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CHINA'S PROPOSAL ON WTO REFORM¹

COMMUNICATION FROM CHINA

The following communication, dated 13 May 2019, is being circulated at the request of the delegation of China.

The world's economic landscape is undergoing profound changes. With the rise of unilateralism and protectionism, economic globalization is encountering twists and turns. The authority and efficacy of the multilateral trading system are facing severe challenges. Against this backdrop, China supports efforts to make necessary reform to the WTO, in order to help it tackle the current crisis, respond to the needs of our times, safeguard the multilateral trading system and promote the building of an open world economy. To this end, China released its position paper on WTO reform in November 2018², outlining the basic principles and specific propositions of China on this issue. This proposal is prepared on the basis of the above-mentioned position paper.

1 INTRODUCTION

1.1 The Important Role of the WTO in Global Economic Governance

1.1. International trade is an important engine for the growth of global economy. The multilateral trading system, with the WTO at its centre, is the cornerstone of economic globalization and free trade. As an important pillar of global economic governance, the WTO has, since its inception, made remarkable contributions to expanding international trade, promoting full employment, stimulating economic growth and raising standards of living.

1.2. In the past 24 years, the membership of the WTO has kept increasing with the total trade volume of its Members accounting for 98% of world's total, which fully demonstrates the representativeness of the multilateral trading system and its appeal to the membership. World merchandise exports have increased from US\$ 4.3 trillion in 1994 to US\$ 17.7 trillion in 2017³, lifting hundreds of millions of people out of poverty around the world and significantly raising the living standards of citizens of relevant countries and regions.

1.3. In the fields of trade liberalization and facilitation, the WTO has made a number of important achievements. The conclusion and full implementation of *the Agreement on Trade Facilitation* are expected to reduce the costs of global trade by 14% and would generate US\$ 1 trillion in additional global trade each year.⁴ The full elimination of agricultural export subsidies is conducive to levelling the playing field for agricultural trade. The elimination of tariffs on IT products has increased the

¹ This proposal is submitted with a view to facilitating the discussions on WTO reform. China stands ready to engage in discussions with other WTO Members. The views expressed in this proposal are without prejudice to the position and proposals of China in the future on the specific issues covered herein.

² For the full text of China's Position Paper on WTO Reform, please visit the official website of the Ministry of Commerce of the P. R. China at <http://sms.mofcom.gov.cn/article/cbw/2018/20181202817611.shtml>.

³ For figures of 1994 and 2017, please see *International Trade Statistics 1995* and *World Trade Review 2018* respectively.

⁴ See http://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm.

export of the products covered from US\$ 549 billion in 1996 to US\$ 1.7 trillion in 2015. All these have contributed tremendously to the recovery and growth of world economy.

1.4. In the field of dispute settlement, 574 dispute cases have been filed with the WTO dispute settlement mechanism by the end of 2018.⁵ The mechanism has been playing an important role in resolving trade disputes, preserving the balance of the rights and obligations of the Members under the WTO agreements and providing security and predictability to the multilateral trading system.

1.5. In the field of trade policy review and monitoring, more than 430 trade policy reviews (TPRs) have been conducted, covering 155 of the 164 WTO Members. TPRs have significantly increased the transparency of Members' trade policies and deepened their understanding of each other's trade regime.

1.2 The Unprecedented Existential Crisis of the WTO

1.6. The recent trend of rising unilateralist and protectionist practices have dealt blows to multilateralism and the system of free trade. The enduring blockage of the appointment process of Appellate Body members risks paralyzing the Appellate Body by the end of 2019, which will significantly affect the effective operation of the dispute settlement mechanism. The abuse of national security exception, unilateral measures inconsistent with the WTO rules, as well as misuse or abuse of existing trade remedy measures have severely damaged the rules-based, free and open international trade order. Moreover, such practices have adversely affected the interests of the WTO Members, especially the developing Members, and undermined the authority and efficacy of the WTO. As a consequence, the Organization is facing an unprecedented existential crisis.

1.7. The WTO itself is not impeccable. The objectives set out in *the Marrakesh Agreement Establishing the World Trade Organization* have not yet been fully attained. As for its function of negotiations, progress has been slow on issues such as agriculture, development and rules, although it has been seventeen years since the launch of the Doha Development Round. Such new issues as electronic commerce and investment facilitation that reflect the reality of international economy and trade in the 21st century have not been timely addressed. By contrast, remarkable progress and achievements have been made in the field of trade liberalization and facilitation through bilateral and regional trade agreements. As for WTO's function of trade policy review and monitoring, transparency of trade policies of its Members awaits to be enhanced and the operational efficiency of the WTO stands in need of improvement.

1.8. It is against this backdrop that some WTO Members have recognized the urgency and necessity of WTO reform. The G20 Summit held in Buenos Aires in 2018 expressed support for necessary reform of the WTO so as to help the Organization to better play its role.

1.3 China's Overall Position on WTO Reform

1.9. China has been an active participant, staunch supporter and major contributor in the multilateral trading system. It has comprehensively participated in all areas of work of the WTO, proactively promoted liberalization and facilitation of trade and investment, respected and fully implemented dispute settlement rulings, and deeply engaged in trade policy reviews. China has spared no efforts towards the integration of developing Members into the multilateral trading system. The white paper entitled *China and the World Trade Organization* published by the Chinese government in June 2018 provides a full account of China's position on the WTO and the multilateral trading system as well as China's positive contributions to the development of world economy and trade.

1.10. China supports necessary reform of the WTO so as to overcome its existential crisis, enhance its authority and efficacy, and increase its relevance in terms of global economic governance. To this end, China has put forward in November 2018 the following three basic principles on WTO reform. First, the reform shall preserve such core values of the multilateral trading system as non-discrimination and openness, with a view to creating a stable and predictable environment for international trade. Second, the reform shall safeguard the development interests of developing Members. In particular, it is imperative to eliminate development deficit in the existing WTO rules,

⁵ See https://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

resolve the difficulties encountered by developing Members in their integration into economic globalization and help attain the Sustainable Development Goals of United Nations 2030 Agenda. Third, the reform shall follow the practice of decision-making by consensus. The specific issues subject to reform, work agenda and final results should be agreed upon after extensive consultations, on the basis of mutual respect, broad participation and dialogues on an equal footing.

1.11. China believes that the multilateral process is the most desirable channel to promote liberalization and facilitation of trade and investment on a global scale. At the same time, opportunities and challenges have been brought about by the new wave of science and technology revolution and transformational power of digital economy. In this context, we may consider an open, transparent, inclusive, pragmatic and flexible approach to explore a new set of rules on international trade and investment, responding to the developments of the times and the needs of business communities. In this process, the interests and capacity constraints of developing Members should be taken into full account.

2 AREAS FOR ACTION

2.1. China believes the necessary reform of the WTO should cover the following four areas for concrete actions: First, resolving the crucial and urgent issues threatening the existence of the WTO; Second, increasing WTO's relevance in global economic governance; Third, improving the operational efficiency of the WTO; and Fourth, enhancing the inclusiveness of the multilateral trading system.

2.1 RESOLVING THE CRUCIAL AND URGENT ISSUES THREATENING THE EXISTENCE OF THE WTO

2.1.1 Breaking the Impasse of the Appointment Process of Appellate Body members

2.2. **Issue and Problem.** As a pillar of the WTO, the dispute settlement mechanism plays a crucial role in providing security and predictability to the multilateral trading system. If the blockage of the appointment process of Appellate Body members is to continue, there will be only one Appellate Body member left in office by December 2019. Such a situation would severely threaten the proper functioning of the dispute settlement mechanism and therefore pose an imminent and institutional risk to the Organization.

2.3. **Objective and Task.** The appointment process of Appellate Body members should be initiated without delay to fill the vacancies so as to ensure the effective functioning of the dispute settlement mechanism.

2.4. **Action and Proposal.** China, together with some other WTO Members, submitted joint proposals⁶ on the Appellate Body reform, urging Members to actively participate in the informal process under the auspices of the General Council and engage in substantive text-based discussions. These efforts are made to address such concerns of certain Members as the transitional rules for outgoing Appellate Body members, 90-day timeframe for appellate proceedings, the status of municipal law, findings unnecessary for dispute resolution and the issue of precedent. The proposals also emphasized the need to preserve and reinforce the independence and impartiality of the Appellate Body and to initiate the appointment process of the Appellate Body members without any further delay.

2.1.2 Tightening Disciplines to Curb the Abuse of National Security Exception

2.5. **Issue and Problem.** Certain Member has imposed unwarranted tariffs on steel and aluminium products and threatened to raise tariffs on auto and auto parts to protect its domestic industries, using national security as a pretext. It has also improperly extended the coverage of export control measures and administered such measures in a non-transparent or unjust manner. These actions have disturbed the international trade order and international market, impeded normal technological exchanges and applications, impaired the interests of Members concerned and undermined the relevant rules of the WTO.

⁶ See WT/GC/W/752/Rev.2, WT/GC/W/753/Rev.1.

2.6. **Objective and Task.** The WTO Members should act in good faith and exercise restraint in invoking provisions on national security exceptions. Such provisions need to be further clarified and regulated within the WTO framework.

2.7. **Action and Proposal.** It is necessary to enhance the notification requirements on measures such as imposing import tariffs on the ground of national security exceptions, and carry out multilateral reviews on such measures. Meanwhile, WTO Members whose interests have been affected should be entitled to take prompt and effective remedies, so as to maintain the balance of their rights and obligations under the WTO.

2.1.3 Tightening Disciplines to Curb Unilateral Measures Inconsistent with WTO Rules

2.8. **Issue and Problem.** Certain Member has taken unilateralist measures of raising trade barriers and imposing import tariffs in an arbitrary way and without authorization from the WTO. In addition, it has imposed economic sanctions on other countries and extended 'secondary sanctions' to overseas business activities of third-country nationals or companies, without authorization from the United Nations or legal basis under international treaties. Such actions have severely violated international commitments and the WTO rules. Although such unilateralist measures are manifestly WTO-inconsistent and have caused serious consequences, the current WTO rules offer no timely or effective discipline and remedy.

2.9. **Objective and Task.** It is necessary to effectively curb such unilateralist measures, reinvigorate the efficiency and authority of the WTO, safeguard the rules-based multilateral trading system and protect the legitimate rights of the WTO Members.

2.10. **Action and Proposal.** Such unilateralist measures should be constrained through, *inter alia*, enhancing the multilateral review mechanism, authorizing the Members affected to take prompt and effective provisional remedies in cases of urgency and accelerating relevant dispute settlement proceedings.

2.2 INCREASING WTO'S RELEVANCE IN GLOBAL ECONOMIC GOVERNANCE

2.2.1 Rectifying the Inequity in Rules on Agriculture

2.11. **Issue and Problem.** Significant inequity, imbalance and unfairness persist in current rules on agriculture, in particular the provisions regarding the Aggregate Measurement of Support (AMS). A number of developed Members enjoy high levels of AMS and therefore are able to provide much higher levels of support than their *de minimis* level with respect to a number of specific products, seriously distorting agricultural production and trade. By contrast, the majority of developing Members have no entitlement to AMS. Furthermore, they could not implement domestic public stockholding programmes necessary for food security purposes.

2.12. **Objective and Task.** It is necessary to rectify the inequity in rules on agriculture so as to promote agricultural trade and create a level playing field for developing Members. It is also necessary to enhance their abilities to safeguard food security and livelihood security so that they could benefit more from the multilateral trading system.

2.13. **Action and Proposal.** The AMS entitlements of developed Members should be eliminated in gradual instalments. In the meanwhile, Members should reach an agreement on the permanent solution for public stockholding for food security purposes.

2.2.2 Improving Trade Remedies Rules

2.14. **Issue and Problem.** At present, there exist a number of gaps and ambiguities in existing multilateral trade remedy rules. Misuse and abusive application of trade remedy measures abound. Discriminatory practices based on country-of-origin and types of enterprises have been on the rise. The special situations of developing Members and SMEs as well as the public interests are not accorded adequate or appropriate consideration. As a result, trade remedy rules have failed to exert their due functions or respond to the needs of the development of the multilateral trading system to the detriment of the normal course of international trade.

2.15. **Objective and Task.** It is necessary to further clarify and improve relevant WTO rules on subsidies, countervailing measures and anti-dumping measures. We should curb the misuse and abuse of trade remedies, eliminate discriminatory rules and practices, and give consideration to the special situations of developing Members and SMEs as well as public interests. In this way, the spirit and principles of relevant agreements of the WTO could be more faithfully honoured and free trade and levelling playing field better safeguarded. Such improvements of rules could answer to the needs of the world and the WTO Members for sustainable development.

2.16. **Action and Proposal.** First, the provisions on non-actionable subsidies should be reinstated and their coverage expanded. Second, efforts need to be made to clarify and improve relevant rules on and relating to price comparison in anti-dumping proceedings, improve the rules on sunset review and explore the possibility of harmonizing the rules on anti-circumvention. Third, the subsidies and countervailing rules relating to subsidy identification, calculation of benefits conferred and application of facts available should be clarified and improved to mitigate abusive applications of countervailing measures. Fourth, transparency and due process of anti-dumping and countervailing investigations should be improved and the assessment of their effectiveness and compliance be reinforced. Fifth, more consideration should be given to the special situations of developing Members and SMEs as well as public interests.

2.2.3 Accelerating Negotiations on Fisheries Subsidies

2.17. **Issue and Problem.** The negotiations on fisheries subsidies are among the areas where the WTO could help achieve the Sustainable Development Goals of the United Nations 2030 Agenda. Swift conclusion of the negotiations is important.

2.18. **Objective and Task.** It is necessary to conclude the negotiations on fisheries subsidies in accordance with the decision adopted by the 11th WTO Ministerial Conference. The agreement to be reached should provide comprehensive and effective disciplines to prohibit certain forms of fisheries subsidies contributing to overcapacity and overfishing and to eliminate subsidies contributing to illegal, unreported and unregulated (IUU) fishing.

2.19. **Action and Proposal.** China supports the 2019 Work Programme drafted by the Chairperson of the Negotiating Group on Rules and will continue to actively and constructively engage in consultations of various forms. The negotiations should be conducted in a pragmatic and consensus-seeking manner. Transparency and inclusiveness should be ensured in these consultations.

2.2.4 Advancing Joint Initiative on Trade-related Aspects of E-commerce in an Open and Inclusive Manner

2.20. **Issue and Problem.** E-commerce has created unprecedented opportunities for international trade and economic growth. Meanwhile, the digital divide still needs to be bridged. Issues such as cyber security and data security have gained in prominence. Members, particularly developing Members, have their own challenges in developing E-commerce. And they have diversified interests and concerns with respect to international rules on E-commerce. However, in the past two decades, the WTO did not launch the rule-making process on trade-related aspects of E-commerce.

2.21. **Objective and Task.** Business communities have made strong call for E-commerce rules. It is important for Members to work on pro-multilateral rules. Such efforts will be conducive to bolstering inclusive trade, revitalizing the WTO negotiating function and enhancing the relevance of the multilateral trading system. These rules, once agreed upon, would create new opportunities of international trade for Members, particularly developing Members, as well as SMEs, women and youth. With these rules in place, E-commerce will generate more benefits for businesses, consumers and global economy.

2.22. **Action and Proposal.** China and 75 other WTO Members issued a joint statement on E-commerce, confirming their intention to commence negotiations on trade-related aspects of E-commerce on the basis of existing WTO agreements and framework. China proposes the following actions: First, conduct the rule-making process in an open, transparent, inclusive and flexible manner, and welcome participation of all Members. Second, uphold the development dimension and focus on cross-border trade in goods enabled by the Internet, as well as on such related services as payment and logistics services; and establish rules on cross-border E-commerce facilitation,

electronic signature, electronic authentication, and online consumer protection etc. Third, formulate provisions on development cooperation so as to strengthen technical assistance and capacity building for developing Members, particularly least-developed country Members. Fourth, respect Members' right to regulate and accommodate specific concerns of developing Members. Fifth, strike the balance among technological advances, business development and such legitimate public policy objectives as Internet sovereignty, data security and privacy protection, so as to reach a balanced and pragmatic outcome acceptable to all through equal consultations. Sixth, continue in-depth discussions in relevant WTO bodies pursuant to the *Work Programme on Electronic Commerce* in 1998.

2.2.5 Promoting Discussions on New Issues

2.23. **Issue and Problem.** Trade and investment are closely interlinked in today's world underlined by the in-depth development of global value chains. Investment facilitation measures play an increasingly important role in improving business environment, attracting inbound cross-border investment and promoting trade and sustainable development. However, cross-border investment by businesses is still hindered by opaque policies and government inefficiencies. Micro, small and medium sized enterprises (MSMEs) make significant contributions to job creation and technology innovation. However, they are confronted with challenges in connecting to global value chains, such as limited access to information and high costs of trade financing.

2.24. **Objective and Task.** It is crucial to meet the development needs of business communities and to promote inclusive trade, so as to ensure the multilateral trading system keep pace with the times.

2.25. **Action and Proposal.** Continued efforts should be made to bring the discussions on relevant issues into a new phase while adhering to the principles of openness, transparency and inclusiveness. On investment facilitation, a dedicated mechanism should be established to enable Members to carry out efficient policy coordination and explore the establishment of multilateral framework. This process should focus on such elements as improving transparency, streamlining administrative procedures and enhancing international cooperation, while paying due respect to Members' right to regulate. With the process centring on development, developing Members will benefit from technical assistance and capacity building. On MSMEs, those enterprises could better participate in and benefit more from international trade with improved access to information, easier corporate financing and reduced trade costs.

2.3 IMPROVING THE OPERATIONAL EFFICIENCY OF THE WTO

2.3.1 Improving the Compliance of Notification Obligation

2.26. **Issue and Problem.** At present, Members' overall fulfilment of notification obligations still falls short of the requirements under various WTO agreements. Due to their limited capacity and other constraints, some Members could not submit the notifications on time. Meanwhile, the quality of counter-notifications submitted by some Members still needs further improvement.

2.27. **Objective and Task.** It is imperative to enhance the transparency of Members' trade policies. Greater transparency will help create an open, stable, predictable, equitable and transparent international trading environment, and raise Members' confidence in the multilateral trading system.

2.28. **Action and Proposal.** First, developed Members should lead by example in submitting comprehensive, timely and accurate notifications. Second, Members should improve the quality of their counter-notifications. Third, Members should increase exchange of their experiences on notifications. Fourth, the WTO Secretariat needs to update *Technical Cooperation Handbook on Notifications*⁷ as soon as possible and intensify training in this regard. Fifth, developing Members should also endeavour to improve their compliance of notification obligations. Technical assistance and capacity building should be provided to developing Members, in particular LDCs, if they are unable to fulfil notification obligations on time.

⁷ See WT/TC/NOTIF/INF/3.

2.3.2 Improving the Efficiency of WTO Subsidiary Bodies

2.29. **Issue and Problem.** The potentials and functions of the subsidiary bodies of the WTO have not been fully tapped. Some issues on the agenda of the regular meetings have not been resolved despite prolonged discussions for years. There is considerable room for improving the operational efficiency of the subsidiary bodies.

2.30. **Objective and Task.** It is important to elevate WTO's role in global economic governance. In this regard, its subsidiary bodies and the Secretariat should find ways to better respond to the interests and needs of Members.

2.31. **Action and Proposal.** Viable options should be explored to improve the efficiency of the WTO in the following areas, among others: First, improve the rules of procedures of the subsidiary bodies. Second, adjust the frequency of regular meetings in light of the specific situation of each body. Third, encourage the Secretariat to conduct more research on important economic and trade issues, enhance cooperation with other international organizations, and help developing Members address and resolve specific trade concerns at regular meetings. Fourth, further improve the representation of developing Members in the Secretariat and steadily increase their share in the staff.

2.4 STRENGTHENING THE INCLUSIVENESS OF THE MULTILATERAL TRADING SYSTEM

2.4.1 Respecting the Right of Special and Differential Treatment of Developing Members

2.32. **Issue and Problem.** Development issue is at the centre of WTO work. The WTO agreements have set forth special and differential treatment (S&D) provisions for developing Members. However, most of these provisions are best-endeavour clauses in nature and their implementation leaves much to be desired. Furthermore, some Members are challenging the entitlement of developing Members to S&D, disregarding the systemic gaps between developing and developed Members. They even request some developing Members to assume the same obligations as those of developed Members.

2.33. **Objective and Task.** Development remains an important theme of the times. It is crucial for the WTO to safeguard the rights of developing Members to S&D and make S&D provisions more precise, effective and operational. This will be conducive to reducing development deficit in trade rules and contributing to the achievement of the Sustainable Development Goals of the United Nations 2030 Agenda.

2.34. **Action and Proposal.** China, together with some other WTO Members, has submitted joint proposal⁸ on S&D and calls for continued preservation of the rights of developing Members to S&D. China further proposes the following: First, enhance the implementation and monitoring of existing S&D provisions, particularly the implementation of Duty-Free and Quota-Free treatment and the Preferential Treatment to Services and Service Suppliers of the LDCs. Second, provide more targeted and concrete technical assistance to ensure the integration of developing Members into the multilateral trading system and global value chains. Third, advance the negotiations on S&D provisions in accordance with the Doha Ministerial Declaration. Fourth, accord adequate and effective S&D treatment to developing Members in future negotiations on trade and investment rules. Fifth, encourage developing Members to actively assume obligations commensurate with their level of development and economic capability.

2.4.2 Adhering to the Principle of Fair Competition in Trade and Investment

2.35. **Issue and Problem.** State-owned-enterprises (SOEs) engaged in commercial competition are equal players in the market as other types of enterprises. However, some Members have come to set differentiated rules on the basis of ownership of enterprises. For example, they label indiscriminately all SOEs as 'public bodies' within the meaning of *the Agreement of Subsidies and Countervailing Measures*, set forth additional transparency requirements and disciplines for SOEs, and discriminate against SOEs in foreign investment security review. Such practices are detrimental to creating an institutional framework for fair competition and, if left unchecked, would give rise to more discriminatory rules in the future.

⁸ See WT/GC/W/765/Rev.2.

2.36. **Objective and Task.** It is imperative to respect the diversity of development models among Members and promote fair competition in the fields of trade and investment. Such efforts would strengthen the inclusiveness of the multilateral trading system.

2.37. **Action and Proposal.** Actions shall be taken in the WTO to uphold the principle of fair competition, so as to ensure that enterprises of different ownerships operate in an environment of fair competition. China proposes the following: First, during discussions on subsidy disciplines, no special or discriminatory disciplines should be instituted on SOEs in the name of WTO reform. Second, foreign investment security reviews shall be conducted in an impartial manner and follow such principles as transparency and due process. Non-discriminatory treatment shall be given to like investment by enterprises with different ownership structures.
