

**Working Party on the  
Accession of China**

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**DRAFT REPORT OF THE WORKING PARTY  
ON THE ACCESSION OF CHINA TO THE WTO<sup>1</sup>**

Revision

The following Draft Report of the Working Party on the Accession of China to the WTO is a revision to the Revised Outline of the Draft Report of the Working Party on the Accession of China to the WTO, circulated on 14 June 2000, reflecting the submissions by members and China since the beginning of the Tenth Meeting of the Working Party.

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

**PROJET DE RAPPORT DU GROUPE DE TRAVAIL DE  
L'ACCESSION DE LA CHINE À L'OMC<sup>1</sup>**

Révision

Le projet de rapport du Groupe de travail de l'accession de la Chine à l'OMC qui figure ci-après est une révision du nouvel aperçu du projet de rapport du Groupe de travail de l'accession de la Chine à l'OMC, distribué le 14 juin 2000; il tient compte des communications adressées par les membres et la Chine depuis le début de la dixième réunion du Groupe de travail.

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

**PROYECTO DE INFORME DEL GRUPO DE TRABAJO  
SOBRE LA ADHESIÓN DE CHINA A LA OMC<sup>1</sup>**

Revisión

El siguiente proyecto de informe del Grupo de Trabajo sobre la adhesión de China a la OMC es una revisión del anteproyecto revisado de informe del Grupo de Trabajo sobre la adhesión de China a la OMC, distribuido el 14 de junio de 2000, en el que se recogen las comunicaciones de los Miembros y de China desde el comienzo de la décima reunión del Grupo de Trabajo.

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<sup>1</sup> In English only./En anglais seulement./En inglés solamente.

## **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/23.

## **INTRODUCTORY STATEMENTS**

4. In statements to the [GATT 1947 Working Party and subsequently to the] Working Party [on China's accession to the WTO], the representative of China 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. ][Some members of the Working Party indicated that because of the significant size, rapid growth and transitional nature of the Chinese economy, a pragmatic approach should be taken in determining China's need for recourse to transitional periods and other special provisions in the WTO Agreements available to developing country WTO Members. Each Agreement and China's situation should be carefully considered and specifically addressed.]

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 [and China's Schedules annexed to the Protocol].

## **II. ECONOMIC POLICIES**

### **1. Non-discrimination (including national treatment)**

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 [and foreign funded] 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 [and foreign funded] 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.**

[xx. The representative of China confirmed that consistent with China's rights and obligations under the WTO Agreement and this Protocol, China would provide non-discriminatory treatment to other WTO Members, in particular with respect to any benefit accorded to Members of the WTO that are separate customs territories. The Working Party took note of this commitment.

xx. The representative of China confirmed that all fiscal, financial and budgetary activities performed by sub-central governments would be in compliance with Article III of the GATT 1994. The representative of China confirmed that sub-central entities had no autonomous authority over issues of subsidies, taxation, trade policy or any other measures covered by WTO provisions. He also confirmed that the provisions of the WTO Agreement, including China's Protocol, shall be applied uniformly throughout its customs territory, including in special economic zones and other areas where special regimes for tariffs, taxes and regulations are established. The Working Party took note of these commitments.]

[xx. Members expressed concern about certain provisions of Chinese laws, regulations, administrative notices and other requirements which could, directly or indirectly, result in [prejudicial] [less favourable] treatment of imported products in contravention of Article III of GATT 1994. Such requirements include product registration and certification, internal taxation, price and profit controls and all distinct forms of licensing for imports, and distribution or sale of imported goods. Even where such requirements exist in relation to domestically produced goods, Members reiterated that any *de facto* or *de jure* [difference in the] [less favourable] treatment of imported goods must be eliminated in order to ensure full conformity with the principle of national treatment.

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

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

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

- After sales service (repair, maintenance and assistance), including any conditions applying to its provision, such as the MOFTEC 3<sup>rd</sup> Decree of 6.9.93, imposing mandatory licensing procedures for the supply of after-sales service on various imported products;
- Pharmaceutical products, including regulations, notices and measures which subject imported pharmaceuticals to distinct procedures and formulas for pricing and classification, or which set limits on profit margins attainable [and imports], or which create any other conditions regarding price [inclusion in the National Essential Drug Reimbursement List] or local content which may result in [prejudicial] [less favourable] treatment of imported products;
- Cigarettes, including unification of the licensing requirements so that a single licence authorises the sale of all cigarettes, irrespective of their country of origin, and elimination of any other restrictions regarding points of sale for imported products, such as may be imposed by the China National Tobacco Corporation (CNTC). It is understood that in the case of cigarettes, China may avail itself of a transitional period of 2 years to fully unify the licensing requirements. Immediately upon accession, and during the 2 year transitional period, the number of retail outlets selling imported cigarettes shall be substantially increased throughout the territory of China;
- Spirits, including requirements applied under China's "Administrative Measures on Imported Spirits in the Domestic Market", and other provisions which impose distinct criteria & licensing for the distribution and sale of different categories of spirits, including unification of

the licensing requirements so that a single licence authorises the sale of all spirits irrespective of their country of origin;

- Chemicals, including registration procedures applicable to imported products, such as those applied under China's "Environmental Control Regulations for Initial Imports of Chemical Products and Imports and Exports of Toxic Chemical Products";
- Boilers and pressure vessels, including certification and inspection procedures which must be no less favourable than those applied to goods of Chinese origin, and fees applied by the relevant agencies or administrative bodies, which must be equitable in relation to those chargeable for like products of domestic origin.

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

## **2. Monetary and Fiscal Policy**

[to be completed]

## **3. 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 [, ("forex")] reform was to gradually reduce administrative intervention and increase the role of market forces. From 1979, a [foreign exchange, "forex"] retention system was applied in China, although [forex] [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.

[xx. China noted the significant steps that had been taken to reform, rationalize, and liberalize its foreign exchange market. In particular, China had unified its foreign exchange market and achieved current account convertibility. Moreover, China had stated its acceptance of the obligations of Article VIII of the Articles of Agreement of the International Monetary Fund. In the light of these advances, China would provide complete information on its exchange controls in the context of the transitional review mechanism and such other information as is deemed necessary in the context of the transitional review mechanism. The Working Party took note of this commitment.

xx. China stated that it would implement its obligations with respect to foreign exchange matters in accordance with the provisions of the WTO Agreement and related declarations and decisions that concern the International Monetary Fund. In particular, China confirmed that it would not subject individual requests for foreign exchange for the making of payments and transfers for current international transactions, including the issuance of credit or credit guarantees for current international transactions (e.g., letters of credit; direct loans; guarantees of loans by financial institutions or other entities; or insurance of financing by financial institutions or other entities), to any form of approval or restriction (including a requirement for the presentation of an invoice), in a manner inconsistent with its obligations under the Articles of Agreement of the International Monetary Fund. The Working Party took note of this commitment.]

#### **4. 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 [WTO balance-of-payment provisions] [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 [such

measures][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.

## **5. Investment Regime**

[to be completed]

## **6. State Ownership and Privatization**

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

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

xx. The representative of China confirmed that China would ensure that all state-owned and state-invested enterprises will make purchases and sales based solely on commercial considerations, e.g., price, quality, marketability, availability, and that the enterprises of other WTO members will have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, China's government would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, including the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO. The Working Party took note of these commitments.

xx. China confirmed that, without prejudice to China's rights in future negotiations in the Government Procurement Agreement, all laws, regulations and measures relating to the procurement

by state-owned and state-invested enterprises of goods and services for commercial sale, production of goods [or supply of services] for commercial sale, or for non-governmental purposes would not be considered to be [laws, regulations and measures relating to] government procurement. Thus, such purchases or sales would be subject to the provisions of Articles II, XVI and XVII of the GATS and Article III of GATT 1994. The Working Party took note of this commitment.

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

xx. China confirmed that it will only impose, apply or enforce laws, regulations or measures relating to the transfer of technology, production processes, or other proprietary knowledge to an individual or enterprise in its territory that are not inconsistent with the WTO Agreements on Trade Related Aspects of Intellectual Property Rights and Trade Related Investment Measures. China confirmed that the terms and conditions of technology transfer, production processes or other proprietary knowledge, particularly in the context of an investment, will be agreed between the parties to the investment. The Working Party took note of these commitments.]

## **7. 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.**

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

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.**

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

## **8. Competition Policy**

[to be completed]

## **III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES**

### **1. 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 [i.e. sub-national] government[s] 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[s]. 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 [its other accession commitments throughout China's][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.

## **2. Uniform administration of the trade regime**

[xx. The representative of China further confirmed that the mechanism established pursuant to Section 2 (A) of the protocol would be operative upon entry into force of China's protocol. All individuals and entities could bring to the attention of central government authorities cases of non-uniform application of China's trade regime, including its commitments under the WTO and protocol. When China's authorities were informed of such cases, relevant government authorities would promptly act to remedy the situation without requiring affected parties to petition through the courts, taking into consideration the need to provide a meaningful remedy. The individual or entity making the notification would be informed promptly in writing of any decision and action taken. The Working Party took note of these commitments.]

## **3. 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 [actions required to be reviewed] [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.

[xx. Members expressed concern that China needed to improve its institutions and procedures for the prompt review of disputes over trade-related matters in China, in particular with respect to the independence of the administrative and judicial authorities responsible for reviewing measures. Members also sought to ensure that all measures related to the WTO, including foreign exchange measures would be subject to review under Chinese domestic procedures; in particular they sought a commitment to cover measures related to services trade and intellectual property. Some Members sought explicit confirmation that certain types of measures, such as decisions relating to statutory inspection and chemical registration, would be subject to judicial review.]

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.**

[xx. In response to questions from Members, the representative of China confirmed that administrative actions relating to any measure within the scope of the WTO, including decisions relating to national treatment, conformity assessments, grant or denial of a license to provide a service and other matters, would be subject to the procedures established for prompt review under Section 2(D) of the protocol and information on such procedures would be available through the enquiry point that China would establish upon accession. The Working Party took note of these commitments.]

**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.**

#### **4. 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**

##### **1. 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.

[xx. 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. 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 expressed concern that China's restrictions on the right of enterprises to engage in trade were among the most significant limitations on securing access to the Chinese market. Members sought progressive elimination of all such restrictions and the application of objective and generally applicable criteria for the granting of trading rights pending the total elimination of such restrictions. 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 and foreign enterprises and individuals 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, except as otherwise specified in China's Protocol.

xx. Members noted that China was in the process of liberalizing the availability of the right to import and export goods from China, but that such rights were now restricted to enterprises in China. Objective criteria for the grant of trading rights needed to be agreed and applied to facilitate implementation of the national treatment provisions in this Section of China's Protocol. Members emphasized that upon accession China would need to apply the same criteria to foreign enterprises and individuals that it applied to Chinese enterprises in authorizing foreign enterprises and individuals to import and export goods, rather than approving the grant of such rights on case-by-case basis. This would ensure that the process of progressive liberalization would proceed more rapidly and uniformly.

xx. Those members noted China's commitment to accord foreign enterprises and individuals, including those not invested or registered in China, national treatment with respect to obtaining the right to trade. Moreover, goods imported or exported by foreign enterprises and individuals must 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. 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 commitments during this transition period.

xx. Members requested that China provide detailed information regarding the process for enterprises and individuals to qualify to import and export goods. The need for specific, objective and automatic criteria for the prompt grant of rights was emphasized. Existing enterprises should be able to engage in importation and exportation without need to amend their scope of business or obtain a new business license, since the approval process could itself delay and form a barrier to obtaining these important rights. Members sought assurances that China's requirements for various licenses, such as import business licenses, would not adversely affect the realization of the right to trade. Nor should enterprises be required to establish in a particular form or create separate entities to engage in importing or exporting.

xx. The representative of China confirmed that China would progressively liberalize the scope and availability of trading rights in China. Upon accession, China would eliminate export performance and trade and foreign exchange balancing requirements as criteria for obtaining or

maintaining the right to import and export. China would also immediately upon accession apply an automatic registration system for obtaining the right to trade instead of a licensing system. The representative of China also confirmed that the right to trade will be granted promptly to any enterprise seeking to import or export such goods and an enterprise's scope of business would automatically encompass the right to import and export. Enterprises would not be required to establish in a particular form or as a separate entity to engage in importing and exporting nor would new business licenses be required to engage in these activities. Except as otherwise specified in its Protocol, China would permit Chinese enterprises, including foreign-invested enterprises, and foreign enterprises and individuals to import and export all goods into its customs territory according to the following schedule. Upon accession: All goods except those listed in appendix (1a); within one year after entry into force of China's Protocol, all goods except those listed in appendix (1b); and two years after entry into force of China's Protocol all goods except those listed in appendix (1c). Three years after entry into force of its Protocol, the representative of China confirmed that all goods, except as otherwise specified in the Protocol, could be imported and exported throughout the customs territory of China. The Working Party took note of these commitments.

xx. The representative of China further confirmed that China would grant to any enterprise possessing the right to trade any product pursuant to Section 5 of the Protocol, the right to import goods in Annex 2a that are subject to a tariff quota or to an agreed volume of imports by non-state trading enterprises, except for the quantity of such goods specifically reserved for importation by state trading enterprises. Any firm possessing the right to trade pursuant to Section 5 would also have the right to import that portion of a tariff rate quota reallocated to non-state trading enterprises pursuant to the agreed rules on tariff rate quota administration. China also confirmed that for goods in Annex 2a subject to a tariff rate quota, any enterprise granted the right to trade, pursuant to Section 5 of the Protocol, would be permitted to import such goods at the out-of-quota tariff rate. The Working Party took note of these commitments.

xx. Members noted China's commitment that it would phase out the limitation on the grant of trading rights for goods specified in Annex 2b ("Products Subject to Designated Trading") within [three] years of entry into force of its Protocol. In responding to questions raised by WTO members, the representative of China said that China would progressively liberalize the right to trade in such goods by increasing the number of designated entities permitted to import goods in each of the three years of the transition period specified in Annex 2b. The representative of China added that China would extend the right to register as designated importing and exporting enterprises for the goods in Annex 2b in each of the first, second and third years after entry into force of its Protocol to enterprises that used such goods in the production of finished goods and enterprises that distributed such goods in

China. At the end of three years, all enterprises in China and all foreign enterprises and individuals would be permitted to import and export such goods throughout the customs territory of China. The Working Party took note of this commitment.]

## **A. IMPORT REGULATION**

### **1. 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 [in 1999] 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.

[xx. Members welcomed China's decision to bind tariffs for all products in its schedule on market access for goods. This action would increase the certainty and predictability of this aspect of China's trade regime.

xx. The representative of China confirmed that upon accession China will participate in the Information Technology Agreement (ITA). Furthermore, upon accession, China will eliminate all other duties and charges for ITA products. The Working Party took note of these commitments.

xx. Some Members, however, expressed concerns over the broad availability and application of tariff reductions and exemptions for a wide variety of enterprises and other entities, including state trading enterprises, state-owned enterprises, foreign-invested enterprises and not-for profit entities. Similar concerns also existed for exemptions from application of other duties, taxes and charges. Members noted the detrimental effect such reductions or exemptions had on revenues and predictability and certainty in application of tariff and other trade measures. The representative of China recognized that currently many foreign and domestic entities enjoyed exemptions from tariffs and other duties and charges assessed at the border. The representative of China confirmed that upon entry into force of this Protocol, China would adopt and apply reductions and exemptions from the commitments set forth in China's market access schedule so as to ensure MFN and national treatment for imported goods. The Working Party took note of this commitment.

xx. Members expressed particular concerns about tariff treatment in the auto sector. In response to questions about the tariff treatment for kits for motor vehicles, China confirmed that it has no tariff lines for completely knocked-down kits for motor vehicles or semi-knocked down kits for motor vehicles. If China creates such tariff lines, the tariff rates will be no more than 10 percent. The Working Party took note of this commitment.

xx. With respect to future tariff liberalization, China stated its support for the ongoing Early Voluntary Sectoral Liberalization program initiated in the Asia Pacific Cooperation Forum (APEC) and now under consideration in the WTO. Without prejudice to its rights to participate in the WTO



process, China will participate fully in the sectoral tariff liberalization programs that WTO Members accept for implementation. The Working Party took note of this commitment.

xx. The representative of China further confirmed that tariff rates on paper and wood products will be applied on an MFN basis even if China enters into an agreement pursuant to Article XXIV of GATT 1994 or cuts tariffs on these goods as part of a WTO-consistent preference programme. The Working Party took note of this commitment.]

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.

## **2. 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.

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

## **3. Rules of Origin**

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

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.

[xx. The representative of China confirmed that from the date of accession, China's preferential and non-preferential rules of origin would comply fully with the WTO Agreement on Rules of Origin, and that a mechanism that meets the requirements of Article 2(h) and Annex II, paragraph 3(d) of the Agreement, which require provision upon request of an assessment of the origin of the import and outline the terms under which it will be provided, would be established in China's legal framework prior to accession. The Working Party took note of this commitment.]

#### **4. 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.

#### **5. 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.

## **6. 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.

[xx. Members expressed concern that Scheduled tariff quotas should be administered simply, effectively, transparently and in a non-trade restrictive manner. China agreed that it would administer the tariff quotas fully in accordance with WTO rules and principles and that the administration would be along the following lines and in accord with the provisions set out in the Schedule. ] *[Paragraph to be added which briefly outlines the arrangements for state-traded commodities and wool.]*

## **7. 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 [which] 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][Actions] 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.

[xx. The representative of China confirmed that, upon accession, China shall comply with the Agreement on Trade-Related investment Measures and shall take the necessary legislative measures to eliminate foreign-exchange balancing and trade balancing requirements, local content requirements and export performance requirements. Chinese authorities—whether national or sub-national—shall not enforce the terms of contracts containing such requirements. The allocation or permission or rights for importation and investment shall not be conditional upon performance requirements set by national or sub-national authorities, or subject to secondary conditions covering, for example, the conduct of research, the provision of offsets or other forms of industrial compensation including specified types or volumes of business opportunities, the use of local inputs or the transfer of technology. Permission to invest, import licenses, quotas and tariff rate quotas shall be granted without regard for the existence of competing Chinese domestic suppliers.

xx. In addition to restrictions maintained on exports of silk, some Members expressed concern about China's restrictions on exports of other goods, in particular raw materials or intermediate products that could be subject to further processing, such as tungsten ore concentrates, rare earths and other metals. Members urged China to ensure that any such restrictions that were imposed or maintained complied with the terms of the WTO and Protocol. Some Members also noted that the requirements and procedures for obtaining import licenses and export licenses often were not

transparent, and, when known, proved overly burdensome. Often, it took a long time to obtain all of the required approvals.

xx. The representative of China confirmed that upon entry into force of this Protocol, restrictions on exports would be eliminated unless they could be justified under the WTO and this Protocol. In particular, any export restrictions on tungsten ore concentrates would be eliminated upon accession. The Working Party took note of this commitment.

xx. Some Members requested information on how China would implement the quota and licensing requirements for products listed in Annex 3, in particular the procedures and criteria for grant of quota allocations and licensing during the phase-out period for these restrictions. Members expressed concern about complex and burdensome requirements for obtaining a license or quota allocation which often required approvals from various authorities within an organization as well as approval from both the sub-central and central level. Members sought a transparent, streamlined system that would issue quota allocations and licenses through a simple, consolidated approval process that would ensure full use of the quota and its equitable distribution among importers. Members also requested information on how China would establish the value of imports for those products whose quota is established in terms of value of imports.

xx. The representative of China confirmed that the products currently covered under the HS categories listed in Annex 3 were the only products that would continue to be subject to quotas during the agreed phase-out periods and that additional products would not be added to these HS categories. In response to questions from some Members, he confirmed that the quota for autos and certain parts did not include CKD kits. Further, the representative of China stated that for products listed in Annex 3 as being subject to quota and licensing requirements, any entity possessing the right to trade, including enterprises in the sector importing the products or importing inputs for production purposes, will be permitted to apply for and receive a quota allocation and license to import products listed in Annex 3. China's system for quota allocation and licensing would ensure that those entities with quota allocations would also receive any necessary import license. This system would conform to WTO rules and would be transparent, timely, responsive to market conditions and would minimize the burden on trade. All applications for an import license and allocation of the quota would be submitted to the organization authorized to grant such allocations and licenses. Applicants would be required to approach only one organization at one level (central or sub-central) to obtain both an allocation and license. In exceptional cases, an applicant may be required to approach up to three organizations for approval of an allocation and license. The relevant organization, amount of quota, including the growth in quota provided for in Annex 3, and procedures for application for a quota

allocation and license, including the beginning and end date of the application period and any other relevant procedures or criteria will be published in the official journal referred to in paragraph 2(C)(2) of the Protocol no later than 30 days prior to the beginning of the application period. Such application period will be from 1-30 June. Quotas and licenses shall be allocated to applicants no later than 30 days after closure of the application period.

xx. The representative of China stated that China will grant quota allocations on a first-come-first served basis, valid for importations on a calendar year basis. If after the specified application period additional quota remains, the relevant organization will receive and process requests for quota allocations and licenses until the full amount of the quota has been allocated. Such allocations will be made within 10 days after receipt of a request. If requests for a quota allocation received at the same time exceed the quota level, the relevant organization will ensure that quota is allocated in an equitable manner that promotes utilization of the allocation, including granting a proportionate share of individual requests and giving priority consideration to unfilled requests in the context of reallocated quota. In all cases, allocations will be established for commercially viable quantities and provision will be made for partial shipments against a single allocation. Inquiries regarding quota allocation and grant of a license can be made to the relevant organization, with written responses provided within 10 working days.

xx. The representative of China confirmed that all commercial terms of trade, including product specifications, product mix, pricing, and packaging, will be at the sole determination of the quota holder. Allocations will be valid for any article or mixture of articles subject to the same quota as specified in Annex 3. Allocations will be valid for a period of 12 months from the opening of the quota import period. However, if the holder of a quota allocation has not contracted for import of the total quantity allocated to it within 6 months after the opening of the import period, the holder shall immediately return the unused portion of the allocation to the relevant authority which shall reallocate the quota immediately, if unfilled requests are pending, or otherwise within 10 days after receipt of a request for an allocation. The relevant organization will publish notice of the availability of additional allocations on a monthly basis. This reallocation shall be valid for the duration of the original term. For quota quantities specified in terms of value, China will determine the value of any shipment based on the F.A.S. ship value listed on the bill of lading. The Working Party took note of these commitments.]

## **8. 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. [The Working Party took note of this commitment.]

[delete paras 69-71]

[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.

[xx. Working Party Members expressed concern that China's Provisional Procedures for the Administration of Automatic Registration for the Import of Special Commodities (13 August 1994), in particular the criteria for approval of registration, would act as a restraint on imports. The representative of China emphasized that the purpose of the registration system was only to gather statistical information. He confirmed that China would bring its automatic licensing system into conformity with Article 2 of the Agreement on Import Licensing upon entry into force of the Protocol and would eliminate criterion, such as the need to establish demand and foreign exchange availability, as conditions for approval. The Working Party took note of this commitment.

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

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

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

xx. China confirmed that it would implement the provisions of the Agreement on Import Licensing with Procedures upon entry into force of this Protocol without recourse to the provisions of footnote 5 of that Agreement. The Working Party took note of this commitment.]

## **9. Customs Valuation**

[xx. Some members expressed concern regarding the methods used to determine duty-paying value of goods, in particular regarding the practice of using minimum or reference prices for certain goods. Use of such prices would be inconsistent with the WTO Agreement on Implementation of Article VII. Other WTO-consistent means were available to Members doubting the veracity of declared transaction values.]

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 [determined] [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.

[*move to section on Tariff rate Quotas/Exemptions*][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. ]

[xx. The representative of China confirmed that, from the entry into force of this Protocol, China would apply fully the WTO provisions concerning customs valuation and would not invoke the provisions in Article 20 of the Agreement on Implementation of Article VII of the GATT 1994. In addition, China would apply the provisions on the Treatment of Interest Charges in Customs Value of Imported Goods and for the Valuation of Carrier Media Bearing Software for Data Processing Equipment. In accordance with these latter provisions, only the cost of the carrier medium itself would be accounted for in the customs value. The Working Party took note of these commitments.]

#### **10. Other customs formalities**

[to be completed]

#### **11. Preshipment inspection**

[xx. Some members of the Working Party requested information on whether China used the services of a private preshipment inspection entity. The representative of China confirmed that China did not use private preshipment inspection entities and stated that China would ensure that any laws and regulations relating to preshipment inspection by private entities now or in future would be consistent with relevant WTO Agreements, in particular, the Agreements on Preshipment Inspection and Customs Valuation. Moreover, any fees charged in connection with such preshipment inspection would be commensurate with the service provided. The Working Party took note of these commitments.]

#### **12. Anti-dumping, countervailing duties**

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.

[xx. The representative of China confirmed that, notwithstanding Article 18 of the Agreement on Implementation of Article VI of GATT 1994 (“Antidumping Agreement”),

(a) China shall apply the provisions of the Antidumping Agreement to:

(1) proceedings under Article 9.3, including the calculation of margins of dumping, in connection with antidumping measures adopted before the entry into force of China’s Protocol (“existing measures”) pursuant to requests made on or after the entry into force of this Protocol;

(2) reviews of existing measures initiated under Articles 9.5, 11.2, and 11.3 pursuant to requests made on or after the entry into force of this Protocol. Any review of an existing measure under Article 11.3 shall be initiated no later than five years from the date of its imposition.

(b) China shall also provide the type of judicial review described in Article 13 of the Antidumping Agreement with regard to proceedings under Article 9.3 and reviews under Articles 9.5, 11.2, and 11.3.

The Working Party took note of these commitments.]

78. Several members of the Working Party noted that China was continuing the process of transition towards a full market economy. Those members 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. Those members 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.

[xx. The representative of China expressed concern with regard to the implementation of Article 20 on Price Comparability in determining Dumping and Subsidization, and stated the following:

1. The provisions of the Anti-Dumping Agreement and the SCM Agreement shall apply in proceedings involving imports of Chinese origin except as otherwise provided for in the Protocol.
2. The provisions of the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes arising under Article 20 of the Protocol.
3. For the effective application of the above-mentioned subparagraph (1), the importing WTO Member shall define clear and reasonable criteria of the market economy and publish them before they are applied.
4. When invoking the methodology pursuant to subparagraph (1)(b) in the Protocol on Price Comparability in determining Dumping and Subsidization, the importing WTO Member should select the prices or costs of the like product produced in a market economy which has an equivalent level of economic development with that of China.

The process of selection should be transparent and provide adequate opportunity for the Chinese producers or exporters to make comments on it or make counter-proposals for the purpose of fair treatment.

The Working Party took note of China's position.]

### **13. Safeguards**

[to be completed]

## **B. EXPORT REGULATIONS**

### **1. 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[. In addition, all goods subject to export duties should be listed] in Annex 6 to China's Protocol of Accession [and such duties applied in conformity with WTO requirements].

[xx. Some Members raised concerns over taxes and charges applied exclusively to exports. In their view, such taxes and charges should be eliminated unless applied in conformity with GATT Article VIII or listed in an Annex to the Protocol.]

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.

### **2. 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.

[xx. Some members of the Working Party noted that China's export licensing system was conflicting with WTO rules, even in those cases where licenses were withheld due to a shortage of supply in the domestic market. China confirmed that the number of products subject to export licensing would be gradually and progressively reduced, in such a manner that by 1.1.200., such licensing requirements would no longer apply on any products, unless justified by WTO provisions.]

[xx. Some Members expressed concern that China's export licensing rules had been used to restrict exports in a manner inconsistent with WTO requirements. They noted that Article XI of GATT 1994 applied to both import and export restrictions and the same need for certainty, predictability, transparency and minimizing the burden on trade applied with respect to the grant of export licenses as pertained to import licenses.

xx. The representative of China stated that upon accession, China would apply the same procedures to the grant of export licenses as it applied to automatic and non-automatic import licenses depending on the WTO justification for such export license. The Working Party took note of this commitment]

### **3. 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.

### **4. 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.]

[xx. China confirmed that it would eliminate all export subsidies by accession, including fiscal or other financial measures referred to in Article 1 contingent upon export performance. To this end, China would , by accession, cease to maintain all pre-existing export subsidy programmes and, upon accession, make no further payments or disbursements, nor forego revenue or confer any other benefit, under such programmes. This commitment covers subsidies granted at all levels of government, including tax exemptions, reductions, deferrals or forgiveness to enterprises, which are contingent, in law or in fact, upon an obligation to export. The Working Party took note of this commitment.



xx. On the same basis, China would eliminate, upon accession, all subsidies contingent upon the use of domestic over imported goods. The Working Party took note of this commitment.]

## **C. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS**

### **1. Taxes and Charges Levied on Imports and Exports**

xx. Members expressed particular concern about application of the value-added tax (VAT) and additional charges levied by sub-central governments on imports. In some cases, producers of domestic goods either did not pay the VAT or failed to pass the charge along to customers. The loss of revenue from this failure to pass along the VAT often put such firms into an unprofitable position and loans or other measures would then be provided to address the situation. Non-discriminatory application of the VAT and other internal taxes was deemed essential. Moreover, central-government discipline over the practices of sub-central authorities to ensure their conformity with the provisions of this Protocol and the WTO was essential.

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

### **2. Industrial policy, including subsidies**

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.

[xx. Members expressed concern about certain provisions under Article 27 of the SCM Agreement with regard to certain actionable and countervailable subsidies. It was considered that [some of] the exemptions provided for under Article 27 would not be appropriate, given the special situation which prevails in China. Members pointed to the many manufacturers that are still either owned or controlled by the Government, and that benefit from state support notwithstanding the

substantial reforms that are underway. Furthermore, it was difficult to ascertain the conditions under which publicly-owned banks provide finance, as well as the extent to which state-owned enterprises provide goods and services on terms not normally available in a market economy. As a result of these uncertain factors, including the conditions of pricing of certain important inputs and the ability to price all such inputs and goods or services transparently and according to market conditions, the potential level of actionable subsidies in China could be significant across sectors, and members expressed concern over the possible trade distorting and adverse effects this might have. Therefore, members concluded that actionable and countervailable subsidies granted by China should be subject to available remedies under the SCM Agreement upon accession.

xx. In particular, members were concerned that China would not invoke the provisions of Articles 27.8 and 27.9, since this would severely restrict the scope for dispute settlement action against adverse effects caused by actionable subsidies granted by China, notably by removing any remedy for subsidies which displace or impede the exports of another Member in a third country market. The Chinese delegate confirmed that the above Articles would not be invoked.

xx. Members were concerned that, given the price sensitivity of a number of commodities exported by China and the ability of a relatively small volume of imports of such products to depress prices in the importing country, China should not benefit from the higher de-minimis thresholds for countervailing duty investigations in Article 27.10. The Chinese delegate agreed that China would not seek to invoke the application of Article 27.10 in such investigations.

xx. Members, referring to the special situation with regard to actionable subsidies in China described above, were concerned that China should not invoke the provisions of Article 27.11 in countervailing duty investigations. China was not an Annex VII country, and in addition, a period of time would be required after accession before members could be satisfied that China had ceased to grant export subsidies in all their forms (including those granted by sub-national levels of government and those granted on an ad-hoc basis). The Chinese delegate confirmed that China would not make any notifications under Article 27.11.

xx. Members confirmed their support for privatization in China but some considered that the types of subsidy described in Article 27.13 had, in the context of the special situation with regard to actionable subsidies prevailing in China, potential to cause serious adverse effects to other members. It was therefore considered that these subsidies should not be exempted from Part III disciplines, even if granted within and directly linked to a privatization programme. The Chinese delegate confirmed that China would not make any notifications under Article 27.13.

xx. Members were concerned that the scope of subsidization in China should be adequately defined. In this regard, it was concluded that all activities of state-owned enterprises (including banks) which involve a financial contribution (e.g. provision of goods and services, purchases of goods, forgiveness of debt, provision of loans and/or guarantees) would fall within the scope of Article 1.1(a) of the SCM Agreement, since such enterprises are part of or controlled by the Government. The Chinese delegate confirmed this conclusion.

xx. Members took note of China's updated subsidy notification of 31 May 2000, which provided information concerning subsidies granted in 1998. Members did not, however, consider that this notification covered all specific subsidies granted within China's territory, and it did not contain the information required by Article 25 of the SCM Agreement and Document G/SCM/6.

xx. Members noted that China had granted, on a discretionary basis, ad-hoc investment subsidies, which included free or preferential provision of goods and services and tax benefits (e.g. tax exemptions, deferral, reductions, forgiveness). Such subsidies, whether granted at national or sub-national level, should be notified.

xx. Members also noted that the notification did not cover the main subsidies granted through state-owned banks, some of which were only available to exporting firms, nor did it capture all sub-national or tax subsidies. It also did not cover all subsidies granted in Special Economic Zones, in particular those contingent upon export obligations. There was also no mention of subsidies to compensate for currency changes. Other specific subsidies were not reported.

xx. The Chinese delegate agreed that the notification was inadequate; China would make the necessary improvements to the notification by the time of accession.]

[xx. In the context of discussions on the government's Industrial Policy for the Automotive Sector, the representative of China confirmed that this Policy will be amended to ensure compatibility with WTO rules and principles.

xx. The representative added that amendments would be made to ensure that all measures applicable to motor vehicle producers restricting the categories, types or models of vehicle permitted for production will gradually be lifted. Such measures will be completely removed two years after accession, thus ensuring that motor vehicle producers will be free to choose the categories, types and models they produce. However, it is understood that category authorisations by the government may

continue to distinguish between trucks and buses, light commercial vehicles, and passenger cars (including multi-purpose vehicles and sport utility vehicles).

xx. China also agreed to raise the limit within which investments in motor vehicle manufacturing can be approved at provincial government level only, from the current level of \$30 million, to \$60 million one year after accession, \$90 million 2 years after accession, and \$150 million 4 years after accession.

xx. With respect to the manufacture of motor vehicle engines, China agreed to remove the 50% foreign equity limit for joint ventures upon accession.]

### **3. Technical Barriers to Trade**

87. 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.

88. 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.

89. 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.

90. 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).

91. 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.

92. 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.

93. The representative of China stated that pursuant to the provisions of the Agreement on TBT, 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.

94. The representative of China noted that China had set up a TBT enquiry point of inspection and quarantine which had been notified to the WTO's TBT Committee. 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 enquiry points.

[xx. For the information of WTO Members, a compilation of technical regulations and relevant standards in force in China was provided in Annex 7 to China's Protocol of Accession. The Members of the Working Party agreed that Annex 7 does not prejudice the legal status, nature or effects of the notified standards and technical regulations under the WTO Agreement.]

95. 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.

[xx. The representative of China also indicated that China would ensure the transparency of its standard and certification systems by publishing all relevant laws and regulations, including the regulations concerning domestic products, which are not currently published.

xx. Some members of the Working Party raised specific concerns regarding the standards and certification systems in China, including such matters as (a) registration of initial imports of chemical products, (b) procedures for the Chinese Commodity Inspection Bureau (CCIB) safety mark and the "Great Wall" mark, (c) standards and certification for automobiles, and (d) safety and quality license system for boilers and pressure vessels. In response to those concerns, the representative of China stated that China intended to implement the following measures. These measures would be implemented prior to China's accession to the WTO, unless otherwise indicated.

(a) Registration of Initial Imports of Chemical Products

- Enact and implement, within two years after its accession to the WTO, a new law and relevant regulations regarding assessment and control of chemicals for the protection of the environment, in which complete national treatment and full consistency with international practices will be ensured.
- Ensure that chemicals listed in the “inventory chemicals” annexed to the above new law and its regulations will be exempted from a registration obligation and that a unified assessment procedure will be established for domestic and imported products under the new law and its regulations.

(b) CCIB Safety Mark and the “Great Wall” Mark

- Promulgate implementation regulations on the harmonization of the CCIB safety mark and the “Great Wall” mark, by introducing into these regulations the principle of “a single application, a single inspection and a single fee payment” for obtaining both marks at the same time. This principle will be applied before the promulgation of the regulations.
- Accept testing reports for products subject to the CB Scheme to which China is a party, and simplify the procedures for obtaining the CCIB safety mark and/or the “Great Wall” mark.
- Shorten the time period needed for the importers to obtain both marks regarding the same products, to around 3 months in principle.

(c) Standards and Certification for Automobiles

- Unify its laws, regulations and standards applied to domestic and imported automobiles.
- Formulate, publish and implement laws and regulations, standards and implementation regulations to establish a transparent system under which all the laws and regulations will be applied so as to accord imported products treatment no less favourable than that accorded to like products of national origin.

(d) Safety and Quality License System for Boilers and Pressure Vessels

- Accord imported products treatment no less favourable than that accorded to products of national origin, including fees imposed for conformity assessment and the effective period of factory certification.
- Adopt international standards to the greatest extent possible, and exempt imported products from inspection where like domestic products are not subject to such inspection.

Simplify the inspection methods and procedures for factories and products certified by inspection agencies having bilateral mutual recognition arrangement.]

96. **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.**

#### **4. Sanitary and phytosanitary measures**

97. 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.

98. The representative of China stated that pursuant to the provisions of the Agreement on 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.

99. The representative of China noted that China had set up a SPS enquiry points of inspection and quarantine which had been notified to the WTO's SPS Committee. 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 SPS enquiry point.

[xx. The notification of laws, regulations and other measures relating to sanitary and phytosanitary measures referred to in China's Protocol of Accession was provided in document WT/ACC/CHN/\_\_. Members of the Working Party agreed that this notification does not prejudge the legal status, nature or effects of the notified laws, regulations and other measures under the WTO Agreement.]

## **5. Trade-Related Investment Measures**

[100. 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.]

[xx. Upon accession, China shall comply with the Agreement on Trade-related Investment Measures. China shall take the necessary legislative measures to eliminate foreign-exchange balancing and trade balancing requirements, local content requirements and export performance

requirements. Chinese authorities – whether national or sub-national - shall not enforce the terms of contracts containing such requirements.

xx. The allocation of permission or rights for importation and investment shall not be conditional upon performance requirements set by national or sub-national authorities, or subject to secondary conditions covering, for example, the conduct of research, the provision of offsets or other forms of industrial compensation including specified types or volumes of business opportunities, the use of local inputs or the transfer of technology. Permission to invest, import licenses, quotas and tariff rate quotas shall be granted without regard for the existence of equivalent Chinese domestic suppliers.

xx. In accordance with Article 3.1 (a) of the WTO Agreement on Subsidies and Countervailing Measures China shall eliminate all export subsidies by accession, including fiscal or other financial measures referred to in Article 1 contingent upon export performance.]

## **6. State-trading entities**

101. 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.

102. 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] [as part of China's notification under] the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, China should notify information on the pricing mechanisms of its state-trading enterprises for exported goods, including domestic procurement prices, contract terms for delivery and financing terms and conditions.

103. 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.

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

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

[xx. Members expressed concern that the activities of China's state trading enterprises were not sufficiently transparent and were not in accordance with WTO obligations. China indicated, however, that its state trading enterprises have full management autonomy and responsibility for their own profits and losses and that it had undertaken broad and significant commitments to improve the transparency of state trading enterprises' operation and the measures relating to such operation.

xx. Members noted that prior to accession, enterprises in China were permitted to import goods for production purposes, including those goods included in Annex 2a. China confirmed that, notwithstanding section 5 paragraph 1 of the Protocol, non-state trading enterprises, including private traders, will still be permitted to import for production purposes goods which continue to be subject to state trading under the Protocol and WTO and that such enterprises would have direct access to end-users of these goods including processors. The Working Party took note of these commitments.

xx. Members expressed their concerns about supplies of raw materials in the textiles sector and particularly concerning supplies of silk, in the light of China's position as the major world supplier of silk, currently subject to state trading rights concerning exports.

xx. In this regard, the representative of China confirmed that China will progressively abolish the system of state trading in respect of silk by measures increasing and extending trading rights with the result that China will remove completely the silk products set out in numbers 10 and 11 from Annex 2a-2 to China's Protocol of Accession (being the list of products subject to state trading on exports) and grant the right to trade in such products to all individuals and enterprises no later than 1 January 2005. Pending the implementation of this right, China undertook not to introduce any changes of a

more restrictive nature to the existing structures in place for the supply of silk. The representative of China further confirmed that access to supplies of raw materials in the textiles sector will remain at conditions no less favorable than for domestic users and gave his assurance that access to supplies of raw materials as enjoyed under existing arrangements would not be adversely affected following China's accession to the WTO. The Working Party took note of these commitments.

xx. Members raised concerns regarding the current operation of China's tariff quota (TRQ) system for bulk agricultural commodities and the practices of state trading enterprises in relation to importing such products. These concerns included the current lack of transparent regulations for administering TRQs; failure to establish and publish annual TRQ quantities; trade-restrictive and non-competitive practices of state-trading enterprises; and general uncertainty, inconsistency and discrimination in trade of bulk commodities. Members requested that China reduce tariffs and regulate access for bulk commodities by using TRQs with low in-quota duties.

xx. The representative of China confirmed that China would adopt TRQs for certain goods and would ensure that these TRQs are administered on a transparent, predictable, and non-discriminatory basis using clearly specified time frames, administrative procedures and requirements that would provide effective import opportunities and promote filling each TRQ, including the grant of trading rights and import licenses to non-state trading entities to import quota allocations permitted to be imported by such entities. China confirmed that for the goods listed in Annex 2 that are subject to a tariff quota, China would apply the provisions of its market access schedule relating to TRQ administration and related commitments in the Protocol, including those relating to the right to trade. The Working Party took note of these commitments.

xx. The representative of China also confirmed that China would eliminate state trading of cottonseed oil, sunflower seed oil, and corn oil upon entry into force of the Protocol. The Working Party took note of these commitments.

xx. Members noted that domestic prices for most agricultural commodities in China are higher than world prices, and this differential allows China's state trading enterprises to import at low prices and then mark up the price when selling the product to wholesalers and end users. Members expressed concern that this practice could become more widespread when access opportunities are created under TRQs. Members were particularly concerned that mark-ups could be used to reduce the competitiveness of imported products and limit the range of qualities and grades available to end users in China. China stated that currently state trading enterprises do not mark up imported products, instead they only charge a nominal transaction fee. Consequently, China claimed that its practice is

consistent with WTO obligations, did not result in any trade-distorting effect, and that limits exist under China's law on the fees charged by state trading enterprises.

xx. The representative of China stated that further to the requirements of Article II.4 of the GATT 1994 and Article 4.2 of the Agreement on Agriculture, China shall ensure that no price increase in respect to imports, in particular by state trading enterprises, will result in protection beyond that provided by the tariff in its schedule. The Working Party took note of this commitment.]

## **7. Free zones, special economic areas**

104. 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.

105. 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.

106. 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.

107. 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.

108. 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 [also] determined to prevent smuggling.

109. 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.

**110. 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.**

111. 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.

**112. 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.**

113. 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.

## **8. Government procurement**

[xx. Some Members stated that China should become a Signatory to the Agreement on Government Procurement (GPA) and that prior to its accession to the GPA, China should conduct all government procurement within the meaning of China's protocol of accession, in a transparent and non-discriminatory manner. Members noted that China's public entities engaged exclusively in commercial activities would not be conducting government procurement and thus laws, regulations and other measures regulating these entities procurement practices would be fully subject to WTO requirements.

xx The representative of China stated that upon accession to the WTO, China would seek to become an observer to the GPA and would initiate negotiations for membership in the Agreement by tabling an Appendix 1 offer within one year of accession with the aim of becoming a signatory of the GPA by [200x]. The Working Party took note of these commitments.

xx. Until such time as China becomes a signatory to the GPA, all government entities at the central and sub-central level would conduct their procurement in a transparent manner and provide all foreign suppliers with equal opportunity to participate in that procurement pursuant to the principle of most-favoured nation treatment. Such procurements would be subject only to laws, regulations, judicial decisions, administrative rulings of general application, and procedures (including standard contract clauses) which have been published and made available to the public.]

## **9. Transit**

[to be completed]

## 10. Agricultural policies

*[delete this paragraph]*[114. 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.]

115. 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.

116. **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.**

117. 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.]

118. 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.

119. 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.



## **11. Trade in civil aircraft**

[xx. China confirmed that it would not impose any provisions of offsets or other forms of industrial compensation when purchasing civil aircraft, including specified types or volumes of business opportunities.]

## **12. Textiles**

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

[Move following paragraph to Protocol.]

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

- (a) In the event that a WTO Member maintaining bilateral textile agreements with China and notifying restrictions on imports of textiles and apparel from China believes that imports of Chinese origin of textiles and apparel products covered by the Agreement on Textiles and Clothing as of the date the WTO Agreement entered into force, are, due to market disruption, threatening to impede the orderly development of trade in these products, such Member may request consultations with China with a view to easing or avoiding such market disruption. The Member requesting consultations shall provide China, at the time of the request, with a detailed factual statement of reasons and justifications for its request for consultations with current data which, in the view of the requesting Member, shows: (1) the existence or threat of market disruptions; and (2) the role of products of Chinese origin to that disruption;

- (b) Consultations will be held within 30 days of receipt of the request. Every effort will be made to reach agreement on a mutually satisfactory solution within 90 days of the receipt of such request, unless extended by mutual agreement;
- (c) Upon receipt of the request for consultations, China agrees to hold its shipments to the requesting Member of textile or textile products in the category or categories subject to these consultations to a level no greater than 7.5 per cent (6 per cent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made;
- (d) If no mutually satisfactory solution is reached during the 90-day consultation period, consultations shall continue and the Member requesting consultations may continue the limits for textiles or textile products in the category or categories subject to these consultations;
- (e) The term of any restraint limit established under subparagraph (d) will be effective for the period beginning on the date of the request for consultations and ending on 31 December of the year in which consultations were requested, or where three or fewer months remain in the year at the time of the request for consultations, for the period ending 12 months after the request for consultations;
- (f) No action taken under this provision shall remain in effect beyond one year, without reapplication, unless otherwise agreed.

The Working Party took note of these commitments.]

### **13. Measures Maintained Against China**

120. 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.

### **14. Transitional Safeguards**

121. 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.

[xx. The representative of China expressed concern with regard to the implementation of the Product-Specific Safeguard, and stated the following:

1. The provisions of the Safeguard Agreement shall apply in proceedings involving imports of Chinese origin except as otherwise provided for in the Protocol.
2. The provisions of the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes arising under Article 19 of the Protocol.
3. "Diversions of trade" mentioned in paragraph 8 of the Product-Specific Safeguard Section of the Protocol exists only when there is clear evidence to show:
  - (a) that imports of an article, like or directly competitive with an article produced by the domestic industry, are increasing significantly and absolutely as a result of the imposition of the Product-Specific Safeguard measure by other WTO Members against imports from China; and
  - (b) such increased imports to be a significant cause of material injury to domestic industry. The affected WTO Member shall consider objective factors including the volume of imports, the effect of imports on prices for like or directly competitive articles and the effect of such imports on the domestic industry producing like or directly competitive products.
4. If a measure taken as a result of diversions of trade remains in effect more than two years, China has a right to suspend the application of substantially equivalent concessions or obligations under GATT 1994 to the Member applying the measures.

The Working Party took note of China's position.]

## **15. Transitional Review Mechanism**

122. 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.

123. 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**

### **1. General**

[xx. Members of the Working Party expressed concern that certain elements of China's laws were not yet fully compatible with the provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights. This related, in particular, to provisions in the fields of copyright and neighbouring rights, trademarks, patents, geographical indications and layout-designs of integrated circuits, and to enforcement of intellectual property rights. Members also expressed concern that there was a continued need for additional enforcement efforts by the Chinese Government.

xx. The representative of China confirmed that China will apply the provisions of the TRIPS Agreement upon accession. To this end, China agreed to amend existing legislation and, where necessary, introduce new legislation to fully implement the TRIPS Agreement. In particular, China would amend the following laws: the Copyright Law to provide for a rental right for computer programmes and phonograms; the Trademark Law to provide for protection of trade-names, famous marks and marks consisting of colours, letters or numerals; the Patent Law to allow compulsory

licensing only within the limits prescribed in the TRIPS Agreement, and the Criminal Code to provide remedies which constitute a deterrent to further infringements. In addition, China would provide for the protection of geographical indications and layout-designs of integrated circuits to implement the respective provisions of the TRIPS Agreement. China confirmed that it would strengthen the legislative framework for the enforcement of intellectual property rights for all right-holders. In particular, national treatment would be fully applied, so that copyright enforcement action by local copyright bureaus involving foreign right-holders, would no longer require clearance by the National Copyright Administration in Beijing. Other procedural rights would be strengthened as well, so that right-holders can obtain information on government enforcement activities and that investigations are conducted within reasonable time-limits supported, where necessary, by significant fines that constitute an effective deterrent to further infringements. In addition, China would ensure the vigorous application by Chinese authorities of the enforcement legislation in order to considerably reduce the existing high levels of piracy and counterfeiting. Action would include the closure of manufacturing facilities as well as markets and retail shops that have been the object of administrative convictions for infringing activities. The Working Party took note of these commitments, and recalled that a full review of China's intellectual property laws would take place after accession.] *alternative text*

[xx. Some members of the Working Party expressed their concerns over the infringement cases of intellectual property rights in China, including the counterfeit of many products originating in those members. In response, the representative of China stated that China was fully committed to complying with its obligations under the TRIPS Agreement, including the appropriate enforcement for the protection of intellectual property rights.]

[xx. Noting the advanced state of protection for intellectual property rights in China, the representative of China confirmed that China will apply the provisions of the Agreement on Trade Related Aspects of Intellectual Property, upon accession, without recourse to the provisions of Article 65 of that Agreement. The Working Party took note of this commitment.]

124. 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 ....

## **2. Specific aspects of the intellectual property regime**

[to be completed]

## **VI. POLICIES AFFECTING TRADE IN SERVICES**

125. 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.

### **Licensing**

[xx. Some Members expressed concern regarding the lack of transparency in China's services regime in particular in respect of obtaining, extending and renewing licenses and other approvals required to provide services in China's market. Members welcomed the broad ranging and comprehensive commitments that China was undertaking to increase transparency and to provide information to governments and service providers on any matter relating to the GATS including China's schedule of specific commitments. Upon its accession, China will, *inter alia*, publish a list of authorities responsible for authorizing, approving or regulating those service sectors in which China made specific commitments as well as the specific procedures and conditions for obtaining, extending, renewing, denying or terminating licenses or approvals. Members also stated the need to ensure the independence and impartiality of regulatory authorities from the enterprises and individuals that they regulate.

xx. Members noted that the procedures and conditions for obtaining, extending or renewing licenses or approvals for providing services must be consistent with the provisions of the WTO Agreement, including the Protocol and China's schedule of specific commitments. Any licensing or approval process must not itself act as a barrier to market access and not be more trade restrictive than necessary. Specific time frames for decision, the opportunity to cure deficiencies in an application and to submit additional information, and the prompt provision in writing of reasons for denial of an application should be provided for in the procedures. Fees charged for processing of applications should be commensurate with the administrative cost of processing the application. Conditions for filing an application and the time taken to approve applications are not to have the effect of quantitative limitations on service suppliers or denial of national treatment. Members expressed particular concern regarding the practice of inviting only certain service providers to apply for licenses or approvals and the practice of automatically terminating the effectiveness of an application if the approving authority has not acted within a set period of time. Moreover, automatically terminating the effectiveness of pending applications after a certain period of time without providing reasons had the effect of denying a license with no effective right of appeal as required under China's protocol. Applicants needed to be informed of the reasons for denial of a license and such reasons needed to be consistent with China's WTO commitments.

xx. The representative of China confirmed that, in the application of its commitments under the WTO Agreement, the Protocol and its schedule of specific commitments, China shall, upon accession, ensure that the procedures for obtaining, expanding and renewing licenses or approvals for providing services will not be more trade restrictive than necessary and will be in accordance with Article XVII of GATS. All procedures and conditions for processing applications will be published prior to becoming effective. Such procedures will include specific time frames for review and decision by all relevant authorities. Decisions will be taken promptly on all applications and, if denied, reasons for such action would be provided in writing to the applicant, together with the possibility of resubmitting the application without delay. If the application is accepted, the applicant will be informed, without delay, of the date of entry into force of the license or approval which normally should be immediate. All necessary forms and applications would be readily available on request and without special invitation. Elements such as the opportunity to cure deficiencies in an application (after promptly informing the applicant about these) and to submit additional information will be included in the procedures. Any fees charged would be commensurate with the cost of processing an application. Relevant regulatory authorities will be separate from, and not accountable to, any service suppliers that they regulate. The decisions and procedures used by regulators shall be impartial with respect to all market participants. Where China requires an examination to license professionals, such examinations will be scheduled at frequent intervals. The Working Party took note of these commitments.

xx. Some Members also expressed concern regarding China's current practice of imposing conditions on the Chinese companies that are allowed to partner with foreign service suppliers. These Members indicated that this may amount to a "*de facto*" quota, as the number of potential partners meeting those conditions may be very limited. The representative of China confirmed that a foreign service supplier will be able to partner with the Chinese entity of its choice, including outside the sector of operation of the joint venture, as long as the Chinese partner is legally established in China. The Working Party took note of this commitment.

xx. With respect to its schedule of specific commitments, China confirmed that, while it had limited its market access commitments in some sectors to permit foreigners to hold only a minority equity interest, a minority shareholder can enforce, under China's laws, regulations and measures, rights in the investment. Moreover, WTO Members will have recourse to WTO dispute settlement to ensure implementation of all commitments in China's GATS schedule. The Working Party took note of these commitments.

xx. The representative of China also confirmed that established foreign service suppliers will be able to agree with their joint venture partners on the modification of their equity interest and implement this. He further confirmed that such an agreement will be approved if consistent with the relevant equity commitments in China's GATS schedule. The Working Party took note of these commitments.

xx. The representative of China submitted an action plan for implementing China's services and related commitments, circulated to the Working Party in [WT/ACC/CHN/X]. The action plan outlined the steps that China was taking to ensure full implementation of its services commitments, in particular, focusing on revisions in its laws, regulations and other measures relating to licensing of enterprises to provide services to comply with its obligations. The representative of China confirmed that China would consult with WTO Members regarding its revision of relevant laws, regulations and other measures to comply with China's obligations. The Working Party took note of this commitment.

xx. Members welcomed China's commitments in the area of distribution, noting that implementation of its commitments in this area would modernize China's infrastructure for supplying this essential service. Moreover, China's commitments were subject to a progressive phase-in of rights which would require changes in China's laws and regulations concerning distribution activities generally. New regulations on sales away from a fixed location, for example, were specifically referenced in China's schedule of specific commitments. Some Members noted that the World Code of Conduct provided a strong ethical basis for regulating sales away from a fixed location. Members also sought confirmation that the supply of franchising services was different from the establishment of a "chain store" since franchises with numerous establishments could be envisioned in a country of the size and population of China.

xx. China confirmed that it will consult with WTO Members and develop regulations, consistent with the commitments in its services schedule, on sales away from a fixed location. The Working Party took note of this commitment.

xx. The representative of China confirmed that franchising services were distinct from the establishment of a chain store and that the limitations on certain chain stores would not apply to enterprises established and operating under franchising agreements. The Working Party took note of this commitment.

xx. In response to questions from Members regarding certain terms in China's GATS schedule, the representative of China confirmed the following:



(a) A “master policy” is a policy that provides blanket coverage for the same legal person’s property and liabilities located in different places. A master policy may only be issued by the business department of an insurer’s head office or that of its authorized province-level branch offices. Other branches are not allowed to issue master policies.

(I) Master policy business with the state key construction projects as its subject-matter insured.

If investors on the state key construction projects (i.e., projects that are so listed and annually announced by the State Development and Planning Commission) meet either of the following requirements, they may purchase a master policy from insurers that are located in the same place as the investors’ legal persons are located.

(1) The investment on the subject-matter insured is all from China (including the reinvestment from the foreign-invested enterprises in China) and the sum of investment of the investor accounts for over 15% of the total investment.

(2) The investment is partially from abroad, and partially from China (including the reinvestment from the foreign-invested enterprises in China) and the sum of investment of the Chinese investor accounts for over 15% of the total domestic investment.

For those projects that draw investment all from abroad, every insurer may provide coverage in the form of master policy.

II. A Master policy covering different subject-matters insured of the same legal person.

For those subject-matters insured located in different places and owned by the same legal person (excluding financial, railway, and post and telecommunications industries and enterprises), a master policy may be issued on the basis of either of the following conditions.

(1) Insurance companies incorporated where the legal person or accounting unit of the insurance applicant is located are allowed to issue a master policy and pay the premium tax at that location.

(2) If over 50% of the insurance amount of the subject-matter insured is from a larger or medium sized city, then insurers in that city are allowed to issue a master

policy, no matter whether the insurance applicant's legal person or accounting unit is located in the city.

(b) Large commercial risk means an insurance risk written on any large scale commercial enterprise in which the aggregate annual premium exceeds \$10,000 (RMB), or construction projects where the investment amount is greater than \$12 million.

(c) Statutory insurance products are limited to the following specific categories, and that no additional products or categories will be added: Mandatory third-party auto insurance, driver and operator liability for busses and other commercial vehicles; and the reinsurance of statutory insurance associated with each of the above-listed categories.

xx. Members welcomed China's commitment to permit internal branching for all insurance firms consistent with the phase-out of geographic restrictions. Members noted that China had included certain qualifications that foreign insurers must meet to obtain authorization to provide services in China. Those qualifications related to a minimum period of establishment in another WTO member, total global assets and maintenance of a representative office in China. Since these qualifications related to the general characteristics of the foreign insurance company seeking to obtain the initial authorization to enter China's market, a company should only need to meet these qualifications in connection with the grant of such authorization and not in connection with subsequent approvals relating to branching or other activities.

xx. The representative of China confirmed that China will only require a foreign insurance supplier to obtain one authorization to enter China's market to provide services in the territory of China. Furthermore, China will permit internal branching for all insurance firms, including those currently established in China, consistent with the phase-out of geographic restrictions. He confirmed that a branch, including a sub-branch, is an extension of the parent enterprise and not a separate legal entity and that China will permit internal branching accordingly on that basis. The Working Party took note of these commitments.]

[xx. Some members expressed concern regarding the lack of transparency in China's services regime in particular in respect of obtaining, extending or renewing licenses and other approvals required to provide services in China's market. Members welcomed the broad ranging and comprehensive commitments that China was undertaking to increase transparency and to provide information to governments and service providers on any matter relating to the GATS including China's schedule of specific commitments. Upon its accession, China will, *inter alia*, publish a list of authorities responsible for authorizing, approving or regulating those service sectors in which

China made specific commitments as well as the specific procedures and conditions for obtaining, extending and renewing licenses or approvals.

xx. Members noted that the procedures and conditions for obtaining, extending or renewing licenses or approvals for providing services must be consistent with the provisions of the WTO, including the Protocol and China's schedule of specific commitments. Any licensing or approval process must not itself act as a barrier to market access and not be more burdensome than necessary. Specific time frames for decision, the opportunity to cure minor deficiencies in an application and to submit additional information, and the prompt provision in writing of reasons for denial of an application should be provided for in the procedures. Fees charged for processing of applications should be commensurate with the administrative cost of processing the application. Conditions for filing an application and the time taken to approve applications are not to have the effect of quantitative limitations on service suppliers or denial of national treatment. Members expressed particular concern regarding the practice of inviting only certain service providers to apply for licenses or approvals and the practice of automatically terminating the effectiveness of an application if the approving authority has not acted within a set period of time. Moreover, automatically terminating the effectiveness of pending applications after a certain period of time without providing reasons had the effect of denying a license with no effective right of appeal as required under China's protocol. Applicants needed to be informed of the reasons for denial of a license and such reasons needed to be consistent with China's WTO commitments.

xx. The representative of China confirmed that, in application of its commitments under the WTO Agreement, the Protocol and its schedule of specific commitments, China shall, upon accession, ensure that the procedures for obtaining, expanding and renewing licenses or approvals for providing services will not be more burdensome than necessary and in accordance with Article XVII of GATS. All procedures and conditions for processing applications will be published prior to becoming effective. Such procedures will include specific time frames for review and decision by all relevant authorities. Decisions will be taken promptly on all applications and, if denied or terminated, reasons for such action would be provided in writing to the applicant, together with the possibility to resubmit the application without delay. If the application is accepted, the applicant will be informed without delay of the date of entry into force of the license or approval, which should normally be immediate. All necessary forms and applications will be readily available on request and without special invitation, and information requested will be directly relevant to GATS-consistent criteria. Elements such as the opportunity to cure deficiencies in an application (after promptly informing the applicant about these) and to submit additional information will be included in the procedures. Any fees charged will be commensurate with the cost of processing an application. Relevant regulatory

authorities will be separate from, and not accountable to, any service suppliers that they regulate. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants. Where China requires an examination to licence professionals, such examinations will be scheduled at frequent intervals. The Working Party took note of these commitments.

#### **Choice of partner**

xx. Some members expressed concern regarding the existing practice of imposing conditions on the Chinese companies that are allowed to partner with foreign service suppliers. These members indicated that this may amount to “de facto” quotas, as the number of potential partners meeting those conditions may be limited. The representative of China confirmed that a foreign service supplier will be able to partner with Chinese entity of their choice, including outside the sector of operation of the joint venture, as long as the Chinese partner is legally established in China. The Working Party took note of this commitment.

#### **Modification of the equity interest**

xx. With respect to its schedule of specific commitments, China confirmed that established foreign service suppliers will be able to agree with their joint venture partners on the modification of their equity interest and implement this. The representative of China confirmed that such an agreement will be approved if consistent with the relevant equity commitments in China’s GATS schedule. The Working Party took note of this commitment.

#### **Prior experience requirement for establishment**

xx. In response to questions from members, the representative of China confirmed that, the merging, division, restructuring or other change of legal form of a foreign company will not impact on the prior experience requirements included in China’s GATS schedule, as long as the activities of the company, for which establishment in China is requested, are maintained in the new or restructured entity.

#### **Market research**

xx. Some members expressed concern regarding the recent additional requirements imposed on market research activities. In response to questions from members in this respect, the representative of China confirmed that, upon accession to the WTO, it will remove the prior approval requirement for market research services, defined as investigation services designed to secure information on the prospects and performance of an organisation’s products in the market, including market analysis (of

the size and other characteristics of a market) and analysis of consumer attitudes and preferences. Market research firms registered in China which are engaged in such services, would only be only required to file the survey plan and the questionnaire form on record in the statistical agencies of government at or above the provincial level. The Working Party took note of these commitments.

### **Legal services**

xx. In response to questions from members, the representative of China confirmed that "Chinese national registered lawyers", as indicated in China's GATS schedule, are those nationals holding a practising licence.]

126. 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.

## **VII. OTHER ISSUES**

### **1. Notifications**

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

### **2. Trade Agreements**

128. 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.

### **3. Publication of information on trade**

[to be completed]

### **4. Transparency**

129. 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.

130. 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.

131. 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.

132. 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.

[xx. Members expressed concern about the lack of transparency regarding the laws, regulations and other measures that applied to matters covered in the WTO Agreement and this Protocol. In particular, Members noted the difficulty in finding and obtaining copies of regulations and other measures undertaken by various ministries as well as those taken by provincial and local authorities. Transparency of regulations and other measures, particularly of sub-central authorities was essential since these authorities often provided the details on how the more general laws, regulations and other measures of the central government would be implemented and often differed among various jurisdictions. Members emphasized the need to receive such information in a timely fashion so that governments and traders could be prepared to comply with such provisions and could exercise their rights in respect of implementation and enforcement of such measures. Members noted the development of the Internet and other means to ensure that information from all government bodies at all levels could be assembled in one place and made readily available. The creation and maintenance of a single, authoritative journal and enquiry point would greatly facilitate dissemination of information and help promote compliance.

xx. Members also emphasized the importance of a meaningful opportunity to provide comments prior to final implementation of laws, regulations and other measures. Such an opportunity could enhance understanding of the provision and permit China to take such comments into account before implementing a measure.]

133. 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.

134. 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.

135. 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".

136. 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.

137. 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.

138. **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.**

139. **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.**

140. **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.**

141. **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.**

142. **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.**

143. **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.**

## **VIII. CONCLUSIONS**

144. 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.

145. 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.

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