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Grupo de Trabajo sobre la Adhesión de China

ANTEPROYECTO REVISADO DE INFORME DEL GRUPO DE TRABAJO SOBRE LA ADHESIÓN DE CHINA A LA OMC¹

El siguiente anteproyecto revisado de informe del Grupo de Trabajo sobre la Adhesión de China se ha preparado para información de los miembros del Grupo de Trabajo y de China, así como para ayudar a consignar la labor realizada hasta la fecha. El anteproyecto revisado procura reflejar los debates multilaterales que han tenido lugar en el Grupo de Trabajo y se basa en el texto del anterior anteproyecto de informe de 28 de mayo de 1997, en el proyecto de Protocolo de 28 de mayo de 1997 y en la versión actualizada del Memorándum sobre el régimen comercial de China, distribuida el 21 de marzo de 2000 con la signatura WT/ACC/CHN/17.

Para preparar este anteproyecto revisado, se ha tenido que adaptar a veces parte del texto que figuraba en negrita en el proyecto de informe de 28 de mayo de 1997 a fin de desarrollar la relación de los debates y los párrafos en los que se establecen compromisos. Se incluyen referencias al texto en negrita del proyecto de informe en todos los casos en que se ha adaptado el texto y todo texto adoptado figura en cursiva.

¹ En inglés solamente.

REVISED OUTLINE OF THE DRAFT REPORT OF THE WORKING PARTY
ON THE ACCESSION OF CHINA TO THE WTO

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 (hereinafter referred to as "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 (hereinafter referred to as the "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.6.

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.

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/...

INTRODUCTORY STATEMENTS

4. In statements to the Working Party, the representative of China emphasized that the resumption of China's status as a contracting party and accession to the WTO were priorities for the government and critically important elements in the process of economic reform towards a more market-oriented economy and opening to the outside world. He noted in this connection that China had been a full participant in the Uruguay Round and had signed the Final Act accepting the results of these negotiations.

5. The representative of China noted 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 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 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.

6. He 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, \$165.72 billion. Exports from China in 1998 accounted for 3.4% of the world's total.

7. The representative of China noted that the Government of China had always considered that rejoining the multilateral trading system would offer great benefits, placing China's trade and economic relations on a stable and predictable footing, subject to multilaterally agreed rules and disciplines, as well as improving market access for China and its trading partners. It had always been the policy of China's Government that reform and market-opening should proceed simultaneously with the development of the legal system. High priority had been given to economic legislation to guide and safeguard the development of the socialist market economy.

8. The representative of China stated that although China's was clearly a special case, China expected to avail itself of the derogations and special provisions made available to developing country members of the WTO. In response, some members of the Working Party indicated that because of the significant size, rapid growth and transitional nature of the Chinese economy, China should not automatically receive all the benefits accorded to original developing country Members of the WTO. In particular, some members of the Working Party considered that certain transitional arrangements available to developing country WTO Members should not be granted to China. Some members of the Working Party considered that notwithstanding the fact that many of the features of China's economy were at present those of a developing country economy, China should, as a minimum, undertake to bring certain measures into conformity on a more expedited basis than would otherwise be required of an original developing country Member of the WTO.

9. Many members of the Working Party expressed their interest in carrying out bilateral market access negotiations with China with respect to industrial and agricultural products, and initial commitments in services. The representative of China stated that China was keen to undertake such negotiations with interested Working Party members.

10. 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 in Trade in Goods and the General Agreement on Trade in Services (GATS). This was of vital importance to ensure that China was able to take full benefit of the WTO Membership as quickly as possible, as well as to ensure that the value of any market access conditions undertaken was not adversely affected by inconsistent measures such as some types of non-tariff measures.

11. 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. The Group of Experts submitted its report to the Chairman of the Working Party on 30 June 1994 (document ...).

12. 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.

II. ECONOMIC POLICIES

Non-discrimination

13. 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, 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.

14. 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.

15. *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 and foreign enterprises and individuals in China would be subject to other provisions of the Protocol and, in particular, would not prejudice China's rights under the General Agreement on Trade in Services*

(GATS), China's GATS schedule or commitments undertaken in relation to trade-related investment measures. The Working Party took note of this statement.

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

[The preceding 2 paragraphs were developed from the following paragraph of the Outline of the Draft Report of the Working Party on China:

xx. China emphasized the importance of the commitments that the government was undertaking on non-discrimination. China confirmed that it would be providing the same treatment to Chinese enterprises and foreign enterprises and individuals in China in respect of the requirements of this section of the Protocol. This would involve elimination of dual pricing practices as well as differences in treatment accorded to goods which are produced for sale in China and those produced for export. China noted, however, that these requirements are subject to other provisions of the Protocol and, in particular, do not prejudice China's rights under the General Agreement on Trade in Services (GATS), China's GATS schedule or commitments undertaken in relation to trade-related investment measures. The Working Party took note of this statement.]

Monetary and Fiscal Policy

[to be completed]

Foreign Exchange and Payments

17. Some members of the Working Party raised concerns about China's use of foreign exchange controls to regulate the level and composition of trade in goods and services. In response, the representative of China stated that its system of foreign exchange controls was undergoing rapid change. Significant moves had been taken to reform, rationalize and liberalize the foreign exchange market. The practice of multiple exchange rates in swap centres had been abolished. China was moving towards a unified foreign exchange market and had removed many of the restrictions on the

use of foreign exchange. Some members of the Working Party stated that China should undertake appropriate commitments on its reform of foreign exchange controls.

18. In response, the representative of China stated that China was a member of the International Monetary Fund (IMF). The purpose of China's foreign exchange reform was to gradually reduce administrative intervention and increase the role of market forces. From 1979, a forex retention system was applied in China, although foreign exchange swap was gradually developed. In early 1994, official RMB exchange rates were unified with the market rates. The banking exchange system was adopted and a nation-wide unified inter-bank forex market was established, with conditional convertibility of the Renminbi on current account. Since 1996, foreign investment enterprises (FIEs) were also permitted into the banking exchange system, and the remaining exchange restrictions on current account were eliminated. On 1 December 1996, China had formally accepted the obligations of Article VIII, Sections 2, 3, and 4 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 account.

19. The State Administration of Foreign Exchange (SAFE) was affiliated with the People's Bank of China (PBC), and was the administrative organ empowered to regulate foreign exchange. Its main functions were to monitor and advise on balance-of-payments, foreign exchange 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 foreign exchange business, with the approval of the PBC.

20. In response to requests from members of the Working Party for further information he further added that for foreign exchange payments under current account, 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 and etc., exceeding the proportion or limit, the entities could also purchase forex from the banks upon meeting the bona fide test administered by SAFE. Foreign exchange 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 firms should be repatriated promptly into China and be sold to the designated banks at the market rates (unless the firm was permitted to hold a domestic forex account). A clearance system for forex payment (imports) and forex receipt (exports) had also been adopted.

21. 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 foreign exchange transactions 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 foreign exchange 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%. Permitted 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 international market. The buying and selling rate could not exceed 0.5% of the middle rate.

22. The representative of China further noted that since 1 January 1994, designated forex banks had become major participants in foreign exchange transactions. On 1 April 1994, a Foreign Exchange Trading System was set up in Shanghai and branches were opened in several cities. That 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 working 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.

23. The representative of China noted that since 1 December 1998, 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 foreign investment enterprises in exchange administration. Accordingly, FIEs were allowed to open and hold forex settlement accounts to retain receipts under the current account, 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 them upon the approval of SAFE. FIEs could also borrow forex directly from domestic and

overseas banks, but were required to register the loan and repayments with SAFE afterwards. FIEs could remit foreign exchange directly from their forex accounts after liquidation according to law.

Balance-of-Payments Measures

24. Some members of the Working Party expressed concern that China should not make indiscriminate use of balance-of-payments measures pursuant to Article XII or XVIII:B of the GATT 1994 as justification for the imposition of quantitative restrictions or other, price-based measures on imports. Those members stated that the provisions of Article XII or XVIII:B of the GATT 1994 and the Understanding on the Balance-of-Payments Provisions of the GATT 1994 should be strictly respected by China. Those members also stated that measures taken for balance-of-payments 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.

25. 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 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 balance-of-payments equilibrium. Those members also stated that following deposit of such a notification, the Committee on Balance-of-Payments should meet to examine the notification. It was noted that paragraph 4 of the Understanding on the Balance-of-Payments Provisions of the GATT 1994 would be available to China in the case of "essential products".

26. In response, the representative of China stated that China considered that it should have the right to make full use of Article XVIII:B to protect, as necessary, its balance-of-payments situation. Some members of the Working Party considered that China should undertake specific commitments in connection with the invocation of Article XVIII:B. Those members also stated that the Committee on Balance-of-Payments should review the operation of any balance-of-payments measures taken by China on an annual basis, if so requested by China or a WTO Member.

Investment Regime

[to be completed]

State Ownership and Privatization

[to be completed]

Pricing policies

27. 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. Members noted, however, that the goods and services listed in Annex 4 to China's Protocol were expected to remain subject to price controls, 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.

28. 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 [cost and] price-setting mechanisms and policies. The Working Party took note of these commitments.

29. The representative of China noted 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 by 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.

30. He further 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.

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 fix prices in accordance with supply and demand to the extent permitted by generally applicable laws, regulations and policies concerning prices.

31. 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 limit of consumers' purchasing power. He noted that due to 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 such that it was even smaller than that in major Western market economies. The Chinese Government considered that China's price system was becoming increasingly rationalized, creating a relatively fair marketplace for all enterprises to compete on an equal footing.

32. The representative of China recalled that Annex 4 of the Draft Protocol of Accession contains a comprehensive listing of all products and services presently subject to Government guidance pricing and Government pricing.

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

Competition Policy

[to be completed]

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

Powers of Executive, Legislative and Judicial Branches of Government

34. The representative of China informed members of the Working Party that in accordance with the Constitution of the PRC, the Standing Committee of the National People's Congress had the power to annul those regulations and administrative decrees issued by both central and local government that contravened the Constitution and laws. The State Council had the power to annul those inappropriate regulations and administrative decrees issued by both central and local government. The Chinese Government considered that these features of the Chinese legal system would ensure an effective and uniform implementation of the obligations resulting from China's accession to the WTO Agreement.

35. Members of the Working Party stated that it should be made clear that China would apply the requirements of the WTO Agreement and any additional obligations created by China's Protocol of Accession to its entire customs territory, including border trade regions, minority autonomous areas, Special Economic Zones, open coastal cities, economic and technical development zones and other special economic areas.

36. Members of the Working Party also stated that China should ensure that the provisions of the WTO Agreement and any additional obligations created by China's Protocol of Accession were applied uniformly throughout its entire customs territory, including at the sub-national level. Members of the Working Party also noted that China should administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures pertaining to or affecting trade in goods, services or TRIPS or the control of foreign exchange. In this connection, members of the Working Party requested that China establish a mechanism under which individuals and enterprises could bring to the attention of the national authorities cases of non-uniform application of the trade regime. Members of the Working Party also noted that China's laws, regulations and other measures of government entities at the sub-national level would be required to conform to the obligations undertaken in China's Protocol of Accession and the WTO Agreement.

Judicial Review

37. 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 any other measures within the scope of the WTO Agreement. Those members stated that notwithstanding Article X:3(c) of the GATT 1994, the tribunals should be independent of the agencies entrusted with administrative enforcement of provisions contained in the WTO Agreement.

38. Those members also stated that the administrative actions subject to review should include measures relating to the availability and distribution of import and export licenses, permits or quotas; application of measures for safeguard or balance-of-payments purposes or to protect against unfair trade; and any other measures within the scope of the WTO Agreement, in particular any reviews required to be made available under the relevant provisions of the TRIPS Agreement and the GATS. 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 was to an administrative body, there should be an opportunity for 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.

39. Some members of the Working Party expressed concern about the functioning of China's institutions and procedures for the prompt review of disputes over trade-related matters in China. Those members requested that the existing system be improved to provide speedier and more predictable access to those institutions and procedures. Members of the Working Party also requested that the types of measures subject to independent judicial or administrative review should be extended from those currently covered by Chinese domestic procedures. In particular they requested that measures related to services trade and intellectual property and services be subject to such review processes.

40. China confirmed that it would revise its patent and trademark laws so that, upon accession, all of its laws and regulations will be consistent with protocol requirements on procedures for judicial review of administrative actions. The Working Party took note of this commitment.

41. *China confirmed that measures subject to review would include measures affecting in any way the regulation, control, supply or promotion of transportation and transportation-related services, insurance and insurance-related services, banking and other financial services, telecommunications services, distribution services, entertainment services, information processing services, construction and maintenance services, professional services, and retail sales services.*

China undertook to ensure that all such measures would be subject to review. The Working Party took note of that commitment.

[The preceding paragraph was developed from the following paragraph of the Outline of the Draft Report of the Working Party:

xx. China confirmed that measures subject to review would include measures affecting in any way the regulation, control, supply or promotion of transportation and transportation-related services, insurance and insurance-related services, banking and other financial services, telecommunications services, distribution services, entertainment services, information processing services, construction and maintenance services, professional services, and retail sales services. China undertook to ensure that all such measures would be subject to review.]

Authority of Sub-Central Governments

42. In response to questions, the representative of China recalled that the central government had exclusive constitutional power to overturn all measures taken at sub-national level that were inconsistent with China's international obligations.

43. Several members of the Working Party raised concerns about the continued presence of multiple and overlapping trade instruments used by different levels of government within China. Those members considered that situation resulted in a lessening of the security and predictability of access to the Chinese market. In addition, some members expressed concerns about the limited control exercised by the central government over trade measures introduced at the sub-national level.

44. The representative of China indicated that China intended to apply the WTO Agreement to the fullest extent not inconsistent with mandatory legislation in existence on the date of entry into force of the Protocol. Members raised concerns as to what China might consider to be existing "mandatory legislation". China was requested to submit an illustrative list of such legislation. Some members of the Working Party stated that given the constitutional power of China's central government to ensure compliance with China's WTO obligations by both its national and sub-national authorities, and to override inconsistent measures at the sub-national level, very few, if any, Chinese laws could meet the criteria of existing mandatory legislation. Some members of the Working Party noted that the GATT 1994, unlike the GATT 1947, did not permit the possibility of exempting existing mandatory legislation.

45. Some members raised concerns about the precise nature and scope of China's customs territory and how China's customs territory inter-related with the separate customs territories of Hong Kong, China, Macau, China and the separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu ("Chinese Taipei"). Members of the Working Party and China agreed that China would, as a WTO Member, in accordance with GATT Article XXIV:1, maintain standard WTO relations with those other separate customs territories.

46. 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 response, the representative of China emphasized that the central government had full constitutional authority to ensure compliance with WTO obligations by both national and sub-national governmental authorities in China. Some members requested that an appropriate commitment be undertaken in this regard by China.

47. Some members of the Working Party raised concerns about the limited ability of China's central government to be sufficiently informed about non-uniform practices and to 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.

IV. POLICIES AFFECTING TRADE IN GOODS

Trading Rights

48. Some members noted that few enterprises within China had full freedom to engage in foreign trade, i.e., the right to import and export goods without restriction. Those members noted that in many cases, enterprises wishing to import or export goods had to conduct such trade through a state-trading enterprise. Those members stated that China should progressively liberalize the right to trade, so that, within three years of accession to the WTO all enterprises in China would have the right to import and export as well as to trade in all goods throughout the customs territory of China. Such a commitment would be without prejudice to China's right to regulate trade in a manner consistent with the WTO Agreement and would not include those goods listed in Annex 2(a)1 and 2(a)2 of China's Protocol of Accession, which would continue to be subject to state-trading in accordance with that Protocol.

49. Those members also stated that enterprises enjoying the right to trade should also be accorded national treatment under Article III of GATT 1994, especially paragraph 4 thereof, in respect of internal sale, offering for sale, purchase, transportation, distribution or use, including their direct access to end-users. Those members also stated that all foreign individuals and enterprises, including those not invested or registered in China, should be accorded treatment no less favourable than that accorded to enterprises in China with respect to the right to trade. In respect of goods that would remain subject to designated trading listed in Annex 2b of China's Protocol of Accession, China should phase out limitations on the grant of trading rights pursuant to the schedule in that Annex. They also stated that China should complete all necessary legislative procedures to implement these provisions during a transition period.

50. Some members of the Working Party expressed concern that China's restrictions on the right of enterprises to engage in trade operated as significant limitations on secure and predictable access to the Chinese market. Members sought progressive elimination of all such restrictions and objective and generally applicable criteria for the granting of trading rights pending the elimination of all such restrictions. China noted that it was in the process of liberalizing trading rights but that certain products would remain the exclusive domain of designated foreign trade corporations. China also noted that criteria for the granting of trading rights were set out in China's Foreign Trade Law. Some members of the Working Party considered that China should enter a specific commitment in relation to trading rights.

A. IMPORT REGULATION

Ordinary customs duties

51. Members of the Working Party noted the substantial unilateral tariff reductions made in many sectors by China in recent years. They also acknowledged the increased breadth of bindings and reduction in average tariff levels. Some members expressed concern over continued high levels and the lack of proposed tariff bindings in some sectors.

52. The representative of China provided members of the Working Party with a copy of the 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 tariff 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 complete 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.

53. The representative of China noted 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 7066 tariff headings in the Customs Import and Export Tariff of the PRC. Tariff rates were fixed by the State Council. Partial adjustment to the duty rates was subject to deliberation and final decision by the State Tariff Commission. The current simple average of China's import duties was 14.44%. Among the 7066 tariff headings, tariff rates for 709 headings were below 5%, those for 2015 were 5%-9%, those for 1356 were 10%-15% and those for 2896 were above 15%. Information on tariff rates for specific products and import statistical data for recent years was provided to the Working Party.

54. He also noted that 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.

55. China undertook bilateral market access negotiations on goods with members of the Working Party. The results of those negotiations are contained in the Schedule of Concessions and Commitments on Goods and forms Annex 10 to China's Draft Protocol of Accession to the WTO.

Other duties and charges levied on imports but not on domestic production

56. Some members of the Working Party stated that China should ensure that all other duties and charges applied to imported products were applied in conformity with the requirements of the WTO Agreement, in particular Article VIII of the GATT 1994.

Rules of Origin

57. The representative of China noted that 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. Substantial transformation was understood to mean processing which results in a change of the four-digit level tariff classification or an added value (including all cost-related expenditures) exceeding 30% of the total value. These rules of origin were applicable to all imported products. The rules of origin applied for statistical purposes were the same. However, for statistical purposes, the Customs also records countries of consumption and trading countries.

Fees and charges for services rendered

58. Some members of the Working Party expressed concern over an apparent lack of uniformity of customs fees and charges administered by national and sub-national authorities. Members of the Working Party noted that as a condition of accession to the WTO China should undertake a commitment to ensure conformity of such fees and charges with Articles II and VIII of the GATT 1994.

Application of internal taxes to imports

59. 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 undertake a commitment to ensure that all such internal taxes and charges would be in conformity with the requirements of the GATT 1994.

60. 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; (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 the Customs at the point of entry. He noted that VAT was reimbursed once goods were exported. Exported goods were exempted from the Consumption Tax.

61. 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.

Tariff rate quotas, tariff exemptions

62. Some members of the Working Party expressed concern over the lack of transparency, uniformity and security of China's administration of its tariff rate quota and tariff exemptions regime. Those members suggested that China enter a commitment in relation to those matters.

Quantitative import restrictions, including prohibitions and quotas

63. In response to requests for information from members of the Working Party, the representative of China noted that China prohibited the importation of certain commodities, including various types of weapons, ammunition and explosives, narcotic drugs, poisons, obscene materials, and foodstuffs, medicines, animals and plants were inconsistent with China's standards on food, medicines, animals and plants.

64. Members of the Working Party noted that there were a large number of overlapping 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 China's Protocol of Accession.

65. 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. Authorities lacking authorization from the national authorities, should not be implemented or enforced.

66. 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. That list was entered in Annex 3 of China's Protocol of Accession. 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. Those members also noted that the protection afforded by the measures listed in Annex 3 shall not be increased or expanded in size, scope, or duration, nor any new measures be applied, unless in conformity with the provisions of the WTO Agreement.

67. Those members of the Working Party also noted that in implementing the provisions of Articles III and XI of the GATT 1994 and the Agreement on Agriculture, China should eliminate and not introduce any new nor re-introduce any old non-tariff measures that could not be justified under the provisions of the WTO Agreement. Those members also stated that all non-tariff measures administered by China, whether or not referred to in Annex 3 of the Protocol of Accession, 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.

Import licensing

68. In response to requests for information, the representative of China stated that the list of all entities responsible for the authorization or approval of imports would be updated and republished in the official journal within 30 days of any change thereto.

69. Concerns were expressed by some members of the Working Party in relation to the use of import licensing as restrictive non-tariff measures. . Some members of the Working Party asked that China undertake a commitment to comply with the requirements of the Agreement on Import

Licensing Procedures. In response, the representative of China stated that the number of products subject to restrictive licensing was being reduced and that China would comply with the requirements of the Agreement on Import Licensing Procedures

70. Some members of the Working Party stated that in implementing the WTO Agreement and provisions of the Agreement on Import Licensing Procedures, China should undertake the following measures to facilitate compliance with those agreements. They stated that China should notify the following on a regular basis in the official journal referred to in paragraph 2(C)2 of its Protocol of Accession:

- (a) a listing by product, of all organizations, including those organizations delegated such authority by the national authorities, that were responsible for authorizing or approving imports or exports, whether through grant of license or other approval;
- (b) a description of all procedures and criteria for obtaining such import or export licenses or other approvals, and the conditions for deciding whether they should be granted;
- (c) a list of all products, by HS system tariff number, that were subject to tendering requirements, including information on products subject to such tendering requirements and any changes, pursuant to the Agreement on Import Licensing Procedures;
- (d) a list of all goods and technologies whose import or export was restricted or prohibited; this list should be notified to the Committee on Import Licensing; and
- (e) any changes to the list of goods and technologies whose import and export were restricted or prohibited;

Those members also stated that within 75 days of each publication, copies of those notifications should also be notified to the WTO Secretariat in a WTO official language for circulation to WTO Members and for submission to the Committee on Import Licensing.

71. Those members of the Working Party also stated that China should notify the WTO Secretariat of all licensing and quota requirements remaining in effect after the date of entry into force of this Protocol, listed separately by HS tariff line, with the quantities covered by the restriction, the

justification for maintaining the restriction or its scheduled date of termination. Those members also requested that China submit the notification of its import licensing procedures to the Committee on Import Licensing, as required by Article 5 of the Agreement on Import Licensing Procedures. Moreover, those members of the Working Party stated that China should report annually to the Committee on Import Licensing, on its automatic import licensing procedures noting the reasons for the import licensing requirement and justifying the need for their continuation. That notification would also contain the information listed in Article 3 of the Agreement on Import Licensing Procedures. In addition, those members stated that China should ensure that import licences remained valid for at least six months, except in exceptional circumstances. In such cases, China should promptly notify the Committee on Import Licensing of the exceptional circumstances requiring the shorter period of licence validity. Those members also stated that foreign individuals and enterprises and foreign-funded enterprises should be accorded treatment no less favourable than that accorded to other individuals and enterprises in respect of the distribution of import licences and quotas.

72. In response, the representative of China provided additional information on the system of import licensing operating in China. He noted 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 the General Customs Administration 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. The import licensing system ensured that limited foreign exchange resources were used for imports most needed by national economic development and that necessary assistance could be provided to the domestic industries. In 1999, of the total import value of US\$ 165.7 billion, imports subject to licensing represented 8.45%, covering US\$ 14 billion. He noted that MOFTEC determined which products should be subject to import licensing according to the relevant provisions of the "Foreign Trade Law".

73. He 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 chassis; (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 chassis; (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.

74. Concerning the grant and administration of import licences, the representative of China noted 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 License Administrative Bureau of MOFTEC, or Special Commissioner Offices in 16 provinces, or Commissions on 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 year. Import licences could be extended once.

Customs Valuation

75. 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 normal transaction value. If the transaction value of imported goods could not be ascertained, the duty-paying value was determined based on the transaction value or the computed value of identical or similar goods. 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 the Customs for a reconsideration of the case. If the appeal was rejected the importer could sue at the People's Court.

76. He further 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 was 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 the processing program;
- (j) goods imported at zero cost for offset purpose;
- (k) domestic- or foreign-funded projects encouraged by the country;
- (l) articles for scientific research, education and the disabled.

He noted that goods so imported were required to be put under the 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.

Other customs formalities

[to be completed]

Preshipment inspection

[to be completed]

Anti-dumping, countervailing duties, safeguard regimes

77. The representative of China noted that China had recently promulgated Anti-dumping and Countervailing Regulations. On safeguard measures, he noted that at present, China was going through the legislative procedure of drafting legislation regarding safeguard measures in accordance with the Article 29 of the Foreign Trade Law and the WTO Agreement on Safeguards.

78. A member of the Working Party noted that China was continuing the process of transition towards a full market economy. That member noted that under those circumstances, in the case of imports of Chinese origin into a WTO Member, special difficulties could exist in determining price comparability in the context of anti-dumping investigations and countervailing duty investigations. That member stated that in such cases, the importing WTO Member may find it necessary to take into account the possibility that a strict comparison with domestic prices in China may not always be appropriate.

B. EXPORT REGULATIONS

Customs tariffs, fees and charges for services rendered, application of internal taxes to exports

79. Some members of the Working Party noted that certain taxes and charges appeared to be applied exclusively to exports. Those members of the Working Party stated that those taxes and charges should be eliminated unless applied in conformity with GATT Article VIII or listed in Annex 6 to China's Protocol of Accession.

80. 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 deducting the export tariff.

Export licensing

81. The representative of China noted that 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 licencing 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 License (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 products was subject to export licencing were set down in the Foreign Trade Law: (1) to maintain national security or public interests; (2) shortage of supply in the domestic market or for the effective protection of exhaustible domestic resources; (3) limited market capacity of importing countries or regions; or (4) obligations stipulated by international treaties.

82. 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 themselves 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 the Customs on the basis of export contracts and other relevant documents.

83. Some members of the Working Party noted that certain export licensing requirements appeared to operate as restrictive non-tariff measures. In response, the representative of China indicated that the number of products subject to export licensing was being reduced and that China would abide by its WTO obligations concerning export formalities and licensing. In response to this statement, members of the Working Party asked that China undertake such a commitment.

Export restrictions

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

Export subsidies

85. Some members of the Working Party noted concerns about the extent of China's use of prohibited export subsidies. In response, the representative of China stated that all direct export subsidies on industrial and agricultural goods had been eliminated. Some members of the Working Party stated that China should enter a commitment to eliminate all export subsidies by a date to be agreed. Those members of the Working Party stated that China should also provide a notification pursuant to Article 25 of the WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement") detailing all subsidies within the meaning of Article 3 of that Agreement. Those members also noted that the existing practice of granting preferential treatment to imported products and to joint venture production enterprises in China's special economic areas conditional upon export or re-export of products manufactured or subject to additional processing in such areas, appeared to meet the definition of prohibited subsidies pursuant to Article 3 of the Agreement on Subsidies and Countervailing Measures. Those members also stated that China should phase out all subsidies falling within the scope of Article 3 of the SCM Agreement. Those members noted that China had provided a list of subsidies and a timetable for their elimination in Annex 5 of the Protocol of Accession of China to the WTO.

C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

Industrial policy, including subsidies

86. Some members of the Working Party noted that the situation of differential treatment of minority autonomous regions and other areas of economic poverty within China was uncertain and could raise problems in relation to the requirements of the Agreement on Subsidies and Countervailing Measures. In response, the representative of China stated that the central government was required by the Constitution to provide assistance to those disadvantaged areas. Some members of the Working Party stated that China should also provide a notification detailing all subsidies within the meaning of Article 1 of the SCM Agreement.

Sanitary and phytosanitary measures, technical barriers to trade

87. Some members of the Working Party considered that China should provide a notification of all laws and regulations relating to its sanitary and phytosanitary measures, including all products covered by such measures. In addition, some members of the Working Party raised specific concerns in relation to the use of quarantine procedures as non-tariff barriers. In response, the representative of China stated that China's quarantine procedures were not used as non-tariff measures. The Working Party took note of China's notification on SPS in document WT/ACC/CHN/14 and Corr.1.

88. In response to requests for information from members of the Working Party, the representative of China confirmed that internal mechanisms existed in China (e.g. policy guidelines, inter-agency committees) to inform and consult with, on an ongoing basis, government agencies and ministries (at national and sub-national levels), and private sector interests, on the rights and obligations under the GATT 1994 and the TBT Agreement 1994. In response to further requests for information concerning the opportunity for public consultation and comment on proposed standards and technical regulations, the representative of China noted that China had already established such a mechanism. Currently, China provided a 45 day period to allow for comments on proposed standards, technical regulations, and conformity assessment procedures. If within that 45 day period a request for extension of the time-limit was received from a WTO Member, the period was extended to 60 days. In addition, provision was also made a further extension of the time-limit beyond 60 days if requested by another Party to the TBT Agreement.

89. Members of the Working Party noted that a list of products subject to statutory inspection upon importation into China, together with the applicable technical regulations and standards, the objectives which they fulfilled and their necessity to fulfil those objectives was contained in Annex 7 of China's Protocol of Accession.

90. Some members of the Working Party stated that pursuant to the requirements of the TBT Agreement, China's standards, technical regulations and conformity assessment procedures should be based, to the maximum extent possible, on relevant international standards, where they existed except where use of different standards, technical regulations and conformity assessment procedures could be justified to the TBT Committee, pursuant to Article 2.4 of the TBT Agreement, as necessary to fulfil legitimate objectives as defined in Article 2.2 of the TBT Agreement. Those members also stated that

any such standards, technical regulations and conformity assessment procedures should be administered so as not to create unnecessary barriers to trade.

91. Those members also stated that Government inspection agencies should not apply compulsory standards to imported products which related solely to fulfilling unspecified criteria of quality, quantity or weight, nor require statutory inspection of products solely because of the volume of such imports. Those members stated that China should publish complete commodity inspection criteria, whether formal or informal, in its official journal. In this connection those members noted that pursuant to Article 15.2 of the TBT Agreement, China should provide a notification Statement on Implementation and Administration of the Agreement consistent with the relevant Decisions adopted by the Committee on Technical Barriers to Trade of the Tokyo Round Agreement on Technical Barriers to Trade (TBT/16/Rev.7).

92. Some members stated that Government-mandated inspection agencies should not inspect imported products to assess compliance with the terms of commercial contracts. Those members noted that China could inspect imported products or require conformity assessment when third-party testing or certification was not able to fulfil the legitimate objectives listed in the TBT Agreement. They noted that once Mutual Recognition Agreements were concluded between China and a particular WTO Member, China should not require inspection nor retesting in respect of any product exported from that Member which had been tested or certified to meet relevant international standards by a widely recognized conformity assessment body. Concerning foreign and joint-venture commodity inspection agencies, members of the Working Party stated that China should not maintain requirements which had the effect of acting as barriers to their operation.

93. Members of the Working Party also stated that in order to be fully consistent with the requirements of the TBT Agreement and the GATT 1994, China should eliminate the two-tiered system used for imports and domestic products, and otherwise consolidate the standards, technical regulations and conformity assessment procedures (e.g. testing, inspection, certification, quality system registration, laboratory accreditation) to ensure that the same measures applied to domestic production were applied to imports and in the same way.

94. The representative of China stated that pursuant to the provisions of the Agreements on TBT and SPS, China applied compulsory inspection and quarantine as required in the interests of national security, life and health of human beings, animals and plants, environmental protection, as well as to prevent deceptive activities, as well as to animals, plants and their processed products. He also noted

that most of China's standards were the same as or equivalent to the international standards, and that China implemented the same standards, technical regulations and accreditation procedures of inspection and quarantine to both imported and domestic goods. There was no discrimination against the imported goods, animals and plants and their processed products.

95. The representative of China noted that China had set up TBT and SPS enquiry points of inspection and quarantine which had been notified to the WTO's SPS and TBT Committees. Laws, regulations, rules, standards and procedures on entry-exit inspection and quarantine had been published in publications such as the "MOFTEC Gazette". Information could also be gathered from the State Administration of Entry-Exit Inspection and Quarantine, or from China's TBT and SPS enquiry points.

96. Some members of the Working Party expressed concerns about the complexity and lack of consistency of China's standards and inspection regime. In addition, members of the Working Party noted that imported and domestic products were not inspected by the same governmental entities and that this situation could result in less favourable treatment for imports. Some members also criticized mandatory government inspection requirements for compliance with terms of commercial contracts. In response to those concerns, the representative of China stated that China intended to comply fully with its WTO obligations concerning its standards, technical regulations and inspection regime. Notwithstanding the fact that many of the features of China's economy were at present those of a developing country economy, China was prepared to undertake a commitment not to apply the provisions in Article 12 of the TBT Agreement.

97. **Further to China's application of the provisions of the GATT 1994 and the TBT Agreement, China confirmed that:**

(a) internal mechanisms exist (e.g. policy guidelines, inter-agency committees) to inform and consult with, on an ongoing basis, government agencies and ministries (at national and sub-national levels), and private sector interests, of the rights and obligations under the GATT 1994 and the TBT Agreement 1994; and

(b) the recommended time to allow for comments on proposed standards, technical regulations, and conformity assessment procedures of sixty days (or forty-five days if no comments or request for extension of the time-limit have been received from other WTO Members within that time) is observed, and provision is made for giving due

consideration to a time-limit beyond sixty days if requested by another Party to the TBT Agreement 1994.

The Working Party took note of these commitments.

Trade-Related Investment Measures

98. Some members of the Working Party requested that China enter a commitment to comply in full with the requirements of the Agreement on Trade-related Investment Measures (TRIMs Agreement) from the date of accession to the WTO. In response, the representative of China stated that notwithstanding the fact that many of the features of China's economy were at present those of a developing country economy, China was prepared to undertake a commitment to notify and eliminate by the date of entry into force of the WTO Agreement all trade-related investment measures inconsistent with the provisions of the TRIMs Agreement. Such measures included, but were not limited to: requirements that foreign firms balance their foreign exchange for importation with foreign exchange receipts; requirements that firms meet specified export target levels in pursuance of such foreign exchange balancing requirements, including by contract; requirements for minimum export levels; local content requirements; and restrictions on the sale of "non-resultant products", i.e., products not produced in China.

State-trading entities

99. Some members of the Working Party stated that the activities of China's state-trading enterprises were not sufficiently transparent. Some members also raised concerns regarding the conformity of the activities of those enterprises with the requirements of Article XVII of the GATT 1994, and the Understanding on the Interpretation of Article XVII of the GATT 1994.

100. Those members 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. 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 in accordance with the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, China should notify information on the pricing mechanisms of its state-trading enterprises for exported goods, including domestic procurement prices, contract terms for delivery and financing terms and conditions.

101. 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 should comply 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 China's Protocol of Accession.

Free zones, special economic areas

102. Members of the Working Party noted that there was insufficient information available concerning special economic areas, in particular their names, geographic boundaries, and relevant laws, regulations and other measures relating thereto. In response, the representative of China stated that since 1979 China had established a number of zones and areas where more open policies were applied. They included five Special Economic Zones (SEZs), 14 coastal open cities, six open cities along the Yangtze River, 21 provincial capital cities and 13 inland boundary cities. Those areas enjoyed greater flexibility in utilizing foreign capital, introducing foreign technology and conducting economic cooperation overseas. At present, foreign investors were entitled to the certain preferential treatment.

103. He 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.

104. The representative of China noted that throughout the customs territory of China, a socialist market economy system was applied. The sole exception to this general principle concerned all FIEs across the country and state-owned firms within SEZs, which operated under a market mechanism. 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. Laws and regulations on patent, copyright, trade marks and bankruptcy applied to state-owned enterprises in SEZs, and the SEZs were required to conform with all other laws and regulations applied throughout the customs territory of China.

105. In response to further requests for information, the representative of China indicated that, pursuant to governmental policy, the importance of the special trade regimes continued to expand and the differences between these regimes and those of other parts of its customs territory continued to narrow. He noted, however, that the establishment of SEZs and other special economic areas was required to be approved by the State Council, and there was no current plan to establish any new special economic zones. China noted that the long-term objective was to unify the application of its trade regime throughout the customs territory on principles of a market-oriented economy. Members of the Working Party expressed concern that 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 and tariff charges as that normally applied to imports into these other parts of the customs territory. The representative of China stated that China would undertake to ensure such non-discriminatory treatment.

106. Some members also raised concerns about the differential treatment within areas of minority autonomous regions and other areas of economic poverty. In response, the representative of China stated that China had a clear commitment to uniform administration of trade regime within each such area and was determined to prevent smuggling.

107. Some members of the Working Party requested that China take steps to ensure that all products imported into the customs territory of China from special economic areas should 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, imported into China's customs territory from the special economic areas.

108. China confirmed that it 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.

109. Some members of the Working Party requested that China notify to the WTO Secretariat all the relevant laws, regulations and other measures relating to its special economic areas or zones. They asked that the notification list and identify all those areas or zones. 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.

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

111. Some members of the Working Party also requested that any preferential arrangements provided for enterprises located within the special export areas should be applied on the basis of non-discrimination.

Government procurement

[to be completed]

Transit

[to be completed]

Agricultural policies

112. Some members raised concerns in relation to China's intention to maintain certain quantitative import restrictions and restrictive licensing requirements in the agricultural sector. China indicated that it was willing to convert most quantitative restrictions on agricultural products to their tariff-based equivalents in conformity with the Agreement on Agriculture, but that for a very few products it was necessary to maintain restrictive licensing over the longer term.

113. Some members requested further information concerning administrative guidance provided at the national and sub-national level which could have the effect of influencing the quantity and

composition of agricultural imports. Those members requested that China undertake an appropriate commitment to eliminate these practices.

114. China confirmed that it would not maintain, resort to or revert to guidance plans or administrative guidance at the national or sub-national level that regulate the quantity of imports, import controls, import substitution practices, or other non-tariff trade measures maintained through state trading enterprises at the national or sub-national level. The Working Party took note of this commitment.

115. Some members requested additional information about the use of fiscal transfers and other forms of domestic subsidies to government-owned and government-controlled entities in the agricultural sector. Those members stated that China's notifications under the Agriculture and other Agreements and related commitments for subsidies should include reference to such measures. Those members also stated that the information notified should also detail export subsidies within the meaning of Article 9 of the Agreement on Agriculture. In response, the representative of China noted that China continued to maintain export subsidies on certain agricultural products.

116. Some members of the Working Party stated that China should undertake a commitment not to invoke the provisions in Articles 6:2, 6:4(b), 9:4, 12:2 and 15, and Annex 5, Section B of the Agreement on Agriculture.

117. China's commitments on agricultural tariffs, on domestic support and export subsidies for agricultural products are contained in the Schedule of Concessions and Commitments on Goods annexed to China's Draft Protocol of Accession to the WTO.

Trade in civil aircraft

[to be completed]

Textiles

[to be completed]

Non-Tariff Measures Maintained Against China

118. 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 after China's foreign trade regime fully conformed to WTO obligations.

Transitional Safeguards

119. Some members of the Working Party stated that there was a need during a transitional period for a special safeguard mechanism to guard against imports from China in such increased quantities or under such conditions as to cause or threaten injury to domestic producers of like or directly competitive products. The representative of China stated that China opposed the creation of such a discriminatory safeguards provision and considered that the safeguards provisions of the GATT provided sufficient protection to the domestic industries of WTO Members. Some members of the Working Party considered that the provision of a transitional safeguard would have to be carefully circumscribed to prevent abuse in its invocation.

Transitional Review Mechanism

120. Members of the Working Party stated that following China's accession to the WTO it would be necessary to establish a transitional review mechanism constituted by a Working Party to monitor China's compliance with its Protocol of Accession and the WTO Agreement within the overall framework of China's progress in the reform of its economic and foreign trade regimes. Members considered that the review should be held every two years (or more frequently upon request of China or another WTO Member), and that a major review should be held, e.g., every six years. That Working Party would have regard to the outline contained in Annex 9 to the Protocol of Accession of China, and could make recommendations, as appropriate, to China or to the other WTO Members concerned. Those members stated that that Working Party should also decide whether and to what extent the transitional provisions provided in paragraphs ... of this Report should no longer apply. Those members noted that once the transitional provisions ceased to apply, the Transitional Review Mechanism would be extinguished.

121. The representative of China stated that his government did not in principle oppose such a review mechanism but considered that the review could be carried out as part of the regular Trade Policy Review to which China would be subject. In response, members of the Working Party stated that they considered that the WTO Agreement's Trade Policy Review Mechanism was not well adapted to the type of specific review of compliance with conditions of accession that they considered to be necessary. Some members stated that the Trade Policy Review of China in the WTO should occur as regularly scheduled, notwithstanding the possible creation of a special transitional review mechanism for China.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

General

122. Some members of the Working Party stated that China should undertake a commitment to fully comply with the requirements of the Agreement on TRIPS from

Specific aspects of the intellectual property regime

[to be completed]

VI. POLICIES AFFECTING TRADE IN SERVICES

123. Members of the Working Party expressed concerns about the lack of transparency in China's services regime. The representative of China stated that China was prepared to enter a commitment to improve this aspect of its trade regime.

124. China's Schedule of Specific Commitments on Services is annexed to its draft Protocol of Accession reproduced in the Appendix to this Draft Report. This Schedule of Specific Commitments on Services contains the market access commitments of China in respect of services.

Notifications

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

Trade Agreements

126. Some members of the Working Party raised specific concerns in relation to China's special trade arrangements, including barter trade arrangements, with third countries and separate customs territories. Those members requested that China enter a commitment to eliminate or bring such arrangements into conformity with WTO obligations by no later than the date of its accession to the WTO Agreement.

Publication of information on trade

[to be completed]

Transparency

127. Some members of the Working Party requested that China undertake to ensure that upon request, and prior to implementation or enforcement, all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange would be published and made available to WTO Members.

128. Those members also requested that China designate an official journal in which all laws, regulations and other measures pertaining to or affecting the subject-matter of the WTO Agreement would be published and that those laws regulations and other measures should only become effective following a period within which interested parties could submit comments to the designated authorities. They asked that China publish that journal on a regular basis and make copies of all issues of this journal readily available to individuals and enterprises.

129. Members of the Working Party also requested that China set up an enquiry point where information relating to all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange could be obtained. Those members stated that replies to such enquiries should generally be provided within 30 days of a request, though in no case take longer than 45 days, and if so delayed a statement of indicating the reasons therefore should be provided in writing to the interested party. Members noted that replies to enquiries would need to be complete and represent the authoritative view of the Chinese Government.

130. Members of the Working Party further requested that China provide the WTO Secretariat with statistical data and information describing China's economy and trading system specified in

Annex 1 of its Protocol of Accession every two years, and thirty calendar days prior to a meeting of the Working Party on Trade with China that would be established by China's Protocol of Accession.

131. In response, the representative of China noted that the Chinese Government 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 General Administration. China's laws and administrative rules and regulations of the State Council relating to foreign trade were all published, as were regulations issued by Ministries and Commissions. Such laws and regulations were available in the "Bulletin of the State Council", the "Collection of the Laws and Regulations of the People's Republic of China (PRC)" and "MOFTEC Gazette". The administrative regulations and directives relating to foreign trade were also published in MOFTEC's official website (<http://www.moftec.gov.cn>) and periodicals.

132. He further noted that information on exchange controls affecting import and export was published by the State Administration of Foreign Exchange. All the valid laws and regulations of foreign exchange control were reproduced on the website of the State Administration of Foreign Exchange (<http://www.safe.gov.cn>) and via the news media.

133. Concerning administration of import and export, the representative of China noted that MOFTEC, together with the relevant departments, decided the items and specific quantities of products subject to import and export licensing and made timely adjustments according to the need of the current situation. Such information would be published on "International Business" newspaper and "MOFTEC Gazette".

134. He also noted that information on China's customs laws and regulations, import and export duty rates, and customs procedures were published in the "State Council Bulletin" and in the press media, and were 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. The State Statistics Bureau also published quarterly customs statistics, calculated according to country of origin and consumption. The Customs General Administration published trade figures on the basis of eight-digit H.S. headings.

135. 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 identify foreign trade corporations and other enterprises in China engaged in foreign trade.

136. **China confirmed that it would, to the maximum extent possible, 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 foreign exchange, [___ calendar days] before such measures are implemented or enforced. The Working Party took note of these commitments.**

137. **China confirmed that publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange would include [the period for comment,] the effective date of these measures and the products and services affected by a particular measure[, identified by appropriate tariff line and CPC classification if necessary]. The Working Party took note of these commitments.**

138. **China confirmed that it would apply on a most-favoured-nation basis all transparency commitments agreed bilaterally with other countries and separate customs territories. The Working Party took note of this commitment.**

139. **China confirmed that it 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 are responsible for authorizing, approving or regulating services activities whether through grant of license or other approval. Procedures and the conditions for obtaining such licenses or approval would also be published. The Working Party took note of these commitments.**

140. **China confirmed that none of the information required by the WTO or the Protocol to be disclosed shall be withheld as confidential information. The Working Party took note of this commitment.**

141. **China confirmed that it would establish or designate an enquiry point where all information relating to the laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange, as well as the published texts, could be obtained. This 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.**

Conclusions

142. The Working Party took note of the explanations and statements of China concerning its foreign trade regime, as reflected in this 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 of Accession of China.

143. Having carried out the examination of the foreign trade regime of China and in the light of the explanations, commitments and concessions made by the representative of China, the Working Party reached the conclusion that China be invited to accede to the Marrakesh Agreement Establishing the WTO under the provisions of Article XII. For this purpose, the Working Party has prepared the draft Decision and Protocol of Accession reproduced in the Appendix to this Report, and takes note of its 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 are annexed to the Draft Protocol. It is proposed that these texts be adopted by the General Council when it adopts the Draft Report. When the Draft Decision is adopted, the Draft Protocol of Accession will be open for acceptance by China which will become a Member thirty days after it accepts 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.
