of colours, alphabets and figures; to add the content of collective trademark and certificate trademark (including geographical indications); to introduce official symbol protection; to protect well-known trademarks; to include priority right; to modify existing trademark right confirmation system and offer the interested party opportunity for judicial review concerning the confirmation of trademark right; to crack down all serious infringements; and to improve the system of compensation. The Working Party took note of these commitments.

3. Geographical indications, including appellations of origin

213. The representative of China said that the relevant rules by SAIC and the State Bureau of Quality and Technical Supervision partly provided protection for the geographical indications including appellations of origin and that the amendment to the Trademark Law would have a specific provision on the protection of geographical indications.

214. The members of the Working Party took note of the progress achieved on geographical indications and reiterated the importance for the Chinese legislation to comply with the obligations under the TRIPS Agreement (Articles 22, 23 and 24). The representative of China shared this assessment and reiterated China's intention to fully comply with relevant articles in the TRIPS Agreement on geographical indications. The Working Party took note of this commitment.

4. Industrial designs

215. Some members of the Working Party noted that the industrial design provisions of China's Patent Law appeared to implement substantial portions of the TRIPS Agreement requirements relating to industrial designs. One notable exception was the area of textile designs. These members noted that designs of WTO Members could be protected under China's Provisions on the Implementation of the International Copyright Treaty as works of applied art. Members urged China to incorporate this protection into its law and to provide such protection to domestic textile designs.

5. Patents

216. The representative of China said that in preparation for the accession to the WTO, China revised its Patent Law in 1992 for the first time. China had taken measures to enhance consistency with the TRIPS Agreement in terms of major provisions and protection standards. In order to increase the awareness of the general public on IPR protection, and patent protection in particular, and to be consistent with the TRIPS Agreement and to build up a sound social environment for the promotion and commercialization of inventions, the National People's Congress approved the second revision of the Patent Law on 25 August 2000. The revised Patent Law, which would take effect on 1 July 2001, included the following elements: (1) Patent owners would have the right to prevent others from offering for sale the patented product without its consent (Article 11); (2) For utility model and design applications or patents, the final decision of re-examination and invalidation would be made by the people's courts other than the inventions that were already covered (Articles 41 and 46); (3) Patent owners could, before instituting legal proceedings, request the people's court to take provisional measures such as to order the suspension of infringing acts and to provide property preservation (Article 61); (4) Conditions for granting compulsory license would be further clarified and made consistent with the TRIPS Agreement.

217. Since its establishment, SIPO had paid great attention to strengthen its contact and coordination with relevant departments and ministries in the field of IPR law enforcement, especially in the areas of settling inter-agency problems and resolving key cases. At the same time, SIPO had taken appropriate measures to improve the performance of local patent authorities in law enforcement. For example, in June 1999, SIPO convened a nationwide working conference, which was attended by representatives from local patent administrative authorities. The participants summarized their law enforcement practices over the previous two years and also exchanged their experiences in their local legislative works with a view to intensifying patent protection. The conference also called for the introduction of important patent cases reporting and recording system.

218. The representative of China stated that so far as the range of patent protection and protection for new plant varieties were concerned, China had already met the requirements of Article 27 of the TRIPS Agreement. When amending the Patent Law in 1992, China modified Article 25 therein with reference to relevant stipulations in the final text of the TRIPS Agreement and expanded the coverage of patent protection to food, beverage, flavourings, pharmaceuticals and materials obtained by chemical methods. The scope of patent exclusions would be limited to "scientific discoveries, rules and methods of intellectual activities, diagnostic and therapeutic methods for the treatment of diseases, animals and plant varieties, as well as materials obtained by the change of nucleus".

219. He further stated that Article 5 of China's Patent Law stipulated that inventions that violate laws of China or social morality or prejudice public interest would not be entitled to patent right. Therefore, literally, there was a difference between Article 5 of China's Patent Law and the TRIPS Agreement. However, in practice, during the review of patent applications, the interpretation of "violating laws of China" had been restricted to "if laws of China prohibit the sale of a certain patented product, or prohibit the sale of products manufactured by a patented method, the granting of patent right cannot be denied to this product invention or this invention of product manufacturing method by relying on Article 5 of the Patent Law". Hence, in essence, he concluded that there was no difference between Article 5 of the Patent Law as applied and the TRIPS Agreement. Nonetheless, China would amend the Implementing Rules of the Patent Law to ensure that this provision would be implemented in full compliance with Article 27.2 of the TRIPS Agreement, which stipulated that: "Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, **provided that such exclusion is not made merely because the exploitation is prohibited by their law**". The Working Party took note of this commitment.

220. Regarding Article 28 of the TRIPS Agreement (rights conferred), the representative of China stated that China's Patent Law had fully complied with the requirements of the TRIPS Agreement because of the following reasons. First, in the 1992 amendment to the Patent Law, Article 11 was modified as follows: "any entity or individual is, without prior licensing from the patentee, prohibited from making, using or selling patented products or patented processes, or using or selling products directly obtained by the patented processes for the purpose of production and operation". It was also prohibited for any entity or individual to import patented products or products directly obtained by patented processes for the purpose of production and operation. This modification expanded the scope of patentees' right, namely the new content of "the right to prohibit import" and "the effect of patented processes is extended to products directly obtained by patented processes". Second, in 2000, when the second amendment was made to the Patent Law, Article 11 was once again modified. A new stipulation was introduced granting patentees the right to prohibit others from offering for sale the patented products or products directly obtained by patented processes without the consent of patentees. Therefore, so far as "the right of patentees" is concerned, China's Patent Law had fully accommodated the requirements of the TRIPS Agreement.

221. Further to the 1992 amendment, China's Patent Law provided for compulsory licenses based on reasonable terms, on public interest and for dependent patents. With regard to the conditions of compulsory licenses for dependent patents, the Patent Law provided that the latter invention should be technically more advanced than the earlier one. The TRIPS Agreement provides that "the invention

claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent" (Article 31(l)(i)). Since the provisions of the TRIPS Agreement were more transparent and easier to operate, the relevant expressions contained in the TRIPS Agreement were adopted in the new revision. In addition, the following restrictive conditions for granting compulsory licenses contained in the Implementing Rules of the Patent Law of 1992 had been moved into the Patent Law in order to make it more authoritative: the decision of SIPO on the granting of a compulsory license for exploitation would be limited in terms of its scope and duration; when the circumstances which led to such compulsory license ceased to exist and were unlikely to recur, SIPO, upon the request of the patentee, could terminate the compulsory license after examination; were incorporated into the Law (former Article 68 of the Implementing Rules of the Patent Law of 1992 had now been moved into Article 51 of the revised Patent Law).

222. The representative of China stated that following the 1992 amendment, the regulations on compulsory licensing in China's Patent Law and its implementing rules, as a whole, had fulfilled the requirements of the TRIPS Agreement. However, some wording and expressions in the Chinese regulations were still not identical to the TRIPS Agreement and these regulations still needed improvement in respect of the administrative legal proceedings concerning compulsory licensing. Therefore, in the second amendment to the Patent Law in 2000, the corresponding amendments and modifications to the stipulations on compulsory licensing were mainly made in the following two points: (1) Article 53 of the Patent Law was modified from "a patented invention or utility model is **technically more advanced** than the inventions or utility models which have obtained patent right earlier" into "a later invention or utility model is **an important technical progress with striking economic significance** as compared to the earlier invention or utility model"; and (2) having been subject to appropriate adjustments, the regulations on the time, scope and termination of compulsory licensing enforcement in Article 68 of the Implementing Rules of the Patent Law of 1992 were integrated into Article 52 of the amended Patent Law. Following the above-mentioned amendments, China's Patent Law had regulations on compulsory licensing with clearer structure and improved content. In the representative of China's view, these regulations were fully consistent with the TRIPS Agreement. He also added that up to now China had not issued any compulsory licensing for patent enforcement.

223. Some members of the Working Party noted the improvements in the provisions regarding compulsory licensing for patents that the representative of China cited. Some members however, requested clarification of the subject matter that would be subject to compulsory licensing under the Patent Law.

224. In response, the representative of China agreed that still not all the requirements of Article 31 of the TRIPS Agreement had been incorporated into Chinese law, and that Implementing Rules of the Patent Law would therefore be modified so as to ensure that: (1) use without authorization of the right holder would only be permitted if, prior to such use, the proposed user had made efforts to obtain authorization from the right-holder on reasonable **commercial** terms and conditions (Article 31(b)), (2) the right-holder would be paid **adequate remuneration in the circumstances of each case**, taking into account the **economic value** of the authorization (Article 31(h)); (3) any such use would be authorized **predominantly for the supply of the domestic market** (Article 31(f)); and (4) in the case of semi-conductor technology, the scope and duration of such use would only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive (Article 31(c)). The Working Party took note of these commitments.

225. Regarding Article 32 of the TRIPS Agreement (revocation/forfeiture), the representative of China stated that in light of Articles 41 and 46 of the amended Patent Law, patent applicants or patentees of inventions, as well as applicable utility models and designs, could institute legal proceedings in the people's court if they were not satisfied with the review or nullity decisions made by the Patent Review Board. This modification enabled China's Patent Law to be fully consistent with TRIPS regarding administrative decisions which were subject to judicial review.

226. On the duration of patent right protection, the representative of China stated that as early as 1992 when China made an initial amendment to the Patent Law, Article 45 (later converted into Article 42 after the second amendment) was modified as: "the duration of inventions patent right is 20 years and the duration of patent right for applicable utility model and designs is 10 years, counted as of the date of application". Therefore, China's Patent Law had for a long time accorded with Articles 26 and 33 of the TRIPS Agreement concerning the duration of patent rights.

227. Regarding Article 34 of the TRIPS Agreement (process patents: burden of proof), the representative of China stated that China's Patent Law was modified in 1992 and 2000, and was now in full conformity with the TRIPS Agreement. The amended paragraph 2 of Article 57 reads: "when any infringement dispute relates to a process patent for the manufacture of a new product, any entity or individual manufacturing the identical product shall furnish proof to the effect that a different process is used in the manufacture of its or his product".

6. Plant variety protection

228. The representative of China confirmed that China was a party to the 1978 text of the UPOV Convention on the Protection of Plant Varieties. In March 1997, the State Council formulated and promulgated the Regulation on the Protection of New Plant Varieties, thus offering protection for new

plant varieties in a *sui generis* form consistent with the requirements of the TRIPS Agreement. [Brief explanation of the Regulation.]

7. Layout designs of integrated circuits

229. The representative of China said that China was one of the first countries to sign the Treaty on Intellectual Property in Respect of Integrated Circuits in 1989. The specific draft Regulation on the Protection of Layout Designs of Integrated Circuit, which would comply with China's obligations under Section 6 of the TRIPS Agreement, was being prepared and was expected to be accomplished upon China's accession. [Brief explanation of the Regulation.] The representative of China stated that China was strengthening the protection of the layout designs to support the rapid development of the software industry.

8. Requirements on undisclosed information, including trade secrets and test data

230. Some members of the Working Party expressed concern about China's protection against unfair commercial use and disclosure of undisclosed test and other data submitted to authorities in China to obtain marketing approval for pharmaceuticals and agricultural chemicals. They noted that China's laws appeared to prohibit the release of information by government officials but did not include provisions regarding the prevention of unfair commercial use, as required under Article 39.3 of the TRIPS Agreement. Some members requested that China specifically provide in its law and regulations that it would protect against unfair commercial use of undisclosed test or other data submitted in support of applications for marketing approval of pharmaceutical or of agricultural chemical products which utilize new chemical entities, by providing that no person other than the person that submitted such data may, without the permission of the person initially submitting the data, rely on such data in support of an application for product approval for a period of at least six years from the date on which marketing approval to the person that submitted the data had been granted.

231. The representative of China said that Article 10 of the Anti-unfair Competition Law provided that a business operator must not infringe upon trade secrets. Under the same Article, obtaining, using or disclosing another's trade secrets by a third party who clearly knew or ought to have known that the case fell under the unlawful acts listed in the preceding paragraph was deemed infringement upon trade secrets. Trade secrets referred to any technology information or business operation information which was unknown to the public, could bring about economic benefits to the obligee, had practical utility and about which the obligee had adopted secret-keeping measures. He also stated that Article 219 of the Criminal Law had similar definitions on trade secrets.

232. The representative of China further confirmed that China would, in compliance with Article 39.3 of the TRIPS Agreement, provide effective protection against unfair commercial use of undisclosed test or other data submitted to authorities in China as required in support of applications for marketing approval of pharmaceutical or of agricultural chemical products which utilized new chemical entities, except where the disclosure of such data was necessary to protect the public, or where steps were taken to ensure that the data are protected against unfair commercial use. This protection would include introduction and enactment of laws and regulations to make sure that no person, other than the person who submitted such data, could, without the permission of the person who submitted the data, rely on such data in support of an application for product approval for a period of at least six years from the date on which China granted marketing approval to the person submitting the data. During this period, any second applicant for market authorization would only be granted market authorization if he submits his own data. This protection of data would be available to all pharmaceutical and agricultural products which utilize new chemical entities, irrespective of whether they were patent-protected or not. The Working Party took note of these commitments.

C. MEASURES TO CONTROL ABUSE OF INTELLECTUAL PROPERTY RIGHTS

233. The representative of China said that there were provisions relating to compulsory licenses in the Patent Law to prevent abuse of patent right. He also stated that the Trademark Law provided that the trademark registrant may, by concluding a trademark licensing contract, authorize another person to use its registered trademark. The licensor would supervise the quality of the goods on which the licensee used the licensor's registered trademark and the licensee would guarantee the quality of the goods on which the registered trademark was to be used.

234. Some members of the Working Party expressed some concerns as to the compatibility of China's rules on control of anti-competitive licensing practices or conditions with the corresponding obligations under Article 40 of the TRIPS Agreement. The representative of China stated in response that China's legislation would comply with these obligations, notably as to the request for consultations with other Members. He stated that these rules would apply across the board to all intellectual property rights. The Working Party took note of this commitment.

D. ENFORCEMENT

1. General

235. Some members of the Working Party expressed concern that there was a continued need for additional enforcement efforts by the Government of China. They also said that China should strengthen the legislative framework for the enforcement of intellectual property rights for all right-holders. The representative of China stated that where an infringement of intellectual property rights

was found in China, the person concerned could bring a lawsuit to a court. Since 1992, special IPR courts have been set up in major cities such as Beijing and Shanghai on the basis of their specialized collegial panels. According to China's legislation, individuals and enterprises would be held responsible for all their IPR infringing activities and subject to civil and/or criminal liabilities. Where any person [passed off] the IPR of another person and the circumstances were serious, the person directly responsible would be prosecuted for his criminal liability by applying relevant provisions of the Criminal Law. If found guilty, the person directly responsible could be sentenced to a fixed-term imprisonment of no more than seven years or be subject to detention or a fine.

236. Some members of the Working Party further urged China to ensure the vigorous application by Chinese authorities of the enforcement legislation in order to considerably reduce the existing high levels of copyright piracy and trademark counterfeiting. Action should include the closure of manufacturing facilities as well as markets and retail shops that had been the object of administrative convictions for infringing activities. The representative of China stated that the measures for cracking down on intellectual property piracy were always severe in China. In judicial aspects, courts at all levels were continuously paying attention to the trial of IPR cases. As for administration aspects, the administrative authorities at all levels were putting emphasis on strengthening anti-piracy work. In addition, the administrative authorities were also enhancing the legal publication and education to the general public in a bid to ensure the legal environment of China to meet the requirements for enforcing the TRIPS Agreement. The Working Party took note of these commitments.

2. Civil judicial procedures and remedies

237. Some members of the Working Party expressed concern about certain practices relating to the filing of civil judicial actions that made it difficult for intellectual property right-holders to pursue their rights in China's courts. China's system of basing filing fees on the amount of damages requested makes large-scale infringement actions unnecessarily costly. Members also expressed concern regarding the calculation of damages based on the infringer's profits. This, combined with China's rules on establishing the level of profits which require evidence of actual sale and which disregard inventory and past activity, often resulted in damage amounts inadequate to compensate for the injury that the right-holder has suffered.

238. The representative of China stated that Article 118 of the General Principles of the Civil Law provided that if the rights of authorship (copyrights), patent rights, rights on exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or juridical persons were infringed upon by such means as plagiarism, alteration or imitation, they had the right to demand that the infringement be stopped, its ill effects be

eliminated and the damages be compensated for. He further stated that the Trademark Law, the Patent Law and the Copyright Law had similar provisions.

239. The representative of China further confirmed that, Articles 42 and 43 of the TRIPS Agreement would be effectively implemented under the judicial rules of civil procedure. The Working Party took note of this commitment.

240. The representative of China confirmed that the relevant implementing rules would be amended to ensure full compliance with Articles 45 and 46 of the TRIPS Agreement, to the effect that damages paid by the infringer to the right-holder would be adequate to compensate for the injury suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity. The Working Party took note of this commitment.

3. Provisional measures

241. Members of the Working Party noted that the TRIPS Agreement required that judicial authorities have the authority to order prompt and effective provisional measures to (1) prevent an infringement of intellectual property from occurring, in particular to prevent the distribution or sale of infringing goods, and (2) to preserve the evidence of alleged infringement.

242. The representative of China stated that in China's Civil Procedure Law there were provisions on property preservation, but as yet no explicit stipulations had been provided to authorize the people's court to take measures for the prevention of infringements prior to formal institution of a lawsuit by a party involved. In order to enhance the deterrent power of law against infringements and to guarantee that the legitimate rights and interests of patentees would not suffer from irreparable harm as well as to comply with the TRIPS Agreement, China, when amending the Patent Law for the second time in 2000, introduced Article 61 to regulate provisional measures, which provided as follows: "where a patentee or any interested party who can provide any reasonable evidence that his right is being infringed or that such infringement is imminent, and any delay to stop the acts is likely to cause irreparable harm to his or its legitimate rights and interests, he or it may, before instituting legal proceedings, request the people's court to order the suspension of related acts and to provide property preservation".

243. Some Members of the working party expressed concern that Article 61 of the Patent Law did not fully incorporate all requirements of Article 44 of the TRIPS Agreement, and that it was still unclear whether holders of intellectual property rights other than patents could rely on a similar procedure.

244. The representative of China stated that Article 61 of the Patent Law would be implemented in a way fully consistent with Article 50.1-4 of the TRIPS Agreement. He also stated that "reasonable evidence" in Article 61 of the Patent Law would be, through implementing rules, clarified to mean "any reasonably available evidence in order to satisfy with sufficient degree of certainty that the applicant is the right-holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse". The Working Party took note of this commitment.

4. Administrative procedures and remedies

245. Members of the Working Party noted that most IPR enforcement in China was done through administrative actions. In this connection, some members expressed concern about the inadequate levels of administrative sanctions in China which, when coupled with the high threshold for initiating criminal prosecutions, made IPR enforcement in China difficult. Administrative sanctions generally amounted to small fines and the loss of infringing inventory. Members also stressed the need for administrative authorities to refer more cases, including those involving repeat offenders and willful piracy and counterfeiting, to the appropriate authorities for initiation of criminal actions.

246. The representative of China said that the Trademark Law provided that in the event of any infringement of the right to the exclusive use of a registered trademark, the infringed could request the administrative department for industry and commerce at or above the county level for disposition. The relevant administrative department for industry and commerce had the power to order the infringer to stop the infringing act immediately and to compensate the infringed for its or his losses. SAIC and its local agencies above the county level could also impose a fine upon the infringer. The Patent Law provided that the patentee and interested party could request the administrative authority for patent affairs to handle the infringing act. The administrative authority could order the infringer to stop the infringing act immediately and mediate on damages at the request of the parties concerned. The Copyright Law provided that anyone who committed acts of infringement were subjected by the copyright administration department to such administrative penalties as confiscation of unlawful income from the act or imposition of a fine.

247. The representative of China stated that most IPR enforcement actions in China resulted in administrative measures to address the infringement. He noted ongoing efforts to strengthen the sanctions that were available to administrative authorities and the increased attention given to enforcement of IPRs. The representative of China confirmed that the government would continue to enhance its enforcement efforts, including through the application of more effective administrative sanctions. Relevant agencies, including the State Administration for Industry and Commerce, the State Bureau of Quality and Technical Supervision and the Copyright Office, now had the authority to

confiscate equipment used for making counterfeit and pirated products and other evidence of infringement. These relevant agencies would be encouraged to exercise their authority to seize and preserve evidence of infringement such as inventory and documents. Administrative authorities would have the authority to impose sufficient sanctions to prevent or deter further infringement and would be encouraged to exercise that authority. Appropriate cases, including those involving repeat offenders and willful piracy and counterfeiting, would be referred to relevant authorities for prosecution under the criminal law provisions. The Working Party took note of these commitments.

5. Special border measures

248. The representative of China said that on 5 July 1995 the State Council of the People's Republic of China had issued a special legislation in respect of border measures of intellectual property rights – the Regulations of the People's Republic of China Governing Customs Protection of Intellectual Property Rights – which came into effect on 1 October of the same year. According to this legislation, China's Customs offices must take measures to intercept importation or exportation of goods that were proved to be infringing the rights of trademarks, patents or copyrights legally protected in China. China's Customs offices were granted authority to investigate any suspected shipment and confiscate the goods in case infringement was proved.

249. Some members of the Working Party expressed concerns as to the compatibility of existing border measures with obligations under Articles 51 to 60 of the TRIPS Agreement; particularly the provisions on suspension of release into free circulation by custom authorities (Article 51), rules on evidence for initiating this procedure (Article 52), requirements on the security needed to protect the defendant (Article 53), rules on notice of the suspension (Article 54) and its duration (Article 55), rules on indemnification of the importer in case of wrongful detention (Article 56) and opportunity for the right-holder to have the goods detained inspected (Article 57). Moreover some expressed their concern as to compatibility of rules on actions ex-officio by competent authorities and the conditions attached (Article 58), as well as to the remedies provided against infringing goods (Article 59) and the quantities subject to the *de minimis* rules (Article 60).

250. In response, the representative of China stated that China would provide holders of intellectual property rights with procedures related to border measures that comply fully with the relevant provisions of the TRIPS Agreement (Articles 51 to 60). The Working Party took note of this commitment.

6. Criminal procedures

251. The representative of China stated that Articles 213 to 220 of the Criminal Law (Crimes of Infringing on Intellectual Property Rights) provided that whoever seriously infringes the right-holders'

rights of registered trademarks, patents, copyrights or trade secrets would be sentenced to fixed-term imprisonment and would also be fined.

252. Some members of the Working Party expressed concerns that criminal procedures could not be used effectively to address piracy and counterfeiting. In particular, the monetary thresholds for bringing a criminal action, as currently applied, were very high and seldom met. Those thresholds should be lowered so as to permit effective action that would deter future piracy and counterfeiting. In response, the representative of China stated that China's administrative authority would recommend that the judicial authority make necessary adjustments to lower the thresholds so as to address these concerns. The Working Party took note of this commitment.

253. Noting the advanced state of protection for intellectual property rights in China, the representative of China confirmed that upon accession China would fully apply the provisions of the TRIPS Agreement. The Working Party took note of this commitment.

VI. POLICIES AFFECTING TRADE IN SERVICES

1. Licensing

254. Some members of the Working Party welcomed the broad-ranging and comprehensive commitments that China was undertaking to increase transparency and to provide information to governments and service providers on any matter relating to the GATS including China's Schedule of Specific Commitments. These members nonetheless expressed concerns regarding the lack of transparency in China's current services regime, in particular with respect to obtaining, extending, renewing, denying and terminating licenses and other approvals required to provide services in China's market and appeals of such actions (hereafter referred to as "China's licensing procedures and conditions"). To be consistent with the provisions of the WTO Agreement, including the [Draft] Protocol and China's Schedule of Specific Commitments, Members of the Working Party noted that China's licensing procedures and conditions should not in themselves act as a barrier to market access and should not be more trade restrictive than necessary. Those members also expressed the view that upon its accession, China should publish (1) a list of authorities responsible for authorizing, approving or regulating those service sectors in which China made specific commitments and (2) China's licensing procedures and conditions.

255. The representative of China confirmed that paragraph [214] regarding publication of a list of all organizations that were responsible for authorizing, approving or regulating service activities for each service sector, including those organizations delegated such authority from the central government authorities, would apply. The representative of China also confirmed that China would

publish in the official journal all of China's licensing procedures and conditions upon accession. The Working Party took note of these commitments.

256. The representative of China also confirmed that upon accession China would ensure that China's licensing procedures and conditions will not act as barriers to market access and will not be more trade restrictive than necessary. In accordance with China's commitments under the WTO Agreement, the [Draft] Protocol and its Schedule of Specific Commitments, the representative of China confirmed that for those services included in China's Schedule of Specific Commitments, China will ensure that:

- (a) China's licensing procedures and conditions are published prior to becoming effective;
- (b) In this publication, China will specify reasonable time frames for review and decision by all relevant authorities in China's licensing procedures and conditions;
- (c) Applicants will be able to request licensing without individual invitation;
- (d) Any fees charged, which are not deemed to include fees determined through auction or a tendering process, would be commensurate with the administrative cost of processing an application.
- (e) The competent authorities of China would, after receipt of an application, inform the applicant whether the application is considered complete under China's domestic laws and regulations and in the case of incomplete applications, identify the additional information that is required to complete the application and provide the opportunity to cure deficiencies;
- (f) Decisions will be taken promptly on all applications;
- (g) If an application is terminated or denied, the applicant will be informed in writing and without delay the reasons for such action. The applicant would have the possibility of resubmitting, at its discretion, a new application that addresses the reasons for termination or denial;
- (h) If an application is approved, the applicant will be informed in writing and without delay. The information provided will include the date of entry into force of the

license or approval [(i.e the right to start the commercial operations for which the license was issued)] which normally should be immediate and in accordance with China's Schedule of Specific Commitments;

- (i) Where China required an examination to license professionals, such examinations would be scheduled at reasonable intervals.

The Working Party took note of these commitments.

257. Some members of the Working Party also expressed concern about maintaining the independence of regulators from those they regulate. The representative of China confirmed that for the services included in China's Schedule of Specific Commitments, relevant regulatory authorities will be separate from, and not accountable to, any service suppliers they regulate, except for courier and railway transportation services. For these excepted sectors, China will comply with other relevant provisions of the WTO Agreement and this [Draft] Protocol. The Working Party took note of these commitments.

VII. OTHER ISSUES

1. Notifications

258. Members of the Working Party requested that China provide to the WTO Secretariat the notifications described in paragraphs ... of this Draft Report.

2. Special Trade Arrangements

259. Some members of the Working Party raised specific concerns in relation to some of China's special trade arrangements, including barter trade arrangements, with third countries and separate customs territories, which those members considered not to be in conformity with WTO requirements. In response, the representative of China noted that China would undertake a commitment in the Draft Protocol to eliminate or bring into conformity with WTO requirements, all such special trade arrangements that were not in conformity with those requirements, by no later than the date of entry into force of the Draft Protocol.

3. Transparency

260. Some members of the Working Party expressed concern about the lack of transparency regarding the laws, regulations and other measures that applied to matters covered in the WTO Agreement and the Draft Protocol. In particular, some members noted the difficulty in finding and obtaining copies of regulations and other measures undertaken by various ministries as well as those

taken by provincial and local authorities. Transparency of regulations and other measures, particularly of sub-central authorities, was essential since these authorities often provided the details on how the more general laws, regulations and other measures of the central government would be implemented and often differed among various jurisdictions. Those members emphasized the need to receive such information in a timely fashion so that governments and traders could be prepared to comply with such provisions and could exercise their rights in respect of implementation and enforcement of such measures. The same members emphasized the importance of such pre-publication to enhancing secure, predictable trading relations. Those members noted the development of the Internet and other means to ensure that information from all government bodies at all levels could be assembled in one place and made readily available. The creation and maintenance of a single, authoritative journal and enquiry point would greatly facilitate dissemination of information and help promote compliance.

261. In response, the representative of China noted that the Government of China regularly issued publications providing information on China's foreign trade system, such as the: "Almanac of Foreign Economic Relations and Trade" and "The Bulletin of MOFTEC" published by MOFTEC; "Statistical Yearbook of China", published by the State Statistical Bureau; "China's Customs Statistics (Quarterly)", edited and published by the Customs. China's laws and regulations of the State Council relating to foreign trade were all published, as were rules issued by departments. Such laws, regulations and rules were available in the "Gazette of the State Council", the "Collection of the Laws and Regulations of the People's Republic of China" and the "MOFTEC Gazette". The administrative regulations and directives relating to foreign trade were also published on MOFTEC's official website (<http://www.moftec.gov.cn>) and in periodicals.

262. He further noted that there were no FOREX restrictions affecting import or export. Information on FOREX measures was published by the SAFE and was available on SAFE's website (<http://www.safe.gov.cn>) and via the news media.

263. The representative of China noted that information concerning the administration of imports and exports would be published in the "International Business" newspaper and the "MOFTEC Gazette".

264. He also noted that information on China's customs laws and regulations, import and export duty rates, and customs procedures was published in the "Gazette of the State Council" and in the press media, and was available upon request. The procedures concerning application of duty rates, customs value and duty determination, drawback and duty recovery, as well as the procedures concerning duty exemptions and reduction, were also published. Customs also published monthly

customs statistics, calculated according to country of origin and final destination, on the basis of eight-digit HS levels.

265. The representative of China noted that any bilateral trade agreements concluded between China and its trading partners, and protocols on the exchange of goods negotiated under them were published in "The Treaty Series of the PRC". He also noted that the "Directory of China's Foreign Economic Relations and Trade Enterprises" and "China's Foreign Trade Corporations and Organizations" were two publications which identified foreign trade corporations and other enterprises in China engaged in foreign trade.

266. The representative of China stated that the full listing of official journals was as follows: Gazette of the Standing Committee of the National People's Congress of the People's Republic of China; Gazette of the State Council of the People's Republic of China; Collection of the Laws of the People's Republic of China; Collection of the Laws and Regulations of the People's Republic of China; Gazette of MOFTEC of the People's Republic of China; Proclamation of the People's Bank of the People's Republic of China; and Proclamation of the Ministry of Finance of the People's Republic of China.

267. The representative of China confirmed that publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of FOREX would include the effective date of these measures. It would also include the products and services affected by a particular measure, identified by appropriate tariff line and CPC classification. The Working Party took note of these commitments.

268. The representative of China confirmed that China would publish in the official journal, by appropriate classification and by service where relevant, a list of all organizations, including those organizations delegated such authority from the national authorities, that were responsible for authorizing, approving or regulating services activities whether through grant of licence or other approval. Procedures and the conditions for obtaining such licences or approval would also be published. The Working Party took note of these commitments.

269. The representative of China confirmed that none of the information required by the WTO Agreement or the Draft Protocol to be disclosed would be withheld as confidential information except for those reasons identified in Section 2(C) of the Draft Protocol or unless it would demonstrably prejudice the legitimate commercial interests of particular enterprises, public or private. The Working Party took note of this commitment.

270. The representative of China confirmed that China would make available to WTO Members translations into one or more of the official languages of the WTO all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of FOREX, and to the maximum extent possible would make these laws, regulations and other measures before they were implemented or enforced, but in no case later than 90 days after they were implemented or enforced. The Working Party took note of these commitments.

271. Members of the Working Party also requested that China set up an enquiry point where information relating to all laws, regulations, judicial decisions and administrative rulings of general application and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of FOREX could be obtained.

272. The representative of China confirmed that China would establish or designate one or more enquiry points where all information relating to the laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of FOREX, as well as the published texts, could be obtained and would notify the WTO of any enquiry point and its responsibility. The information would include the names of national or sub-national authorities (including contact points) responsible for implementing a particular measure. The Working Party took note of these commitments.

VIII. CONCLUSIONS

273. The Working Party took note of the explanations and statements of China concerning its foreign trade regime, as reflected in this Draft Report. The Working Party took note of the commitments given by China in relation to certain specific matters which are reproduced in paragraphs [...] of this Draft Report and noted that these commitments are incorporated in paragraph 1.2 of the Draft Protocol.

274. Having carried out the examination of the foreign trade regime of China and in the light of the explanations, commitments and concessions made by China, the Working Party reached the conclusion that China should be invited to accede to the Marrakesh Agreement Establishing the WTO under the provisions of Article XII. For this purpose, the Working Party prepared the Draft Decision and Draft Protocol reproduced in the Appendix to this Draft Report, and took note of China's Schedule of Concessions and Commitments on Goods [(document WT/ACC/SPEC/CHN...)] and China's Schedule of Specific Commitments on Services [(document WT/ACC/SPEC/CHN...)] that were annexed to the Draft Protocol. It was proposed that these texts be adopted by the General Council when it adopted the Draft Report. When the Draft Decision was adopted, the Draft Protocol would be open for acceptance by China which would become a WTO Member 30 days after it

accepted the said Draft Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of China to the WTO Agreement.
