WORKING PARTY ON CHINA'S STATUS AS A CONTRACTING PARTY

CHINA'S FOREIGN TRADE REGIME

Note by the Secretariat

At the meeting on 24-28 May 1993 members of the Working Party requested the Secretariat to prepare a structured summary of the information provided by China on its foreign economic and trade regime since the circulation of the last such summary in Spec(88)13/Add.4 on 9 December 1988. The present note has been prepared in response to this request. It is a consolidation of information provided by China in documents Spec(88)13/Add.4, Add.5, Add.6, Add.8, Add.11, Add.4/Rev.1, China's further clarifications of 21-23 October 1992, 2 December 1992, 18 February 1993, 23 April 1993 and 23 July 1993 in response to questions raised by members of the Working Party, the Foreign Trade Law of the People's Republic of China (Draft) of April 1993 and China's statements made during meetings of the Working Party.

The present summary has been checked for accuracy by the Chinese authorities. The structure of the paper, in particular the choice of the headings under which different aspects of the trade regime are described, while based to a large extent on that of Spec(88)13/Add.4, is the sole responsibility of the Secretariat. For presentational reasons, minor changes of a technical, non-substantive nature have been made to the texts of Chinese statements incorporated in this consolidation.
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1. **INTRODUCTION**

1.1 **Basic Features of China’s Economy**

*In late 1988, the Chinese delegation indicated the following:*

As of September 1988, China has a population of over 1.04 billion, with a territory of 9.6 million square kilometres. Before 1949, the output value of agriculture and handicraft industry made up over 90% of the total output value of industry and agriculture. People lived in poverty and the economy was extremely backward. Since the founding of the People’s Republic of China, production has increased substantially and living standards have improved. In 1985, the total output value of industry and agriculture reached Renminbi yuan (RMB) 1,333.6 billion (about US$ 454.1 billion), of which the output value of industry was RMB 875.6 billion (about US$ 298.2 billion). However, the living standard of the Chinese people is still low. Eighty per cent of the population is still living in the countryside. In 1985, the average annual per capita net income was RMB 398 (about US$ 136) for rural dwellers and the average annual living expenses were RMB 752 (about US$ 256) for city residents. Per capita national income in 1985 was RMB 656 (about US$ 223).<sup>1</sup>

China’s foreign trade has developed rapidly in recent years. In 1985, the total value of imports and exports of goods reached US$ 69.61 billion, 84.1% higher than that in 1980. Export value stood at US$ 27.36 billion and import value at US$ 42.25 billion, registering an increase of 49.8% and 116.1%, respectively, compared with 1980. However, as of September 1988 China’s foreign trade is still small relative to both national product and world trade. China’s export value of 1985 represented only 1.42% of the world’s total. Most of the export commodities were primary products and textiles. Manufactures, such as machinery and electronic goods, account for only a small portion of China’s exports. There is a rising domestic demand for raw materials, advanced technology and equipment. A large trade deficit has developed as imports have been growing more rapidly than exports.<sup>2</sup>

During the seven years from 1979 to 1985, medium and long-term foreign loans totalled US$ 13.1 billion and direct foreign investment US$ 6.1 billion, leading to the establishment of more than 6,800 Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and wholly foreign-owned enterprises. A considerable amount of foreign exchange has been spent on import of foreign technology involved in over 10,000 projects.<sup>3</sup>

*Subsequently, the Chinese delegation provided the following additional information:*

As of May 1993, China has a population of over 1.17 billion, with a territory of 9.6 million square kilometres. In 1992, the gross domestic product reached RMB 2,400 billion (about US$ 400 billion). Eighty per cent of the population is still living in the countryside. In 1992, the average annual per capita net income was RMB 784 (about US$ 140) for rural dwellers and the average annual living expenses were RMB 1,826 (about US$ 326) for urban residents.<sup>4</sup>

In 1992, the total value of imports and exports of goods reached US$ 165.63 billion. Export value stood at US$ 85 billion and import value at US$ 80.63 billion. China’s export value in 1992 represented 2.3% of the world’s total.<sup>5</sup>

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<sup>1</sup>Spec(88)13/Add.4, p.5.
<sup>2</sup>Spec(88)13/Add.4, p.5.
<sup>3</sup>Spec(88)13/Add.4, p.5.
<sup>4</sup>Spec(88)13/Add.4/Rev.1, p.1.
<sup>5</sup>Spec(88)13/Add.4/Rev.1, p.1.
In late 1988, the Chinese delegation indicated the following regarding China's Seventh Five-Year Plan:

During the period of the Seventh Five-Year Plan (1986-1990), China's "open door policy" aims at increasing export earnings, promoting external economic, trade and technological exchange, attracting more foreign investment and technology and expanding the scale of other forms of economic co-operation to facilitate socialist modernization. The Plan contains the following specific objectives:

(1) **Trade:** The total volume of imports and exports will increase at an annual rate of 7%, reaching US$ 83 billion in 1990. Exports will increase by 8.1% and imports by 6.1%. The proportion of the manufactured goods exported by China is expected to increase. As for the import commodity mix, the stress is placed on software, advanced technology, key equipment and the materials for production which are urgently needed and in short supply in the domestic market.

(2) **Foreign Investment:** Priority is given to development of energy, transportation, communications and raw materials, particularly projects for electric power generation, port facilities, oil drilling, and technical transformation of machinery and electronics industries; and to export-oriented projects and import substitution.

(3) **Foreign Technology:** Priority is given to technological transformation of existing enterprises, to export-oriented projects and import substitution. Foreign expertise of various forms is to be widely utilized.

(4) **Special Economic Zones:** Efforts are to be made to complete projects of infrastructure and projects related to foreign investment; to construct projects of high and technological intensity by absorbing foreign investment; to develop a number of highly competitive export items; and to establish an export-oriented economy.

(5) **Open Coastal Cities:** These cities are expected to bring into full play their advantages, by expanding foreign economic and technological activities and by speeding up the technological transformation of the existing enterprises.6

The objectives of agricultural development in the Seventh Five-Year Plan are as follows:

(1) The average annual output of grain will reach 415 million tons (425 to 450 million tons in 1990), representing an annual increase of 12%, a rate above that recorded during the Sixth Five-Year Plan.

(2) The average annual output of cotton will be 4.25 million tons, registering a small decline in the rate recorded in the period of the previous Five-Year Plan.

(3) Edible oil crops are expected to register an increased output of 42% over that of the Sixth Five-Year Plan, with average annual output reaching 17.12 million tons (18.25 million tons in 1990).

(4) Average annual output of the sugar crop will be 63.85 million tons (68.75 million tons in 1990), with an increase of 40% which would be a rate above that registered in the period of the previous Five-Year Plan.

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6Spec(88)13/Add.4, pp.5-6.
(5) As regards forestry, 27.7 million hectares (415.5 million mu) will be afforested in five years. Efforts will be made to increase production all over the country, from an annual increase of 12% in 1985 to 14% in 1990.

(6) As for livestock and animal husbandry, the total output of meat products in 1990 will be 22.75 million tons, a 19.7% increase over that of 1985; dairy products will reach 6.25 million tons, 110% higher than that of 1985; the output of eggs will be 8.75 million tons with an increase of 65% over that of 1985.

(7) The total output of aquatic products in 1990 will be 9 million tons, with an increase of 29% over that of 1985.\(^7\)

1.2 Recent Reforms of China's Economic Structure

_In late 1988, the Chinese delegation indicated the following:_

The centralized planned economic system, practised in China for a long time, contributed greatly to the establishment of an independent and fairly complete industrial economy. However, under this system, economic decision-making was over-centralized and mandatory plans were overemphasized to the neglect of the role of the market mechanism. As a result, the enterprises were operated inefficiently. To overcome the defects of that system and give full play to the productive forces, China has progressively reformed its economic system since 1979. The objective of the Chinese Government is to establish a "planned commodity economy", that could be understood as a socialist market economy based on public ownership. The crucial difference between a socialist market economy in China and a capitalist market economy is, in the view of the Chinese authorities, the difference in the ownership of the means of production. Otherwise, economic mechanisms and principles can be identical.\(^8\)

In the rural economy, the system of three-level public ownership (people's commune, production brigade, production team) has been replaced by a system in which households are the basic unit of production. The rural households enter into land lease contracts with the villagers' committee, an autonomous peasant organization. During the tenure of each contract (15-30 years, renewable), the rural households use the collectively-owned land to engage in independent agricultural production and make small contributions to the public cumulation fund and welfare fund. In addition to the individual households, there have emerged specialized households, self-employed industrial and commercial households, joint production units engaged in the production and sale of merchandise, and other forms of associations. The relationship between the rural household and the State is governed through contracts setting a specified quantity of agricultural products to be sold by the rural household to the State at a specified price.\(^9\)

In the industrial field, the principles of enterprise management have also substantially changed. The principle of separation of ownership and managerial authority of enterprises has been adopted. Most production enterprises are now operating under a system under which the manager has full responsibility and considerable decision-making power in such matters as planning, purchasing and marketing, pricing, wage and bonus determination, as well as labour regulation. Enterprises are moving towards full responsibility for their own profits and losses. Various modes of management are being practised in the State-owned enterprises. Many medium and small-sized State enterprises are now being contracted or leased out. The establishment of conglomerates and groups of enterprises is encouraged, and shareholder enterprises have been set up on an experimental basis. Currently, there are not only

\(^7\)Spec(88)13/Add.4, pp.6-7.

\(^8\)Spec(88)13/Add.4, p.7.

\(^9\)Spec(88)13/Add.4, p.7.
Spec(88)13/Add.13
Page 4

State-owned and collective enterprises, but also individual households, private enterprises, Chinese-foreign equity joint ventures, Chinese-foreign contractual joint ventures and wholly foreign-owned enterprises in China. The Chinese authorities intend to develop a multi-formed system of ownership of the means of production while preserving the dominant position of public ownership.  

Subsequently, the Chinese delegation provided the following additional information:

China’s open policy and economic reforms since the 1980s have made remarkable progress and brought about evident strengthening of the national economic capability. Comparing 1990 with 1980, the GNP rose from RMB 447 billion to RMB 1,740 billion, a 136% increase on the basis of constant prices, representing an average annual increase of 9%. The national income rose by 131% as calculated in constant prices, from RMB 368.8 billion to RMB 1,430 billion, or an annual increase of 8.7%.  

However, the continuous high economic growth gave rise to overheating, reflected in an excessively large scale of investments, disorder in marketing and distribution, and high inflation rates and sectoral imbalance. In order to resolve these problems the Party Central Committee, in September 1988, took a "Decision on Further Economic Readjustment and Deepening of Reform". Subsequently, in November 1989, the Party Central Committee made a similar decision to rectify the economic order, improve the economic environment and deepen economic reform. The decisions aim to: (1) curb overheated economic growth and overcome the consequential sectoral imbalance and the high inflation rate, thus putting the economy on the track of sustainable, steady and coordinated growth; and (2) create a favourable environment for economic reform and further opening to the outside world. In the process of economic readjustment, economic, legal and administrative means have been used in combination to curtail the scale of capital investment and control the amount of currency in circulation and the credit level.

More than two years of effort has brought about evident success in the economic readjustment. The excessive high social demand has been brought down and inflation brought under effective control. The retail price index dropped from 18.5% in 1988 to 2.1% in 1990, and this low rate has been maintained for the first half of 1991. China has had a bumper harvest for two years running and industrial growth returned to normal levels. Economic order was stable. In 1990, GNP grew by 5%, 6.9% for agriculture output, 7.6% for total industrial output. Major objectives for the economic readjustment have been achieved. China’s national economy has turned for the better. This creates a relaxed environment for further deepening of reform. Therefore, the National People’s Congress, at its Fourth Session held in April 1991, adopted the "Outline of the Ten-Year Programme and Eighth Five-Year Plan for the National Economic and Social Development" as the general policy guidance for the next ten years.

The Outline clearly defines that firm efforts will be made to push forward the reform and open door policy in the next ten years on the basis of the great success achieved in the 1980s, and in particular the favourable environment which has emerged from the economic readjustment. In light of the Outline, the objectives of further economic reform in the 1990s are to initially establish a new system of planned commodity economy and an operational mechanism that combines plans with market regulation.

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10 Spec(88)13/Add.4, pp.7-8.
11 Spec(88)13/Add.8, p.2.
12 Spec(88)13/Add.8, pp.2-3. For details of the Decision, please refer to Spec(88)13/Add.8, pp.2-8.
13 Spec(88)13/Add.8, pp.7-8.
14 Spec(88)13/Add.8, p.8. For details of the Outline, please refer to Spec(88)13/Add.8, pp.8-13.
1.3 Objectives of China's Economic Reforms

In late 1988, the Chinese delegation indicated the following:

China is in a period of transition during which features of the old economic system and those of the new one coexist. The full realization of the new planned commodity economy requires further reform efforts: First, the management mechanisms for State-owned enterprises and their autonomy vis-à-vis the State need to be further refined to ensure their efficiency and competitiveness. Second, long-term and short-term financial markets and markets for stocks, foreign exchange, technology, labour and real estate need to be developed and expanded, and the pricing and price administration for merchandise has to be further reformed with a view to limiting price controls to a few essential items. Third, as the direct State controls over enterprises decline in importance, the Government's macro-economic controls of the economy have to be improved. Fourth, as China's integration in the world economy continues to expand, foreign trade enterprises need to be given full management autonomy and responsibility for their profits and losses so as to improve the coordination between domestic industry and foreign trade. Fifth, the legal system and its enforcement have to be further strengthened so as to ensure the implementation of the new planned commodity economy system.\(^\text{15}\)

The Chinese authorities intend to achieve a foreign trade system with the following features: The State will regulate foreign trade mainly through economic, legal and administrative means, without direct intervention in the operations of the enterprises. The enterprises will therefore be able to choose the most economic and appropriate means of conducting foreign trade and make their own decisions. Mandatory planning will be abolished and replaced by guidance planning and market regulation.\(^\text{16}\)

The Chinese authorities intend to introduce around 1990 a system of price controls in which the prices of a very limited number of important commodities and services are set by the State and State guidance prices or market-regulated prices are applied for most commodities and services. During the period of the Seventh Five-Year Plan (1986-1990), and for a certain period thereafter, the following price reforms are expected by the Chinese authorities:

(1) Consumer goods: Except for a number of important commodities such as grain, edible oil, cotton cloth, cotton yarn, salt and pork, which will continue to be subject to State prices or guidance prices, the prices of the rest of ordinary consumer goods will be further liberalized according to supply and demand conditions of the market.

(2) Capital goods: According to the policy of readjustment and liberalization, State prices of the crucial capital goods will be readjusted with product coverage further reduced. The discrepancy between State prices and market prices is expected to be further reduced.

(3) Service charges: Service charges of railways, post and telecommunications, public transportation, air transport and ocean shipping will remain under State control and will be appropriately readjusted. Other service charges will be gradually liberalized.\(^\text{17}\)

The Chinese authorities intend to continue to expand and improve the foreign exchange market, steadily pursue exchange rate reform, increase the percentage of foreign exchange that may be retained by enterprises, allow more foreign exchange flows into the market, and reinforce the regulatory role

\(^{15}\) Spec(88)13/Add.4, p.8.
\(^{16}\) Spec(88)13/Add.4, p.8.
\(^{17}\) Spec(88)13/Add.4, pp.8-9.
of the market. At the same time, China intends to strengthen its control over the balance of payments through monetary and other macro-economic policies.\textsuperscript{18}

Subsequently, the Chinese delegation provided the following clarifications and additional information:

China has been progressively reforming its economic system since 1979. The objective of the economic reform is to establish a socialist market economy system, which means a market economy in a socialist country where the market plays a fundamental role in the rational allocation of resources under State macro-control so that (i) the nation's economic activities are undertaken in accordance with the market forces of supply and demand; (ii) resources are channelled into sectors where comparative advantage exists through the functioning of price leverage and competition while enterprises compete with one another for survival because they are forced and motivated to do so in this market-based system; and (iii) the relation between production and demand can be adjusted rapidly, for the market is highly responsive to various economic signals.\textsuperscript{19}

Establishing a socialist market economic system is a significant development and a breakthrough resulting from China's past fourteen years of reform and its opening to the outside world. In the establishment of this system, four major tasks have been identified:

(1) The operational mechanism of State-owned enterprises, particularly large and medium-sized enterprises, shall be transformed with a view to forcing them to compete in the market-place and strengthening their vitality and improving their overall quality. Enterprise autonomy in business operations shall be developed through the separation of government functions from enterprise management and, in particular, the rationalization of the property rights relationship. Enterprises shall be legal entities in their own right and shall compete in the market, exercising full autonomy in their operations and assuming full responsibility for their own profits and losses. Shareholding systems shall be introduced on a trial basis and the combining and merging of enterprises under appropriate circumstances shall be permitted. Some small State-owned enterprises may be leased or sold to individuals.

(2) Growth of the market system shall be promoted. Continued efforts shall be made to (i) develop commodity markets, particularly markets for production materials (capital goods); (ii) foster the growth of financial markets for securities such as bonds and stocks; and (iii) open up markets for technology, labour, information and real estate. The aim is to form a common and open market system on a nationwide basis. Price reform should be accelerated in order to straighten out the relationship between interrelated prices and set up a price system where the market plays a predominant role in price formation.

(3) Reform shall be further deepened in respect of systems of wealth distribution and social security. Relations concerning wealth distribution between the State and enterprises as well as those between the Central Government and local governments shall be rationalized by phasing in a system under which profits and taxes are separately surrendered by enterprises to the State and tax revenues are shared by the Central Government and local governments. Reforms in the pay system shall also be stepped up while a social security system encompassing unemployment, old-age pensions and health care shall be actively pursued.

(4) Work on the transformation of government functions shall be stepped up. It is stressed that to separate government functions from enterprise management is essential to such a transformation. Governments at all levels shall not be allowed to interfere in respect of powers assumed by enterprises

\textsuperscript{18}Spec(88)13/Add.4, p.9.
\textsuperscript{19}Spec(88)13/Add.4/Rev.1, pp.1-2.
in accordance with national laws and regulations. Neither central nor local governmental departments shall deny an enterprise of decision-making powers which have been extended to it. It is clear that government functions are to be performed mainly in such areas as overall planning, policy-making, provision of information and services, coordination and supervision. Eventually the government will be able to exercise indirect macro-control over the economy.\textsuperscript{20}

The foreign trade reform now under way in China focuses on ensuring conformity of the import system with international rules. The reform is directed at the liberalization of import restrictions and the reduction of administrative interference.\textsuperscript{21}

1.4 Promotion of Foreign Trade

\textit{In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on the promotion of foreign trade:}

Article 1. This Law is enacted for the purpose of developing foreign trade, ensuring normal order of foreign trade and promoting national economic development.\textsuperscript{22}

Article 2. For the purpose of this Law, the term "foreign trade" covers importation and exportation of goods, technology and services.\textsuperscript{23}

Article 3. The State shall lay down foreign trade policies and laws and administer foreign trade on a uniform basis.\textsuperscript{24}

Article 4. The State shall adopt a fair, free and mutually beneficial foreign trade system.\textsuperscript{25}

Article 5. The State shall encourage and protect fair competition in foreign trade for the purpose of promoting the development of foreign trade.\textsuperscript{26}

Article 6. The People's Republic of China develops trade relations with other countries and regions on the basis of equality and mutual benefit.\textsuperscript{27}

Article 33. The State allows the importation and exportation of services.\textsuperscript{28}

Article 34. Where the relevant laws and regulations so require, foreign trade entities may import or export services only on acquisition of the approval from the MOFTEC or other authorities concerned of the State Council.\textsuperscript{29}

Article 35. The State grants, in accordance with treaties and agreements, market access to the other contracting parties with respect to the importation and exportation of services.\textsuperscript{30}

\textsuperscript{20}Spec(88)13/Add.4/Rev.1, pp.2-3.
\textsuperscript{21}Spec(88)13/Add.4/Rev.1, p.3.
\textsuperscript{22}Draft Foreign Trade Law, 4.93.
\textsuperscript{23}Draft Foreign Trade Law, 4.93.
\textsuperscript{24}Draft Foreign Trade Law, 4.93.
\textsuperscript{25}Draft Foreign Trade Law, 4.93.
\textsuperscript{26}Draft Foreign Trade Law, 4.93.
\textsuperscript{27}Draft Foreign Trade Law, 4.93.
\textsuperscript{28}Draft Foreign Trade Law, 4.93.
\textsuperscript{29}Draft Foreign Trade Law, 4.93.
\textsuperscript{30}Draft Foreign Trade Law, 4.93.
Article 45. The MOFTEC establishes development fund and risk fund for foreign trade for the purpose of developing foreign trade.\textsuperscript{31}

Article 46. The State sets up import and export bank or specialized financial institutions for the purpose of promoting and facilitating the development of foreign trade.\textsuperscript{32}

Article 47. The State may introduce export credit, tax refund or other trade promotion measures in line with the internationally accepted practices to satisfy the requirements of foreign trade.\textsuperscript{33}

Article 48. The State encourages the development of industries and public undertakings in service of foreign trade.\textsuperscript{34}

Article 50. The State shall play an active role in developing education and research of foreign trade.\textsuperscript{35}

Article 59. This Law is applicable to the trade between foreign trade entities and separate customs territories.\textsuperscript{36}

Article 61. This Law shall enter into effect on the day of its publication.\textsuperscript{37}

\textsuperscript{31}Draft Foreign Trade Law, 4.93.  
\textsuperscript{32}Draft Foreign Trade Law, 4.93.  
\textsuperscript{33}Draft Foreign Trade Law, 4.93.  
\textsuperscript{34}Draft Foreign Trade Law, 4.93.  
\textsuperscript{35}Draft Foreign Trade Law, 4.93.  
\textsuperscript{36}Draft Foreign Trade Law, 4.93.  
\textsuperscript{37}Draft Foreign Trade Law, 4.93.
2. INSTITUTIONAL FRAMEWORK

2.1 Government Agencies

2.1.1 Central Government

In late 1988, the Chinese delegation indicated the following:

The decision-making power on foreign trade as a whole rests with the State Council. In accordance with Article 89 of the Constitution of the People's Republic of China, the State Council exercises the following functions and powers concerning foreign economic relations and trade: it adopts administrative measures concerning foreign economic relations and trade, enacts administrative rules and regulations and issues decisions and orders according to the Constitution and the statutes; submits proposals to the National People's Congress or its Standing Committee; lays down the tasks and responsibilities of the ministries and commissions of the State Council, exercises unified leadership over the work of the ministries and commissions; draws up and implements the plan for national economic and social development; conducts foreign affairs and concludes treaties and agreements with foreign states; and alters or annuls inappropriate decisions, orders and regulations issued by the ministries, commissions or local organs of State administrations at different levels. The State Commission for Economic Restructuring assists and advises the State Council in the field of economic structural reform. It coordinates the implementation of the reform among the various ministries and commissions.38

The State Planning Commission is responsible for the formulation of the long-term, medium-term and annual plans for national social and economic development. Once the plans are approved by the State Council, all government agencies concerned are responsible for facilitating the implementation of the plans. The State Planning Commission is responsible for overall balance of national economic and social development, industrial restructuring, long-term programmes, and guidance for economic planning of other economic departments. The Commission determines the products subject to production and trade controls according to the importance of the products to the national economic and social development as well as the balance of production and demand.39

The Ministry of Foreign Economic Relations and Trade (MOFERT) formulates foreign trade policies and, together with its subordinate departments, exercises administrative supervision over foreign trade. MOFERT is the functional department of the Central Government in charge of external economic relations and trade. It is responsible for implementing foreign trade policies; drawing up long-term foreign trade development programmes and medium-term and annual import-export plans in coordination with the State Planning Commission, and supervising their implementation; organizing bilateral and multilateral trade negotiations between governments, negotiating trade agreements, and organizing their implementation; approving the establishment of import and export enterprises; implementing the import and export licensing system (including the allocation of export quotas for textiles and clothing); and engaging in international market research and disseminating information.40

The business activities of all enterprises involved in foreign trade are under the policy guidance of MOFERT and subject to regulations and mandatory plans promulgated by MOFERT. The Ministry authorizes the establishment of foreign trade corporations (FTCs) and supervises their operations but does not participate directly in foreign trade transactions, nor does it interfere with the management and business activities of enterprises. When an FTC fails to implement State policy, or violates laws

38 Spec(88)13/Add.4, p.10.
39 Spec(88)13/Add.4, p.10.
40 Spec(88)13/Add.4, p.10.
and regulations, MOFERT can intervene in its business activities or even withdraw the authorization to conduct foreign trade.\textsuperscript{41}

There are 26 departments in MOFERT, of which the following are particularly concerned with foreign trade policies and administration: Department of Treaties and Laws, responsible for drafting laws and decrees of foreign economic relations and trade and for examining agreements, contracts and articles of association; Department of Foreign Trade Administration, responsible for the administration of foreign trade activities of the relevant departments and localities, issuing import and export licenses, allocating quotas, and approving the establishment of import and export enterprises; Import and Export Department, responsible for coordination of import and export for the whole country; First, Second, and Third Departments for Regional Affairs, responsible for bilateral economic relations and trade; and Department of International Relations, responsible for multilateral economic relations and trade.\textsuperscript{42}

MOFERT has set up special commissioner offices at the provincial level which administer and supervise foreign trade in their respective areas and issue certain import and export licenses, as authorized by MOFERT. Foreign economic and trade departments of provinces, autonomous regions and municipalities administer local foreign economic relations and trade under the leadership of MOFERT and the local governments concerned.\textsuperscript{43}

\textit{The Chinese delegation has indicated that MOFERT was replaced by the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) as of March 1993.}

\textit{In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on the institutional framework for trade policy:}

\textbf{Article 8.} The State Council of the PRC establishes the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) to administer foreign trade of the whole nation. In respect of foreign trade the MOFTEC shall perform the following obligations:

1. Drawing up policies and programmes for national foreign trade, drafting laws and regulations for foreign trade and, under relevant laws, publishing foreign trade rules and regulations on a uniform basis.

2. Publishing policies, rules and regulations for national foreign trade on a uniform basis, except those to be published by the State Council.

3. Taking charge of the administration of national foreign trade, inspecting and supervising the implementation of the laws, rules and regulations for foreign trade.

4. Taking charge of the statistics of national foreign trade and publishing the statistics at regular intervals.

5. Investigating and disposing of impact upon domestic industries resulting from imports and unfair trade practices of foreign countries.

\textsuperscript{41Spec(88)13/Add.4, p.11.  
\textsuperscript{42Spec(88)13/Add.4, p.11.  
\textsuperscript{43Spec(88)13/Add.4, p.11.}
6. Taking charge of bilateral or multilateral trade negotiations, participating in the activities of the international organizations and institutions concerned, concluding and signing trade treaties or agreements and submitting them for ratification or approval through relevant legal procedures.

7. Partaking in laying down the measures used to adjust foreign trade such as general level of tariffs, mix of tariffs, foreign exchange rates, interest rates for credit and taxation system.

8. Setting up commercial institutions abroad as representatives offices of the MOFTEC in the countries or regions concerned and accrediting trade representatives to relevant international organizations.

9. Exercising other administrative powers for foreign trade concerned by the laws and regulations or authorized by the State Council.44

Article 54. The MOFTEC may impose a fine of up to three times of the price indicated in importation or exportation in case of violation of Article 10 or 11 of this Law.45

Article 55. The MOFTEC may impose a fine in case of violation of Articles 15 and 37. The approval for establishing foreign trade company or the authorization for foreign trade may be revoked in case of non-fulfilment of obligations in defiance of the imposition of a fine.46

Article 56. The MOFTEC may impose a fine and/or revoke the approval for establishing foreign trade company or the authorization for foreign trade in case of violation of Articles 20, 21, 22, 29, 30, 31, 38 of this Law. Criminal acts, if any shall be subject to penal punishment in accordance with relevant laws.47

Article 57. Any interested parties refusing to accept the imposed punishment of the MOFTEC may request review to the MOFTEC within thirty days of the receipt of the notification of punishment; when refusing to accept the results of the review, the interested parties may lodge a lawsuit with the People’s Court within thirty days of the receipt of the decisions of review. The interested parties may also directly file a suit with the People’s Court within thirty days of the receipt of the notification of punishment. Where any interested parties neither request review or file a suit with the People’s Court nor comply with the decision of punishment, the MOFTEC may apply to the People’s Court for forcible execution.48

Article 58. Any malpractice or abuses of authorized powers committed by the staff of foreign trade authorities shall be subject to executive punishment or, under relevant laws, criminal penalties.49

Article 60. Rules for implementation shall be laid down by the MOFTEC in accordance with relevant provisions of this Law and shall be put into effect after approval by the State Council.50
The Tariff Commission, which includes representatives from MOFERT, the State Planning Commission and the Ministry of Finance, among other agencies, is responsible for formulating the guidelines, policies and principles governing the Regulations on Import and Export Duties and the Customs Import and Export Tariff. It also has responsibility for revising the tariff schedule following the examination and approval of requests for partial readjustments. However, the establishment of a new tariff schedule or the overall revision of the existing schedule must be submitted to the State Council for approval.\textsuperscript{51}

Under the direct guidance of the State Council, the Customs General Administration is responsible for the national Customs service. Its main functions are to control inbound and outbound goods, currencies, gold and silver, postal articles, passengers’ luggage, transport vehicles and their crews’ personal effects; to collect customs duties, taxes and fees; to prevent smuggling; and to compile customs statistics.\textsuperscript{52}

The State Administration for the Inspection of Import and Export Commodities supervises and administers the inspection of import and export commodities and controls their quality. In 1980, the China National Import and Export Commodities Inspection Corporation was established. The Corporation, although subject to the supervision of the State Administration, operates independently and carries out a wide range of inspection activities. At the request of foreign clients, the Corporation may carry out inspections and issue inspection certificates. The State Bureau of Technical Supervision exercises quality control in the domestic production process. Both administrations cooperate to avoid inconsistencies in their policies and principles.\textsuperscript{53}

The Ministry of Finance is responsible for drawing up the rules and regulations in respect of the State financial budget; managing revenue, expenditure and taxes, including taxes concerning foreign nationals; supervising China’s domestic and foreign debt, as well as loans granted to China by the World Bank; managing national income and expenses of foreign exchange earned from sources other than merchandise trade; and supervising financial activities of the ministries, commissions and localities. The Ministry of Finance is not involved in the determination of prices of commodities traded at home and abroad.\textsuperscript{54}

The State Pricing Administration exercises supervision to ensure that the same pricing system is applied to imported and domestic products.\textsuperscript{55}

The Chinese delegation has indicated that as a result of the restructuring of the State Council approved by the Eighth National People’s Congress, the State Pricing Administration was abolished.

The People’s Bank of China is the central bank which exercises leadership and administration over money and finance throughout the country. Its functions include: drawing up and implementing policies and rules and regulations with regard to banking and financing; controlling the issuance and circulation of currency; managing the interest rate of deposits and loans, and fixing the foreign exchange rate between and foreign currencies; compiling the State credit plan and administering credit funds and working capital of State-owned enterprises; administering foreign exchange and reserves of foreign exchange and gold; approving the establishment, rescission or merger of the specialized banks or other financial institutions; managing and supervising the business of the specialized banks and other financial institutions.
institutions; acting as agent in issuing government bonds; and administering shares, bonds and other securities of enterprises.56

The Bank of China is a State bank specialized in foreign exchange operations. As authorized by the State and entrusted by the People’s Bank of China, it signs agreements with foreign governments and central banks. It also participates in international financial activities, conducts foreign exchange business for the State and guarantees loan agreements by foreign banks to Chinese enterprises. The Bank of China also provides guarantees and certifications to foreign banks on the business and financial standing of Chinese enterprises requesting foreign loans.57

The State Administration of Exchange Control (SAEC), under the leadership of the People’s Bank of China, is in charge of foreign exchange control. Its major functions include: formulating rules and regulations of foreign exchange control; participating in the preparation of the State plan for foreign exchange receipts and payments, and supervising its implementation; fixing and publishing the exchange rates of RMB; controlling official foreign exchange reserves and foreign debts; controlling foreign exchange dealings, trade and non-trade receipts and payments; and investigating cases involving violation of the regulations governing foreign exchange control and penalizing violators.58

### 2.1.2 Provincial and Municipal Governments

In late 1988, the Chinese delegation indicated the following:

The State has delegated part of the administrative powers in the field of foreign trade to the provinces, autonomous regions and municipalities. The Departments (or Bureaus) of Foreign Economic Relations and Trade of provinces, autonomous regions and municipalities administer and supervise foreign trade in the areas of their jurisdiction in accordance with the authorization of MOFERT. With the decentralization of China’s foreign trade administration and the independent management of foreign trade enterprises, the Central Government exercises control mainly through strengthened enforcement of laws, regulations and policies applicable throughout China. For example, local governments and enterprises have to abide by customs laws and regulations, licensing regulations and foreign exchange control regulations. All local regulations have to be consistent with State laws and regulations.59

The local governments, through the foreign economic and trade bureaus, supervise the implementation of State policies, laws and regulations and the fulfilment of targets established in contracts between the State and production enterprises. However, according to the principle of separating ownership from managerial authority, local government agencies are not permitted to interfere with the business activities of enterprises. Local governments are not allowed to give local foreign trade enterprises monopoly rights within their territory.60

In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on the institutional framework of sub-national governments:

Article 9. The People’s Governments of provinces, autonomous regions or municipalities directly under the Central Government establish Departments (Committees or Bureaus) of Foreign Trade which
shall administer foreign trade within their respective administrative areas in compliance with relevant
laws or under the authorization from MOFTEC.\textsuperscript{61}

2.2 Enterprises

2.2.1 Foreign Trade Corporations

In late 1988, the Chinese delegation indicated the following:

China’s State-owned foreign trade corporations (FTCs) have full powers to make decisions
within the framework of State laws, regulations and policies. The independent management of enterprises
is one of the objectives of the economic restructuring programme. To promote management efficiency,
most of the local subsidiaries of the FTCs have been delinked from the national corporations and become
independent legal entities responsible for their profits and losses. Local FTCs undertake contractual
obligations to fulfil targets in export earnings, foreign exchange submission and economic efficiency.\textsuperscript{62}

The State does not assign areas of exclusive geographic responsibility to FTCs. The plan targets
for imports with centrally-held foreign exchange are distributed among national and local FTCs according
to their operational ability. As of September 1988, with the exception of 9 import products and 32
export products, which are handled by specifically designated FTCs, all other products may be imported
or exported by any corporation. The specific commodities imported by designated FTCs are steel,
fertilizer, cereals, timber, chemical fibres, automobiles, disused ships, tobacco and rubber. The export
products presently handled by designated State FTCs are: rice, soya beans, peanuts, frozen pork, cotton,
cotton yarn, cotton grey cloth, cotton/polyester yarn, cotton/polyester grey cloth, drawnwork, tobacco,
tea, silk, crude oil, petroleum products, coal, maize, prawns, pearls, ginseng, pilose antler, Chinese
angelica, Tienchi, royal jelly (including the powder), canned mushrooms, salted water mushrooms,
eel (including its fry in different species), heavy water, diamonds, rabbit hair, tungsten ore and
ammonium paratungstate.\textsuperscript{63}

Trade in agricultural products is, in general, handled by China Cereals, Oils and Foodstuffs
Import and Export Corporation (CEROILFOOD) and China Native Product and Animal By-Products
Import and Export Corporation. CEROILFOOD deals mainly with cereals, pulses, bean cakes, oil
seeds, vegetables, animal fats, tung oil, livestock and poultry, frozen meat and meat products, eggs,
processed egg products, aquatic products, fresh fast frozen, salted and wild vegetables, assorted canned
products, mushrooms in brine, fine sugar, salt, confectionery and biscuits, rice and wheat flour products,
dairy products, beverages, beer, groundnut products, condiments, wine and spirits. China National
Native Produce and Animal By-Products Import and Export Corporation deals with industrial raw
materials, tea, tobacco and its products, jute and jute products, spices and essential oils, bamboo, wood
and their products, dried fruits and dehydrated vegetables, daily necessities, foodstuffs, hog bristles,
bristle brushes, casings, hair and wool, hand-woven carpets and rugs, feather and down, feather and
down-filled products, leather, fur and their products.\textsuperscript{64}

FTCs are free to import without an import license any product other than the 53 products under
the licensing system. MOFERT does not set guidelines for the FTCs, nor detailed rules regarding
the choice of origin of imports. The origins of imports are decided by the corporations themselves
on the basis of the requests of end-users and market conditions.\textsuperscript{65}

\textsuperscript{61}Draft Foreign Trade Law, 4.93.
\textsuperscript{62}Spec(88)13/Add.4, p.13.
\textsuperscript{63}Spec(88)13/Add.4, pp.13-14.
\textsuperscript{64}Spec(88)13/Add.4, p.14.
\textsuperscript{65}Spec(88)13/Add.4, p.14.
Subsequently, the Chinese delegation made the following clarifications:

It is China's established policy objective to turn FTCs into independent business entities responsible for their own profits and losses. During the foreign trade reform in early 1991, subsidies to cover operational losses were abolished.\(^{66}\)

The State designates FTCs to handle those bulk and resource-based products which have an important bearing on the national economy and people's livelihood. As of October 1991, the number of import products handled by designated FTCs has increased from 9 to 14. These products include cereals, sugar, steel, fertilizer, crude oil, refined oil, rubber, timber, polyester and acrylic fibres, tobacco products, pesticides, agricultural film, cotton and wool (including non-cleansed wool, cleansed wool and wool strip). The number of export products handled by designated FTCs has been reduced from 32 to 21. These include rice, soya beans, maize, bean dregs, tea, tobacco, cotton, drawn work, pearls, diamonds, coal, tungsten ore and ammonium paratungstate, stibium and stibium oxide, crude oil, refined oil, cotton yarn, cotton/polyester yarn, cotton grey cloth, cotton/polyester grey cloth, silk and grey silk. The above product coverage is subject to readjustment in light of changes in the demand and supply situation.\(^{67}\)

As of December 1992, China designates FTCs to handle exclusively imports of a very limited number of products, such as grain, petroleum, tobacco, cotton and coal. Among these designated corporations, some are set up in accordance with State laws and regulations, some are set up to ensure domestic agricultural and industrial production and some are set up out of consideration of established trade practices. China will abide by the provisions of Article XVII of the General Agreement in respect of these corporations.\(^{68}\)

Most of China's foreign trade enterprises do not possess exclusive rights or privileges within the meaning of Article XVII of the General Agreement. They conduct their businesses on the basis of non-discrimination and commercial considerations. They compete with each other in their autonomous operations and are responsible for their own profits and losses.\(^{69}\)

The granting of exclusive import rights enables FTCs to control the level of imports with a view to guaranteeing an equilibrium of supply and demand of the products concerned and preventing erratic fluctuation of supply such as occurred in China a few years ago in certain products, e.g. wool. It also helps to ensure stability of agricultural production.\(^{70}\)

In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provided the following on foreign trade entities:

Article 18. Foreign trade entities may, in accordance with relevant laws, set up their offices or branches at home or abroad.\(^{71}\)

Article 36. Foreign trade entities shall operate in compliance with relevant laws and regulations and compete in the spirit of fair play, their legal rights and interests shall be protected by laws.\(^{72}\)

\(^{66}\)Spec(88)13/Add.11, p.9.

\(^{67}\)Spec(88)13/Add.6, pp. 4-5; Spec(88)13/Add.8, p.14.

\(^{68}\)Clarifications, 2.12.92, p.8.

\(^{69}\)Clarifications, 2.12.92, p.8.

\(^{70}\)Clarifications, 18.2.92, p.5.

\(^{71}\)Draft Foreign Trade Law, 4.93.

\(^{72}\)Draft Foreign Trade Law, 4.93.
Article 37. Foreign trade entities shall, in import or export transactions, conclude and perform the contracts following the principles of honesty and credit and settle the disputes of trade contracts in a timely manner.73

Article 38. Foreign trade entities, in conducting transactions, may not:

1. disturb foreign trade order with undue means,
2. counterfeit trade marks or infringe other intellectual properties under legal protection,
3. mark false place of origin on imports or exports,
4. forge licences or certificates for import and export,
5. falsify prices of imports or exports.74

Article 39. Foreign trade entities may commission each other as its agent for foreign trade operations. Relevant provisions of Generalized Principles of Civil Law of the PRC shall be applicable in this case to the rights and obligations of interested parties. Corporations, enterprises, other economic organizations or individuals without authorization for foreign trade from the MOFTEC may freely commission any foreign trade entities as its agent for foreign trade operations on the basis of an agency agreement concluded by both parties. The rights and obligations of the parties concerned shall be governed by the provisions of relevant laws or regulations in relation to commissions.75

Article 52. The State provides convenience for businessmen of foreign trade entities concerning their exit and re-entry.76

2.2.2 Production Enterprises

In late 1988, the Chinese delegation indicated the following:

Production enterprises with foreign trade rights may export products produced by them and import products for their own use. The existence of a relatively stable source of supply for export products is one of the conditions for authorization to engage in exports. China considers that this rule is in the interest of both the Chinese enterprises and their foreign trading partners because without a stable source of supply an enterprise cannot meet its contractual obligations. A production enterprise supplying export products of a value of US$ 3 million or more qualifies for authorization to engage in export business. China authorizes production enterprises to engage in direct exports in order to encourage the initiative of the enterprises and expand exports. Enterprises without foreign trade rights can request FTCs to conduct imports and exports on their behalf. The fees charged by FTCs for this service are not fixed; however, they are in general within the range of 1.5% to 3% of the transaction value.77

Production enterprises with foreign trade rights have autonomy in the conduct of business within their designated scope of operations. Production enterprises approved to engage in export business may conclude contracts with foreign companies directly. The government does not interfere with the business activities of the enterprises. They can sign import and export contracts on the request of

73Draft Foreign Trade Law, 4.93.
74Draft Foreign Trade Law, 4.93.
75Draft Foreign Trade Law, 4.93.
76Draft Foreign Trade Law, 4.93.
77Spec(88)13/Add.4, pp.14-15.
customers. Moreover, the large and medium-sized enterprises approved to engage in foreign trade do not have to report to MOFERT on their import and export activities within their scope of business. However, they are required to regularly submit statistical reports to the competent departments of the localities.\textsuperscript{78}

The implementation of the contract responsibility system on a trial basis began in May 1984 in State-owned industrial enterprises. By the end of 1987, 80% of all State-owned enterprises had adopted this system. The recently adopted "Law on State-owned Industrial Enterprises" codified these practices. Under the contract responsibility system, a manager, selected on the basis of open competitive recruitment, is made fully responsible for the State-owned enterprise. The State concludes a contract with the manager setting out the enterprise’s rights and obligations towards the State. The contract generally stipulates the portion of profits to be surrendered to the State and in some cases also technical, financial and other targets to be achieved. In 1987, mandatory production targets were fixed for only 17% of industrial output. The total volume of wages is also fixed, usually in relation to the profits earned. If the manager fails to meet his obligations under the contract he has to pay penalties; his personal property is mortgaged as security for that eventuality. The contract leaves it to the manager to decide without government interference how to achieve the agreed targets. The profit-sharing arrangements are such that the successful operation of an enterprise benefits not only the State but also the manager and the workers and therefore gives them incentives to raise productivity and to promptly respond to changes in market demand.\textsuperscript{79}

A share-holding system has recently emerged. Under this system, enterprises and government bodies can acquire shares of enterprises and thereby become entitled to participate in their decisions and to receive part of their profits. The system, which is still in an experimental stage and therefore not yet subject to specific regulations, is now mainly used by enterprises which wish to create mutual horizontal ties.\textsuperscript{80}

Subsequently, the Chinese delegation provided the following clarifications and additional information:

Three contractual obligations (export earnings, foreign exchange submission and efficiency targets) undertaken by the enterprises toward the State are mainly linked with the interests of enterprises. No privileges are accorded by the State to enterprises which meet contractual commitments to the State on export earnings, except that they will be allowed to retain a higher ratio of profits after they fulfil the contractual tasks. This serves to improve the business capacity and welfare of employees of the enterprises.\textsuperscript{81}

As of 1993, enterprises which have been leased or sold to collective enterprises or individuals account for about 10% of the total number of independent enterprises nationwide, among which the majority are large and medium-sized commercial enterprises. Ever since 1978, the State has undertaken constant management reforms of State-owned enterprises. These reforms include introducing on a trial basis a share-holding system within some State-owned enterprises, some of which have issued B-type shares to go public overseas and to be listed on stock exchanges in New York and Hong Kong. Transformation by way of incorporation will represent the future orientation of the reforms of China’s State-owned enterprises.\textsuperscript{82}

\textsuperscript{78}\textsuperscript{Spec(88)13/Add.4, p.15.}
\textsuperscript{79}\textsuperscript{Spec(88)13/Add.4, p.15.}
\textsuperscript{80}\textsuperscript{Spec(88)13/Add.4, p.15.}
\textsuperscript{81}\textsuperscript{Clarifications, 23.7.93, p.20.}
\textsuperscript{82}\textsuperscript{Clarifications, 23.7.93, p.19.}
2.2.3 Rural Household Production Units

In late 1988, the Chinese delegation indicated the following:

In the rural sector of the economy the system of three-level public ownership (people's commune, production brigade, production team) has been replaced by a system in which households are the basic unit of production. The relations between their households and the State are governed by a contract responsibility system. This system establishes a form of production responsibility by linking remuneration to output. Peasants obtain the right to use collectively-owned land by accepting a contract setting out, among other things, the agricultural tax to be paid to the State, the public welfare contributions to be paid to the local villagers' committee (or group) and the quantities and prices of the products to be delivered. The contract responsibility system now covers 98% of all rural households. The system permits peasants to plan their own production in accordance with their contract and with market demand. Sales of agricultural products over and above the contracted quantities have increased from 45% of the total agricultural and sideline production in 1978 to around 60% in 1988.83

With the abolition of the system of the people's communes and the restoration of governments at township level, rural industries are coordinated and administrated by the Supply and Marketing Companies of Rural Industry. Specialized, individual peasant enterprises and rural household production units can directly enter the market. They may accept the State guidance plan (through economic contracts) or benefit from the market information provided by the competent departments of the Government.84

2.2.4 Private Enterprises

In late 1988, the Chinese delegation indicated the following:

In 1987, there were 15 million industrial and commercial households providing 20 million jobs. There were also 115,000 private enterprises with a total of 1.84 million employees. Individual households and private enterprises do not enjoy any privileges but in practice they tend to be very competitive and responsive to market changes.85

A recent amendment of the Constitution provides: "The State permits the existence and development of the private economy under relevant laws. The private economy is a supplement to the socialist economy of public ownership. The State protects the legitimate rights and interests of the private economy and exercises guidance, supervision and administration over the private economy". According to Article 12 of the "Provisional Regulations on Private Enterprises", which entered into force on 1 July 1988, private enterprises may engage, inter alia, in productive operations with respect to industry, building, transportation, commerce, catering, services, repairing and scientific and technical consultancy. According to Article 22 of the Regulations, private enterprises may establish Chinese-foreign equity and contractual joint ventures with foreign firms, enterprises and other economic entities or individuals to the extent permitted by the State laws and regulations. They may also engage in contracting for processing with imported materials, processing according to samples, assembling with foreign supplied spare parts, and compensation trade.86

83 Spec(88)13/Add.4, p.16.
84 Spec(88)13/Add.4, p.16.
85 Spec(88)13/Add.4, p.16.
86 Spec(88)13/Add.4, p.16.
In 1989 there was a drop in the number of individual enterprises as a result of slackened business activity, but growth resumed in 1990. These enterprises are particularly active in construction and transportation.\(^{87}\)

### 2.2.5 Enterprises With Foreign Investment

**In late 1988, the Chinese delegation indicated the following:**

Enterprises with foreign investment include Chinese-foreign joint ventures (equity joint ventures), Chinese-foreign cooperative ventures (contractual joint ventures) and wholly foreign-owned enterprises established within the territory of China. China’s laws grant foreign investors management autonomy. For instance, Article 7 of the "Regulations for the Implementation of the Law of the People’s Republic of China on Joint Ventures Using Chinese and Foreign Investment" specifies that "joint ventures shall have the right of autonomy in operation and management within the limits and scope stipulated by Chinese laws and regulations, agreements, contracts and articles of association of the joint venture. All the departments concerned shall provide support and assistance". Moreover, Article 11 of the "Law of the People’s Republic of China on Wholly Foreign-owned Enterprises" specifies: "A wholly foreign-owned enterprise which conducts its operation and management activities in accordance with the approved article of association shall not be subject to interference".\(^{88}\)

Joint venture enterprises may make their own production and operation plans within the business scope and production scale stipulated by the joint venture contracts. They are free to decide whether to buy machinery, equipment and raw materials in China or from abroad. Such enterprises also have the right to directly export their products. The Government guarantees the right of autonomy of joint venture enterprises.\(^{89}\)

**Subsequently, the Chinese delegation provided the following clarifications and additional information:**

China encourages foreign investment and protects the legal rights of foreign investors. All the foreign exchange earned by foreign-investment enterprises through the export of their products and services rendered can be wholly retained by them. Also, they may open accounts of deposit at any bank dealing in foreign exchange in China. All normal foreign exchange expenditures are payable from their account of deposit. The net profits and any other legal income earned after taxation can be remitted overseas from the enterprises' accounts. The same is true for the wages and salaries of expatriate employees.\(^{90}\)

In their business activities, foreign-investment enterprises can directly borrow from foreign banks and then make a registration with the SAEC or its branches. Foreign-investment enterprises can also apply for loans from banks dealing in foreign exchange within China. The loans are of two kinds, i.e. loans for fixed assets and loans for liquid assets. The lending rates are decided in light of rates in the international market.\(^{91}\)

The basic principle governing the foreign exchange of foreign-investment enterprises is the striking of a balance of foreign exchange, that is the foreign exchange earned by these enterprises should

\(^{87}\)Spec(88)13/Add.11, p.11.  
\(^{88}\)Spec(88)13/Add.4, p.17.  
\(^{89}\)Spec(88)13/Add.4, p.17.  
\(^{90}\)Spec(88)13/Add.4/Rev.1, p.7.  
\(^{91}\)Spec(88)13/Add.4/Rev.1, p.7.
be used to pay for their foreign exchange expenditure and the profits of the investors. The balance of foreign exchange is achieved through the export of their products and the provision of services.\textsuperscript{92}

With respect to the wage system of foreign investment enterprises, annual bonus payments should not exceed 4.5 months’ pay. Enterprises must pay a bonus tax in the case of overpayment. Fifty per cent would be equivalent to six months’ pay. It is really a privilege for foreign investment enterprises. The policy is designed to curb inflation. It is in the interest of foreign investors not to push wages to an artificially high level.\textsuperscript{93}

Foreign investment enterprises, joint venture enterprises and foreign-owned enterprises enjoy tariff exemptions when, for example, they import equipment and machinery or other goods to serve as investment or additional investment contributed by the foreign partner, which apparently gives them a competitive advantage over domestic enterprises in domestic sales.\textsuperscript{94}

2.3 Enterprise Autonomy and the Right of Enterprises to Engage in Foreign Trade

The separation of government functions from enterprise management is essential to the changeover of government functions which is now under way. Governments at all levels shall not intervene in respect of powers assumed by enterprises according to national laws and regulations. Neither central nor local government departments shall deny an enterprise its decision-making power which has been extended to it. Government functions shall be performed mainly in such areas as overall planning, policy making, provision of information and services, coordination and supervision. Eventually the government will be able to exercise indirect macro-economic control over the economy.\textsuperscript{95}

As of December 1992, both central and local government departments are implementing the above tasks by working out reform measures appropriate to the particular sectoral or local situation. In response to the call by the 14th National People's Congress, the State Commission for Economic Structure Reform is formulating the Overall Plan for Building the Socialist Market Economy with a view to further elaborating the objectives, tasks, requirements and measures necessary for the new economic system.\textsuperscript{96}

FTCs in China are composed of specialized FTCs and industrial corporations which have been approved to engage in foreign trade. They are playing a very important role in China's foreign trade. In the future enterprises engaged in the trade of materials or in distribution-oriented business will be granted access to foreign trade where appropriate. Control over an enterprise's access to foreign trade will be phased out with the complete establishment of a socialist market economy in China.\textsuperscript{97}

MOFERT is the sole government entity authorized by the State Council to supervise the authorization and removal of authorization of foreign trading rights. MOFERT grants foreign trade rights according to established criteria and withdraws such rights for enterprises which do not live up to the criteria.\textsuperscript{98}

The commission rate is negotiated and agreed by the contractual parties, i.e. the State-owned production enterprise and the FTC concerned. There is no governmental stipulation of the rate. The
rate depends upon the nature of the enterprises' commercial activity. It is a kind of normal service fee to compensate the services of the import and export agent.\(^9\)

Enterprises capable of conducting foreign trade dealings are entitled access to foreign trade. Such enterprises enjoy the same treatment as FTCs in respect of tariffs, quotas, licenses and foreign exchange.\(^10\)

State-owned trading corporations are playing a key role in China's foreign trade, but foreign-investment enterprises account for a rapidly rising share of China's foreign trade: 16.7% in 1991 and 20% (expected) in 1992.\(^11\)

China has promulgated rules on the application for trading rights by production enterprises. These rules have been published. Any enterprise meeting the following requirements will be authorized by MOFTEC to engage in foreign trade: (1) it must be a legally-established corporate entity, paying taxes, keeping accounts and assuming independent responsibility for its own profits and losses; (2) it must have stable import and export channels as well as a stable source of export supply; (3) it must have a sound financial standing to meet financial obligations commensurate to its business scale; (4) it must have the necessary personnel, expertise and facilities for conducting foreign trade; and (5) it must have the ability to meet relevant product quality standards.\(^12\)

The concrete requirements that production enterprises must fulfil in order to engage in foreign trade are stipulated in the "Decision on Granting Foreign Trade Rights to Production Enterprises" promulgated by the State Council, published in the Economic Daily on 16 November 1992.\(^13\)

As noted, among the five eligibility conditions, an enterprise should have relatively stable export channels and a stable supply of exports. This is a very crucial condition, determined through reference to the previous export performance of the enterprise. Three different cases can be identified: First, for production enterprises producing machinery and electronic products with a technologically intensive base, the export supply should be valued at US$ 1,000,000 for the previous two years. Second, for production enterprises making machinery and electronic products of a general nature, the export supply should reach US$ 2,000,000 for the previous two years. Third, for production enterprises other than those making machinery and electronic equipment, the export supply should reach US$ 4,000,000 for the previous two years.\(^14\)

The regulations on foreign trade rights only apply to production enterprises. MOFTEC has a different set of regulations for FTCs. As for foreign investment enterprises and joint ventures, these are entitled to enter into foreign trade transactions from the moment they enter into operation. Conditions are still premature for all enterprises to engage in foreign trade. This is because of the following two factors:

(1) Most Chinese enterprises lack a thorough understanding of foreign trade information and practices. The majority of production enterprises do not have an established import or export business. China encourages these enterprises to import and export through experienced FTCs acting as agents. The Government and different associations facilitate the training of personnel for these enterprises. Training courses and seminars are in operation in every part of China. Once these

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\(^9\)Clarifications, 2.12.92, p.9; Clarifications, 23.4.93, p.15.
\(^10\)Clarifications, 2.12.92, p.11.
\(^11\)Clarifications, 2.12.92, p.11.
\(^12\)Clarifications, 23.4.93, p.11; Clarifications, 2.12.92, p.11.
\(^13\)Clarifications, 23.7.93, p.22.
\(^14\)14th Mtg.
enterprises meet the requirements they can engage directly in foreign trade. Currently, there are no quantitative restrictions on granting foreign trade rights to applicant enterprises.

(2) China has a system of approval which has served to maintain the normal order of trade and also prevent a situation where enterprises breach contracts or engage in other immoral or deceptive practices due to lack of knowledge of foreign trade practices. The approval requirements have helped safeguard the interests of businessmen both domestically and abroad. China has accelerated the pace and efficiency of granting these trading rights to enterprises.\textsuperscript{105}

After soliciting the opinions of competent authorities of different departments, the State Economic and Trade Commission examines the applications of all enterprises from different regions and sectors, and passes all those applications that meet the above-mentioned requirements on to MOFTEC, with its recommendation. MOFTEC takes account of these recommendations in issuing its approval.\textsuperscript{106}

As of April 1993, more than 1,000 production enterprises have been granted access to foreign trade. Most of these enterprises are State-owned enterprises. Township and collective enterprises account for only a small number (about 100) of those enterprises granted foreign trading rights because of their small size and difficulty in meeting the requirements of the prevailing laws and regulations. More than 80,000 joint-venture and solely foreign-invested enterprises have been granted access to foreign trade. Most of the more than 5,000 FTCs are State-owned enterprises. Currently, individuals cannot engage directly in foreign trade but can import and export through the use FTCs as agents.\textsuperscript{107}

Enterprises applying for foreign trade rights are those which have supplied exports for one or several FTCs. Representatives from these enterprises may take part in the negotiations of import and export deals prior to obtaining trading rights. They get acquainted with a number of clients and are trained in foreign trade, allowing as well for the development of stable export channels. All these factors lay the foundation for the capability of enterprises to engage in foreign trade.\textsuperscript{108}

The threshold set in granting trading rights to production enterprises is intended to ensure that the enterprises have the ability to honour a foreign transaction contract. It guarantees orderly conduct of foreign trade. It can in no way impede international trade. This system will not produce adverse impacts upon foreign traders’ access to China’s market. Those enterprises that do not have foreign trading rights can entrust FTCs to import the inputs they need from abroad. Similarly, they can entrust FTCs to export their products. This is not peculiar to China: in many countries FTCs play a major role in import and export.\textsuperscript{109}

The number of enterprises directly engaged in foreign trade has been increasing with each passing day. Township enterprises are allowed to engage in foreign trade so long as they meet relevant conditions; individuals are not yet allowed to engage directly in foreign trade.\textsuperscript{110}

In line with the establishment of a market economy system, China is moving towards a system of registration by which any enterprises will be able to obtain authorization to engage in foreign trade if they meet the requirements prescribed by laws and administrative rules. There can be no definitive

\textsuperscript{105}14th Mtg.
\textsuperscript{106}Clarifications, 23.4.93, p.11.
\textsuperscript{107}Clarifications, 23.4.93, p.14.
\textsuperscript{108}14th Mtg.
\textsuperscript{109}Clarifications, 23.7.93, p.21.
\textsuperscript{110}Clarifications, 23.7.93, p.20.
timetable for this transition. However, the existing system does not prevent enterprises from engaging in foreign trade through agents.\textsuperscript{111}

\textit{In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on the right of enterprises to engage in foreign trade:}

Article 10. The establishment of corporations engaging in import and export of goods or technology shall be subject to the approval of MOFTEC. The requirements for establishment shall be laid down separately by MOFTEC. The establishment of corporation engaging in the import and export of services shall be subject to the approval of MOFTEC and other relevant authorities of the State Council. The requirements for establishment shall be laid down separately by MOFTEC and other relevant authorities of the State Council.\textsuperscript{112}

Article 11. Corporations, enterprises or other economic organizations intending to engage in foreign trade shall acquire the authorization of MOFTEC. The requirements for authorization shall be laid down by MOFTEC separately. Enterprises with foreign investment shall acquire the authorization for foreign trade under the provisions of relevant laws and regulations in relation to such enterprises.\textsuperscript{113}

Article 12. Foreign trade corporations approved to establish under Article 10 and corporations, enterprises and other economic organizations authorized under Article 11 (hereinafter referred to as foreign trade entities) shall go through the necessary formalities with authorities of industries and commerce, taxation and customs.\textsuperscript{114}

Article 13. Where establishment or authorization is applied for under the provisions of Article 10 or 11, documents required by MOFTEC or by MOFTEC and other relevant authorities of State Council shall be submitted. Within 60 days of the receipt of the application, MOFTEC or MOFTEC and other relevant authorities of the State Council shall determine whether to approve or not, authorize or not, and shall notify the applicants concerned thereof in writing.\textsuperscript{115}

Article 14. Those corporations, enterprises and other economic organization which have acquired approval or authorization before the putting into effect of this Law shall be deemed as having already acquired the approval or authorization within the meaning of Article 10 and Article 11.\textsuperscript{116}

Article 15. Foreign trade entities shall communicate their annual foreign trade deeds and assets situation to MOFTEC or Departments authorized by MOFTEC.\textsuperscript{117}

Article 16. MOFTEC may revoke the approval or authorization of a foreign trade entity wherever any of the following circumstances occurs:

1. Acquiring the approval or authorization within the meaning of Article 10 or 11 by fraudulent or other undue means;

\textsuperscript{111}Clarifications, 18.2.93, p.4.
\textsuperscript{112}Draft Foreign Trade Law, 4.93.
\textsuperscript{113}Draft Foreign Trade Law, 4.93.
\textsuperscript{114}Draft Foreign Trade Law, 4.93.
\textsuperscript{115}Draft Foreign Trade Law, 4.93.
\textsuperscript{116}Draft Foreign Trade Law, 4.93.
\textsuperscript{117}Draft Foreign Trade Law, 4.93.
2. Forfeiting the requirements for establishment of authorization provided by MOFTEC or MOFTEC and other relevant authorities of the State Council.\textsuperscript{118}

2.4 Chambers of Commerce

\textit{In late 1988, the Chinese delegation indicated the following:}

Enterprises have been permitted to establish chambers of commerce in different sectors on a trial basis with a view to improving management efficiency and exchanging market information. The chambers of commerce are voluntary associations, legally independent from the government and enterprises. The main functions of the chambers are to provide advisory services, facilitate the business activities of members and safeguard their common interests. They also act as a bridge between MOFERT and foreign trade enterprises.\textsuperscript{119}

In early 1988, preparations began for the establishment of five chambers of commerce in the following sectors: cereals, oils, foodstuffs, tea, native products, animal by-products; textiles, silk, clothing; light industrial, arts and crafts; metals, minerals, chemicals; machinery and electrical products. FTCs and production enterprises with foreign trade rights voluntarily apply for participation in the relevant chambers according to their own business scope and are free to withdraw their membership.\textsuperscript{120}

\textit{In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on chambers of commerce:}

Article 17. Foreign trade entities may set up or join chambers of commerce of import and export or trade associations under relevant laws.\textsuperscript{121}

Article 49. Chambers of commerce and trade associations shall actively promote the development of foreign trade and coordinate and serve foreign trade entities in the light of their constitutions.\textsuperscript{122}

2.5 Special Economic Zones and Open Coastal Cities

\textit{In late 1988, the Chinese delegation indicated the following:}

Between 1979 and 1988 China has established a number of zones where special economic policies and flexible trade measures are applied. They include four Special Economic Zones (SEZs) (Shenzhen, Zhuhai, Shantou and Xiamen) and fourteen coastal cities (Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Nantong, Lianyungang, Shanghai, Ningbo, Wenzhou, Fuzhou, Zhanjiang, Guangzhou and Beihai), Hainan Province (also a SEZ) and three delta areas (Changjiang River delta, Zhujiang River delta and the triangular area of Xiamen, Zhangzhou, Quanzhou in southern Fujian Province), and recently opened Liaodong and Shandong Peninsulas. With a population of 160 million, turning out one-third of the national industrial output, this coastal region has more autonomous power and enjoys greater flexibility in granting favourable treatment in the areas of foreign investment, transfer of technology and foreign trade. Enterprises in the SEZs and open coastal cities may engage in foreign trade more independently than enterprises in other areas of China.\textsuperscript{123}

\textsuperscript{118}Draft Foreign Trade Law, 4.93.
\textsuperscript{119}Spec(88)13/Add.4, p.17.
\textsuperscript{120}Spec(88)13/Add.4, p.17.
\textsuperscript{121}Draft Foreign Trade Law, 4.93.
\textsuperscript{122}Draft Foreign Trade Law, 4.93.
\textsuperscript{123}Spec(88)13/Add.4, p.18.
Foreign investors are granted more favourable treatment in the following respects:

(1) Equipment, instruments and workshop building materials, imported by foreign investors as part of their investment, are exempted from customs duties and the Consolidated Industrial and Commercial Tax. This also applies to imported raw materials, spare parts and packing materials designed for export production.\(^{124}\)

(2) A 15% preferential enterprise income tax is levied on the income of joint ventures, cooperative enterprises or enterprises with sole foreign investment operating in the SEZs and economic and technological development zones of coastal cities. Legally acquired profits of foreign investors remitted abroad are exempt from income tax.\(^{125}\)

(3) A 15% preferential income tax is applied, upon approval by the Taxation Department, to technology-intensive projects, or projects having overseas investment exceeding US$ 30 million and with a long lead time.\(^{126}\)

(4) A 15% preferential enterprise income tax is applied, upon approval by the Taxation Department, to joint ventures, cooperative enterprises and enterprises with sole foreign investment operating in the coastal cities, whose operations or investments are in the fields of energy, communications and port construction.\(^{127}\)

The establishment of SEZs and other special economic areas is proposed by the State Council and approved by the National People’s Congress. Experience gained from these special policies will gradually be applied in the interior areas. At present, there are no plans for the establishment of new SEZs or the extension of these reform policies to other areas of the country. However, China does not rule out the possibility of extending some of these policies to other parts of the country.\(^{128}\)

The operations and production of enterprises with foreign investment in SEZs are totally regulated by the market, not by plan targets. The State-owned enterprises in SEZs follow guidance plans, but mainly rely on the market in achieving plan targets. Of the total value of exports in the SEZs, the proportion under State guidance plans accounts for less than 15%. In 1987, 5% of China’s foreign trade took place in the SEZs and 21.5% in the Open Coastal Cities.\(^{129}\)

Real estate is leased in all SEZs on the same terms. At present, the practice of paid transfer of the right to use land occurs in six coastal cities, including Tianjin, Shanghai, Fuzhou, Xiamen, Guangzhou and Shenzhen, and in Hainan Province. In addition, the above province and cities have set up their own policies and rules on paid transfers of the right to use land. SEZs allow private ownership of buildings but not of land. The tax regulations set by the State for the SEZs are uniform. The regulations on patent, copyright, trademark and bankruptcy laws for State-owned enterprises applied in the SEZs are the same as those applied in the other parts of China. Shenzhen municipal government also has promulgated regulations governing the bankruptcy of enterprises involved in external business.\(^{130}\)

Hainan Province applies the same policies as the other SEZs with greater liberalization in the following respects:

\(^{124}\) Spec(88)13/Add.4, p.18; Spec(88)13/Add.4/Rev.1, p.3.
\(^{125}\) Spec(88)13/Add.4, p.18; Spec(88)13/Add.4/Rev.1, p.3.
\(^{126}\) Spec(88)13/Add.4, p.18; Spec(88)13/Add.4/Rev.1, p.3.
\(^{127}\) Spec(88)13/Add.4, p.18; Spec(88)13/Add.4/Rev.1, p.3.
\(^{128}\) Spec(88)13/Add.4, p.18; Spec(88)13/Add.4/Rev.1, p.3.
\(^{129}\) Spec(88)13/Add.4, p.18; Spec(88)13/Add.4/Rev.1, p.3.
\(^{130}\) Spec(88)13/Add.4, p.19.
(1) The scope of foreign investment is expanded, allowing foreign investors to engage in real estate transactions within designated areas and to develop mineral and other natural resources.

(2) More flexibility is given in respect of the mode of foreign investment. Foreign investors may not only establish enterprises, but may also invest through the purchase of stocks or bonds. They may also lease State-owned or collectively-owned enterprises or conclude management contracts with them.

(3) With the approval of the Hainan Government, certain goods subject to import restrictions may be imported for use within the Province.

(4) More flexibility is provided in the flow of goods, personnel and capital.

(5) Greater power of economic management is granted to the Province.\textsuperscript{131}

Subsequently, the Chinese delegation provided the following clarifications and additional information:

Since 1979 China has established a number of zones and areas where more open policies are applied. They include five SEZs and fourteen coastal cities, open coastal economic zones composed of 284 cities and counties, six open cities along the Yangtze River, sixteen inland cities and thirteen inland boundary cities. With a population of 320 million, these areas enjoy greater flexibility in the use of foreign capital, introducing foreign technology and engaging in economic cooperation with foreign countries.\textsuperscript{132}

China set up five SEZs in succession between 1979 and 1988. They are: Shenzhen, Zhuhai, Shantou, Xiamen and Hainan. No new SEZs have been created in recent years. Those SEZs are intended to serve as both "windows" for China's opening to the outside world and pilot areas for introducing a market economy into China. In order to attract more foreign investment by improving the investment climate and to speed up the experiment with the market economy, the SEZs are assisted by certain preferential policies granted by the State. In view of the small coverage of these SEZs vis-à-vis other parts of the country, these preferential policies are appropriate and will be gradually adjusted, thus having no adverse impact on the unified application of national policies. At the same time, the successful experience in the SEZs is being extended to the inland areas. In parallel with this process, the differences between SEZs and non-SEZs concerning China's open policy are being narrowed.\textsuperscript{133}

Guidance planning, which provides information about the general direction and objectives of the national economy, is important for enterprises in SEZs in their decision-making as to production and sales.\textsuperscript{134}

China is moving towards a socialist market economy. Joint ventures, cooperative enterprises, wholly-foreign-owned enterprises in the entire country and State-owned enterprises in the SEZs are all under the guidance of the market mechanism. In 1992, one-seventh of China's foreign trade value was handled by enterprises in the SEZs. At present, the practice of renting land has been pursued in the SEZs and coastal regions. Private ownership of houses and other buildings is permitted but not private ownership of land. Tax regulations set by the State for the SEZs are uniformly applied in these

\textsuperscript{131}Spec(88)13/Add.4, p.19.
\textsuperscript{132}Spec(88)13/Add.4/Rev.1, p.3.
\textsuperscript{133}Clarifications, 2.12.92, p.21.
\textsuperscript{134}Spec(88)13/Add.11, p.12.
zones. Laws on patent, copyright, trademark and bankruptcy applied to State-owned enterprises in the SEZs are the same as those applied in other parts of China.\(^{135}\)

Since April 1988, the Chinese Government has further liberalized certain policies for the coastal areas by granting more autonomy, as follows: foreign investment projects under US$ 30 million may be approved by provinces and municipalities; technological transformation of State-owned and collectively-owned enterprises through the formation of Chinese-foreign joint ventures or cooperative ventures is encouraged; the importation of raw materials for processing for export has been facilitated; and entry and exit procedures for businessmen have been simplified.\(^{136}\)

The Chinese Government has special regulations which clearly state that imported materials with duty exemption or reduction in the SEZs or bonded warehouses should be strictly limited in the SEZs. Entry into the inland market requires approval and paying up of the exempted import duties. Strict administrative measures include:

1. The variety and quantity of imported materials needed by enterprises in SEZs for their own use must be approved by the competent authority to ensure that those materials are only to be used in the SEZs.

2. Units of imported materials must go to Customs for registration after they receive approval. Customs shall list these units separately in its supervision book, including the variety and quantity of the imported materials.

3. Customs shall examine the destination and use of the imported materials. If the imported units are found in the inland market without approval, the units shall be fined. Entry into the inland market contravening relevant regulations will be deemed to be smuggling. Those persons committing a serious breach of law shall be prosecuted.\(^{137}\)

It is an important measure that China adopts the policy of reform and opening to the outside world by setting up SEZs. These SEZs are designed to serve as both the windows for reforming progressively the closed and semi-closed society by opening to the outside world and as the pilot areas for reforming the traditional economic system by introducing a market economy in China. The main functions of China’s SEZs are to attract foreign investment, conduct foreign trade and further international economic and technological cooperation. Therefore, the introduction of SEZs is a long-term measure.\(^{138}\)

The successful experience of SEZs has been widely spread in coastal and inland areas and the market economy system introduced in the SEZs has become the objective for restructuring the national economic system. As China is establishing a market economic system nationwide, it does not make sense to set up more SEZs.\(^{139}\)

Joint ventures within the SEZs enjoy preferential treatment in respect of income tax in comparison with joint ventures outside the SEZs, but there is no unfair treatment regarding access to foreign trade.\(^{140}\)
The SEZs are an integral part of the customs territory of China. The products allowed to enter the SEZs duty free or at a reduced rate are strictly confined to use within the SEZs. Any entry of these products into the inland market of China is subject to approval and payment of the exempted import duties.\(^\text{141}\)

China considers that the preferential trade policies applicable in its SEZs are in conformity with Article XXIV:12.\(^\text{142}\)

The level of import duties applicable at different ports of entry is generally the same. Variations may be due to such factors as misstatements by the importer or exporter or miscalculations of the rate by the Customs officer. Those persons affected may lodge complaints or take the matter to court.\(^\text{143}\)

With respect to both tariff and non-tariff measures, SEZs are subject to the uniform administration of trade policies.\(^\text{144}\)

The SEZs in China are part of China’s unified customs territory. Principal differences between SEZs and other parts of the country are as follows: (1) Foreign investment is the principal source of capital supply in building SEZs; (2) SEZs have taken the first step in reform and market regulation has played a dominant role in the economy; (3) foreign investment enterprises enjoy exemption or reduction in respect of income taxes for enterprises within SEZs and in respect of tariffs on imported goods used in SEZs; and (4) the Central Government has extended more economic administrative power to the governments of SEZs. The Chinese Government encourages the development of economic relations and exchange between SEZs and non-SEZs. Products manufactured in the SEZs with imported or bonded raw materials, spare parts and components can be sold to areas outside the SEZs, provided that customs duties have been paid retroactively.\(^\text{145}\)

Foreign investors may set up enterprises in an SEZ according to relevant laws and regulations of the Central Government and the government of the SEZ. Normally the SEZ encourages foreign investment in high-tech manufacturing and services for production enterprises as well as for international trade. There are no restrictions on the number or type of firms which can have access to SEZs other than those applicable to industries causing environmental pollution and high energy consumption.\(^\text{146}\)

In the future, China will take more vigorous steps in spreading the successful experience of the SEZs to inland regions.\(^\text{147}\)

SEZs cover less than 1% of China’s GNP.\(^\text{148}\)

\(^{141}\)Statement, 15.3.93.  
\(^{142}\)11th Mtg.  
\(^{143}\)13th Mtg.  
\(^{144}\)13th Mtg.  
\(^{145}\)Clarifications, 2.12.92, pp.21-22.  
\(^{146}\)Clarifications, 23.7.93, p.18.  
\(^{147}\)Clarifications, 2.12.92, p.22.  
\(^{148}\)Clarifications, 23.4.93, p.10.
In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on SEZs:

Article 53. The State may establish free trade zones to meet the demand of development of foreign trade.

2.6 Policies in Minority and Disadvantaged Areas

In order to promote development of local economies in minority and disadvantaged areas, and to enhance the autonomous development capability of these areas, the Government provides certain fiscal, financial, investment and trade assistance in resource exploitation, industrial development and township enterprise development, and provides information for trade and technical cooperation with neighbouring countries.

China is a large country with an unbalanced economic development. In order to raise the people's living standards in minority and disadvantaged areas the Chinese Government provides proper production and financial assistance, such as extending development funds to support disadvantaged areas, granting loans with low and discounted interest and strengthening the basic infrastructure, e.g. for water, electricity, communications, etc., so as to increase the internal vitality of these areas for development of their local economies.

As of July 1993, China has about 550 disadvantaged counties, for which the per capita GNP is lower than 300 RMB. About 100 million people inhabit these areas.

No regionally discriminatory economic and trade policies are applied in China. The socio-economic policies adopted by the Chinese Government for implementation in minority and disadvantaged areas are aimed at providing them with assistance and support to develop the local economy and raise people's living standards. The policies are in the nature of general economic development policies, not trade policies. There is no direct link between such policies and the conduct of border trade in these areas.

In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on autonomous and underdeveloped regions:

Article 51. The State supports and promotes the development of foreign trade in ethnic autonomous regions and underdeveloped regions.

2.7 Bankruptcy Law

China has indicated the following with respect to the development of a bankruptcy law:

China promulgated a Bankruptcy Law on 2 December 1986. In case of operational losses, a State enterprise may apply for loans from the State banks, and the government department in charge
should assist the enterprise to improve production management for the purpose of overcoming operational losses. The enterprise may be declared bankrupt for continuous losses according to the Bankruptcy Law.\textsuperscript{155}

The scope of application of the Bankruptcy Law extends only to State-owned enterprises. It is equally applied nationwide without any leniency clause.\textsuperscript{156}

Assessing which enterprises are operating at a loss is carried out by two different departments depending upon the type of ownership of the enterprises: (1) the assessment of State-owned enterprises is carried out by the Ministry of Finance; and (2) the assessment of collective and privately owned enterprises is carried out by the Taxation Department. According to the new accounting system which came into operation on 1 July 1993, the assessment of enterprises will be gradually transferred to registered accountants. The Bankruptcy Law will operate where an enterprise reaches the point of insolvency.\textsuperscript{157}

\textsuperscript{155}Spec(88)13/Add.4, p.15.
\textsuperscript{156}Clarifications, 23.7.93, p.22.
\textsuperscript{157}Clarifications, 23.7.93, p.19.
3. IMPORT AND EXPORT REGIME

For a listing by tariff line of China's tariff and non-tariff measures, please refer to the "Summary Document of the Existing Tariff and Non-Tariff Measures in China", Spec(88)13/Add.12 and Spec(88)13/Add.12/Rev.1.

3.1 Foreign Trade Plans

3.1.1 Formulation of the Plan

In late 1988, the Chinese delegation indicated the following:

Article 15 of the Constitution stipulates that the harmonious and coordinated development of the national economy should be ensured through the overall balancing of economic planning and market regulation. Among the main criteria for drawing up the foreign trade plan are the social and economic development needs of the country, the balance-of-payments situation and economic factors such as supply and demand, prices and competition in both domestic and international markets. China regards the import-export plan as an important means of macro-economic guidance.\textsuperscript{158}

The duration of the plan is one calendar year. It is drawn up according to the five-year plan for national economic and social development and in light of the medium and long-term foreign trade plans. The foreign trade plan contains the name, quantity and value of the main traded products. The products imported with retained foreign exchange are not covered by the import plan. The import and export products of foreign enterprises in China are also not included. The State does not formulate separate plan targets for the SEZs.\textsuperscript{159}

The initial contributions to the export plan are made by import and export corporations under various ministries, FTCs and production enterprises authorized to engage in foreign trade at levels of provinces, autonomous regions, municipalities directly under the Central Government and cities separately listed in the plan. After careful analysis of these contributions, MOFERT prepares a draft national export plan which goes first to the State Planning Commission for overall coordination and then to the State Council for examination. Finally, the draft plan is submitted to the Standing Committee of the National People's Congress as a part of the annual plan for the national economic and social development for approval. The State Planning Commission and MOFERT are responsible for implementation of the approved plan.\textsuperscript{160}

The initial contributions to the import plan are made by the enterprises and institutions at levels of ministries, provinces, autonomous regions, municipalities directly under the Central Government and cities separately listed in the plan. After an overall coordination of these initial contributions in accordance with the five-year plan for national economic and social development and the availability of foreign exchange, the State Planning Commission works out a national import plan and submit it first to the State Council for examination, and then to the Standing Committee of the National People's Congress as a part of the annual plan for national economic and social development for approval. The State Planning Commission and MOFERT are responsible for implementation of the approved plan.\textsuperscript{161}

\textsuperscript{158}Spec(88)13/Add.4, p.20.
\textsuperscript{159}Spec(88)13/Add.4, p.20.
\textsuperscript{160}Spec(88)13/Add.4, p.20.
\textsuperscript{161}Spec(88)13/Add.4, p.20.
Subsequently, the Chinese delegation provided the following clarifications and additional information:

The Constitution stipulates that "China is a socialist market economy and the government shall strengthen its economic legislation and improve its macro regulation and control". The foreign trade plan is drafted in the light of the social and economic development needs of the country, the balance-of-payments situation and economic factors such as supply and demand, and competition in both domestic and international markets. The plan serves merely as a target and, being in the nature of guidance, it is directed to the macro-regulation of the national economy.  

Initial plans are separately drafted by FTCs and institutions of provinces, autonomous regions, municipalities directly under the Central Government and cities separately listed in the plan. Based on these plans, MOFTEC works out a draft national foreign trade plan, which goes first to the State Planning Commission for overall coordination and then to the State Council for examination. Finally, the draft plan is submitted to the Standing Committee of the National People’s Congress for approval. The State Planning Commission and MOFTEC are responsible for implementation of the approved plan. Import and export products of foreign-investment enterprises in China are not covered in the plan.  

3.1.2 Plan Targets

In late 1988, the Chinese delegation indicated the following:

The totally mandatory foreign trade planning practised in the past has been replaced by a mixture of mandatory planning, guidance planning and adjustment through market forces (non-planning). Most products are now under guidance planning. Approximately 60 products as of September 1988 are subject to mandatory planning, including steel, chemical fertilizers, petroleum, coal, grain, cotton and lumber.  

Mandatory plan targets are orders of a legally compulsory nature imposed by the State. Mandatory plans thus must be fulfilled. Any amendment or adjustment is subject to approval by the competent departments. Under guidance plans, no compulsory targets for individual enterprises are established. These plans are implemented primarily through fiscal and regulatory means designed to induce enterprises to adjust their production to the plan.  

Mandatory targets have been completely abolished in the agricultural sector and are playing a declining role in the industrial sector. Only large and medium-sized enterprises are subjected to mandatory plan targets. Of the 15 million enterprises in China, only about 8,000 fall into this category and of these only a small portion are subjected to mandatory targets as of September 1988. These enterprises are free to determine their production in accordance with market conditions after having fulfilled the targets assigned to them.  

During the course of the reforms China has significantly reduced the scope of direct State intervention in production, commerce and distribution. The number of industrial products subject to mandatory production targets dropped from over 300 in 1978 to 60 in 1986; the number of capital goods and industrial inputs subject to the unified State distribution from over 250 to about 20; the
number of products subject to planning by the Ministry of Commerce from over 180 to 22. Export 
products subject to mandatory planning are estimated to account in 1988 for roughly 30% of total exports 
and those subject to guidance plans for 15%, with the remaining 55% no longer subject to any export 
plan. With respect to imports, products subject to mandatory planning in 1988 account for 20% of 
total imports; for another 20% of total imports, the import plan specifies only a certain amount of 
import values for particular purposes; and the remaining 60% are not subject to any plan. 167

The mandatory product-specific targets in the export plan are generally quota targets setting 
out the maximum quantity that may be exported. Products subject to a mandatory export plan are 
mostly natural resources traded in bulk having an important bearing on the national economy and people's 
livelihood. Generally, the export plan targets are not allowed to be exceeded. The mandatory product-
specific targets in the import plan set out a minimum import quantity. Such targets are limited to a 
small number of products that have an important bearing on the national economy. 168

When an unexpected development occurs with respect to production or the market, the State 
may readjust the planned import and export targets, including the mandatory targets. The import levels 
for raw materials and other inputs for the controlled industries are determined in accordance with the 
amount of inputs and outputs required by other industries and the balance-of-payments situation. 169

Subsequently, the Chinese delegation provided the following clarifications and additional 
information:

State guidance is only applicable to the export in bulk quantity of natural resources having 
an important bearing on the national economy and the people's livelihood, in which case the maximum 
export quantity is specified. The guidance plan is subject to adjustment in the light of both national 
and international markets. It is non-mandatory and no punitive measures are instituted. Having full 
autonomy in their business operations, FTCs are fully responsible for their own profits and losses. 
The list of products subject to export guidance will be shortened gradually. In 1993 the number of 
listed export products was reduced by more than half. 170

Import restrictions are imposed on a few products which are paid for with foreign exchange 
owned by the Central Government. Such restrictions are dependent on the amount of foreign exchange 
owned by the Central Government. The restrictions are intended to ensure national economic 
development and the minimum subsistence needs of the people. The amount of foreign exchange owned 
by the Central Government will be reduced year by year with the constant perfection of the market 
mechanism. Therefore, the share of China's total imports covered by these restrictions will be reduced 
by a big margin in the national total import value. 171

As of May 1993, imports by local governments, ministries and enterprises (including foreign-
investment enterprises) now constitute about 85% of the total national import value, which means that 
imports are increasingly subject to market regulation. When unexpected developments occur with respect 
to production or the market, the State may readjust the planned import and export targets. 172

The difference between mandatory plans and guidance plans lies in the fact that mandatory 
plan targets have to be strictly observed while guidance plans do not. Liberalization of prices may

167 Spec(88)13/Add.4, p.21.
168 Spec(88)13/Add.4, p.21.
169 Spec(88)13/Add.4, p.22.
170 Spec(88)13/Add.4/Rev.1, p.5.
171 Spec(88)13/Add.4/Rev.1, p.5.
172 Spec(88)13/Add.4/Rev.1, p.5.
in some cases result in further decline in domestic prices and subsequently lower export prices. Therefore, some degree of export limit will continue to be necessary if China is to avoid trade disputes with contracting parties over so-called "dumping practices".\textsuperscript{173}

China's foreign trade plans are a form of macro-economic guidance in which the market mechanism plays a major role. The role of mandatory plans has been greatly reduced and guidance plans do not specify the content or volume of products to be exported. A minimum import target cannot constitute an import restriction. Maximum export targets are specified for some products which are in short supply and minimum import quantities are specified for certain products where there is a particular need, such as in the construction industry.\textsuperscript{174}

In October 1991, 30 products remained subject to mandatory planning, including steel, chemical fertilizer, petroleum, coal, grain, cotton and timber. Export products subject to mandatory plans accounted for approximately 22.2\% of China's total exports in 1990, export under guidance plans represented 12.3\%, while the remaining 65.5\% were not subject to any export plan. Import products under mandatory plans accounted for 20\% of China's total imports in 1990, another 20\% were subject to guidance plan specifying only a certain amount of import values for particular purposes, and the remaining 60\% were not subject to any plan.\textsuperscript{175}

The decision to subject particular products to mandatory or guidance plans is made in light of the importance of the particular products in the national economy. The formulation of State plans is based on the overall balance of national economic development, taking into account economic need and ability. Adjustments can be made to reflect changes in domestic production, foreign trade developments and market movement. In recent years, frequent adjustments have been made leading to a substantial reduction in the number of products subject to mandatory plans. As of October 1992, the proportion of products subject to mandatory import plan has been reduced to one-fifth of total import value. The products covered are the following: grain, chemical fertilizers, plastic foil for agricultural use, iron ore, copper, aluminium, natural rubber, timber, cotton, wool and wool pulp.\textsuperscript{176}

Reform of the functions of the State Planning Commission is one of the most important tasks of the national economic structural reform. In 1993, action will be taken in a number of industrial sectors, such as:

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In the competitive industrial sectors such as chemical, machinery, electronic, light industry and textiles, mandatory production plan targets will be eliminated for some products, leaving these subject to market forces. For the rest, guidance plans will remain, but in a form of market projections or indicators to direct production decisions by enterprises. Such plans will not be assigned to any specific entities.

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As for products of natural resources, such as crude oil and coal, partial liberalization of the market is to be implemented by way of price reform and the reduction of mandatory production plan targets so as to increase the dynamism of enterprises.\textsuperscript{177}

No other products are subject to mandatory plan in China.\textsuperscript{178}

\begin{itemize}
\item\textsuperscript{173} Clarifications, 23.7.93, p.12
\item Spec(88)13/Add.5, pp.3-4.
\item Spec(88)13/Add.8, p.14.
\item Clarifications, 21-23.10.92, p.1.
\item Clarifications, 18.2.93, p.2.
\item Clarifications, 23.4.93, p.22.
\end{itemize}
The annual plan for industrial production after the reforms will be reduced by 33%, and the percentage taken up by industrial output under the mandatory plan targets in the total industrial output will be reduced from 12% to 7%. The proportion of output subject to mandatory targets in the total domestic production is as follows: 179

<table>
<thead>
<tr>
<th>Year</th>
<th>Coal</th>
<th>Steel</th>
<th>Timber</th>
<th>Cement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1991</td>
<td>58.8%</td>
<td>77.1%</td>
<td>85%</td>
<td>35.7%</td>
</tr>
<tr>
<td>1992</td>
<td>49.9%</td>
<td>33.1%</td>
<td>19.5%</td>
<td>7.2%</td>
</tr>
<tr>
<td>1993</td>
<td>48.6%</td>
<td>21.9%</td>
<td>9.8%</td>
<td>5%</td>
</tr>
</tbody>
</table>

Concerning commodities for which import quotas have been removed, these are no longer subject to State plans, unless they are commodities imported using central foreign exchange to support the development of the national economy. The quantity of these latter imports is, to some extent, controlled in order to save foreign exchange of the Central Government. 180

As of April 1993, wood, pulp, grain, soybeans, tobacco and wool are still under import license, cotton is subject to import quota, while wood products and processed grains are not subject to import control. 181

There are no voluntary import controls introduced by industrial departments in China. Import policy is implemented in a unified manner and industrial departments have no right to introduce import control measures on their own initiative. 182

China removed mandatory purchase and allocation quotas for wool in 1992. 183

In the light of China’s industrial policy and the continued existence of quota restrictions in the international market, China’s quota restrictions on new textile spindles will remain. 184

There are no punitive measures or border control measures to ensure the fulfilment of plan targets. Normally, foreign trade enterprises will make great efforts to meet plan targets for their long-term trade interests. Also, undertaking these targets enables them to obtain central foreign exchange reserves. 185

Export targets are set on the basis of actual performance in the previous year, plus a certain percentage increase, with the necessary leeway to ensure that the set targets can generally be fulfilled. However, as a result of the 1991 trade reform, pushing foreign trade enterprises along the road of independent management, with responsibility for their own profits and losses, the role of export targets is diminishing. The enterprises make decisions on the basis of commercial considerations. 186

179 Clarifications, 18.2.93, p.2.
180 Clarifications, 23.4.93, p.22.
181 Clarifications, 23.4.93, p.22.
182 Clarifications, 2.12.92, p.10.
183 Clarifications, 18.2.93, p.3.
184 Clarifications, 18.2.93, p.3.
185 Clarifications, 23.7.93, p.11.
186 Spec(88)13/Add.11, p.20.
As far as exports are concerned, only guidance plans have been retained, mandatory plans have been eliminated. With regard to imports, both mandatory and guidance plans have been reduced. Some of the mandatory plans have been replaced by guidance plans. The aim of mandatory import plans is to guarantee a minimum level of imports. It varies from time to time. The State might reduce mandatory import plans as a result of unforeseen factors or increase such plans as Government-held foreign exchange reserves increase. The general objective is to gradually eliminate mandatory plans as foreign exchange reserves increase.¹⁸⁷

"First category" and "second category" refer to product categories subject to mandatory plan targets. They do not involve the question of import restrictions. First category products include those products handled by one or several designated FTCs. Second category products include products handled by many FTCs and other enterprises with foreign trade rights.¹⁸⁸

Non-fulfilment of mandatory plans could happen under two circumstances: (1) the drying up of Government-held foreign exchange; or (2) domestic over-supply, making imports unnecessary. In the former situation, the Government would either try to obtain foreign exchange or reduce the import plan. In the latter situation, the mandatory import plan would be diminished and eventually eliminated.¹⁸⁹

The present mandatory import planning in China is not being used as a form of import control. Instead, it is intended to guarantee a minimum import of products within the planned period so as to ensure the availability of imports to key Chinese production enterprises.¹⁹⁰

China is prepared to implement necessary reforms in its import administration system including the mandatory import planning system in accordance with GATT principles and rules, taking into account the particular needs of China’s economic and trade development. China will provide the timetable for the expected reductions in mandatory import planning in the light of progress in negotiations conducted on GATT principles and rules. Products eventually subject to mandatory import planning will be those products essential to the development of the national economy as well as to the people’s livelihood, such as grain.¹⁹¹

3.1.3 Implementations of the Plan

In late 1988, the Chinese delegation indicated the following:

The foreign trade plan targets are determined by the Central Government according to different levels of economic and foreign trade development as well as the requirements of the national and local economies, and are allocated to the relevant national FTCs and the local governments for implementation. MOFERT supervises implementation of the plans through the laws and regulations promulgated by the State and through its own policies and administrative measures. MOFERT’s rôle in the implementation of the plans is mainly one of monitoring and evaluation.¹⁹²

Mandatory import plan targets are assigned to the national FTCs. The State does not assign such targets to any production enterprises. The mandatory export plan targets are only assigned to the national FTCs concerned. The guidance export plan targets are assigned to FTCs and to the foreign economic relations and trade departments of local governments which in turn assign the targets to foreign

¹⁸⁷Clarifications, 21.10.92, p.1.
¹⁸⁸Spec(88)13/Add.11, p.15.
¹⁸⁹Clarifications, 21.10.92, p.1.
¹⁹⁰Clarifications, 21.10.92, p.6.
¹⁹²Spec(88)13/Add.4, p.22.
trade enterprises at the provincial level. The foreign trade restructuring programme for 1988 provides that the provinces, autonomous regions and municipalities, FTCs and production enterprises authorized to engage in foreign trade undertake contractual obligations towards the State on export earnings, foreign exchange submission and efficiency targets. These targets are determined through consultation and are specified in the contracts. The targets accepted by the local authorities are implemented by local FTCs again on the basis of contracts.  

Guidance plan targets are attained through changes in taxes, interest rates and the exchange rate, and increased investment in basic industries and infrastructures. Examples of economic levers to implement guidance plan targets include the application of differential interest rates on loans to promote construction in the energy, transportation and communication industries, and in industries producing raw materials; a lower product tax on newly constructed power stations; and amendments to the construction tax to control the scale of investment.  

In the field of agriculture, the State ensures the fulfilment of the guidance plan targets essentially by three means: first, the State improves the basic conditions for agricultural production, for instance by making agricultural inputs available, developing industries that produce fertilizers, pesticides, plastic films and other inputs into agricultural production and by promoting the use of advanced agro-technology; second, the State uses price incentives to influence the structure and level of agricultural production; and third, the State concludes purchase contracts for important agricultural products, such as grain, cotton, edible oil and sugar plants and provides farmers with financial incentives (for instance, the sale of inputs at the State price or advance payments) to ensure the fulfilment of the contracts.  

Subsequently, the Chinese delegation provided the following clarifications and additional information:

The foreign trade plan is implemented by relevant national FTCs and local governments. MOFTEC exercises supervision over the implementation of the plan by law. MOFTEC’s role in the implementation of the plan is primarily limited to monitoring and evaluation.  

The export plan is assigned to national FTCs and foreign economic and trade relations departments of local governments before it reaches provincial foreign trade enterprises. The import plan (quotas) is assigned to the provincial planning commissions and departments responsible for production under the State Council before it reaches relevant enterprises. Enterprises may entrust the handling of imports to any FTCs authorized to engage in foreign trade on the basis of agency contracts.  

The Central Government requires that the provinces, autonomous regions and municipalities, FTCs and production enterprises authorized to engage in foreign trade undertake contractual obligations towards the State on export earnings, foreign exchange submission and efficiency targets. These targets are determined through consultation and are specified in the contracts. The targets accepted by the local authorities are implemented by local FTCs, again on the basis of contracts.  

The State Planning Commission formulates the annual import plan in light of the available foreign exchange in the hands of the Central Government (accounting for about 15% of total foreign exchange income in July 1993) and allocates these import plans among provinces. The provincial
planning commissions are responsible for implementation of the plans allocated to them. This allocation process guarantees the availability of foreign exchange.199

China is prepared to commit itself to remove mandatory State production quotas on most agricultural and industrial products within the next few years. Mandatory purchase and allocation quotas on wool will be removed within the next few years. Other mandatory State purchasing and allocating measures will be progressively converted into measures of a guidance nature.200

3.2 Foreign Exchange Administration System

3.2.1 Organization of the Foreign Exchange System

*In late 1988, the Chinese delegation indicated the following:*

The State plan for foreign exchange receipts and expenditures is formulated by the State Planning Commission and approved by the State Council. MOFERT, the Ministry of Finance and the State Administration of Exchange Control (SAEC) participate in the process. MOFERT takes part in the policy-making discussion on the use of foreign exchange for import priorities. The provincial and municipal offices of SAEC control foreign exchange transactions for both central and local authorities. The Bank of China is the State-owned bank specialized in foreign exchange business. Other banks and financial institutions may also deal, with the approval of SAEC, in foreign exchange business within their approved scope of business, subject to the control and supervision by SAEC and its branch offices.201

*Subsequently, the Chinese delegation made the following clarifications:*

The chief organization in charge of foreign exchange is SAEC, under the leadership of the People’s Bank of China. Its major functions include: (1) formulating rules and regulations of foreign exchange control, fixing and publishing the exchange rates of RMB; (2) controlling official foreign exchange reserves and foreign debts, and administering Foreign Exchange Swap Centres (FESC); (3) controlling foreign exchange dealings, trade and non-trade receipts and payments, and drafting balance-of-payments sheets; and (4) investigating cases involving violation of the regulations governing foreign exchange control, and penalizing violators.202

The State banks, regional banks, banks with foreign investment, Sino-foreign jointly-owned banks and non-banking financial agents within the territory of China may conduct foreign exchange business within their designated scope of business and subject to the supervision and administration of SAEC and its branches.203

*In late 1988, the Chinese delegation indicated the following:*

The State objectives for use of foreign exchange are defined when the annual plan for national economic and social development is established. After the overall balance is established by the State Planning Commission, the foreign exchange plan is submitted to the State Council for approval and then incorporated into the national economic and social development plan and submitted to the National...
People's Congress for approval. Once approved, the plan is sent back to the various localities and the ministries through the State Planning Commission and SAEC for implementation. The State Planning Commission formulates the foreign exchange and expenditure plans according to the current official exchange rate. If the current year's official exchange rate is adjusted, the part of the plan which has not been implemented is subject to the newly-adjusted rate.204

SAEC is responsible for managing foreign debt and supervising borrowing abroad. The plan for the utilization of foreign funds is drafted by the State Planning Commission and approved by the State Council. Funds borrowed abroad are mainly used in the energy, transportation, communication and construction sectors, for imports of raw materials and for the development of exports. The debt service ratio is an important factor limiting foreign borrowing, but it is not the only factor. As of September 1988, the State Planning Commission has set the maximum allowable debt service ratio at 15%. The scope of China's borrowing of foreign capital has expanded in recent years. By the end of 1985, the outstanding foreign debt stood at US$ 15.8 billion. The figure for 1987 was almost double that of 1985.205

Subsequently, the Chinese delegation provided the following clarifications and additional information:

As a member of the IMF, China currently administers its foreign exchange arrangements pursuant to Article XIV of the IMF Agreement, i.e. transitional arrangements, according to which, in its current account of balance of payments, China may apply foreign exchange restrictions. China will, however, as conditions improve, accept the obligations contained in Article VIII:2, 3, 4; i.e. eliminate foreign exchange restrictions in the current account of its balance of payments, refrain from maintaining multiple exchange rates, and seek to realize free convertibility of the currency. Reform of China's foreign exchange system is moving toward this objective.206

Upon its resumption of GATT status, China will adhere to the provisions contained in Articles XV and XVIII of the General Agreement. China's foreign exchange allocation system has undertaken dramatic changes. Firstly, the proportion subject to allocation accounts for only around 15% of total imports; secondly, this proportion of imports is intended to guarantee a minimum level of supply of the most essential materials for the national economy and the people's livelihood, and therefore does not constitute a restriction on trade; and lastly, such imports are conducted on a non-discriminatory basis, irrespective of the source of supply.207

In the light of the general requirements of national economic development, economic structural reform and adherence to the objectives of the IMF, China for the past several years has carried out a whole spectrum of reforms concerning its foreign exchange regime, including foreign exchange allocation, exchange rate determination and the establishment of swap centres, with a view to making the foreign exchange regime more market-oriented and liberalized. As of May 1993, the foreign exchange allocated by plan at the official rate only takes up 15% of the exchange used in total imports, whereas the exchange transacted through the swap centres at market rates accounts for 85% in the total exchange used for imports. China will continue its reform of the exchange regime, and as the conditions are ripe, will be prepared to assume the obligations under Article VIII of the IMF Agreement, i.e. eliminate foreign exchange restrictions on current account transactions and the multiple exchange rate systems, and ultimately introduce free convertibility of the RMB. Experiences of the industrialized countries have shown that it can take a long time to accomplish the transition from obligations under

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204 Spec(88)13/Add.4, p.23.
205 Spec(88)13/Add.4, p.23.
206 Spec(88)13/Add.4/Rev.1, p.6.
207 Statement, 15.3.93, pp.2-3.
Article XIV of the IMF Agreement to those of Article VIII of that Agreement. In 1992, amongst the 157 members of the IMF, there were 85 covered by Article XIV. As a developing country, China is at an early stage of development, facing a chronic shortage of foreign exchange and burdened with heavy external debt of US$ 70 billion. The foreign exchange reserve is at a low level of US$ 19 billion. Therefore, it will take some time to achieve a step-by-step transfer to the obligations of Article VIII. China will make efforts to establish a national foreign exchange market system of unified quotations and transactions not later than early 1994, further narrow the scope of allocation by plan at the official rate, enlarge the role of the market in regulating rates, stabilize market rates and gradually adjust official rates. China will be prepared to achieve the goal of a single market rate for the RMB in five year's time, and on that basis, gradually move to the free convertibility of the RMB.\textsuperscript{208}

China can commit to a national foreign exchange market system of unified quotations and transactions among the 15 markets for foreign exchange by early 1994. It can also commit to further reductions in allocation of exchange by plan at official rate and the achievement of a single rate of exchange within five years.\textsuperscript{209}

The percentage of total import value subject to foreign exchange under the mandatory plan will be further reduced in the future. Allocation will be automatically abolished when free convertibility is achieved.\textsuperscript{210}

The ultimate goal of China's reform of the foreign exchange system is to achieve the free convertibility of the RMB. China is now creating conditions and making efforts to progressively achieve this goal. However, the pace towards achievement of this goal will heavily depend on the successful performance of the national economy and a substantial increase in export earnings. Once the goal is achieved, China's foreign exchange control will be progressively removed. There is no discriminatory policy in China regarding the use of foreign exchange by enterprises in China.\textsuperscript{211}

A copy of China's foreign exchange control regulations has been provided to the Secretariat.\textsuperscript{212}

Foreign exchange subject to the central plan is allocated by the State Planning Commission in accordance with the needs of annual national economic development and is subsequently listed in the annual import plan. The amount listed in the central plan can be used after the submission of a written application to SAEC or other relevant department, and the quantity, not quality, of the import needs is to be indicated in the application. The foreign exchange retained by localities and enterprises and owned by foreign investment enterprises can be used by them freely, which means that foreign exchange directly used for imports is under the guidance of State industrial policy, and foreign exchange transactions conducted in swap centres are subject to market forces.\textsuperscript{213}

In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on the handling of foreign exchange affairs:

Article 27. The handling of foreign exchange affairs in relation to import and export, inspection, quarantine, quality and standards of imports or exports shall be in line with the relevant laws and regulations or treaties and agreements to which the PRC is a signatory state.\textsuperscript{214}

\textsuperscript{208}Statement, 24.5.93, pp.3-4.
\textsuperscript{209}14th Mtg., 26.5.93.
\textsuperscript{210}Clarifications, 23.7.93, p.14.
\textsuperscript{211}Clarifications, 23.7.93, p.13.
\textsuperscript{212}Spec(88)13/Add.11, p.19
\textsuperscript{213}Clarifications, 23.7.93, pp.13-14.
\textsuperscript{214}Draft Foreign Trade Law, 4.93.
3.2.2 Exchange Rates

In late 1988, the Chinese delegation indicated the following:

China practices what it refers to as a managed floating exchange rate system. The RMB is a non-convertible currency. Its rate of exchange is fixed and promulgated by SAEC. Factors taken into account by SAEC in deciding on adjustments of the official rate include the balance of international payments, the foreign exchange reserves, the price level of commodities, the rate prevailing in the foreign exchange swap centres, and the fluctuations in the values of other currencies. As of September 1988, China has an official exchange rate and a market exchange rate. The official exchange rate is the main rate formulated and published by SAEC. This rate was US$ 1 = RMB 3.72 on 1 November 1988. The market exchange rate is the price in the foreign exchange swap centres which is determined by buyers and sellers in light of supply and demand. This rate was US$ 1 = RMB 6.63 on 5 November 1988. The gap between the two rates is a consequence of certain irrationalities in the domestic price system; the co-existence of the two rates is a transitional situation. The official exchange rate will be adjusted in the future and the gap between the market rate and the official rate will be gradually reduced until a single exchange rate is established. When the official RMB rate is overvalued, exporters can obtain compensation by selling retained foreign exchange in the swap centres at market rates. China considers that such a practice is not an export subsidy.215

China does not intend to peg the RMB to any particular currency nor to allow the free floating of the RMB exchange rate. A transition to free convertibility could be considered only once a rational price system is established, the total supply and demand of the economy is balanced, and the balance of international payments is stabilized.216

Since its depreciation of 13.6% on 5 July 1986, the official RMB exchange rate has undergone little change. In the two years to September 1988, China’s balance of payments has improved and China’s foreign exchange reserves have increased. At the same time, China’s current account has been in deficit, the increase in foreign exchange reserves resulting largely from foreign capital inflows.

Subsequently, the Chinese delegation provided the following clarifications and additional information:

On 30 June 1991 the official exchange rate was US$ 1 = RMB 5.35 and the swap centre rate was US$ 1 = RMB 5.89. The difference between the two rates was 9.2%.218

As of May 1993, China had two coexisting exchange rates: an official exchange rate and a market exchange rate. The official exchange rate is the main rate formulated and published by SAEC. Factors taken into account by SAEC in deciding on adjustments of the official rate include the changes of comparative purchasing power of foreign and local currencies, the balance of international payments, the foreign exchange reserves and the exchange rates in the international markets. The exchange rate was US$ 1 = RMB 5.719 on 7 March 1993. The market exchange rate is the price in the foreign exchange swap centres, which is determined by buyers and sellers in light of supply and demand. This rate was US$ 1 = RMB 8.2 on 7 March 1993.219

216 Spec(88)13/Add.4, p.24.
217 Spec(88)13/Add.4, p.24.
218 Spec(88)13/Add.8, p.15.
219 Spec(88)13/Add.4/Rev.1, p.7.
The coexistence of two exchange rates is a transitional mechanism during the process of economic reform. China will take effective measures to develop the foreign exchange market and to stabilize the market rates in order to create a condition for unifying the RMB rate. The goal is ultimately to establish a floating system of exchange rates on the basis of a single market rate.

Movement towards a single rate of exchange is definitely one of the ultimate goals which should be achieved through a smooth transition process. To set a rigid timetable may not be helpful to achieving this goal. The value of the RMB is influenced by market forces. It is therefore difficult to set a target value without taking into account the actual performance of the national economy.

The Foreign Exchange Certificate (FEC) is on par value with the RMB. Foreign tourists, overseas Chinese, Hong Kong and Macao compatriots as well as personnel from foreign embassies, consulates and missions in China are free to exchange their own currencies into FEC in the Bank of China and spend it in hotels, restaurants, airports and designated shops in China. This facilitates the ability of foreigners to change back unspent FEC into foreign currency against production of the original exchange receipt. In this respect, FEC is a convertible RMB. China practices two exchange rates, that is, the official rate and the market rate. FEC is exchanged at the official rate. In the future, the two rates will be progressively unified into a single, market-based floating rate and FEC will be exchanged at a uniform rate.

3.2.3 Foreign Exchange Allocation Mechanisms

(i) Retention System

In late 1988, the Chinese delegation indicated the following:

In 1979, China adopted a foreign exchange retention system. Under this system, the State grants foreign exchange quotas to local authorities, departments and State enterprises in proportion to the amount of their sales of foreign exchange earnings to the State. The foreign exchange earned by State-owned enterprises must be sold to the State. After each sale, the State allocates the foreign exchange quota to the State enterprise according to the retention ratio of foreign exchange determined by the State. The enterprises can then open non-interest bearing foreign exchange retention quota accounts at SAEC or its local offices. The foreign exchange quota accounts are not foreign currency accounts. They merely determine the amount of foreign exchange each enterprise is entitled to obtain from the State. They are expressed in US dollars. Enterprises may use their retained foreign exchange to purchase imports for their own use or may sell it freely in the foreign exchange swap centres at market rates. They may purchase foreign exchange within the quota limit through banks authorized by SAEC to handle foreign exchange transactions. No restrictions are imposed on the use of these funds, though the accounts are subject to examination by SAEC offices and the amount of withdrawals must not exceed the account balance.

Users of foreign exchange are required to submit a written application to SAEC, indicating the quota account number, the amount and currency to be used, and the purpose of the transaction. The foreign exchange allocation document does not specify the purchase price, ceiling or floor price, brands or specifications, or country of origin. In the case of a product under the State plan, the quantity must be specified in the document. In all other cases, no quantity is specified. The application will be accepted, and a foreign exchange certificate will be issued, as long as the amount to be used does

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220 Spec(88)13/Add.4/Rev.1, p.7.
221 Clarifications, 18.2.93, p.8.
222 Clarifications, 23.4.93, p.8.
223 Spec(88)13/Add.4, pp.24-25.
not exceed the balance in the account. A period of two or three days is required to complete the procedures.\(^{224}\)

Under the retention scheme in effect in 1988, 75% of the foreign exchange earnings within the contracted targets are submitted to the central authorities, 12.5% is retained by the foreign trade enterprises, and another 12.5% is reserved for the local government. For the additional earnings in excess of the contracted targets, the central authority takes 20%, the rest is reserved for the foreign trade enterprises and the local governments. For the three experimental sectors of light industries, arts and crafts, and clothing, 30% of within-target earnings is submitted to the central authority, 70% is retained by the enterprises and local governments. For above-target earnings, 20% is handed over to the central authorities, while 80% is retained. For machinery and electrical products, 35% of within-target earnings is surrendered to the central authority, 65% is retained by the enterprises and local governments; 100% of the above-target earnings is retained. Full retention is applied in the SEZs of Shenzhen, Zhuhai, Shantou, Xiamen and Hainan Province, and for enterprise groupings in the automobile and electronic sectors. The coastal provinces apply the general ratios of retention applicable to the interior areas of China. Provincial authorities are free to reduce their own shares in favour of local foreign trade enterprises, but they cannot reduce the share of enterprises. When FTCs act as export agents for production units, 12.5% of the retained foreign exchange goes to the production units and 12.5% goes to local governments.\(^{225}\)

China expects that the percentage of foreign exchange which may be retained by enterprises will be raised gradually. Along with the expansion of exports, the percentage will be raised in labour-intensive and export-oriented sectors. For local governments, the rate of foreign exchange retention will be reduced. Rural production units may also retain foreign exchange. In determining the rate of foreign exchange retention, the State takes account of the needs of local governments and enterprises. Local governments are given a percentage equivalent to that retained by the foreign trade enterprises. The provincial governments have the authority to adjust retention rates within the levels set by the Central Government for the provinces.\(^{226}\)

Subsequently, the Chinese delegation provided the following clarifications and additional information:

From 1991 the new foreign exchange allocation system transformed the differential foreign exchange retention rates for different regions into a unified retention system by product categories. Twenty per cent of foreign exchange earnings has to be sold to the State at the official exchange rate, 10% is retained by local governments, another 10% is retained by the production enterprises and the remaining is retained by FTCs. In order to ensure foreign exchange availability for use by the State, the State purchases 20% from FTCs and 10% from export supplier enterprises, respectively, of their retained foreign exchange at the average rate of the swap centres. The remaining may be used by the enterprises for swap operations or for imports. China allows foreign investment enterprises to retain all their foreign exchange earnings and requires them to balance their foreign exchange.\(^{227}\)

As of May 1993, foreign exchange in China is divided into two categories: central foreign exchange; and foreign exchange owned by local departments, retained by enterprises and foreign-investment enterprises. The central foreign exchange is allocated and used subject to plans for the importation of a few essential materials which are vital to the national economy and the people's livelihood. This share of foreign exchange takes up only 15% of the foreign exchange spent for total

\(^{224}\)Spec(88)13/Add.4, p.25.
\(^{225}\)Spec(88)13/Add.4, p.25.
\(^{226}\)Spec(88)13/Add.4, p.25.
\(^{227}\)Spec(88)13/Add.8, p.15.
imports. Transactions are conducted in light of the principle of non-discrimination; there are no country-specific restrictions. While the foreign exchange owned by local departments, enterprises and foreign-investment enterprises is subject to guidance plans and market regulation, these enterprises have discretion over payments for imports and services and the sale of this exchange in the foreign exchange swap centres.

Users of foreign exchange are required to submit a written application to SAEC, indicating the amount and currency to be used, and the purpose of the transaction. In addition to these items, if central foreign exchange is to be used, the quantity of the commodity to be purchased must be indicated. In so far as the foreign exchange owned by local departments, enterprises and foreign investment enterprises is concerned, the application will be accepted, and a foreign exchange certificate will be automatically issued, provided that the amount to be used does not exceed the balance in the account.

Both foreign-investment enterprises and domestic residents are permitted to retain all foreign exchange earnings while domestic enterprises are permitted to retain 70% of their foreign exchange earnings. Foreign exchange owned by enterprises and residents is at their disposal either for their own use or for trading through foreign exchange markets.

There is no restriction on the use of foreign exchange retention quotas. They can be used for imports or sold in the foreign exchange swap markets.

China does not permit the use of different exchange rates according to the quantity of imports. The Chinese Customs conducts a valuation for all imported goods on the basis of the official exchange rate, whether the goods are imported using foreign exchange under State plan or using foreign exchange obtained in swap centres. The formula for customs valuation is: value of the imports in terms of foreign exchange, multiplied by the official exchange rate and the tariff rate. Therefore, there is no linkage between customs valuation and foreign exchange quotas. At present, China maintains the quota system for retained foreign exchange, but this system will be progressively transformed into a foreign exchange cash retention system.

The use of foreign exchange by industrial departments is directed by State-guided priority lists for the use of foreign exchange. These departments can import such advanced technology, raw materials, equipment, parts and components, etc. that they may need, using their retained foreign exchange or foreign exchange purchased from swap centres. With the development and improvement of swap centres in China the use of foreign exchange by industrial departments will be further improved.

According to the regulation of foreign currency administration, the following enterprises have the right to fully retain their foreign exchange:

--- foreign exchange income of export of goods and labour services of the foreign capital enterprises in China;

--- foreign exchange income of services in the sectors of science, education, public health, mass media and culture;

--- Spec(88)13/Add.4/Rev.1, p.7.
--- Spec(88)13/Add.4/Rev.1, p.7.
--- Clarifications, 2.12.92, p.23.
--- Spec(88)13/Add.11, p.13.
--- Clarifications, 23.4.93, p.7.
--- Clarifications, 23.4.93, p.7.
foreign exchange income from tourism of enterprises in Inner Mongolia, Xinjiang, Gan Su, Ning Xia, Qing Hai, Yun Nan, Gui Zhou and Tibet autonomous regions and provinces;

foreign exchange income from exports in Tibet autonomous region.

The proportion of retained foreign exchange by other enterprises and the rest of the country will also be increased along with the overall increase of the total foreign exchange income. At this stage it is hard to predict when enterprises will be allowed to retain all foreign exchange income.\(^\text{234}\)

(ii) Foreign Exchange Accounts

*In late 1988, the Chinese delegation indicated the following:*

For joint Chinese-foreign and other enterprises with foreign investment, foreign exchange deposit accounts are opened in banks authorized to handle foreign exchange business. No foreign exchange quota is involved. If State-owned, collectively-owned enterprises, or enterprises with foreign investment wish to open bank accounts abroad, they have to obtain the approval of SAEC or its local offices.\(^\text{235}\)

Domestic enterprises may establish foreign exchange accounts with local banks subject to the approval of SAEC or its branches. Generally, foreign exchange accounts may only be opened for those enterprises which must maintain foreign exchange for their operations. Chinese enterprises and residents are not allowed to borrow foreign exchange from each other. As of September 1988, domestic banks provide services for lending foreign exchange to export production enterprises, but not to residents. The interest rate of foreign exchange borrowing is determined at present by the Bank of China in light of the international market and the duration of the deposit.\(^\text{236}\)

When enterprises intend to acquire advanced foreign technology and/or import equipment, raw materials or spare parts, they may have access to foreign exchange loans from a Chinese bank so long as they can guarantee repayment by earnings from the export of their products. There are two categories of loans: working fund loans and fixed-term loans. The interest rates are set with reference to international rates. FTCs do not use foreign exchange loans. If they need to import raw materials for re-export after processing, a designated amount of foreign exchange is allocated for their use. After export, the earnings are paid back to the foreign exchange circulation account for future use.\(^\text{237}\)

*Subsequently, the Chinese delegation provided the following clarifications and additional information:*

China encourages foreign investment and protects the legal rights of foreign investors. All the foreign exchange earned by foreign-investment enterprises through the export of their products and services rendered can be wholly retained by them. Also, they may open accounts of deposit at any bank dealing in foreign exchange in China. All normal foreign exchange expenditures are payable from their account of deposit. The net profits and any other legal income earned after taxation can be remitted overseas from the enterprises' accounts. The same is true for the wages and salaries of expatriate employees.\(^\text{238}\)

\(^{234}\)Clarifications, 21-23.10.92, p.1.
\(^{235}\)Spec(88)13/Add.4, p.26.
\(^{236}\)Spec(88)13/Add.4, p.26.
\(^{237}\)Spec(88)13/Add.4, p.26.
\(^{238}\)Spec(88)13/Add.4/Rev.1, p.9.
In their business activities, foreign-investment enterprises can directly borrow from foreign banks and then make a registration with SAEC or its branches. Foreign-investment enterprises can also apply for loans from banks dealing in foreign exchange within China. The loans are of two kinds, i.e. loans for fixed assets and loans for liquid assets. The lending rates are decided in light of rates in the international market.239

China is open to foreign banks and permits foreign banks and Sino-foreign banks to establish their own institutions in SEZs and open coastal cities and operate within approved business lines. As of April 1993, there are 68 such banks. An application must be submitted to the People's Bank of China in order to open such a bank in China. Those who meet the requirements can be approved. Such banks may apply to deal in the following lines of business: (1) foreign exchange deposits (inter bank deposits at home, deposits abroad, deposits from foreign investment enterprises at home, foreigners, overseas Chinese and Hong Kong and Macao compatriots, deposits transferred to domestic enterprises by foreign banks and Sino-foreign joint venture banks); (2) foreign exchange loans and foreign exchange bills discount; (3) foreign exchange investment; (4) foreign exchange remittance and collection and remittance of bills of foreign investment enterprises; (5) foreign exchange guarantees; (6) exports settlement and settlement of accounts for imports under loans provided by foreign banks and Sino-foreign joint venture banks; purchase and sale of negotiable securities; (7) exchange of foreign exchange and foreign exchange bills; and (8) trust and safe deposit services, credit investigations and consulting.240

Transactions in RMB are not allowed for foreign banks and Sino-foreign joint venture banks. However, progressive liberalization may be possible when conditions are ripe. Foreign banks and Sino-foreign banks enjoy the treatment of foreign investment enterprises, their foreign exchange incomes being fully retainable and remittable abroad after the payment of taxes. Trade associations for banks have been established in the open areas in China; foreign banks and Sino-foreign banks can join these and enjoy the same treatment as domestic member banks.241

(iii) Balancing Requirement

In late 1988, the Chinese delegation indicated the following:

The net profits which foreign investors receive from Chinese-foreign contractual joint ventures may be entirely remitted abroad from the foreign exchange deposit accounts that the joint ventures maintain with the banks. Foreign investors who set up enterprises in SEZs are allowed to remit their profits either outside China through their foreign currency accounts or to other areas of China for reinvestment purposes. Chinese enterprises are allowed to remit their profits derived from their operations in SEZs to other areas of China, but not outside China.242

Both joint Chinese-foreign and wholly foreign-owned enterprises are subject to foreign exchange balancing requirements, according to which their foreign exchange earnings must cover their foreign exchange expenditures and profit remittances. The State does not impose any direct requirement to export. However, the balancing of the foreign exchange accounts is largely achieved through exports. Once they have balanced their foreign exchange accounts through exports, enterprises with foreign investment may sell their remaining output in the Chinese market. To help enterprises with foreign investment balance their foreign exchange accounts, the State allows the sale of foreign exchange against domestic currency by enterprises with a foreign exchange surplus to those with a shortage. These transactions are made under the supervision of the foreign exchange administration authorities at foreign

239 Spec(88)13/Add.4/Rev.1, p.9.
240 Clarifications, 23.4.93, p.9.
241 Clarifications, 23.4.93, p.10.
242 Spec(88)13/Add.4, p.27.
exchange swap centres at rates determined by supply and demand. In order to balance their foreign exchange accounts, foreign investors may also reinvest their profits in domestic currency in export-oriented projects, sell their products to domestic users in foreign currency, provided their transactions are approved by SAEC or its branch offices, or purchase with domestic currency goods not subject to export controls and sell these goods outside China upon approval of MOFERT.  

**Subsequently, the Chinese delegation made the following clarifications:**

The basic principle governing the foreign exchange of foreign-investment enterprises is the striking of a balance of foreign exchange, that is the foreign exchange earned by these enterprises should be used to pay for their foreign exchange expenditure and the profits of the investors. The balance of foreign exchange is achieved through the export of their products and the provision of services.  

(iv) Foreign Exchange Swap Centres

*In late 1988, the Chinese delegation indicated the following:*

Under the retention system, some enterprises may have a surplus in the foreign exchange quota accounts while others may be in need of foreign exchange. Direct dealings in foreign exchange are not allowed. However, so as to enable enterprises with a foreign exchange surplus to sell their retained surplus to enterprises in need of foreign exchange, foreign exchange swap centres were established in 1980 in provinces, autonomous regions, municipalities, SEZs and major coastal cities. As of September 1988, there are over 40 centres in China, including a national centre in Beijing, 5 centres in the SEZs and 14 centres in the open coastal cities.  

The foreign exchange swap centres are subject to the guidance and supervision of SAEC.  

State-owned and collectively-owned enterprises, as well as enterprises with foreign investment, can all buy or sell foreign exchange quotas in the foreign exchange swap centres. Enterprises with foreign investment and other enterprises conduct their transactions in the centres on an equal footing.  

Residents in the SEZs and some coastal cities are allowed to sell their foreign exchange through foreign exchange swap centres. This measure, as of 1988 implemented on a trial basis, may in the future be applied in other parts of the country. Foreign exchange holdings allocated by the State under mandatory plans and those derived from non-trade foreign exchange income may not be traded in the swap centres. Also, as of September 1988, China’s private enterprises are not permitted to participate in the swap centres.  

Foreign exchange transactions between different foreign exchange swap centres are permitted across provinces, autonomous regions or municipalities. The Government does not intervene in the activities of the centres to influence the foreign exchange swap rates. However, the People’s Bank of China may intervene when abnormal fluctuations in such rates occur.
The daily foreign exchange swap rate is published at the local foreign exchange swap centres. No ceiling rate is stipulated. Due to market imperfections, the rates differ slightly among provinces, autonomous regions, municipalities and SEZs. The rate in the SEZs and coastal cities is somewhat higher than that in the inland cities. The rates are determined by buyers and sellers according to the supply and demand of foreign exchange. Between 31 October and 5 November 1988, the transaction price was US$ 1 = RMB 6.63 on average. The centres also permit trading in foreign exchange. The currencies that may be traded in the centres are the US dollar, British pound, German mark, Hong Kong dollar, Japanese yen and French franc. The centres collect fees from both the buyer and seller at a rate of 0.15 of the value of the transaction in RMB, with a minimum charge of RMB 10 and maximum charge of RMB 10,000.\textsuperscript{250}

In 1987, the total value of the transactions in the centres amounted to US$ 4.2 billion, of which US$ 330 million represented transactions between enterprises with foreign investment. For the first half of 1988, the volume was US$ 2.4 billion.\textsuperscript{251}

The expansion of the foreign exchange swap centres and the flexible approach to foreign exchange rates make the exchange rate of RMB more responsive to market forces. The purpose of the foreign exchange swap centres is not to maintain a dual exchange rate.\textsuperscript{252}

\textit{Subsequently, the Chinese delegation provided the following clarifications and additional information:}

From the very outset of the reform and opening up to the outside world, with a broadening scope and intensification of efforts, China has been continuously adjusting the balance of payments through market levers in the field of foreign exchange administration. China started foreign exchange swap centres in October 1980. These were designated to handle transactions of foreign exchange retained by local departments and enterprises. Since 1986, this business was extended to the transaction of foreign exchange owned by foreign-investment enterprises. And from 1991, it was further extended to the transaction of foreign exchange held by national residents.\textsuperscript{253}

China's foreign exchange swap centres are operating on the basis of market forces, similar to those in Western countries. As of May 1993, there are 15 swap centres, whose participation is secured through a system of membership. Membership is divided into two groups: one is brokers (financial institutions authorized to engage in exchange transactions) who deal in foreign exchange on behalf of their clients; the other is jobbers (domestic and foreign-investment enterprises) who buy or sell foreign exchange of their own. Both types of members can assign dealers to handle their transactions.\textsuperscript{254}

The rate at which exchange is transacted is determined by buyers and sellers in light of supply and demand in the market. Generally, rates are based upon the closing rate of the previous representative business day, and both buyers and sellers bargain over requests and offers. After transactions are completed, the swap centre will notify sellers and buyers to conclude the deal within a defined period of time.\textsuperscript{255}
The swap centre publishes priorities for exchange, with a view to channelling flows of exchange in line with national industrial policy. The priorities are of a guidance nature, having no mandatory bearing on enterprises' use of exchange.256

The FESC are under the supervision of the SAEC, and in normal cases, the Government does not intervene in the operations of the FESC. However, in the event of abnormal fluctuations of the market rates, the Central Bank may intervene as appropriate, and fix a temporary ceiling rate as necessary.257

Chinese FESC are in the process of development. In the near future, China will take effective measures to set up a unified and standard foreign exchange swap centre. The objective of reform of the foreign exchange system is to realize the free convertibility of RMB. This will also require a corresponding policy for the reform of the price system and the operational mechanism of enterprises. In short, China will, in a positive manner, create conditions for realization of this objective.258

Enterprises forecast their foreign exchange needs according to the supply and demand situation in foreign exchange swap markets and the fluctuation of market rates. The criteria for approving the use of foreign exchange are based on State industrial policy.259

In early 1993 there has been an enlargement of the gap between the official rate and the swap centre rate due to rapid expansion of the economy. There has been an extreme increase in import demand. In addition to demand being greater than supply, speculation is also an apparent factor. Therefore, the recent increase in this gap between the official and swap market rates is caused by the operation of the market mechanism.260

China will foster and improve the foreign exchange market so as to establish a unified and normalized foreign exchange market, thus making the exchange rate reflect more precisely the supply and demand situation of the exchange market.261

3.3 Restrictions on Importation and Exportation

3.3.1 Generally Applicable Import and Export Restrictions

China prohibits the import of certain commodities, including various types of weapons, ammunition and explosives; narcotic drugs, poisons, obscene materials; and foodstuffs, medicines, animals and plants that are inconsistent with China's food, medical, materials and plant standards. China also prohibits the export of narcotic drugs, poisons, materials containing State secrets, precious and rare animals and plants. China considers that these prohibitions are imposed for purposes enumerated in Article XX of the General Agreement.262

There are no import or export bans other than those enumerated above (derived from Spec(88)13/Add.4, section 3.3.1).263

256 Spec(88)13/Add.4/Rev.1, p.8.
257 Spec(88)13/Add.4/Rev.1, p.8.
258 Spec(88)13/Add.4/Rev.1, p.8.
259 Clarifications, 23.7.93, p.12.
260 14th Mtg., 27.5.93.
261 Clarifications, 23.4.93, p.7.
262 Spec(88)13/Add.4, p.28; Spec(88)13/Add.4/Rev.1, p.9.
263 Spec(88)13/Add.11, p.17.
China will maintain quantitative restrictions on some imports in accordance with relevant GATT rules. China is willing to negotiate with all contracting parties concerning the specific products to be subject to such restrictions.\(^{264}\)

MOFTEC allocates quotas to firms which have been granted approval to engage in foreign trade in light of their scope of business and their export performance, and the adjustment of quotas for the next calendar year is based upon their efficiency and the fulfilment of quotas in the previous year.\(^{265}\)

Regulations concerning the administration of machinery and electronic imports are presently under discussion and in the process of being drafted. The regulations will be implemented once they are approved. In this regard, market forces will be used as one of the major factors of reference in regulating this trade.\(^{266}\)

\emph{In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on generally applicable import and export restrictions:}

\begin{itemize}
  \item Article 21. Prohibitions shall be imposed on the importation or exportation of:
  \begin{enumerate}
    \item The goods endangering national security;
    \item The goods jeopardizing health or life of humans;
    \item Animals or plants on the brink of extinction;
    \item The goods in violation of international obligations undertaken by the PRC;
    \item The goods in violation of public interests.\(^{267}\)
  \end{enumerate}
  \item Article 28. The State allows technology to be imported and exported freely, without prejudice to Article 29 and 30.\(^{268}\)
  \item Article 29. The State shall impose licensing system upon any importation or exportation of technology:
    \begin{enumerate}
      \item which shall be restricted on the grounds of national security,
      \item which shall be restricted in accordance with bilateral or multilateral treaties,
      \item which shall be restricted on the grounds of social public interests,
      \item which shall be restricted in compliance with exceptional provisions of the State.\(^{269}\)
    \end{enumerate}
  \item Article 30. Prohibitions shall be imposed on the importation or exportation of technology which:
    \begin{enumerate}
      \item may endanger the world peace;
      \item may jeopardize national security;
      \item is in violation of the international obligations undertaken by the PRC.\(^{270}\)
    \end{enumerate}
  \item Article 32. Matters such as technologies which are subject to restrictions or prohibitions under Article 29 and 30, application of licences and the procedures of licensing provided by Article 31 shall be laid down by the MOFTEC with the participation of other relevant authorities of the State Council. The MOFTEC with the participation of other relevant authorities of the State Council shall hold regular
\end{itemize}

\(^{264}\)Clarifications, 2.12.92, p.9.

\(^{265}\)Clarifications, 23.7.93, p.19.

\(^{266}\)Clarifications, 23.7.93, p.20.

\(^{267}\)Draft Foreign Trade Law, 4.93.

\(^{268}\)Draft Foreign Trade Law, 4.93.

\(^{269}\)Draft Foreign Trade Law, 4.93.

\(^{270}\)Draft Foreign Trade Law, 4.93.
deliberations on the technologies subject to the restrictions or prohibitions. As soon as the conditions for imposition of restrictions or prohibitions provided by Article 29 and 30 disappear, corresponding adjustments shall be made to the technologies subject to restrictions or prohibitions and these adjustments shall be made public.271

3.3.2 Import and Export Licensing

In late 1988, the Chinese delegation indicated the following:

China’s import and export licensing system was created in 1951. After 1956, China’s foreign trade was exclusively handled by State-run FTCs under the then Ministry of Foreign Trade and all FTCs conducted their business in accordance with import and export plan targets assigned by the Ministry. In those years, the import and export licensing system practically stopped functioning. Since China’s adoption of the policy of opening to the outside world in 1979, the diversity and number of enterprises engaging in foreign trade has steadily increased. China therefore resumed the application of the import and export licensing system in August 1980.272

MOFERT is the department exclusively responsible for administering the licensing system. It may authorize the departments of foreign economic relations and trade at the provincial level or the special commissioner offices located at the main ports to issue licenses for some import or export products within their respective administrative areas.273

Subsequently, the Chinese delegation made the following clarifications:

MOFTEC is the department exclusively responsible for administering the licensing system. It may authorize the departments of foreign economic relations and trade at the provincial level and the special commissioner offices located at the main ports to issue licenses for some import and export products within their respective administrative areas.274

(i) Import Licensing System

In late 1988, the Chinese delegation indicated the following:

In 1984, the State Council promulgated the "Interim Regulations on Licensing System for Import Commodities" and MOFERT and the Customs General Administration issued "Detailed Rules for the Implementation of the Interim Regulations on Licensing System for Import Commodities". The Interim Regulations are uniformly implemented throughout China. The import licensing system ensures that the limited foreign exchange resources are used for imports necessary for national economic development and that domestic industries are protected. In 1987, of the total import value of US$ 43.24 billion, imports subject to licensing represented 43.7%, covering US$ 18.9 billion. MOFERT decides which products require import licenses on the basis of supply and demand conditions, domestic production and foreign exchange earnings.275

The Chinese import licensing system is administered without discrimination among countries or regions. Quotas representing the total amount of permitted imports are not fixed. Mandatory plan targets for imports set the minimum amount of imports to be achieved and do not constitute global

271Draft Foreign Trade Law, 4.93.
272Spec(88)13/Add.4, p.28.
273Spec(88)13/Add.4, p.28.
274Spec(88)13/Add.4/Rev.1, p.9.
275Spec(88)13/Add.4, p.29.
import restrictions. For the products subject to guidance plans, licenses are issued according to the
guidance targets.  

MOFERT or its authorized local agencies issue import licenses on the basis of justifications
given by the applicants and a certification by the competent authorities concerning the production of
like products. Licenses are issued to FTCs and end-users taking into account their registered scope
of business. Enterprises requiring imports of small quantities of urgently needed goods may be granted
import licenses even if the imports are outside their registered scope of business. As of September
1988, licenses for 14 products are issued by MOFERT; for 39 products they are issued by MOFERT-
authorized local economic and trade bureaus. Two to three days are required to process license
applications. The licenses may not be traded, exchanged or sold. The cost of import and export licenses
is borne by the license issuing department. A small fee is charged to the applicants. Import licenses
are valid for one year and, when necessary, the validity can be extended for a limited period, usually
not more than six months. As of September 1988, no consideration is being given to the auctioning
of licenses. Among the 53 products subject to import licensing in 1988, 46 can be imported by provincial
FTCs within their registered scope of business. Only a few products subject to import licensing, such
as steel, timber, oil, sugar, rubber and man-made fibres, may be imported only by the FTCs designated
by MOFERT. However, for these products, MOFERT may grant import licenses to local FTCs in
light of requirements of the provinces. 

Subsequently, the Chinese delegation provided the following additional information:

In 1989, the number of products subject to import licensing by MOFERT was increased from
14 to 16. These products are steel, billets of steel, scrap steel, scrap vessel, natural rubber, timber
plywood, wool, manmade fibres, wood pulp, petroleum oils, sugar, tobacco products, civil aircraft,
motor vehicles and key spare parts.  

In 1992, of the total import value of US$80.63 billion, imports subject to licensing represented
38.3%, covering US$ 30.9 billion. MOFTEC decides which products require import licenses on the
basis of supply and demand conditions, domestic production and foreign exchange earnings.

The import licensing system serves to guarantee orderly trade. It also serves the purpose of
utilizing the limited foreign exchange to import the products which are vital to development of the
national economy. China's considers the licensing system to be compatible with Articles X and XIII
of the General Agreement in that it ensures transparency and simplicity.

As of April 1993, China applies import restrictions to 53 product categories. These product
categories are:

1. steel  2. billets of steel  3. scrap steel  4. scrap vessels  5. natural rubber  6. timber  7. plywood
man-made fibres  14. ABS resin  15. synthetic rubber  16. polycarbonate  17. sodium cyanide
22. key parts for vehicles  23. crane lorries  24. civil aircraft  25. open-end spinning machines
electronic computers  30. audio and video tape duplicating machines  31. video cassette recorders

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276 Spec(88)13/Add.4, p.29.
277 Spec(88)13/Add.4, p.30.
278 Spec(88)13/Add.6, p.5.
279 Spec(88)13/Add.4/Rev.1, p.20.
280 Clarifications, 23.4.93, p.15; Clarifications, 23.7.93, p.10.
32. duplicating machines 33. air conditioners 34. agro-chemicals 35. tobacco products 36. filter tips 37. acetate tow 38. coffee and coffee products 39. cobalt and cobalt salt 40. vehicle tires 41. demolition chemicals and equipment for civil use 42. fabrics of man-made fibres 43. garments of man-made fibres 44. refrigerators 45. washing machines 46. tape recorders 47. television sets 48. motorcycles 49. key parts for motorcycles 50. cameras (excluding instant cameras) 51. camera bodies (without lens) 52. watches 53. assembly and processing equipment.

China has committed to reduce the number of product categories subject to import licensing by two-thirds as of 1995. The products (by tariff line) subject to import licensing as of October 1992 are contained in an annex to Spec(88)13/Add.10.

Ministries of the State Council and their subordinate units also need licenses for imports. The competent departments must apply for licenses at MOFTEC. Special commissioner offices in 15 provinces issue some import licenses to departments within their respective administrative areas. Similarly, the foreign economic relations and trade bureaus of various provinces, autonomous regions and municipalities directly under the Central Government are responsible for issuing some import licenses.

Applicants must submit application letters signed and stamped by officials at or above the department or bureau level, together with import certificates, including certificates approving the import by the competent departments and/or industry-specific approval departments under the State Council. All applications must be accompanied by a foreign exchange certificate issued by the foreign exchange administration authorities. Importers of goods listed in the State import plan (together with the quantities and the users) may apply for and obtain import licenses with the documents approving the planned import, without going through the industry-specific approval departments. When importing products for approved projects utilizing foreign investment and imported technology or equipment, the importer may request the import license directly from the license-issuing organ. Chinese-foreign equity joint ventures and wholly-owned foreign enterprises may be exempted from the import license requirement in respect of goods used for export production. These enterprises are also subject to fewer formalities when the license applications relate to the construction or expansion of plants.

(ii) Export Licensing System

In late 1988, the Chinese delegation indicated the following:

The export licensing system is administered in accordance with the "Interim Procedures for the Export Licensing System". In 1987, products under export licensing accounted for 55% of the total value of Chinese exports. As of July 1988, the total number of products subject to export licensing was reduced to 159. For some of these products the licenses are issued by MOFERT or the special commissioner offices of MOFERT; however, for the majority of the products, the provincial authorities issue the licenses. Products are subjected to restrictive export licensing to take into account the quota obligations in bilateral and multilateral agreements, the capacity of foreign markets and the need to avoid indiscriminate exports. Some products are placed under export restriction because they are essential to the national economy and people's livelihood.

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281 Spec(88)13/Add.4/Rev.1, p.10.
282 Clarifications, 21-23.10.92, p.2.
283 Spec(88)13/Add.4/Rev.1, p.10.
284 Spec(88)13/Add.4/Rev.1, p.11.
285 Spec(88)13/Add.4, p.31.
The application for an export license must be submitted to MOFERT and be accompanied by documentary evidence, such as documents of approval for the establishment of the enterprises, export contracts and letters of credit. The procedures are the same for all export destinations. The decision on the request for an export licence usually takes three to five working days. Export licenses are valid for six months; they may be extended for a period of two months upon request. A small fee is collected for each licence.\(^{286}\)

Enterprises with foreign investment engaged in exporting products not produced by them must obtain export licences if the products are subject to licensing. If the products are not subject to licensing, customs clearance will be given after examination has been made by Customs on the basis of contracts and other relevant documents.\(^{287}\)

\textit{Subsequently, the Chinese delegation provided the following clarifications and additional information:}

In 1989, the number of products subject to export licensing was increased from 159 to 173, the added items including copper, zinc, lead, manganese, iron and nickel ores, which are in short supply domestically.\(^{288}\)

In 1991, the number of products subject to export licensing was 228\(^{289}\).

China increased the number of products subject to export licensing in April 1991 in order to stabilize China’s export market, prevent rush buying at high prices and exporting at below-cost prices, thus maintaining proper order in the export market. With the deepening of Chinese foreign trade reform, the number of products subject to the export licensing system will be greatly reduced.\(^{290}\)

In 1992, products subject to export licensing accounted for 48.3\% of the total value of Chinese exports. As of July 1993, the total number of products subject to export licensing is to be reduced to 143. For some of these products the licenses are issues by MOFTEC or the special commissioner offices of MOFTEC; however, for the majority of the products, the provincial authorities issue the licenses.\(^{291}\)

China makes use of export licensing in cases where products are being exported in such quantities and at such prices as would be likely to cause trade disputes (e.g. so-called "dumping practice"). Export licensing would be necessary in order to avoid such disputes, e.g. the case of ferro-manganese exports.\(^{292}\)

\textit{In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on import and export licensing:}

\textbf{Article 19.} The State allows goods to be imported or exported freely, without prejudice to Article 20 and 21\(^{293}\).

\textbf{Article 20.} The State shall impose licensing system upon any goods:

\(^{286}\) Spec(88)13/Add.4, p.31.
\(^{287}\) Spec(88)13/Add.4, p.31.
\(^{288}\) Spec(88)13/Add.6, p.6.
\(^{289}\) Spec(88)13/Add.8, p.16.
\(^{290}\) Clarifications, 21-23.10.92, p.2.
\(^{291}\) Spec(88)13/Add.4/Rev.1, p.11.
\(^{292}\) Clarifications, 23.7.93, p.18.
\(^{293}\) Draft Foreign Trade Law, 4.93.
1. The importation or exportation of which shall be restricted on the grounds of national security.
2. The importation or exportation of which shall be restructured in accordance with bilateral or multi-lateral treaties.
3. The exportation of which shall be restricted on account of the shortage of domestic resources or market supply.
4. The exportation of which shall be restricted on account of the limited market capacity of the intended country or region.
5. The importation of which shall be restricted for protection of domestic infant industries.
6. When necessary, the importation of agricultural or fishery products in any form shall be restricted.
7. The importation of which shall be restricted for maintaining the international financial status and balance of international payments.

Article 22. Goods subject to the licensing system imposed by the State under the provisions of Article 20 may be imported or exported only on acquisition of authorization of the MOFTEC.

Article 23. The MOFTEC shall impose licence with quota and licence without quota on goods whose importation or exportation is subject to licences.

Article 24. On the basis of categories of goods and surrounding circumstances of the importing or exporting countries, the MOFTEC may allocate licences with quota pursuant to the principles as follows:

1. To allocate on the basis of the import and export deeds and the performance of the applicants in the preceding year.
2. To allocate in proportion with respect to the applications of a certain period.
3. To allocate according to the sequence of applications.
4. To allocate in the way of tendering or auction.

As to the licences without quota the MOFTEC shall dispose of on the basis of applications of the foreign trade entities.

Article 25. Matters such as nomenclatures of the imports or exports subject to restrictions or prohibitions under Article 20 and 21, the application for and procedures of licences provided by Article 22 and the quantity of quotas with respect to licences with quotas within the meaning of Article 23 shall be laid down and published by the MOFTEC.

The MOFTEC shall hold regular deliberation on the nomenclature of the imports and exports subject to restrictions or prohibitions. As soon as the conditions for the restrictions or prohibitions imposed under Article 20 and 21 disappear, corresponding adjustments shall be made to the nomenclature of the imports and exports and these adjustments shall be made public.

Article 28. The State allows technology to be imported and exported freely, without prejudice to Article 29 and 30.
Article 29. The State shall impose licensing system upon any importation or exportation of technology:
1. which shall be restricted on the grounds of national security,
2. which shall be restricted in accordance with bilateral or multilateral treaties,
3. which shall be restricted on the grounds of social public interests,
4. which shall be restricted in compliance with exceptional provisions of the State. 300

Article 30. Prohibitions shall be imposed on the importation or exportation of technology which:
1. may endanger the world peace,
2. may jeopardize national security,
3. is in violation of the international obligations undertaken by the PRC. 301

Article 31. Technology to be imported or exported which is subject to the licensing system under Article 30 may be imported or exported only on acquisition of authorization of the MOFTEC. 302

3.3.3 Agricultural Development Policies

China is a heavily populated country with more than 80% of its total population living in the rural areas. Agricultural production, especially the production of grain, cotton and edible oils, which is essential and vital to its people, is playing an important role in terms of the stability of economic development. 303

With 14 years of economic reform and opening to the outside world, the Chinese Government has adopted various kinds of policies and measures to support agricultural development and has succeeded in feeding 22% of the global population utilizing only 7% of the world's total arable land. 304

China essentially intends to maintain its agricultural development programme which includes:

(1) Subsidies on means of production, i.e. fertilizer, gasoline, plastic film, pesticides and agricultural machinery (such subsidies are not specifically related to trade);
(2) Government investment in infrastructure, i.e. irrigation works, capital construction in agricultural machinery and weather forecasting;
(3) Government inputs in agro-services in technology training, agricultural research and development, plant protection and plant epidemic prevention;
(4) Government financing of buffer stocks to maintain stable domestic prices of agricultural products, particularly foodstuffs;
(5) Import quotas for grain implemented through exclusive imports by FTCs. 305

With the exception of cereals (including wheat, maize, rice and soybeans) and cotton, currently handled by designated specialized FTCs, all other agricultural imports and exports are entirely open for those corporations having foreign trade rights and the ability to engage in such business. The purpose of exclusive dealing by designated FTCs for cereals is to have an exchange of varieties, guarantee adequate food supply and protect urban residents against market speculation which would affect their normal life. Along with the increase in production and supply, restrictions will be liberalized progressively. As from 1992, China has abolished all import and export subsidies for FTCs. The
latter are responsible for their own profits and losses. CEROILFOOD is already an independent economic entity without being privatized.306

As of July 1993, only grains (including wheat, maize, rice and soybeans), cotton and tea are traded by State-designated FTCs. Import and export of other agricultural products are open to all enterprises. Paper pulp and wool are also still traded by designated corporations.307

CEROILFOOD is the designated FTC for handling the grain trade. It is responsible for its own profits and losses. The corporation undertakes to fulfil import targets set by the State, but maintains its own independent management.308

Government financing of buffer stocks is intended to ensure national food security in case of food shortages resulting from natural disasters. A moderate amount of government financing of buffer stocks helps to balance supply between years of bumper harvests and those of shortfalls so as to stabilize grain prices and prevent famine.309

As to why China does not rely on the international market rather than government intervention to make up shortfalls in domestic grain production: China has a population of 1.1 billion; natural disasters occur frequently; when there is a serious shortfall, huge increases in emergency demand for grain may not be met by international markets due to shortage of supply or shortage of foreign exchange reserves.310

Based on the Law of Agriculture of the PRC, the central and local governments jointly maintain buffer stock funds to support regulatory storing and transportation facilities. When the market price drops sharply as a result of a bumper harvest, the governments use the fund to buy stocks to stabilize the market price and protect farmers’ interests. When the market price rises sharply as a result of natural disasters, the governments sell the stock to stabilize the market price and protect consumers’ interests.311

Grain prices are determined on the basis of production costs, sales expenses, reasonable profits and tax payments.312

With respect to maintaining import quotas for grain China emphasizes the need to develop grain production and increase grain supply and variety. China could consider the tariffication of existing import quotas in accordance with the Uruguay Round agriculture agreement.313

Grain prices have been liberalized in most provinces and autonomous regions, with the exception of Tibet and Ningxia which rely on supply from other provinces and are frustrated by the lack of transportation facilities. They maintain State pricing for the time-being in order to ensure a minimum living standard.314

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306Clarifications, 23.4.93, p.1
307Clarifications, 23.7.93, p.5.
308Clarifications, 23.7.93, p.1.
309Clarifications, 23.4.93, p.1.
310Clarifications, 23.7.93, p.2.
311Clarifications, 23.7.93, p.9.
312Clarifications, 23.4.93, p.1.
313Clarifications, 23.4.93, p.2.
314Clarifications, 23.7.93, p.6.
In 1985, China removed mandatory production targets for all agricultural products. As of April 1993, only guidance production targets remain for a few major agricultural products, such as grains, cotton, oils, sugar, meat and aquatic products.\textsuperscript{315}

China maintains no production controls on agricultural products and has no plans to institute such controls.\textsuperscript{316}

As of July 1993, agricultural products subject to guidance pricing include only 4 products: Chinese medicinal materials, sugar, wool and resin. Only when there is a sharp price fluctuation will the State introduce a range of ceiling or floor prices to stabilize market prices.\textsuperscript{317}

State involvement in respect of agricultural products as of April 1993 is as follows:

1. The State sets prices for procurement contracts for cereals (rice, wheat maize and soybeans, which account for about 12% of China's total grain output), cotton, tobacco, silkworm cocoon, certain kinds of timber subject to State plans and compressed tea; the State pricing will be gradually liberalized in the process of economic reform; and

2. The State requires import quotas and licenses for cereals (wheat, rice, maize and soybeans), cotton, wool, vegetable oil, sugar, apples and pears; export licenses are required for grains, tea, pork, beef, mutton and fowl.\textsuperscript{318}

According to Chinese Customs Statistics for 1991, the major Chinese exports are maize (US$ 812,900,000), foodstuffs (US$ 943,920,000), tea (US$ 397,540,000), frozen prawns (US$ 381,980,000) and canned vegetables (US$ 336,750,000). The major Chinese imports are cereals (US$ 1,368,750,000), animal, vegetable oils and oil seeds (US$ 409,980,000), sugar (US$ 287,450,000), timber (US$ 443,620,000) and aquatic products (US$ 268,740,000).\textsuperscript{319}

The so-called subsidies programme on means of agricultural production is actually a form of compensation to farmers for their sales of farm produce to the State at State-fixed prices (normally lower than the market price). Before 1992, these kinds of subsidies were given by providing farmers with certain amounts of chemical fertilizer and diesel fuel at State-fixed prices corresponding to the quantity of grain and cotton sold to the State (such grain sales accounting for about 12% of total grain output). Starting from 1993, this system of subsidies has changed, with compensation being paid to farmers to cover the differences between State-fixed prices and market prices, corresponding to the quantity of grain sold to the State at State-fixed prices. It is clear that this latter type of subsidy is in fact neutral in trade terms. Along with the progressive liberalization of prices for grain and cotton, China will correspondingly reduce its subsidies on the means of agricultural production.\textsuperscript{320}

In 1992, the Chinese Government decided on further reforms in liberalizing grain prices. Time schedules will be set individually by provincial governments for liberalizing grain purchases and sales prices according to the actual situation in the provinces, in line with the principle of uniform national policies. As of April 1993, 13 provinces have liberalized both grain purchasing prices and selling

\textsuperscript{315}Clarifications, 23.4.93, p.2.
\textsuperscript{316}Clarifications, 23.4.93, p.3.
\textsuperscript{317}Clarifications, 23.7.93, p.10.
\textsuperscript{318}Clarifications, 23.4.93, p.2.
\textsuperscript{319}Clarifications, 23.4.93, p.2.
\textsuperscript{320}Clarifications, 23.4.93, pp.3-4.
prices, 5 provinces have liberalized their grain selling prices; 9 provinces have liberalized their grain prices only in part of the province.  

From 1985 to 1991, the output of bovine meat, mutton and milk rapidly increased. The output of bovine meat increased from 470,000 tons to 1.53 million tons, with an average rate of growth of 21.7%; consumption per person jumped from 0.45 kilograms to 1.34 kilograms, an increase of 197%. The output of mutton increased from 590,000 tons to 1.18 million tons, with an average rate of growth of 12.2%; consumption per person jumped from 0.56 kilograms to 1.03 kilograms, an increase of 84%. The output of milk increased from 250 million tons to 465 million tons, an average rate of growth of 10.9%; consumption per person jumped from 2.39 kilograms to 4.07 kilograms, an increase of 70%. Therefore, these three products are basically in equilibrium, with the price rising slightly. Generally, Chinese consumption of bovine meat and mutton is still rather low, with Chinese people mainly eating pork and poultry. At the same time, the Government encourages herdsmen to raise more grass-eating stocks, such as cattle and sheep. Therefore, domestic production can basically meet the market demand.  

China exercises no specific restrictions on dairy products.

Government investment in infrastructure has the following purposes: (1) to support the agricultural scientific and research institutions and colleges, technological dissemination and training institutions, animal and plant protection departments and agro-technological services departments for the construction of basic facilities (office buildings, testing instruments and equipment); and (2) to construct large-scale irrigation projects and basic facilities for weather forecasting departments.

As of February 1993, only 10% of timber production volume is subject to State guidance pricing, and prices of wool have been totally freed. There are no fiscal subsidies in respect of these products.

China has abolished, at all levels of government, fiscal subsidies on exports of agricultural products as of 1 January 1993. All enterprises engaged in foreign trade are responsible for their own profits and losses, following current international practice. State enterprises handling wool and livestock are equally covered by these policies.

From 1986 to 1990, about 8% of total financial assistance was spent in the agricultural sector, mainly on infrastructure, large-scale irrigation projects and scientific research.

As a result of rural reform, the household responsibility system has replaced the People’s Commune system. Agricultural production is conducted on the household basis. Households sign supply contracts with the State but make their production decisions independently of the State. Such independent rights of farmers are protected by law. This household system covers over 90% of arable land.

In order to keep pace with reform of the production system, the reform of the agricultural marketing system began in 1985. The State monopoly of supplies was transformed into contractual
purchases of agricultural products. The State maintains control of supplies for only a small proportion of the main agricultural products. As a matter of fact, over 90% of agricultural production in value terms is now run by individuals.329

Before 1990, the Government provided economic support to foreign trade enterprises engaged in exports of agricultural products. This support accounted for about 4% of total import value. Such support was eliminated in 1990.330

Tariff and non-tariff measures are fewer in the agricultural sector than in the industrial sector. For details, please refer to Spec(88)13/Add.12 and Spec(88)13/Add.12/Rev.1.331

China’s agricultural production accounted for 26.2% of GDP in 1991 and 23.91% in 1992.332

For a comprehensive listing of programmes and policies China proposed to maintain under its agricultural development programme, please see "The Outline of the Ten-Year Programme and the Eighth Five-Year Plan for the National Economic and Social Development of the People’s Republic of China", as published.333

Based on China’s development programme, China will implement its agricultural development policies and measures in line with international rules governing trade in agriculture. If the Uruguay Round agriculture agreement could adequately cover China’s agriculture development programme China will not insist on a special safeguard clause for agricultural development.334

The Chinese delegation has offered the following additional clarifications:

China has decided to implement its agricultural development policy within the scope of existing GATT rules, without seeking an overall special exception. China supports the objectives of negotiations on trade in agriculture in the Uruguay Round and is prepared to submit China’s offer on agricultural products to the Trade Negotiations Committee. With regard to the residual quantitative restrictions on individual agricultural products subject to import licenses (including wool and rubber), these will be justified by relevant GATT provisions.335

Quotas for wool and rubber are allocated according to market demand and actual import performance of the enterprises over a previous representative period. As of July 1993, these quotas are still handled by designated FTCs.336

China does not prohibit imports of agricultural and fishery products. China exercises restrictions on certain agricultural and fishery products, which it considers to be justified by relevant GATT provisions.337

China’s justification for maintaining quantitative import restrictions on wool is as follows: Wool production is located in the remote, underdeveloped regions of China where some 40 million
people from about 30 minority nationalities live, including Mongolians, Khazaks and Tibetans. These are the dry and frigid zones with disadvantageous habitat. A substantial number of the herdsmen are leading a nomadic life. The inhabitants live on sheep-raising. Wool accounts for 60-70% of their sources of total income. In 1990, there were some 112.8 million head of sheep, producing 80,000 tons of wool annually. Due to the fluctuation in the domestic and international markets, an import surge occurred in the first half of 1986. With a view to guaranteeing the people’s livelihood in such remote and underdeveloped areas, as well as remedying the damage caused by such market disruption, import licensing for wool was introduced on 20 September 1986. However, after introduction of import licensing, the imports were still on a rampant rise and continued to sustain a high level until 1988 when total annual imports reached 187,411 tons, exceeding total annual demand of 148,651 tons for the year. Stocks accumulated to 238,760 tons, resulting in a sharp decline in wool prices. The herdsmen were threatened with a hopeless state of destitution. This erratic market situation also had a very negative impact on trade. The jump of stockpiles led to a sharp decline in imports in 1989 and 1990, which was not necessarily the result of import licensing. Due to the poor natural endowment and remote geographic location, it is hardly possible to develop new avenues of employment within a short time. The present wool import regime will be maintained, with a view to meeting the subsistence needs of those herdsmen, until the economic situation in those regions substantially improves. Even with the licensing regime, the medium and long-term trend of wool imports will be on the rise.338

Production policies in the minority nationality regions of China include the exemption of taxes on most wool production and government supply of low-rate credit for the production base.339

China’s justification for maintaining quantitative restrictions on imports of natural rubber is as follows: At present, the natural rubber growing areas in China are above 9 million mu. About 2 million people engage in production and processing natural rubber. In comparison with tropical countries, China does not possess advantageous conditions for growing natural rubber. Therefore, upon resumption of GATT contracting party status, China will contain its growing area. China maintains quantitative restrictions on imported rubber in accordance with Article XI:2(b) of the General Agreement.340

Beginning in 1993, China has gradually liberalized agricultural prices. It is expected that by the end of 1995 all purchasing and selling prices for agricultural products will be liberalized. China plans to eliminate State pricing for the remaining wool products by the end of 1994.341

3.3.4 Import Substitution

In late 1988, the Chinese delegation indicated the following:

There are no provisions specifically requiring import substitution in China's licensing regulations. The State nevertheless encourages the purchase of like products produced domestically (whether by domestic firms or foreign-owned firms) when such products are available and satisfy user requirements. A list of import substitution products is established by China’s industrial sectors to encourage domestic users to buy products which can be manufactured and supplied domestically. In the view of the Chinese authorities, this practice does not constitute a mandatory import restriction.342

338Clarifications, 23.7.93, pp.2-3, 9.
339Clarifications, 23.7.93, p.3.
340Clarifications, 23.7.93, p.6.
341Clarifications, 23.7.93, pp.2, 8.
342Spec(88)13/Add.4, p.31.
The 1987 regulation of the State Planning Commission on measures for the substitution of importation by products of Chinese-foreign joint and cooperative ventures is intended to assist the development of production in China. The products of such enterprises must be exported or sold domestically according to the ratios stipulated in the contracts between the Chinese Government and the foreign investors. The enterprises are furthermore required to achieve a balance of their foreign exchange accounts. Where such products meet their needs, domestic users are encouraged to buy, with foreign exchange, the products of some enterprises with foreign investment experiencing difficulty in achieving exports.343

Subsequently, the Chinese delegation provided the following clarifications and additional information:

The exact meaning of "import substitution" is to encourage the production and use of advanced technology products in replacement of imported like products. This is reflected in advertising in industrial sectors to promote domestic-made products to domestic users. China's import licensing system does not contain an import substitution clause. It should be made clear that the import substitution list recommended by industrial sectors cannot be treated as the basis for import restrictions. Therefore, it cannot prevent enterprises from importing like products.344

Import substitution lists published by industrial departments are intended for disseminating information and recommending domestic-made products to consumers. These lists are not for the purpose of restricting or prohibiting imports and they have no legally binding force with respect to the decisions of enterprises to import like products.345

The Chinese Government announced on 22 August 1992 that all lists covering products for import substitution had been removed and that China would not reintroduce such lists in the future.346

Having publicly announced that it has ceased to publish an import substitution list, China declares that in the future it will encourage the use of domestic-made goods by means of promoting industrial development and enhancing competitiveness through reducing production costs, improving quality and updating technical standards, rather than enforcing import substitution by administrative means.347

3.4 Customs Tariffs and Other Charges on Importation and Exportation

3.4.1 Legal Basis and Principles of Tariff Policy

In late 1988, the Chinese delegation indicated the following:

The "Regulations on Import and Export Duties" and the "Customs Import and Export Tariff" took effect in March 1985. Amendments to the Regulations were made in September 1987. Amendments to the tariff schedule were made in April, August and December 1986, in June 1987 and in February, May, July, September, October and November 1988.348

The main purpose of the Customs Tariff is to regulate importation and exportation; none of the charges imposed on imports serve primarily to raise revenue. The import tariff, as a significant

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343 Spec(88)13/Add.4, p.31.
344 Spec(88)13/Add.8, p.16.
345 Spec(88)13/Add.8, p.24.
346 Spec(88)13/Add.4/Rev.1, p.11.
347 Clarifications, 21-23.10.92, p.2.
348 Spec(88)13/Add.4, p.32.
component of the price of imports, plays an important rôle and that this rôle will become increasingly important in regulating imports and in promoting and protecting domestic production. China’s tariff policy furthers the opening of the Chinese economy to the outside world, encourages exports, promotes the import of necessities and protects and improves the development of the national economy.  

The basic principles for establishing duty rates are as follows:

(1) Duty-free or low duty rates are applied to those imported goods which are needed for the national economy and the people’s livelihood but cannot be produced or sufficiently supplied domestically;

(2) Import duty rates on raw materials are generally lower than those on semi-manufactured or manufactured products;

(3) For parts or components of machinery, equipment and instruments which cannot be produced domestically, or the quality of which is not up to standard, the import duty is lower than the duty on finished products;

(4) Higher duty rates are applied to those products which can be produced domestically or which are not essential for the national economy and the people’s livelihood;

(5) A still higher duty is applied to imported products, the equivalent of which can be produced domestically and which need protection;

(6) The majority of products are free of export duty.

Subsequently, the Chinese delegation made the following clarifications:

The Customs tariff of China is the main type of charge imposed on imported and exported goods. The purpose of the Customs tariff is two-fold: (a) to regulate imports and exports so as to promote and protect domestic production; and (b) to serve as an important source of revenue for the Central Government after the reform of China’s financial system.

China’s tariff policy is directed to promoting the country’s process of reform, opening to the outside world and protecting national industry through pursuance of industrial policy and opposing trade discrimination.

The legal basis for China’s tariff policy is as follows:

(1) Customs Law of the People’s Republic of China (adopted in 1987 at the 19th Session of the Standing Committee of the 6th National People’s Congress);

(2) Regulations on Import and Export Duties of the People’s Republic of China (issued by the State Council in 1985, amended in 1987, 1988 and 1992);

In late 1988, the Chinese delegation indicated the following:

The Tariff Commission, of which MOFERT is a member, continuously considers proposals for amendments to the tariff schedule made by domestic production enterprises, users of imports and companies engaged in foreign trade. On the basis of such proposals, the Tariff Commission prepares amendments for approval by the State Council. Partial amendments may be approved directly by the Tariff Commission. 354

There are two columns of import duty rates: minimum rates and general rates. The minimum rates apply to imports originating in countries with which China has concluded trade agreements containing a most-favoured-nation clause, whereas the general rates apply to imports originating in the other countries. There is only one column of export tariff rates applied to all countries. 355

Products subject to import duties (including those subject to the import regulatory tax) accounted in 1987 for 64% of total imports; the value of export products subject to export duties accounted for 1.6% of total exports. The weighted average tariff rates (minimum rates) for the principal import product categories in China’s foreign trade in 1987 were: 11.3% for agricultural raw materials, chemical raw materials, metal and steel; 19.29% for capital goods such as machinery; and 19.29% for consumer goods such as foodstuffs. 356

There are nine items subject to export duties, all of which are raw materials having no import content. The nine products subject to export duties are eel fry, prawns, chestnuts, crude lacquer, tungsten ores, goat skins, crude antimony, raw silk, powder and waste of bones. 357

Subsequently, the Chinese delegation provided the following clarifications and additional information:

From April 1986 to August 1991, the import duty rates were adjusted 18 times: import duties of 83 dutiable items were adjusted downward and those of 140 dutiable items were adjusted upward. The products covered by the downward and upward adjustments are listed (in part) in Spec(88)13/Add.8. The foregoing upward adjustment of import duties was implemented in compliance with the economic readjustment begun in 1988, particularly in view of the poor economic performance and international balance-of-payments situation. With the improvement of the economic performance and international balance-of-payments, and rationalization of the exchange rate of RMB, the import duties on a wide range of raw materials and new technology products have been reduced. The above-mentioned duty reductions on some 83 items were, for the most part, accomplished in 1990 and 1991. 358

The tariff reductions give tariffs a role to play as an economic lever to regulate the national economy and foreign trade. At the same time, the tariff situation may be considered as a positive measure taken by China in the light of its commitment to make tariff concessions to contracting parties.

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353 Spec(88)13/Add.4/Rev.1, p.12.
354 Spec(88)13/Add.4, p.33.
355 Spec(88)13/Add.4, p.33.
356 Spec(88)13/Add.4, p.33.
357 Spec(88)13/Add.4, p.33.
358 Spec(88)13/Add.8, pp.17-18.
for the resumption of its contracting party status, as well as a contribution in the spirit of the Ministerial Declaration of the Uruguay Round.\textsuperscript{359}

Between 1985 and 1991 the items and rates of the export duty were adjusted 12 times. In 1990 and 1991, the export duty was reduced on 15 items. The products covered by the reduction include: lead ores and concentrates, zinc ores and concentrates, wrought bar, rods, angles, shapes of aluminium, ferro-silicon, ferro-manganese, lead, phosphor, etc. As of October 1991, the export tariff was being imposed on 29 products found in 57 items in the Export Tariff.\textsuperscript{360}

3.4.2 Tariff Classification and Structure

In late 1988, the Chinese delegation indicated the following:

The tariff classification follows the Customs Cooperation Council Nomenclature (CCCN). The tariff schedule is divided into 21 sections, 99 chapters and 2,127 tariff headings and sub-headings, of which 2,072 are dutiable and 55 are duty-free. The minimum import tariff ranges from 3 to 150\%, divided into 17 grades, whereas the general import tariff ranges from 8 to 180\%, also in 17 grades. The percentages of classifications within the various grades are as follows: 12.9\% for the grades 0-9\%, 34.3\% for the grades 12-25\%, 26.1\% for the grades 30-50\%, 26.1\% for the grades 60-100\%, 0.6\% for the grades 120-150\%. Normally, the minimum duty rate is one grade lower than the general duty rate. The export tariff rates range from 10 to 60\% in four grades.\textsuperscript{361}

Since the customs tariff system in force in September 1988 has been applied for a relatively short period of time, it would be difficult to change this system to the Harmonized System in the near future. However, the Harmonized System is being studied.\textsuperscript{362}

Subsequently, the Chinese delegation provided the following clarifications and additional information:

The Chinese Customs has completed the transposition of the tariff schedule based on the CCCN to the new tariff schedule based on the Harmonized Commodity Description and Coding System ("HS"). The new HS tariff schedule is to be promulgated on 1 November 1991 and put into effect on and from 1 January 1992. China is studying the International Convention on the Harmonized Commodity Description and Coding System with the intention of acceding to it.\textsuperscript{363}

The established principle for the transposition of the CCCN duty rates to the new ones is to keep the new rates virtually on the same level as the former rates and to keep unavoidable changes to a minimum. For the case of combining or splitting of headings or subheadings in the course of transposition where the change of duty rates in the new tariff schedule is imperative, three methods of transposition have been employed for establishment of the new rates, with a view to minimizing the effect of changes in duty rates resulting from the transposition on the trade flow. They are:

(1) Use of the present duty rate of the principal product accounting for 70\% or more import value of all products concerned as the duty rate of the new item. This method applies mainly to the case where several products merge into one dutiable item. There are 295 items transposed using this method.

\textsuperscript{359}Spec(88)13/Add.8, p.18.
\textsuperscript{360}Spec(88)13/Add.8, p.18.
\textsuperscript{361}Spec(88)13/Add.4, p.33.
\textsuperscript{362}Spec(88)13/Add.4, p.33.
\textsuperscript{363}Spec(88)13/Add.8, p.18.
(2) Balance of the duty rates of the related products, e.g. use of the same rate in line with the industrial policy for the products regrouped into one like or related product group in the new tariff, rates of which are on different levels in the present tariff. There are 168 dutiable items transposed using this method.

(3) Use of the average rate of the different rates in the present tariff as the new rate for the item in the new tariff. There are 30 dutiable items transposed using this method.

The average level of duty rates so transposed in the new HS tariff is on the whole in equivalence with that of the CCCN tariff.364

China adopted the HS nomenclature as from 1 January 1992 and joined the International Convention on the Harmonized Commodity Description and Coding System in the same year. As of May 1993, there are 21 sections, 97 chapters and 6321 tariff headings in the Customs Import and Export Tariff of the People's Republic of China.365

Tariff rates are fixed by the State Council. Partial amendments to the duty rates are subject to the deliberation and final decision of the Tariff Commission and authorization by the State Council.366

China has submitted to the GATT Secretariat a floppy disk of 3371 tariff line cuts which took effect on 31 December 1992.367

As of May 1993, the simple average of import duties is 39.9% while the weighted average tariff (measured against actual import volume for 1992) is 21.9%. Among 6321 tariff headings, the tariff rates for 125 headings is nil, accounting for 2% of the total; those for 2429 is 10 to 30%, representing 38.4% of the total; those for 1713 is 30 to 60%, representing 28.4% of the total and those for 1479 is above 60%, accounting for 23.4% of the total. For information on tariff rates for specific products and import statistical data for recent years, reference may be made to the data tape and disc submitted by China to the GATT Secretariat.368

There are two columns of import duty rates: general rates and preferential rates. The preferential rates apply to imports originating in countries and regions with which China has concluded reciprocal tariff agreements, whereas the general rates apply to imports from other sources.369

As of May 1993, 25 items, including tungsten ore and magnet iron, are subject to export duties.370

China is a member of the Brussels "International Tariff Schedule Publishing Coalition" and submits the latest version of its tariff schedule in a timely manner to the organization.371

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364 Spec(88)13/Add.8, pp.19-20.
367 Clarifications, 18.2.93, p.7
368 Spec(88)13/Add.4/Rev.1, p.13.
369 Spec(88)13/Add.4/Rev.1, p.13.
370 Spec(88)13/Add.4/Rev.1, p.13.
371 Clarifications, 2.12.92, p.21.
3.4.3 Customs Valuation

In late 1988, the Chinese delegation indicated the following:

Chapter Three of the "Regulations on Import and Export Duties" contains the rules for customs valuation. Both import and export duties are ad valorem duties. The duty-paying value of goods to be imported is assessed according to the c.i.f. price, based on the normal transaction value verified by Customs. The c.i.f. price covers the price of the goods, packing charges, freight, insurance premiums and other service charges incurred prior to the unloading of the goods at the place of destination in the customs territory of the People's Republic of China. If, after examination by Customs, the transaction value of the goods to be imported cannot be ascertained, the duty-paying value is based on the c.i.f. transaction value of identical or similar goods previously imported from the same country or area. If such transaction value cannot be determined for the goods in question, the duty-paying value is assessed in accordance with the wholesale price of identical or similar goods on the domestic market after deducting the import duties levied and other taxes collected in the process of importation, business expenses and profits. In exceptional cases, the duty-paying value is assessed using other reasonable methods. The duty-paying value of goods to be exported is identical with the f.o.b. price of the goods, after deducting export duties. The f.o.b. price is subject to examination and approval by Customs. 372

Subsequently, the Chinese delegation made the following clarifications:

The duty-paying value of imported goods is assessed according to the c.i.f. price based on the normal transaction value. If the transaction value of imported goods cannot be ascertained, the duty-paying value is determined based on the transaction value or computed value of identical or similar goods. The duty-paying value of exported goods is the f.o.b. price of the goods. 373

The Customs Law provides for appeal procedures. In case the person obligated to pay the duty is involved in a dispute over duty payment with Customs, he may apply to Customs for a reconsideration of the case. If he rejects Custom's decision, he may sue at the People's Court. 374

The Chinese Government has indicated its intention to accept the Tokyo Round Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade and its Protocol. 375

For additional details on China's customs valuation regulations and procedures, please refer to Spec(88)13/Add.8.

3.4.4 Tariff Exemptions

In late 1988, the Chinese delegation indicated the following:

The Customs Law provides that, in exceptional circumstances, temporary tariff reductions and exemptions may be granted by the General Customs Administration and the financial departments concerned. The Regulations on Import and Export Duties stipulate that the Customs authorities shall exempt from import duties products imported to process export products, according to the actual export

372 Spec(88)13/Add.4, p.34.
373 Spec(88)13/Add.4/Rev.1, p.13.
374 Spec(88)13/Add.4/Rev.1, p.13.
375 Spec(88)13/Add.4/Rev.1, p.13.
volume of the processed products. Preferential tariff treatment is currently granted to imports of machinery and equipment used in foreign investment projects.\textsuperscript{376}

Duty reductions or exemptions are granted to imports and exports of the SEZs and other specially designated areas, to imports and exports for specific purposes, and to imported materials donated for public welfare undertakings. Imports by enterprises in the SEZs are under strict Customs control and generally cannot be sold in other parts of the country. In those cases where products that have been manufactured within the SEZs from duty-free and tax-exempted imported materials are sold into the interior parts of China, the import duties and the Consolidated Industrial and Commercial Tax (CICT) are levied retroactively. Because the SEZs are small both in size and volume of trade, China considers that the special measures applied in the SEZs in no way affect the function of tariffs as the major means of regulating trade throughout the country.\textsuperscript{377}

Subsequently, the Chinese delegation provided the following clarifications and additional information:

In accordance with international practices and the stipulations of the Customs Law, import duty reductions or exemptions are available for the following goods: (1) a consignment of goods, on which customs duties are estimated below RMB 10; (2) advertising articles and samples, which are of no commercial value; (3) goods and materials, which are rendered gratis by international organizations or foreign governments; (4) fuels, stores, beverages and provisions for use en route loaded on any means of transport, which is in transit across the border; (5) exported goods being replaced; (6) goods damaged prior to the Customs release; (7) goods covered by international treaties providing for tariff reductions and exemptions which China has entered into or acceded to; (8) goods temporarily imported; (9) goods imported under the processing programme; (10) goods imported free-of-charge for offset purpose; (11) goods imported for construction in the SEZs; (12) equipment imported by foreign-investment enterprises as a means of investment; (13) goods imported for special purposes (such as scientific research, teaching, oil extracting, sports, radio and television broadcast, etc.). Import goods under Items (11), (12) and (13) shall be put under the Customs supervision and control. The Customs duty shall be recovered if such goods are sold, transferred or used for other purposes during the time period of supervision and control.\textsuperscript{378}

3.4.5 Import Regulatory Tax

In late 1988, the Chinese delegation indicated the following:

The Import Regulatory Tax, imposed since July 1985, is a surcharge additional to the import tariff and not an internal tax. As of September 1988, 17 kinds of products, for which the tariff rates are considered to be too low to provide the required protection, are covered. These include passenger vehicles, motorcycles, colour television sets, mini-electronic computers, electronic calculators and woven fabrics of chemical fibres. The tax measure is only temporary but its adjustment will depend upon the level of development of the domestic industry and the needs of the national economy. There is no intention to incorporate the Import Regulatory Tax into the tariff.\textsuperscript{379}
The product coverage, tax rates and duration of implementation of the Import Regulatory Tax are decided by the Tariff Commission. The weighted average rate of the tax in 1986 was 47%, the highest rate being 80% and the lowest 20%.\footnote{Spec(88)13/Add.13, p.69.}

Dutiable products imported into SEZs are subject to the Import Regulatory Tax. Products manufactured in or imported into the SEZs are generally restricted from entering into other parts of China. However, when approval is granted for shipment into other parts of China, the customs duties, the Import Regulatory Tax and the CICT, except to the extent exempted or reduced, are retroactively levied on the imported components and materials contained in such products.\footnote{Spec(88)13/Add.4, p.35.}

\textit{Subsequently, the Chinese delegation provided the following clarifications and additional information:}

Between 1985, when it was established, and October 1991, the rates and items of the import regulatory duty were adjusted 8 times. As of October 1991, the duty was being imposed on 18 products.\footnote{Spec(88)13/Add.4, p.35.}

China intends to eliminate this border tax by the end of March 1992. After the elimination of the import regulatory duties, customs duties will be the only cross-border duties in China.\footnote{Spec(88)13/Add.13, p.15.}

The Import Regulatory Duty was removed as from 1 April 1992.\footnote{Spec(88)13/Add.4, p.35.}

The imposition of the Import Regulatory Duties was a temporary measure, like import surcharges used by many contracting parties to tide over temporary difficulties.\footnote{Spec(88)13/Add.4, p.35.}

\subsection{Charges for Services Rendered}

\textit{In late 1988, the Chinese delegation indicated the following:}

China imposes no customs user fees. Under the agency system, production enterprises without authorization to conduct foreign trade can import and export goods through FTCs by paying a service charge. The service charge is based on the value of the transaction, up to about 3% of the contract value. China considers that the service charge, which is not treated as tariffs for budgetary purposes, does not constitute an indirect protection for domestic products.\footnote{Spec(88)13/Add.4, p.35.}

\textit{Subsequently, the Chinese delegation made the following clarifications:}

The agency fee paid by production enterprises to FTCs for the importation or exportation of goods is not a charge imposed on importation but a commission to FTCs for services rendered.\footnote{Spec(88)13/Add.4, p.35.}
3.5 Safeguard Measures

3.5.1 Anti-Dumping and Countervailing Duties

In late 1988, the Chinese delegation indicated the following:

There is no specific legislation in China concerning anti-dumping and countervailing duties. These matters are under consideration. 388

Subsequently, the Chinese delegation provided the following clarifications and additional information:

China is in the process of formulating regulations regarding anti-dumping and countervailing duty measures. The draft of these regulations will take due account of GATT principles, especially the relevant rules of Article VI concerning anti-dumping and countervailing duties. 389

The Chinese Government is studying the Anti-Dumping Code and the Subsidies and Countervailing Duty Code. China will consider joining these Tokyo Round codes after China resumes its contracting party status in GATT. The Draft Foreign Trade Law which is under consideration in China includes regulations on anti-dumping, countervailing and safeguard measures. 390

In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on anti-dumping and countervailing duties:

Article 41. Where a product is imported at a price less than the normal value as to cause or threaten to cause substantial injury to a certain domestic industry already established or substantially retard the establishment of a certain domestic industry, the MOFTEC may initiate investigation and impose an anti-dumping duty on the said imports under relevant laws to eliminate or ease such injury or threat. 391

Article 42. Where an imported product receives, directly or indirectly, subsidies of any kind granted by the exporting country as to cause or threaten to cause substantial injury to a certain domestic industry already established or substantially retard the establishment of a certain domestic industry, the MOFTEC may initiate investigation and impose countervailing duty on the said product under relevant laws. 392

Article 43. Where unfair competition occurs in the importation and exportation of technology or services, the MOFTEC and other relevant authorities of the State Council may take necessary measures in accordance with relevant laws to halt the unfair competition practices. 393

Article 44. The MOFTEC may set up special agencies to fulfil the obligations provided for in Article 39, 40 and 41. 394

388 Spec(88)13/Add.4, p.35.
389 Clarifications, 23.4.93, p.17.
390 Clarifications, 2.12.92, p.19.
391 Draft Foreign Trade Law, 4.93.
392 Draft Foreign Trade Law, 4.93.
393 Draft Foreign Trade Law, 4.93.
394 Draft Foreign Trade Law, 4.93.
3.5.2 Emergency Action on Imports of Particular Products

In late 1988, the Chinese delegation indicated the following:

Currently, there is no separate legislation in China providing relief to producers from injurious imports.395

Subsequently, the Chinese delegation provided the following clarifications and additional information:

In response to a question as to the basis in the Chinese legal system for frequent import bans enforced by the Chinese authorities: Import restrictions to relieve domestic producers from injurious imports are based on China’s national industrial policy endorsed by the People’s Congress.396

As of May 1993, China is drafting its foreign trade law, which will provide relief to domestic producers from injurious imports, consistent with GATT rules.397

In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on emergency action in response to increased imports:

Article 40. Where a product is imported in such greatly increased quantities as to cause or threaten to cause substantial injury to domestic producers of like or directly competing products, the MOFTEC may initiate investigation and take necessary measures under relevant laws to eliminate or ease such injury or threat.398

3.6 Production and Export Subsidies

In late 1988, the Chinese delegation indicated the following:

The State grants incentives and economic assistance to export-oriented enterprises in industry and agriculture as follows:

(1) Tax exemptions or drawbacks are applied to a number of export products;

(2) Preferential loans are granted to export-oriented enterprises with a view to improving the structure and quality of their export products; enterprises producing machinery and electronic products are among those receiving such loans;

(3) Export-oriented enterprises with exceptional export performances are permitted to give bonuses to their employees;

(4) Exporting enterprises are allowed to retain a portion of the foreign exchange earned.399

China considers that limited temporary economic assistance is necessary for the following reasons: in international markets, Chinese products are confronted with distorted prices, particularly in the agricultural sector; the official exchange rate for the RMB is not completely rationalized and differs

395Spec(88)13/Add.4, p.35.
396Spec(88)13/Add.11, p.13.
397Spec(88)13/Add.4/Rev.1, p.15.
398Draft Foreign Trade Law, 4.93.
399Spec(88)13/Add.4, pp.35-36.
significantly from the market rate; some of the internal taxes levied on China’s export products are not entirely reimbursed; and the comparatively high prices for China’s manufactured goods, as a vestige of the past pricing system, have not yet been adequately adjusted.\footnote{Spec(88)13/Add.4, p.36.}

At present, economic assistance comes from Central Government revenue. The amount of assistance represents about 4\% of the total value of China’s exports. China expects that the level of assistance will decrease gradually. China is making efforts to reduce the losses of some enterprises through the negotiation of efficiency targets; but there is no precise time-frame for the phasing out of economic assistance.\footnote{Spec(88)13/Add.4, p.36.}

Joint ventures with foreign investment, whether established within the SEZs, the open coastal cities or in other areas of China, determined by MOFERT to be export-oriented or technologically advanced, are exempted from income tax on their profit remittances. An enterprise is considered to be an export-oriented enterprise if not less than 50\% of the total value of its annual production is exported and if it maintains a foreign exchange balance or surplus at the end of the year. To be considered as a technologically-advanced enterprise, the technology, processes and major equipment used by the enterprise must fall within the categories of priority projects as announced by the State, and must be both advanced and suitable. The enterprise must furthermore be engaged in the production of products in short supply in China or be capable of developing new or improved products or of increasing exportation or of facilitating import substitution.\footnote{Spec(88)13/Add.4, p.36.}

For a period of up to five years, the income tax on profits of export-oriented and technologically advanced enterprises may be refunded if the profits are reinvested in the enterprise. After the expiration of the period for exemption of income tax, a further 50\% reduction of income tax may be granted to an enterprise using foreign investment if its exports reach 70\% its annual output value. The income tax is levied on the accumulated value of profits of the enterprises. The income tax rate on profits of joint ventures is 30\%, with an additional 10\% local tax.\footnote{Spec(88)13/Add.4, p.36.}

For enterprises with foreign investment, the following imported goods are exempted from customs duties, the Consolidated Industrial and Commercial Tax and regulatory taxes: (1) equipment and machinery, spare parts and other materials used as capital input within the total investment value or as increased capital input; and (2) raw materials, accessories, components, spare parts and other articles used in the production of export products.\footnote{Spec(88)13/Add.4, p.36.}

Enterprises with sole foreign investment in SEZs and open coastal cities pay a preferential rate of income tax at 15\% and are exempted from income tax on their profit remittances abroad. For domestic enterprises, the income tax rate on profits is 55\%. Enterprises in the SEZs which annually export more than 70\% of their products pay income tax at the lower rate of 10\%. Whereas export-oriented and technologically advanced enterprises may receive short-term loans from the Bank of China on a priority basis and at preferential rates, such loans are not available to enterprises with foreign investment.\footnote{Spec(88)13/Add.4, p.36.}

Chinese enterprises, in remitting their profits derived from their operations in SEZs to other areas of China, must pay a retroactive enterprise income tax at a rate of 20\%. No restrictions are imposed on the use of the profits. If a Chinese-foreign joint venture in the SEZs establishes another
joint venture elsewhere in China, such investment is deemed to be foreign investment only when the investment from the foreign partner accounts for no less than 25% of the new joint venture.\footnote{Spec(88)13/Add.4, p.37.}

Lower rates of income tax, ranging from 15 to 24%, are applied in the cities and autonomous regions to attract foreign investment. Other tax reductions and tax holidays are determined in accordance with the generally applicable tax laws of China.\footnote{Spec(88)13/Add.4, p.37.}

China encourages changes in the structure of its export market from primary products to manufactured and refined products. But the various incentive measures for export are, in principle, applicable both to primary products and manufactured products. State incentives and economic assistance to textile export-oriented enterprises are the same as those to other export-oriented enterprises.\footnote{Spec(88)13/Add.4, p.37.}

The State also assists the agricultural sector. Peasants who have contracted to use land sell a portion of certain crops, such as grain and plant oil, to the State according to that contract. The remainder of their crops may be sold either in the market or to the State at market prices. If the market price is lower than the contracted price, the State purchases the products at a higher price to protect the interests of the peasants. As the State provides materials for agricultural production to the peasants at low prices, the contracted price is usually lower than the market price. In the past two years, the market price was 10 to 30% higher than the contracted price.\footnote{Spec(88)13/Add.4, p.37.}

Subsequently, the Chinese delegation provided the following clarifications and additional information:

- The amount of export subsidies was frozen in 1988 and 1989, and was to remain frozen in 1990. The subsidy ratio would be reduced each year as the export value rises.\footnote{Statement, 12.12.89, p.6}
- As from 1 January 1991 the Chinese Government ceased to provide subsidies to export enterprises suffering losses.\footnote{Clarifications, 21-23.10.92, pp.1-2.}
- China has eliminated all export subsidies, including those provided by local governments. Subsidies covering production losses are still in effect. The State Council has promulgated "Regulation of Transforming Operational Mechanism of State-owned Enterprises". One of the objectives of this regulation is to reduce and eventually eliminate subsidies for operational losses.\footnote{Clarifications, 21-23.10.92, pp.1-2.}
- With the implementation of China's economic reforms, subsidies given to production enterprises and those linked with production are being phased out. Production enterprises still being subsidized are those in coal mining and oil extraction, because, previously, prices for these products were fixed by the State. Although prices for these products have been under adjustment during the reforms, price distortions have not been fully redressed. In addition, there is a large workforce whose wages are constantly rising, leading to a rise in production costs. In order to avoid substantial social disturbance, China needs a transitional period to redress the distortion in the prices for these products in a progressive manner. This is also the case for China’s efforts in eliminating subsidies to these production enterprises. This process will be undertaken in parallel with price reform. As of December 1992, China is speeding up its price reform. Prices for coal are expected to be decontrolled completely in some regions and

\footnote{Spec(88)13/Add.4, p.37.}
subsidies to coal mining enterprises in those regions will be removed. If everything goes well China will likely accomplish its chief task concerning price reform with the next few years. The price formation system will be straightened out and distortions in the relationship between interrelated prices will be redressed. As a result, subsidies granted to related industries and enterprises can be eliminated eventually.413

Direct export subsidies to FTCs operating at a loss have been abolished, but China maintains internationally accepted indirect measures as follow: (1) indirect tax reimbursement; (2) certain percentages of foreign exchange retention; and (3) export credits and export risk guarantees. There are no differences concerning these types of aids between, on the one hand, companies operating in SEZs and other special areas, and companies operating in the rest of the country, on the other.414

Certain subsidies on energy and transportation are generally available to all enterprises or are sector-specific, but not enterprise-specific. Therefore, they do not prevent competition on an equal basis.415

Most of the subsidies on imports have been abolished. The remaining few are for sensitive products. To set a time-frame for phasing them out may not be practicable or desirable. China would prefer to commit itself to eliminate these subsidies as soon as possible.416

The State has introduced a series of social security measures, such as reform of the housing system and medical care for employees, with a view to creating a mechanism under which the financial burden of such social security programmes is shared among the State, enterprises and individuals. The perfecting of this system will of course take time.417

As of May 1993, China has the following policies for developing exports:

(1) Tax rebates are applied to the export of a number of processed products;

(2) Preferential loans are granted to export-oriented production enterprises with a view to encouraging them to introduce advanced technology and improve the structure and quality of their export products;

(3) Export enterprises are permitted to retain a portion of their foreign exchange earnings.418

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413Clarifications, 2.12.92, p.6.
414Clarifications, 18.2.93, p.5.
415Clarifications, 23.7.93, p.15.
416Clarifications, 23.7.93, p.16.
417Clarifications, 23.7.93, p.20.
418Spec(88)13/Add.4/Rev.1, p.15.
4. INTERNAL TAXES AND REGULATIONS

4.1 Price Controls

4.1.1 Domestic Price Control System

In late 1988, the Chinese delegation indicated the following:

There are presently three types of prices: the State price, the State guidance price and the market-regulated price. The State price is set by the price administration authorities and cannot be changed without the approval of these authorities. The State guidance price is a more flexible form of pricing; it leaves scope for enterprises to take the market situation into account. There are various modalities of guidance. The price administration authorities stipulate either (a) the basic price and a floating range, or (b) rates of price differences, or (c) profit margins, or (d) a ceiling price and a minimum price. Enterprises can, within the limits of the guidance, make their own decisions on prices. As to market-regulated prices, the enterprises are free to determine the prices in accordance with supply and demand to the extent permitted by generally applicable laws, regulations and policies. The products and services subject to State prices are those having a direct bearing on the national economy and the basic needs of the people. They include a limited number of important industrial and agricultural products, communications, telecommunications, electricity, transportation and other public services. 419

The products subject to State pricing as of September 1988 include:

(1) Purchase prices of agricultural products under State purchase contracts: rice, wheat, maize, rapeseed, cotton and tobacco;

(2) Ex-factory prices of industrial products: cotton yarn, cotton cloth, cigarettes, salt, ferrous and non-ferrous metallic products, caustic soda, soda ash, sulphuric acid, hydrochloric acid, coal, electrical power, heating oil, natural gas and timber processed in State-owned forests;

(3) Retail prices of consumer goods: flour, rice, maize, soya beans, edible oil and cotton cloth. 420

The enterprises assume responsibility for all profits and losses associated with State-priced products and services. 421

The products subject to State guidance prices as of September 1988 include:

(1) Purchase prices of agricultural products: live pig, timber from collective-owned forests, sheep wool, jute, kenaf, tea, musk, licorice root, cortex eucommiae, cortex magnoliae;

(2) Ex-factory prices of industrial products: household enamel ware, machine tools, machinery of general purpose, automobiles, most electronic products, and mining and refining equipment;

(3) Retail prices of consumer goods: pork, tea, timber from collective-owned forests in Southern China, household enamel ware, and cotton shirts and bed sheets. 422

419 Spec(88)13/Add.4, pp.37-38.
420 Spec(88)13/Add.4, p.38.
421 Spec(88)13/Add.4, p.38.
422 Spec(88)13/Add.4, p.38.
In formulating the State prices and State guidance prices, the following four elements are taken into account: the normal costs of production under efficient operations, the supply and demand situation, government policies and the prices of related products. The prices of industrial goods are determined by taking into account the average production costs, taxes and profits. In order to keep prices stable, the State guidance price for industrial products is generally set somewhat lower than the market price, allowing for a reasonable profit. For goods and services subject to market regulation, enterprises are entitled to fix prices and charges in accordance with the State price guidelines, policies and regulations. But they are not allowed to fix monopolistic prices among themselves.\textsuperscript{423}

The purchase prices of agricultural products are determined by taking into account production costs under efficient operations in normal weather conditions, the agricultural tax and a reasonable profit margin. Not only the market situation is taken into consideration but also the interests of the producers and the ability of consumers to bear the price. The agricultural production costs include those of seeds, fertilizers, pesticides, the depreciation of agricultural machinery, irrigation and drainage, and manpower. In calculating the costs of inputs, such as chemical fertilizers, pesticides and farm machinery, the actual prices are taken into account, of which some are State prices, some are State guidance prices and others are market prices. The price of the products sold by farmers to the State through purchasing contracts (grain, cotton, etc.) is based on the State prices; any excess production can be sold at market prices. Wholesale prices are set on the basis of purchasing prices plus business costs of commercial departments in producing areas and reasonable profit margins. Retail prices are based upon the wholesale prices plus the price difference between wholesale and retail transactions, which consists of retail costs and profit. The prices of comparable imports and rates of service charges in foreign countries serve as important points of reference.\textsuperscript{424}

Agricultural products subject to supply rationing as of September 1988 are grains (wheat flour, rice and corn) and edible oils. Taking into account the purchasing power of consumers, the retail price of these products is lower than the State purchase price paid to the farmers. The difference is covered by the State budget. The needs of urban residents that go beyond the rationed part of supply are supplied at market-regulated prices. There are differences in the prices of goods sold in different provinces. This is due to differences in supply and demand situations. For instance, in mid-January 1988, the price of steel rods was RMB 1,350 per ton in Shenyang, RMB 1,400 in Taiyuan, and RMB 1,540 in Shantou.\textsuperscript{425}

Of the total value of agricultural products sold by the peasants, the portion under State prices dropped from 92.6\% in 1978 to 35\% in 1987; the portion under State guidance prices and market prices rose from 7.4\% to 65\% during the same period. Of the total value of retailed consumer goods, the portion subject to State prices decreased from 97\% in 1978 to 47\% in 1987. In the case of light industrial products, the decline was from 95\% to 45\% and in that of heavy industrial products, from 100\% to 60\%.\textsuperscript{426}

The price system has gradually become more rational, providing more equitable market conditions for enterprises. However, further adjustments are needed to achieve a completely rational price system. The Government's aim is to gradually establish a framework in which the State sets the price of only a few products and services and the prices for the overwhelming majority of products will be liberalized with a view to meeting the principle "the State regulates the market, the market guides enterprises". The pace of further price reforms will depend on fiscal, economic and social factors.\textsuperscript{427}

\textsuperscript{423}Spec(88)13/Add.4, pp.38-39.
\textsuperscript{424}Spec(88)13/Add.4, p.39.
\textsuperscript{425}Spec(88)13/Add.4, p.39.
\textsuperscript{426}Spec(88)13/Add.4, p.39.
\textsuperscript{427}Spec(88)13/Add.4, p.39.
The price control system is administered by the Central Government and the local governments. Price administrative departments of provinces, autonomous regions and municipalities are empowered to adjust State prices and the State guidance prices in light of the changes in the cost of production, the market situation and State policies. Prices may vary from one region to another. If raw materials needed by production enterprises are in short supply because their State prices are too low, temporary prices higher than the nationwide State prices may be fixed by provinces, autonomous regions and municipalities.\(^{428}\)

Subsequently, the Chinese delegation provided the following clarifications and additional information:

For State guidance prices, the price administration authorities stipulate either (a) the basic price and a floating range, or (b) a ceiling price and a floor price. Enterprises can, within the limits of the guidance and taking into account the market situation, make their own decisions on prices. As to market-regulated prices, enterprises are free to fix prices in accordance with supply and demand, to the extent permitted by generally applicable laws, regulations and policies concerning prices.\(^{429}\)

Products and services subject to State pricing are those having a direct bearing on the national economy and the basic needs of the people, including those products for which there is scarcity in China. As of May 1993, products subject to State pricing include:

(1) Purchase prices of agricultural products under State purchase contracts: a few kinds of grain, cotton, tobacco, silkworm cocoon, compressed tea and the ex-work price of State-controlled timber;

(2) Ex-work prices of heavy industrial products: crude oil, coal, electrical power, natural gas, refined oil and chemical fertilizers (altogether 25 products);

(3) Ex-work prices and selling prices of industrial consumer goods: edible salt and a few therapeutic medicines;

(4) Infrastructure service charges: railway transport, post and telecommunications (altogether 4 kinds of such services).\(^{430}\)

As of May 1993, products subject to State guidance pricing include:

(1) Purchase prices of agricultural products: a few traditional Chinese herbs and medicines, sheep wool and resins;

(2) Ex-work prices of heavy industrial products: a few chemical minerals and products, a few non-ferrous metals and large, specific-purpose machinery and equipment;

(3) Ex-work prices and selling prices of industrial consumer goods: a few kinds of wood pulp and newsprint, a few synthetic materials.\(^{431}\)

In formulating State prices and State guidance prices, the following four elements are taken into account: normal production costs; the supply and demand situation; relevant government policies;

\(^{428}\) Spec(88)13/Add.4, p.40.

\(^{429}\) Spec(88)13/Add.4/Rev.1, p.16.

\(^{430}\) Spec(88)13/Add.4/Rev.1, p.16.

\(^{431}\) Spec(88)13/Add.4/Rev.1, p.16.
and prices of related products. When fixing prices of consumer goods, consideration is given to the limited consumer purchasing power.\textsuperscript{432}

By the end of 1992, the share of State-priced products accounted for around 10% in the national total retail sales value, about 15% in the total purchase value of agricultural products, about 20% in the total sales value of production means and less than 3% in the total import value.\textsuperscript{433}

Thus, the share of directly-controlled prices has been reduced to such an extent that it is even smaller than that in major Western market economies. That share will become even smaller as reform continues. China’s price system is becoming increasingly rationalized, creating a relatively fair marketplace in which enterprises may compete.\textsuperscript{434}

Naturally, in the context of a socialist market economy, the existing price system requires further reforms and improvement. Taking into account the capacity of the society to absorb change, China is prepared to speed up its pace of price reform to redress the remaining distortions in price relations, so as to set up a predominantly market-based pricing mechanism and promote the rational allocation of resources.\textsuperscript{435}

The Central Government conducts a uniform pricing policy throughout the country. The pricing administration departments of provincial and local governments are directed by the State Administration of Commodity Prices. The provincial and local governments must strictly implement the State price catalogue. However, due to differing resource endowments and production structures of various provinces, there may be variations in the application of State-fixed prices in different provinces. But for products for which prices have been liberalized by explicit order of the Central Government, the provincial and local governments must not bypass such order.\textsuperscript{436}

Prices of most services of a competitive nature are set by the market. The Government only sets prices for a few service sectors, such as: (1) railway transportation, telecommunications; (2) urban public welfare, e.g. bus transport, running water, gas; and (3) hospital facilities, education.\textsuperscript{437}

In order to ensure the stability of prices in China, the Government mainly takes economic and legal measures to tighten the money supply, establish necessary stocks of essential goods, stimulate production and increase supply.\textsuperscript{438}

State pricing is an administrative measure generally applicable on a nationwide basis. There is no procedure for appealing against a decision on pricing by the State Administration of Commodity Prices.\textsuperscript{439}

Concerning reform of prices for steel, China takes the approach of, first, allowing a part of steel output to be priced by the market, and then gradually expanding this proportion, while at the same time raising the State-fixed price, with the ultimate goal of merging the two-track pricing of steel.\textsuperscript{440}
The double-track pricing system works in parallel with a double-track production system, in which the State sets mandatory production plan targets for particular products to be sold at State-fixed prices. Enterprises are free to sell additional output, in excess of plan targets, at market prices. This approach is designed to stimulate production.

The most crucial part of China's establishment of a socialist market economy is to put in place a predominantly market-based pricing mechanism. As of 1993, China is speeding up its price reform. Prices for grain and other products have been further liberalized since the beginning of the year. The number of products subject to State pricing has been substantially reduced. In terms of product categories, there are only 25 categories of production means subject to State pricing, accounting for about 20% of the total sales value of all production means; there are 6 categories of agricultural products subject to State pricing, accounting for about 15% of the total purchase value of all agricultural products; there are merely 2 categories of industrial consumer goods subject to State pricing, accounting for a negligible proportion of such goods; and the share of State-priced goods in the total social retail sales value is around 10%. With the on-going price reform, favourable market conditions have been created for both foreign and domestic products to compete on an equal footing.

The Eighth National People's Congress has set the objective of building a market economy which will, among other things, aim at establishing a system of price formation based on market forces. In this process, a uniform national market will emerge. The need for price-setting by local governments will diminish consequently.

After China resumes its status in GATT, petroleum, electricity, railways, postal services and telecommunications and certain other infrastructure facilities will remain subject to State pricing. The rationale for this is that these are the sectors of basic need, with scarcity of supply, and for which the Government wishes to maintain stable prices by way of State monopolies. This is also the general practice of many countries in the world.

4.1.2 Application of Price Controls to Imported Products

In late 1988, the Chinese delegation indicated the following:

Only a small proportion of imports are subject to State pricing, set with reference to the prices of like domestic products. The State prices are the same for imported and domestic products, except for quality variations. The State prices for domestic products and the State prices for imported products are formulated and administered in the same manner even though the specific product coverage may vary.

When imported products under State pricing are sold in the domestic market at prices lower than the import price, the difference is borne by the State. As of September 1988, there are 28 import commodities for which the State provides import subsidies, namely: steel products, non-ferrous metals, fertilizers, wood pulp, timber, plywood, linear alkyl benzene, sodium tripoly phosphate, non-ionic surface active agent, tallow, coconut oil, cocoa beans, foodstuffs, pig iron, sulphur, cow hide, caustic soda, soda ash, glycerine oil, phosphate rock, butanol, zethyl hexanol, xylene, refined naphthalene, ortha nitrochloro benzene, aniline oil, dioxide titanium and agro-chemical intermediates. The elimination

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441 Clarifications, 21-23.10.92, p.4.
442 Statement, 24.5.93, pp.2-3.
443 Clarifications, 23.7.93, p.15.
444 Clarifications, 23.4.93, p.5.
445 Spec(88)13/Add.4, p.40.
of price subsidies for these 28 imported products is expected to take place gradually in the course of price reform, for which there is no specific time-table as of September 1988.\footnote{Spec(88)13/Add.4, p.40.}

An agency pricing system is largely applied in the import business of FTCs. Under this system, the domestic price of an import commodity is composed of the c.i.f. value, import duty, internal taxes, banking charges and commissions. The profits and losses resulting from the sales of imported products on the domestic market go to the importing enterprise. As of September 1988, the volume of the imports handled under the agency pricing system by the FTCs accounts for 80\% of the total import volume.\footnote{Spec(88)13/Add.4/Rev.1, p.17.}

Market regulation of prices is applied to countertrade products.\footnote{Clarifications, 2.12.92, p.15.}

The prices for government services, railway transportation and postal services are the same for domestic and imported goods.\footnote{Spec(88)13/Add.4, p.41.}

Subsequently, the Chinese delegation provided the following clarifications and additional information:

As of May 1993, the majority of imports are handled through a system of agency under which enterprises are free to negotiate prices. Imports subsidized by the government are chemical fertilizers, agro-chemical intermediates and phosphate, accounting for less than 3\% of the total national import value. The reason for retaining State prices on these imports is that the income level of China’s peasants is so low that they cannot afford to buy those imports without State assistance. Only when the State imports those products at a higher price but sells them at a lower price can the normal production and basic subsistence needs of China’s peasants be ensured. The difference between import costs and selling prices is covered by fiscal subsidies. Such price management does not affect the entry of foreign goods into the Chinese market. Even so, the goal of reform is to promote market-based prices for all imports. Subsidies on the few products noted above will be gradually removed.\footnote{Spec(88)13/Add.4, p.40.}

As for domestic prices of goods imported by provincial and other local governments with their own foreign exchange, these have, since 1980, gradually been placed under the import agency pricing system, i.e. subject to market pricing and based on commercial considerations.\footnote{Spec(88)13/Add.4, p.40.}

4.1.3 Application of Price Controls to Products Destined for Other Territories

In late 1988, the Chinese delegation indicated the following:

In the case of export business carried out by FTCs on their own or jointly with production enterprises, price components include purchase price or production costs, transportation expenses, storage expenses, banking charges, export duty (when levied), a reasonable profit margin and the supply and demand conditions on the international markets. No maximum profit margin is set by the State.\footnote{Spec(88)13/Add.4, p.40.}
In the case of export business entrusted through the agency system to FTCs, prices are determined on the basis of domestic costs, international market conditions and the commission charged by the FTCs.\footnote{Spec(88)13/Add.4, p.41; Spec(88)13/Add.4/Rev.1, p.18.}

In determining an export price, the FTCs first of all take account of domestic costs. The administrative organs of the Government do not interfere with the setting of the export prices by the corporations. Data on the costs of export products are compiled by the enterprises, not by government departments.\footnote{Spec(88)13/Add.4, p.41.}

Subsequently, the Chinese delegation provided the following clarifications and additional information:

Export prices are fixed by enterprises engaged in foreign trade, free of government interference.\footnote{Spec(88)13/Add.4/Rev.1, p.18.}

The international sales price of China’s exports is increasingly determined by enterprises themselves. The domestic purchasing price of exports, starting in 1980, has been set increasingly by buyers and sellers together in the light of specifications, packaging and terms of delivery.\footnote{Clarifications, 2.12.92, p.13.}

4.2 Internal Taxes

4.2.1 Internal Taxes Levied on Products

In late 1988, the Chinese delegation indicated the following:

Products are subject either to the Consolidated Industrial and Commercial Tax (CICT) or to the Product Tax and the Value-Added Tax. The coverage and rates for these two taxes are determined by the State Council; the taxes are administered by the Ministry of Finance. The Product Tax and the Value-Added Tax are applied only to domestic products whereas products of foreign enterprises, Chinese-foreign joint ventures and Chinese-foreign cooperative ventures are subject to the CICT. The product coverage of the Product Tax and the Value-Added Tax is almost the same as that of the CICT. The tax rates of a small number of products subject to the CICT are slightly different from the Product Tax and the Value-Added Tax for the same product. Where the corresponding CICT rates are higher, the Chinese authorities intend to reduce them to the level of the Product Tax and the Value-Added Tax.\footnote{Spec(88)13/Add.4, p.41.}

Subsequently, the Chinese delegation provided the following clarifications and additional information:

Work on combining of the CICT with the Product Tax and the Value-Added Tax has begun in 1993 and is expected to be completed by the end of 1995.\footnote{Spec(88)13/Add.4/Rev.1, p.18; 14th Mtg.}

In the overwhelming majority of cases, joint ventures pay lower tax rates than Chinese enterprises with foreign trade rights. For a small number of products the CICT paid by joint ventures is higher
than the Product Tax and Value-Added Tax paid by domestic enterprises. As noted, the Chinese Government intends to bring the CICT into line with the Product Tax and Value-Added Tax.\(^{459}\)

The Chinese Government also is in the process of revising the Tax Laws into one single, uniform tax law. In 1992, adjustment was completed for 27 products; adjustment for the remainder will hopefully be completed in 1993. The legislative process for a uniform tax law could hopefully be completed by the end of 1995.\(^{460}\)

4.2.2 Border Tax Adjustments

The Consolidated Industrial and Commercial Tax is an internal tax and is levied on imported products by Customs at the customs entry points. The Product Tax or Value-Added Tax is levied on domestic goods at the production stage. Tax exemptions are granted for the products that are exported. The Product Tax or the Value-Added Tax levied on products sold by production enterprises to FTCs for export is reimbursed when the products are actually exported. Products exported by foreign investment enterprises are exempted from the CICT.\(^{461}\)

China confirms that tax rebates for exports involve only indirect taxes and not direct taxes.\(^{462}\)

Tax refunds for exports constitute an internationally recognized practice and are justified by Article VI:4 of the General Agreement. They should not be regarded as a government subsidy. The principle underlying tax refunds for exports in China is to refund the exact amount of the taxes levied on the export goods prior to their exportation.\(^{463}\)

4.3 Local Content Requirements

*In late 1988, the Chinese delegation indicated the following:*

China's laws contain no express local-content requirement. However, participants in Chinese-foreign joint ventures in many cases assume contractual undertakings of export performance and local content. Moreover, enterprises with foreign investment are subject to foreign exchange balancing requirements.\(^{464}\)

*Subsequently, the Chinese delegation provided the following clarifications and additional information:*

No local content requirement is imposed by the Government. Export performance and local content obligations are contained in contracts of some Sino-foreign investment enterprises, as agreed upon by participants to those enterprises on their own initiative.\(^{465}\)

The incentive for Chinese enterprises to include local content in joint venture products is to upgrade the technology and product quality of domestic enterprises. They are not subject to State guidance.\(^{466}\)

\(^{460}\)Clarifications, 23.4.93, p.15.
\(^{461}\)Clarifications, 18.2.93, p.6.
\(^{462}\)Spec(88)13/Add.4, p.41; Spec(88)13/Add.4/Rev.1, p.18.
\(^{463}\)Clarifications, 23.7.93, p.18.
\(^{464}\)Spec(88)13/Add.4, p.41; Spec(88)13/Add.4/Rev.1, p.18.
\(^{465}\)Clarifications, 23.7.93, p.18.
In order to make the best use of foreign investment, protect both parties' interests and improve the quality of domestic production, it is reasonable for Chinese enterprises to require a certain percentage of local content.\footnote{Clarifications, 21-23.10.92, p.3.}

4.4 Technical Standards

In late 1988, the Chinese delegation indicated the following:

The State Administration for the Inspection of Import and Export Commodities (State Administration or SAIIEC) is the competent authority in charge of import and export commodity inspection. Quality control of domestic commodities is administered by the State Bureau of Technical Supervision. The State Council promulgated the "Regulations on the Inspection of Import and Export Commodities" in 1984, replacing the previous Provisional Regulations. The new Regulations strengthen the inspection of import and export commodities and protect the legitimate rights and interests of the parties concerned with foreign trade.\footnote{Spec(88)13/Add.4, p.42.}

The import and export commodity inspection bureaus in various parts of China, over which the State Administration has jurisdiction, and other inspection organizations designated and/or accredited by the State Administration, act as independent third parties conducting inspection of import and export commodities. As of September 1988, there are two types of independent inspection entities: The China National Import and Export Commodities Inspection Corporation, the only inspection corporation designated by the State Administration; and accredited laboratories, in charge of inspection of some products, mostly machinery and electrical products. Some of the laboratories have been accredited by international accreditation organizations. The establishment of foreign inspection agencies is not permitted in China. But foreign inspection agencies may send representatives to visit China to carry out technical exchanges or consultative activities.\footnote{Spec(88)13/Add.4, p.42.}

In addition to compulsory inspection, the inspection bureaus also carry out inspections in accordance with contracts or on request. If importers or users detect quality problems, they can immediately request that an inspection be carried out by the local inspection bureaus and an inspection certificate be issued. The inspection bureaus also supervise the inspections of import commodities undertaken by the entities mentioned above.\footnote{Spec(88)13/Add.4, p.42.}

The standards applied to imported products may be classified into two categories: (1) standards related to quality, quantity, weight and packing; and (2) standards related to safety, health, worker protection and environmental protection. In most cases, inspections are made in accordance with the relevant clauses of commercial contracts or, in their absence, in accordance with standards established in the exporting countries or pursuant to generally applied international standards. In the absence of either of the above, China’s national standards are applied. China has increasingly adopted international standards. China has established such standards in the areas of safety, health, worker protection and environmental protection. These standards are re-examined every three to five years.\footnote{Spec(88)13/Add.4, p.42.}

The competent departments in charge of production are responsible for proposing national standards. These departments solicit opinions from relevant manufacturers, users, sellers and scientific research institutes before submitting the standards to the State Bureau of Technical Supervision for

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\footnote{Clarifications, 21-23.10.92, p.3.}\footnote{Spec(88)13/Add.4, p.42.}\footnote{Spec(88)13/Add.4, p.42.}\footnote{Spec(88)13/Add.4, p.42.}\footnote{Spec(88)13/Add.4, p.42.}
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promulgation. The standards for inspection methods are established by the State Administration. National sanitary standards are established by the Ministry of Public Health.472

Special regulations have been promulgated for: the inspection of imported medicines and crude drugs; sanitary inspection and quarantine of foodstuffs; quarantine of animals and plants; calibration of weighing and measuring instruments; supervision and inspection of the safety of boilers and pressure vessels; and the surveying of ships, including offshore platforms, ship’s main equipment, materials and containers.473

China’s plant quarantine regulations generally conform to the guidelines for plant quarantine practices and procedures of the International Plant Protection Convention, administered by FAO. China’s "Law on Food Hygiene" defines the use of additives in food; it is applicable to both domestic and imported products. The national "Sanitation Standard for Additives in Food" is applied to all domestic and imported products. Procedures for introducing new additives require that an application with accompanying safety evaluation and specification be submitted, by the producers or users, to the China Food Additive Technical Committee for examination and then to the Ministry of Public Health for approval.474

The State Administration in principle does not apply embargoes or reject imports for quality reasons. The decision to reject imports for quality reasons is made by the importer concerned in accordance with the contract concluded with the exporter. However, when the imported products do not comply with governmental safety or health standards, the State Administration, together with other relevant authorities, may decide to apply an embargo.475

Compulsory inspection is applied to large-volume imports, products with frequent quality problems and safety or health-related products. The list of products subject to compulsory inspection by the Commodity Inspection Agency is drawn up by the State Administration. As of September 1988, this list includes the following 18 products: corn, wheat, soyabean, cotton, jute, sisal, cellulosic fibres, synthetic fibres, natural rubber, paper, fertilizer, sugar, fish meal, furs and leather, wool, steel products, non-ferrous metal products, and boilers and pressure vessels. Following prevailing international practice, inspection of import and export products is carried out by statistical sampling or by inspecting a percentage of each consignment. Some commodities, such as scientific instruments, are inspected piece by piece (or set by set, or package by package). Generally there are no delays due to administrative reasons.476

Subsequently, the Chinese delegation provided the following clarifications and additional information:

The "Law of the People’s Republic of China on Import and Export Commodity Inspection" was adopted by the Seventh National People’s Congress at its Sixth Session on 21 February 1989. The law went into effect on 1 August 1989, superseding the "Regulations on the Inspection of Import and Export Commodities" promulgated by the State Council in 28 January 1984.477

472 Spec(88)13/Add.4, p.43.
473 Spec(88)13/Add.4, p.43.
474 Spec(88)13/Add.4, p.43.
475 Spec(88)13/Add.4, p.43.
476 Spec(88)13/Add.4, p.43.
477 Spec(88)13/Add.6, p.7.
According to the provisions of the "Law of the PRC on Import and Export Commodity Inspection", the State Administration is the competent authority in charge of import and export commodity inspection.478

Most of the test laboratories for import and export products are the quality control and test centres for like domestic products. They carry out testing work on import products within their mandate while at the same time carrying out inspection of like domestic products and export products.479

Standards for inspection are based on related international standards which China has adopted to the greatest extent possible. Forty per cent of China’s standards are the same as, or equivalent to, related international standards.480

There are compulsory standards and non-compulsory standards. Standards concerning the protection of human life, health and safety as well as those stipulated in administrative laws and regulations of a mandatory nature are compulsory standards. Compulsory standards are applied to both domestic and import/export goods. The standards for inspection methods are established by the State Administration.481

In accordance with relevant laws and regulations, inspection is carried out by other special organizations with regard to the safety and quality inspection of imported medicines and crude drugs; sanitary inspection and quarantine of foodstuffs; quarantine of animals and plants; calibration of weighing and measuring instruments; supervision and inspection of the safety of boilers and pressure vessels; the surveying of ships, including offshore platforms, ship’s main equipment, materials and containers; testing of aircraft airworthiness (including engines, carried-on-board equipment) and the safety testing of nuclear pressure-bearing equipment.482

Article 6 of the Law on Import and Export Commodity Inspection stipulates that in the absence of compulsory standards or inspection standards which must be complied with as provided for in laws or administrative rules and regulations, inspection shall be carried out in accordance with the agreed inspection standards contained in the foreign trade contract. In such cases, the inspection clause in the contract is the decisive basis for inspection on imports. Standards applied to imports are the same as those applied to like domestic products; they are not more stringent than those applied to domestic products.483

China considers that the Law on Import and Export Commodity Inspection should be viewed in a positive light. Its objective is to ensure the quality of import and export products and to promote the smooth development of foreign economic relations and trade. It is not and will never be used as a policy instrument to regulate trade. The following are the important elements necessary for a better understanding of the inspection system:

(1) The Commodity Inspection Authority publishes the "List of Import and Export Commodities Subject to Inspection"; not all standards for inspection are mandatory;

478 Spec(88)13/Add.4/Rev.1, p.19.
479 Spec(88)13/Add.4/Rev.1, p.19.
480 Spec(88)13/Add.4/Rev.1, p.19.
481 Spec(88)13/Add.4/Rev.1, p.19.
482 Spec(88)13/Add.4/Rev.1, p.19.
483 Spec(88)13/Add.4/Rev.1, p.20.
(2) China does not have any technical or quality standards specially designed for imported goods;

(3) Compulsory standards are established for sanitary, hygiene and safety considerations for domestic products; these compulsory standards are equally applicable to imported goods;

(4) The Inspection Law provides that inspection shall be carried out in accordance with inspection standards stipulated by trade contracts; the inspection authorities take a neutral stance; they only provide services in the process of trade. 484

Foreign firms may establish joint ventures in China, acting as independent third parties, to undertake commodity inspection. The State Administration has, as of July 1993, approved the establishment of several such joint ventures. 485

Concerning charges associated with import inspection and certification, these are 0.24-0.5% of the value of the goods. Certification is issued within one or two working days. 486

If a certain kind of product imported into China has been certified wholly or in major part to meet international standards, the State Administration will, pursuant to the Law on Import and Export Commodity Inspection, consider an application for exemption from inspection. 487

When mandatory inspection is required, the importer registers with the commodity inspection authorities located at the port of discharge or the station of arrival. The commodity inspection agency concerned carries out inspection pursuant to Article 10 of the Regulations for the Implementation of the Law on Import and Export Commodity Inspection. In the case of non-mandatory inspection, the importer may go directly to the commodity inspection agency for inspection. 488

Following its resumption of GATT contracting party status, China intends to accede to the Agreement on Technical Barriers to Trade. 489

Joining the TBT Code will ultimately enhance the transparency of China's inspection regime and reduce the number of claims involving imported goods. The categories of imports subject to mandatory inspection are unlikely to expand. Meanwhile, China is actively seeking to establish a varied bilateral or multilateral approach to quality recognition, with a view to further decreasing barriers to trade, doing away with duplication of inspection and promoting growth in trade. 490

Even when China joins the Agreement on Technical Barriers to Trade, it will not abolish all mandatory retesting for imported products which have been certified as meeting international standards. 491

China would be prepared to multilateralize on an MFN basis relevant provisions on commodity inspection contained in the Sino-US Memorandum of Understanding on market access. 492
China is a signatory to the Asian-Pacific Plant Protection Convention (APPPC) and has applied for membership of the International Plant Protection Convention (IPPC). Upon resumption of Gatt membership, China will accede to the Agreement on Technical Barriers to Trade and abide by the rules of that Agreement on phytosanitary regulations.493

China has so far signed bilateral agreements or memoranda on plant inspection with 12 countries. China’s level of inspection and measurement technology has a first-rate ranking in the world. China’s standards of protection are similar to those internationally applied, such as those for import control of seeds and buds which must be certified by the originating countries and cannot bear any soil, hazardous insects or weeds.494

China considers that it is unscientific to assert that the application of a phytosanitary quarantine would make the elimination of quotas meaningless. The phytosanitary quarantine is not for the purpose of restricting imports. Exporting countries should make sure that their products are free from epidemic diseases, rather than require China to remove its quarantine requirement. The application of such a quarantine on imports and exports is a generally applicable measure used by all countries to protect domestic agricultural production, forestry, animal husbandry, fisheries and human health.495

Plants imported subject to mandatory inspection include products manufactured from plants, whether or not refined, which may disseminate infectious diseases, such as grain, beans, cotton, oil, jute, tobacco, seed kernels, dried fruit, fresh fruit and vegetables, raw medicinal herbs, timber and feed. The implementing departments responsible for this inspection under the State Council are the General Institute of National Sanitary and Phytosanitary Inspection and other local bureaus at various points of entry.496

The draft detailed implementing regulation on quarantine has been submitted to the State Council for approval in the second half of 1993.497

493Clarifications, 23.4.93, p.3.
495Clarifications, 23.4.93, p.3.
497Clarifications, 23.7.93, p.4.
5. **CHINA'S FOREIGN TRADE RELATIONS**

5.1 **Bilateral Trade and Payments Agreements**

*In late 1988, the Chinese delegation indicated the following:*

China has entered into bilateral trade agreements with over 90 countries and regions. Three main categories of trade agreements can be distinguished, as follows:

The first category are agreements which contain a most-favoured-nation clause and other general conditions for the conduct of trade. As of April 1988, China had concluded such agreements with the following countries: Albania, Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Benin, Botswana, Brazil, Bulgaria, Burkina Faso, Burma, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Côte d′Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Djibouti, Ecuador, EEC (including Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, United Kingdom), Egypt, Equatorial Guinea, Ethiopia, Finland, Gabon, Gambia, German Democratic Republic, Ghana, Guinea, Hungary, Iceland, India, Iraq, Jamaica, Japan, Jordan, Kenya, Kuwait, Lebanon, Liberia, Libya, Madagascar, Malaysia, Mali, Mauritania, Mexico, Mongolia, Morocco, Mozambique, Nepal, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Peru, Philippines, Poland, Romania, Rwanda, Sao Tomé and Principe, Senegal, Sierra Leone, Singapore, Somalia, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Tanzania, Thailand, Togo, Tunisia, Turkey, United States of America, Union of Soviet Socialist Republics, Venezuela, Vietnam, Arab Republic of Yemen, People's Democratic Republic of Yemen, Yugoslavia, Zaire, Zambia, and Zimbabwe.

The second category are agreements which, in addition to the most-favoured-nation clause, provide for annual protocols of exchange of goods with indicative lists of commodities to be exchanged between the two parties. Commodities on the indicative list are determined through consultations on the basis of commercial considerations and according to the needs and capabilities of both countries. The countries with which China had signed such agreements as of April 1988 are: Ethiopia, Kenya, Tanzania, Burkina Faso, Cameroon, Côte d′Ivoire, Guinea, Nigeria, Equatorial Guinea, Liberia, Mauritania, Algeria, Sudan, Iraq, Morocco, Singapore, Cyprus, Iran, India, Bangladesh, Nepal, Pakistan, Sri Lanka, Afghanistan, Mexico, Chile, Ecuador and Brazil.

The third category are agreements which contain a most-favoured-nation clause and fix the quantity or value of specified commodities to be exchanged. For such agreements, a protocol of exchange of goods is signed annually. Countries with which China has signed such agreements include: Ethiopia, Sao Tomé and Principe, Ghana, People's Democratic Republic of Yemen, Thailand, Philippines, Iran, India, Turkey, Bangladesh, Pakistan, Soviet Union, Poland, German Democratic Republic, Czechoslovakia, Hungary, Bulgaria, Albania, Romania, Democratic Peoples's Republic of Korea, Mongolia and Cuba. The agreements in this category provide for annual negotiations of protocols on the exchange of goods with a list of import and export products. Under the agreements, the government provides a forum for the enterprises to conduct negotiations on specific transactions. The importers or end-users bear all costs of the imports; the government does not provide financial support. The volume or value targets for the products listed are fulfilled through contracts signed by FTCs of both sides according to commercial considerations. The prices of import and export products are determined through consultations in light of international market conditions; they are expressed in...
Swiss francs or US dollars. No tariff preferences are accorded to the imports stipulated in the protocols.\(^{500}\)

From 1978 to 1987, China's trade with the Soviet Union and the Eastern European countries, conducted under this third type of Agreement, represented on average 6.2% of China's total foreign trade.\(^{501}\)

China also has concluded protocols on barter trade with the following African countries: Tanzania, Zimbabwe, Sao Tomé and Principe, Ghana, Algeria and Tunisia. The protocols set out the quantities of products to be exchanged. These transactions are based on the prevailing international market prices. The payments for barter trade products are settled, on an annual basis, through trade clearing accounts. If there is a trade imbalance, the debtor makes a cash payment. The import duties and licensing system apply to trade conducted through such clearing accounts. Of the total value of China's trade with developing countries, 99.75% is on the basis of cash payment trade, 0.05% under trade clearing accounts and 0.2% on the basis of barter trade.\(^{502}\)

Subsequently, the Chinese delegation provided the following additional information:

As of May 1993, China has entered into bilateral trade agreements with over 130 countries and regions.\(^{503}\)

Most of the payment agreements with other countries have turned into cash trade agreements.\(^{504}\)

5.2 Goods Originating In or Destined For Hong Kong, Macao and Taiwan

In late 1988, the Chinese delegation indicated the following:

For products originating in Hong Kong and Macao, customs duties are applied at rates equivalent to the rates levied on goods originating in countries enjoying most-favoured-nation treatment. The Tariff Commission will decide which tariff treatment will apply to products originating in Hong Kong after 1997.\(^{505}\)

Imports from Hong Kong and Macao are treated as if they were imported from abroad and import licenses must be obtained for goods under licence restriction originating therefrom. The Chinese authorities believe that it is too early to discuss the application of the licensing system to imports from Hong Kong and Macao after 1997 and 1999, respectively.\(^{506}\)

Quotas and licensing are applied to some products exported to Hong Kong and Macao, in particular fresh and frozen food products, live animals and poultry. The revision of the list of products subject to export restrictions to Hong Kong is under study. Export quotas to Hong Kong and Macao are allocated under the export licensing system according to the market capacity of Hong Kong and Macao and the export capabilities of Chinese provinces, autonomous regions and municipalities.\(^{507}\)

\(^{500}\)Spec(88)13/Add.4, pp.44-45.
\(^{501}\)Spec(88)13/Add.4, p.45.
\(^{502}\)Spec(88)13/Add.4, p.45.
\(^{503}\)Spec(88)13/Add.4/Rev.1, p.20.
\(^{504}\)Spec(88)13/Add.8, p.22.
\(^{505}\)Spec(88)13/Add.4, p.45.
\(^{506}\)Spec(88)13/Add.4, p.45.
\(^{507}\)Spec(88)13/Add.4, p.45.
Hong Kong and Macao Special Administrative Regions will continue to formulate their own economic and trade policies autonomously when China regains its sovereignty over Hong Kong and Macao in 1997 and in 1999, respectively. However, the economic and technical cooperation between the SEZs and the Hong Kong and Macao regions will be further strengthened. In its Communique of April 1988 to the GATT contracting parties, the Chinese Government declared that after 1997, Hong Kong will continue to undertake its obligations in GATT as a separate customs territory and separate GATT contracting party. The tariff bindings which Hong Kong has entered into will not be affected.\footnote{Spec(88)13/Add.13, p.46.}

Direct imports from Taiwan are not subject to Chinese import duties. China considers that Taiwan is part of China’s territory.\footnote{Spec(88)13/Add.13, p.46.}

Subsequently, the Chinese delegation provided the following clarifications and additional information:

The Tariff Commission decides which tariff treatment shall apply to products originating in Hong Kong and Macao after 1997 and 1999, respectively.\footnote{Spec(88)13/Add.4/Rev.1, p.20.}

In its Communique of April 1988 to the GATT Contracting Parties, the Chinese Government declared that after 1997 and 1999, Hong Kong and Macao will continue to undertake their obligations in GATT as separate customs territories and separate GATT contracting parties. The tariff bindings which Hong Kong and Macao have entered into will not be affected.\footnote{Spec(88)13/Add.4/Rev.1, p.20.}

Taiwan is part of China’s territory. For historical reasons, there has been no direct economic exchange between China’s mainland and Taiwan since the founding of the PRC. As of May 1993, there is no direct trade between China’s mainland and Taiwan. The Customs duty is imposed on imports from Taiwan which are transshipped to China’s mainland via third parties (mainly Hong Kong and Macao) in accordance with relevant laws and regulations.\footnote{Spec(88)13/Add.4/Rev.1, p.21.}

5.3 Trade with Adjacent Countries

In late 1988, the Chinese delegation indicated the following:

China has border trade with Nepal, Burma, Pakistan, the former Soviet Union and the Democratic People’s Republic of Korea. China considers that this trade, both in the form of barter and cash payment, is of a negligible size. The traded goods are mostly of local manufacture and third-country currencies are generally not used for payment. With the exception of the special custom tariff between the Autonomous Region of Tibet and Nepal, border trade does not involve preferential treatment. In order to help the economic development of Tibet, a separate tariff with lower duty rates was established for imports from Nepal into Tibet.\footnote{Spec(88)13/Add.4, p.46.}

Subsequently, the Chinese delegation provided the following clarifications and additional information:

China’s frontier provinces have border trade with Nepal, Burma, Pakistan, the former Soviet Union and the Democratic People’s Republic of Korea. China considers that this trade between local

\footnote{Spec(88)13/Add.4, p.46.}
residents at the border, both in the form of barter and cash payment, is of a small size. In order to help the economic development of Tibet, a separate tariff with low duty rates was established for imports from any sources into Tibet but their use is confined to Tibet.\footnote{Spec(88)13/Add.13, p.21.}

In 1992, China entered into a barter trade arrangement with the Commonwealth States of the former Soviet Union. According to the arrangement, barter trade conducted by the two governments will be exempted from import duties and value-added tax; barter trade conducted by local governments and enterprises, as well as that under projects of economic cooperation, enjoy a 50% reduction in import duties and value-added tax. These provisional measures are to tide over the temporary difficulties in maintaining normal trade relations with the Commonwealth States of the former Soviet Union in view of their economic difficulties and shortage of foreign exchange. The Chinese Government undertakes to terminate these temporary measures by the end of 1995, and will notify the contracting parties.\footnote{Clarifications, 23.7.93, p.24.}

There are no preferential arrangements between China and its adjacent countries. The Simplified Tariff Schedule in Tibet is an exception to China’s Tariff Schedule, which is applied to imports coming through the border of Tibet in the light of Tibet’s geographic, transport and economic situation. The schedule has been published and is applicable to any foreign products entering Tibet irrespective of their origin, provided their use is confined to Tibet. When these imports are sold into other areas of the country, a duty equivalent to the preferential tariff margin is imposed.\footnote{Clarifications, 23.7.93.}

In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on border trade:

Article 26. Border trade is allowed in the neighbouring regions at frontier and the measures for administration of the border trade shall be laid down separately by the MOFTEC.\footnote{Draft Foreign Trade Law, 4.93.}

5.4 Rules of Origin

The "Provisional Regulations of the Customs Administration on the Origin of Imported Goods" provide that, if an imported product is processed and manufactured in several countries, the country of origin of the product shall be the last country in which the product underwent substantial processing. Substantial processing is understood to mean processing which results in a change of the four-digit level tariff classification or in an added value (including all cost-related expenditures) exceeding 30% of the total value. These origin criteria are applicable to all imported products. The rules of origin applied for statistical purposes are the same. However, for statistical purposes, Customs also records the countries of consumption and trading countries.\footnote{Spec(88)13/Add.4, p.46; Spec(88)13/Add.4/Rev.1, p.21.}

The "Provisional Regulations" coincide with international practice.\footnote{Spec(88)13/Add.8, p.23.}

For the past 40 years, certificates of origin have been issued without uniform legal documents. In order to place the administration of rules of origin on a systematic basis, MOFERT is drafting a uniform set of rules of origin, taking into account current practices of GATT, the United States, Japan, the EEC and Hong Kong, in order to ensure that the rules reflect the actual conditions in China and conform to international practices on rules of origin. This uniform set of rules will soon be promulgated.
China's uniform rules of origin will specify the competent authorities responsible for administering the rules of origin, the issuing authorities, the eligibility requirements for certificates of origin, rules of origin criteria for export goods and ways to address violations of the rules of origin.\textsuperscript{520}

\textit{The Chinese delegation has indicated that these uniform rules were promulgated in April 1992.}
6. PUBLICATION AND ADMINISTRATION OF TRADE REGULATIONS

6.1 General Sources of Information

In late 1988, the Chinese delegation indicated the following:

The following publications, among others, provide information on China’s foreign trade system: "Almanac of China’s Foreign Economic Relations and Trade"; "Guide to China’s Foreign Economic Relations and Trade", edited by the Policy Research Department of MOFERT; "Statistical Yearbook of China", published by the State Statistical Bureau; "China’s Customs Statistics", edited and published quarterly by the Customs General Administration; "International Trade", "International Economic Cooperation" and "China Foreign Trade", journals edited by the Institute of International Trade, the Institute of International Economic Cooperation of MOFERT and China Council for the Promotion of International Trade; the bimonthly journal "International Trade Issues", edited and published by the University of International Business and Economy; and "International Business" and "International Trade News", edited by the Institute of International Trade of MOFERT, both of which contain updates on the policies, laws and regulations relating to China’s foreign economic relations and trade.521

The rules, regulations and orders of the State Council relating to foreign trade are all published. So are the regulations issued by ministries and commissions. Such laws and regulations are available in the "Bulletin of the State Council" and the "Collection of the Laws and Regulations of the People’s Republic of China". The administrative regulations and directives which affect foreign traders are also published in various newspapers and periodicals.522

Subsequently, the Chinese delegation provided the following clarifications and additional information:

The following publications, among others, provide information on China’s foreign trade system: "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", edited and published by the Customs General Administration.523

As of December 1992, the publications in China which promulgate laws and regulations are "People’s Daily", "International Business" and the "Communiqué of the State Council of the People’s Republic of China".524

China has undertaken to issue an official publication containing laws, decrees and decisions relating to foreign economic and trade relations. This commitment will be fulfilled soon after China resumes its GATT contracting party status.525

China has conducted a general review of laws and regulations on foreign trade and has abolished 122 documents and regulations which are out of date and published 47 documents and regulations which are still in force. In the future, all new laws and regulations relating to foreign trade shall be published by MOFERT, except those promulgated directly by the State Council and the National People’s Congress.526

521 Spec(88)13/Add.4, p.47.
522 Spec(88)13/Add.4, p.47.
523 Spec(88)13/Add.4/Rev.1, p.21.
524 Clarifications, 2.12.92, p.18.
525 Clarifications, 23.4.93, p.16.
526 Clarifications, 21-23.10.92, p.4.
China will ensure that only those laws, regulations and administrative decisions that are published in a timely manner will be enforced.\(^{527}\)

China is trying to improve transparency and administer its foreign trade in accordance with international practices. On 6 May 1993, further work was done to screen the existing foreign trade laws and regulations. At that time, 54 internal documents relating to foreign trade were revoked. Work in this field is continuing and is expected to be completed by the end of 1993 so that China's foreign trade regime will be as transparent as is required by the General Agreement. China has recently submitted to the GATT Secretariat the updated memorandum on China's foreign trade system (Spec(88)13/Add.4/Rev.1). The newly-revised draft Foreign Trade Law has been circulated to the Working Party. At the Fourteenth Meeting, China provided an updated Directory of China's Foreign Trade Enterprises and the compilation of China's laws and regulations concerning external economic relations.\(^{528}\)

6.2 Foreign Trade Plans and Trade Statistics

China publishes its five-year plan of national economic and social development, which includes the development programme for imports and exports. The five-year plan is published in newspapers. Annual, medium-term and long-term plans approved by the National People's Congress are also published, including targets of key sectors of national economic and social development.\(^{529}\)

China however does not publish its annual import and export plans nor modifications of these plans. The detailed targets established in the import and export plans are regarded as business secrets. The foreign exchange earning targets negotiated with the provinces and municipalities are also not published. The State Statistics Bureau publishes information concerning the implementation of the import and export plans, as well as the annual report of statistics.\(^{530}\)

China's trade statistics are compiled and published by the General Administration of Customs in light of the criteria stipulated by the Statistics Bureau of the United Nations and on the basis of case-by-case calculations of the goods imported and exported. The statistics for 1990-1992 have been submitted to the GATT Secretariat.\(^{531}\)

China is not in a position to provide target plan figures, as foreign trade plans are commercial secrets, the disclosure of which would prejudice the commercial interests of enterprises. Such plans do not specify sources of supply or destination.\(^{532}\)

6.3 Exchange Controls Affecting Importation and Exportation

Since the "Provisional Regulations for Foreign Exchange Control of the People's Republic of China" was promulgated in December 1980, China has published more than 20 specific rules implementing these regulations, including the "Regulations for Foreign Exchange Concerning Foreign-Invested Enterprises, Foreign Banks and Non-Bank Financial Institutions" and the "Regulations for Monitoring External Debt and External Guarantees". These rules are published in the "Gazette of the State Council".\(^{533}\)

\(^{527}\)14th Mtg.
\(^{528}\)Statement, 24.5.93, p.6.
\(^{529}\)Spec(88)13/Add.4, p.47; Spec(88)13/Add.4/Rev.1, p.22.
\(^{530}\)Spec(88)13/Add.4, p.47; Spec(88)13/Add.4/Rev.1, p.22.
\(^{531}\)Clarifications, 2.12.92, pp.19-20.
\(^{532}\)Spec(88)13/Add.11, p.16.
\(^{533}\)Spec(88)13/Add.4, pp.47-48; Spec(88)13/Add.4/Rev.1, p.22.
6.4 Restrictions on Importation and Exportation

In late 1988, the Chinese delegation indicated the following:

MOFERT publishes its import and export regulations, as well as the quantity of products to be licensed for export, in the newspaper "International Business" on a timely basis. Changes in criteria for issuing import and export licenses are also published in "International Business" and in the "Almanac of Foreign Economic Relations and Trade". 534

The items of import commodities restricted by the State are made public and readjusted in a unified way by MOFERT. MOFERT readjusts import restrictions in light of the availability of foreign exchange and changes in domestic production and in the market. These adjustments are duly made public in "International Business" and the "Almanac of Foreign Economic Relations and Trade". 535

Subsequently, the Chinese delegation made the following clarifications:

MOFTEC publishes its import and export regulations, as well as the quantity of products to be licensed for export, in the newspaper "International Business" on a timely basis. Changes in criteria for issuing import and export licenses are also published in "International Business", the "Bulletin of MOFTEC" and in the "Almanac of Foreign Economic Relations and Trade". 536

Import commodities restricted by the State are made public by MOFTEC, which readjusts import restrictions in a unified way in light of the availability of foreign exchange and changes in domestic production and market conditions. These adjustments are duly made public in the "Bulletin of MOFTEC" and the "Almanac of Foreign Economic Relations and Trade". 537

6.5 Customs Tariffs and Other Charges on Importation and Exportation

China's customs laws and regulations, import and export duty rates, and customs procedures are published in the "State Council Bulletin" and in the press, and are available upon request. The procedures concerning the application of duty rates, customs value and duty determination, draw-back and duty recovery, as well as the procedures concerning duty exemptions and reduction, are also published. The State Statistics Bureau publishes quarterly customs statistics, calculated according to country of origin or consumption. The Customs General Administration publishes trade figures on the basis of four-digit CCCN headings. 538

The Regulations on Import and Export Duties provide that in the case of disputes over tariff classifications or customs valuation, the duty payer can demand a re-examination of the matter by the local Customs office and, if the matter cannot be resolved in this way, appeal to the Customs General Administration and, finally, to the People's Court. 539

Implementation of the Import Regulatory Tax is subject to advanced notice. For the settlement of disputes over payment of the tax, the appeal procedures for Customs import duties apply. 540

534 Spec(88)13/Add.4, pp.47-48.
535 Spec(88)13/Add.4, p.48.
536 Spec(88)13/Add.4/Rev.1, p.22.
537 Spec(88)13/Add.4/Rev.1, p.22.
538 Spec(88)13/Add.4, p.48.
539 Spec(88)13/Add.4, p.48.
540 Spec(88)13/Add.4, p.48.
Subsequently, the Chinese delegation made the following clarifications:

The Customs General Administration publishes trade figures on the basis of eight-digit H.S. headings.\footnote{Spec(88)13/Add.4/Rev.1, p.23.}

6.6 Internal Taxes and Regulations

The rules and regulations applied by the State Administration and the State Bureau of Technical Supervision are published in the press and are available on request. The list of products subject to compulsory inspection is published by the State Administration.\footnote{Spec(88)13/Add.4, pp.48-49; Spec(88)13/Add.4/Rev.1, p.23.}

China's national standards are published in the "National Standards Catalogue of the People's Republic of China", the journal "Standardization of China" and the "New Standards Catalogue".\footnote{Spec(88)13/Add.4, p.49.}

According to the Commodity Inspection Regulations, if the parties involved in foreign trade object to findings regarding the inspection of import and export commodities, they may apply for reinspection. Thereafter, they may make a further appeal to the State Administration. The parties may also appeal to an arbitration body in accordance with an arbitration clause in the contract.\footnote{Clarifications, 23.7.93, pp.23-24.}

China has published the English version of the "Regulation of the People's Republic of China on Import and Export Quarantine of Animals and Plants", which went into force on 1 April 1992.\footnote{Clarifications, 23.7.93, p.4.}

The following laws and regulations applied by the State Administration (SAIEC) are available in English and have been provided to the GATT Secretariat during the Fourteenth Meeting: "The Law of the People's Republic of China on Import and Export Commodity Inspection", "Regulations for the Implementation of the Law of the People's Republic of China on Import and Export Commodity Inspection", "Provisions of the People's Republic of China on Sanitation of Food for Export", "Minimum Sanitary Requirements for Factories and Storehouses of Food for Export" and "Detailed Rules for the Registration of Factories and Storehouses of Food for Export", "Detailed Rules and Procedures for Implementing the Safety License System of Import Commodities" and "Appendices to Detailed Rules and Procedures for Implementing the Safety License System of Import Commodities (the parts of refrigerators, air-conditioners, motor-compressors, Television Sets and Kinescopes)".\footnote{Spec(88)13/Add.4, p.49; Spec(88)13/Add.4/Rev.1, p.23.}

At the Fourteenth Meeting, China submitted the following additional documents to the GATT Secretariat: "The PRC Import Plant Quarantine: "List of Dangerous Diseases, Insects and Weeds", "The PRC Import Plant Quarantine: List of Prohibited Import Plants", and "The PRC List of First and Second Class Epidemic Diseases and Parasitic Diseases for Animal Import".\footnote{Clarifications, 23.4.93, p.4.}

6.7 Government Agreements Affecting Trade Policy

The bilateral trade agreements listed in Section 5.1 above and protocols on the exchange of goods negotiated under them are published in "The Treaty Series of the People's Republic of China".\footnote{Clarifications, 23.7.93, p.4.}
6.8 Enterprises Engaged in Foreign Trade

The "Directory of China’s Foreign Economic Relations and Trade Enterprises" and "China’s Foreign Trade Corporations and Organizations" are two publications which identify the FTCs and other enterprises in China engaged in foreign trade. The "Directory", compiled by MOFERT (now MOFTEC), is published in English and subject to annual updating.\textsuperscript{549}

\textsuperscript{549}Spec(88)13/Add.4, p.49; Spec(88)13/Add.4/Rev.1, p.23.
7. CHINA'S FOREIGN TRADE REGIME AND THE GATT

7.1 General

In late 1988, the Chinese delegation indicated the following:

China originally assumed contracting party status by accepting the Protocol of Provisional Application, dated 30 October 1947. China requests the resumption of its original membership but declares itself ready to negotiate the rights and obligations resulting from its resumption. The Protocol of Provisional Application exempts measures taken pursuant to mandatory legislation in force on 30 October 1947 from the obligations under Part II of the General Agreement. China requests that the date relevant for the existing legislation clause in the protocol on China's status as a contracting party be the date of that protocol rather than 30 October 1947. The Chinese authorities explain these requests as follows: The founding of the People's Republic of China in 1949 did not alter China's status as a subject of international law. The deposed Chiang-Kai Shek regime ceased to represent China as from 1 October 1949. The withdrawal from GATT in the name of China by the authority in Taiwan in 1950 was therefore not legally valid. The United Nations, in a resolution adopted in October 1971, recognized the representatives of the Government of the People's Republic of China as the only legitimate representatives of China, and the GATT, on the understanding that it should generally follow decisions of the United Nations on essentially political matters, expelled the observer from Taiwan in November 1971. For these reasons, China is both legally and politically justified in requesting a resumption of its original membership. However, given the considerable changes that have taken place during the suspension of China's relations with the GATT and given China's readiness to negotiate the substantive rights and obligations, a non-retroactive approach to the changes during the period of suspension is appropriate and in the interest of the contracting parties concerned.

The Chinese authorities consider that China has at present an adequate basis and full capability to comply with GATT obligations and to exercise GATT rights, and that a commitment to a time schedule for the accomplishment of economic reforms is therefore not needed. In their view, the controls on importation, such as the custom tariff, the Import Regulatory Tax and the import licensing system, serve to protect domestic industries and the external financial position; these measures are therefore justified by Article XVIII of the General Agreement. The Chinese authorities recognize that the temporary economic assistance which the Chinese government grants to export enterprises is a subsidy within the meaning of the General Agreement. After China resumes its membership, they intend to comply with the provisions of Article XVI when giving economic assistance to producers of export products.

The Chinese authorities consider that China's bilateral trade and payments agreements do not provide for preferences inconsistent with the principles of the General Agreement. Upon resuming its contracting party status, China will review these agreements in light of the relevant GATT provisions.

The Chinese authorities are of the view that the production enterprises with foreign trade rights and the FTCs are not state-trading enterprises within the meaning of Article XVII of the General Agreement merely because they are owned by the State.

550 Spec(88)13/Add.4, p.50; Spec(88)13/Add.4/Rev.1, pp.23-24.
551 Spec(88)13/Add.4, p.50; Spec(88)13/Add.4/Rev.1, p.24.
552 Spec(88)13/Add.4, p.50.
553 Spec(88)13/Add.4, p.50.
China is a member of the International Monetary Fund and is availing itself of the transitional provisions of Article XIV of the Fund's Articles of Agreement. China considers its system of exchange controls to be consistent with the Fund's Articles of Agreement and consequently covered by Article XV:9 of the General Agreement.\textsuperscript{554}

The Chinese authorities consider the non-publication of the annual import and export plans to be consistent with Article X of the General Agreement because these plans contain confidential commercial information, the disclosure of which would prejudice the legitimate commercial interests of the State and the enterprises concerned.\textsuperscript{555}

The Chinese authorities have studied the Anti-Dumping, Subsidies, Customs Valuation and Import Licensing Agreements. A decision whether or not to accept these agreements is still under consideration. The Chinese authorities have also studied the Agreement on Technical Barriers to Trade and declared that they consider it possible that China might sign that Agreement at an appropriate time. Adherence to the Agreement on Government Procurement is presently not being considered.\textsuperscript{556}

Subsequently, the Chinese delegation provided the following clarifications and additional information:

All FTCs have become independent economic entities responsible for their own profits and losses and have full autonomy in their management. FTCs given exclusive rights to import particular products operate on commercial considerations and on the basis of non-discrimination and are therefore in conformity with Article XVII of the General Agreement.\textsuperscript{557}

The Chinese authorities have indicated China's intention to join the Anti-Dumping, Subsidies, Customs Valuation and Import Licensing Agreements and the Agreement on Technical Barriers to Trade.\textsuperscript{558}

The Sino-US Memorandum of Understanding on market access of 10 October 1992 will be applied to other contracting parties on the basis of the principle of MFN treatment. The MOU has been circulated to members of the Working Party.\textsuperscript{559}

In April 1993, the Chinese delegation submitted a Draft Foreign Trade Law to the Working Party which provides the following on the granting of MFN and national treatment:

Article 7. The People's Republic of China grants MFN treatment and national treatment in compliance with the treaties and agreements to which the PRC is a contracting party or a signatory state or in line with the principles of reciprocity and equality. Where any countries or regions take prohibitions, restrictions or other discriminative measures against the PRC, as the case may be, the PRC may introduce corresponding measures toward the countries or regions concerned.\textsuperscript{560}

\textsuperscript{554}Spec(88)13/Add.4, p.51; Spec(88)13/Add.4/Rev.1, p.24.
\textsuperscript{555}Spec(88)13/Add.4, p.51; Spec(88)13/Add.4/Rev.1, p.24.
\textsuperscript{556}Spec(88)13/Add.4, p.51.
\textsuperscript{557}Spec(88)13/Add.4/Rev.1, p.24.
\textsuperscript{558}Spec(88)13/Add.4/Rev.1, p.24.
\textsuperscript{559}Clarifications, 23.4.93, p.17.
\textsuperscript{560}Draft Foreign Trade Law, 4.93.
7.2 China's Developing Country Status

China is a low-income developing country in a primary stage of development. It benefits from treatment granted to low-income developing countries both from the International Monetary Fund and the World Bank, as well as from official development aid and GSP schemes of developed countries. China will undertake obligations in the GATT consistent with its level of economic development. It should therefore be entitled to the more favourable treatment granted to less-developed contracting parties under the General Agreement. Such treatment would include, inter alia, the right to maintain flexibility in its tariff structure and, in accordance with Article XVIII, to impose import restrictions for balance-of-payment purposes and to protect infant industries.\footnote{Spec(88)13/Add.5, p.6}

China, upon its resumption of GATT membership, shall naturally have the right to invoke Article XVIII. When necessary, China should have the right to take measures provided for in Article XVIII in the light of its needs of economic development, balance of payments and newly established industries. However, China will not abuse resort to Article XVIII and will strictly observe the procedures for its invocation. It would be unreasonable to deny the developing country status of China.\footnote{Clarification, 2.12.92, p.25.}

China wishes to see a protocol based on a standard GATT protocol, with balanced rights and obligations. At the same time, full consideration should be given to the unique historical relationship between China and the GATT, as well as the fact that China is a developing country.\footnote{Statement, 9.12.92, p.5.}

7.3 Powers of Central Government in relation to Sub-National Governments

According to Chinese Law (Article 142 of the General principles of Civil Laws, Article 6 of the Laws on Economic Contracts with Foreign Counterparts), all international treaties are part of the domestic law. If there is a conflict between domestic law and the provisions of an international treaty, the provisions of the international treaty shall be applied unless the provisions are those on which the People’s Republic of China has announced reservations.\footnote{Spec(88)13/Add.4, p.51; Spec(88)13/Add.4/Rev.1, p.24.}

As stipulated in the Constitution (Article 67), the Standing Committee of the People’s Congress has the power to alter or annul those local regulations or decisions of the organs of state power of provinces, autonomous regions and municipalities directly under the Central Government that contravene the Constitution, the laws, administrative rules or regulations of the Central Government. The Constitution also authorizes the State Council to alter or annul inappropriate decisions and orders issued by local organs of state administration at various levels (Article 89). The State Council also is authorized to alter or annul inappropriate orders, directives and regulations issued by the ministries or commissions. In order to assure the prompt and precise execution of the above-mentioned powers, these laws and regulations stipulate that laws and regulations at local level shall be reported to the Standing Committee of the National People’s Congress and State Council for the record, and the regulations of various departments of the State Council and the People’s Government at local level shall be reported to the State Council for the record. The Chinese authorities are of the view that these features of the Chinese legal system will ensure an effective and uniform implementation of the obligations resulting from China’s resumption of GATT contracting party status.\footnote{Spec(88)13/Add.4, p.51; Spec(88)13/Add.4/Rev.1, pp.24-25; Clarifications, 23.4.93, p.18.}