

WORKING PARTY ON CHINA'S STATUS AS A CONTRACTING PARTY

Examination of the Foreign Trade Regime - Part II

Note by the Secretariat

4. Examination of China's System of Import and Export Control

4.1 Members of the Working Party sought from the representative of China detailed information on the operation of China's system of import and export control in addition to the information provided in the memorandum (L/6125) and Sections 5-10 of the question-and-replies document [L/6270]. The following paragraphs are a structured summary of the additional information provided in response to these queries.

(a) Institutional aspects

4.2 The decision-making power on foreign trade as a whole rests with the State Council. 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 various ministries and commissions. The State Planning Commission is responsible for the formulation of the national social and economic development plan. Once the plan is approved by the State Council, all government agencies concerned are responsible for facilitating implementation of the plan.

4.3 The Ministry of Foreign Economic Relations and Trade (MOFERT) formulates foreign trade policies and exercises administrative supervision. It authorizes the establishment of foreign trade corporations 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. It controls foreign trade enterprises through economic, legal and other means and supervises the implementation of laws, regulations and State policy. When a foreign trade corporation fails to implement State policy, or violates laws and regulations, MOFERT can intervene in its business activities or even withdraw the authorization to conduct foreign trade. The Tariff Commission is responsible for formulating the guidelines, policies and principles governing the Regulations on Import and Export Duties and the Customs Import and Export Tariff, revising the tariff schedule, and examining and approving partial readjustments to the tariff schedule. However, the establishment of a new tariff schedule or the overall revision of the existing schedule must still be submitted to the State Council for approval. The Tariff Commission includes representatives from the administration of general economic affairs, the foreign trade department, the commerce department and the industrial department.

4.4 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 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 Quality Administration exercises quality control in the domestic production process. Both administrations cooperate to avoid inconsistencies in their policies and principles. The State Pricing Administration exercises supervision to ensure that the same pricing system is applied to imported and domestic products.

4.5 The local governments, through the foreign economic and trade bureaus, supervise the implementation of State policies, laws, regulations and rules and the fulfilment of targets established in contracts between the State and productions enterprises. However, according to the principle of separating ownership from managerial authority, local governmental agencies are not allowed to interfere with the business activities of enterprises. In the course of the foreign trade reform, local governments were prohibited from establishing monopolies by local foreign trade enterprises within their territory. All local regulations have to be consistent with State laws and regulations.

4.6 Foreign trade corporations have full powers to make decisions within the framework of State laws, regulations and policies. The independent management of the enterprises is one of the objectives of the economic restructuring programme. To promote management efficiency, most of the local subsidiaries of the foreign trade corporations will be delinked from the national corporations and become independent legal entities responsible for their profits and losses. Local foreign trade corporations undertake obligations to fulfil contractual targets in export earnings, foreign exchange submission and economic efficiency. The State does not assign areas of exclusive geographic responsibility to foreign trade corporations. The plan targets for imports with centrally-held foreign exchange are distributed among national and local foreign trade corporations according to their operational ability. With the exception of nine import products and 21 export products, which are handled by one or several specifically designated foreign trade corporations, all other products may be imported or exported by any corporation. Foreign trade corporations are free to import without an import license any product other than the 53 products under the licensing system.

4.7 Production enterprises with foreign trade rights may import products for their use and other enterprises can request foreign trade corporations to conduct such imports and exports on their behalf. The fees charged by foreign trade corporations for this service are not fixed; however, they

are in general within the range of 1.5-3 per cent of the transaction value. The existence of a relatively stable source of supply for export products is one of the conditions for authorization to engage in exports. 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. Authorization is given to production enterprises to engage in direct exports in order to encourage the initiative of the enterprises and expand exports. An increasing number of production enterprises will be authorized to engage in foreign trade in the course of further foreign trade reforms and in pursuance of the economic development of the coastal regions. The government does not interfere with the business activities of enterprises. However, the production enterprises must abide by the laws and administrative regulations governing their business activities. Enterprises have been permitted to establish import and export associations in different sectors on a trial basis with a view to improving management efficiency and exchanging market information.

4.8 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. These chambers are non-governmental organizations and therefore do not perform any governmental function and do not have any control over the business activities of enterprises. Foreign trade corporations apply voluntarily for participation in the relevant chambers according to their own business scope and are free to withdraw their membership. The main functions of the chambers are to provide advisory services, facilitate the business activities of members and safeguard their common interests.

(b) Import and Export Controls

4.9 Foreign trade plans. 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. In drawing up the annual foreign trade plan, account is taken of the requirements of annual plan targets established in the long-term and medium-term foreign trade plans so that they can be harmonized with each other. 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 planning targets for the special economic zones. The duration of the plan is one calendar year.

4.10 Foreign trade planning can be classified into mandatory planning, guidance planning and non-planning. The criteria for determining mandatory foreign trade targets include the importance of the product for the national economy, the scarcity of resources as well as the supply and demand situation. The foreign trade plan contains the name, quantity and value of the main traded products. According to the present classification of plan targets, quantitative targets are largely used for products subject to mandatory and guidance export plans. The value plan targets are expressed in US dollars calculated according to the exchange rate published by the State Exchange Administration at the time when the plan is drawn up. The plan does not indicate suppliers in terms of a country or enterprise. Of the total export value, the products under mandatory planning presently represent approximately 30 per cent while the corresponding import share is approximately 20 per cent. With further reforms, the number and total value of products subject to mandatory planning will gradually decline. It is difficult to foresee which products will be removed from the mandatory plan and at what stage.

4.11 The estimated composition of China's foreign trade planning for 1988 is as follows. Export planning: the mandatory export plan includes 21 products accounting for 30 per cent of the total export value; the guidance export plan includes 91 products accounting for 15 per cent of the total export value and the remaining products not subject to planning take up 55 per cent of the total export value. Import planning: the mandatory plan includes 39 products accounting for 20 per cent of the total import value; the guidance import plan accounts for 20 per cent of the total import value and the remaining products not subject to planning take up 60 per cent of the total import value.

4.12 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 generally natural resources traded in bulk having an important bearing on the national economy and people's livelihood, and the State therefore strictly controls their export. 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 and, being only minimum targets, do not constitute barriers to trade.

4.13 Mandatory import plan targets are assigned only to national foreign trade corporations with competent operational ability. The State does not directly assign foreign trade plan targets to any other type of enterprise. The State foreign trade plan targets are assigned to the foreign economic relations and trade departments of local governments which in turn assign the targets to foreign trade enterprises at the provincial level. The local governments organize and supervise the implementation of the plan, and MOFERT monitors its implementation.

4.14 The foreign trade restructuring programme for 1988 provides that the provinces, autonomous regions and municipalities, foreign trade enterprises 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 foreign trade enterprises again on the basis of contracts.

4.15 Import and export restrictions. The purpose of China's import licensing system is to ensure that the goods which are imported are essential for economic development. There are no fixed quotas. There are no country-specific restrictions and there is no overt or hidden discrimination.

4.16 In the licensing regulations, there is no specific provision requiring import substitution. Users are nevertheless encouraged to purchase like products produced domestically (whether by domestic firms or foreign-owned firms) when such products are available and satisfy their 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. This is not a mandatory import restriction. In a broad sense, no product is excluded from importation except those under State prohibition.

4.17 The regulation announced by the State Planning Commission on measures for the substitution of importation by products of Sino-foreign joint and cooperative ventures is intended to support and assist the development of production in China. The products of such enterprises must be exported and sold domestically according to the ratios stipulated in the contracts between Chinese partners 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 foreign investment enterprises experiencing difficulty in achieving exports.

4.18 Mandatory plan targets for imports set the minimum amount of imports to be achieved; they therefore do not constitute global import restrictions. For the products subject to guidance plans, licenses are issued according to the guidance targets. For products outside the guidance plan, licenses are issued on evidence of foreign exchange possession and authorization to carry out import and export business. Regardless of their source of foreign exchange, import license applicants are required to provide evidence of foreign exchange availability. There are no foreign exchange allocations in the case of importation with retained foreign exchange.

4.19 MOFERT or its authorized local agencies decide on the issuing of import licenses on the basis of the justifications given by the applicants, and a certification by the competent authorities concerning the production of like products. Licenses are issued to foreign trade corporations and end-users taking into account their registered scope of business. Licenses for 14 products are issued by MOFERT; for 39 products licenses are issued by MOFERT-authorized local economic and trade bureaus. Two to three days are required to process license applications. Currently, no consideration is being given to the auctioning of licenses. Among the 53 products subject to import licensing, 46 can be imported by provincial foreign trade corporations within their registered scope of business. Only few products subject to import licensing, such as steel, timber, oil, sugar, rubber and man-made fibres, are imported by the foreign trade corporations designated by MOFERT. However, for these products, MOFERT may grant import licenses to local foreign trade corporations in the light of the situation and requirements of the provinces.

4.20 The import licensing system covers 53 products; 257 products are subject to export licensing. A reduction of the number of products under export licensing by about 40 per cent is under examination.

4.21 In 1987, of the total import value of US\$ 43.24 billion, the imports subject to licensing represented 43.7 per cent covering US\$ 18.9 billion

while the imports not subject to licensing represented 56.3 per cent covering US\$ 24.3 billion. In 1987, in value terms, products under export licensing accounted for 55 per cent of total exports.

4.22 Customs tariffs and other taxes. The Customs Tariff is based on the Customs Cooperation Council Nomenclature (CCCN), which facilitates tariff classification and international trade.

4.23 Foreign trade enterprises, which are independent self-accounting economic entities, take their decisions to import or export in accordance with commercial considerations. Customs duties, being a component of the price of imported and exported goods, are consequently an effective means to regulate importation and exportation. China, as a developing country, applies low tariffs or tariff exemptions to advance-technology equipment and goods not produced domestically that have an important bearing on the national economy and people's livelihood. However, China applies high tariffs to those products which can be produced domestically and the producers of which still need protection. Only nine items are subject to export duties. These duties serve to stabilize prices in international markets, to ensure the orderly exportation of commodities with a narrow market and to discourage the exportation of a few raw materials and semi-processed products in short supply.

4.24 The Customs Law provides that, in exceptional circumstances, temporary tariff reductions and exemptions may be granted by the General Customs Administration of China or jointly by the General Customs Administration and the financial departments concerned. The Regulation on Import and Export Duties stipulates that the customs authorities shall exempt products imported to process export products from import duties according to the actual export volume of the processed products.

4.25 The customs value is the normal c.i.f price subject to review by Customs, and for exported products the normal f.o.b. price minus export

duties. The customs value is usually based on the documented transaction price. Only when the prices declared are dubious and when the importer or his agent cannot provide adequate documentation, do the customs authority assess and determine the customs value. The complaint procedure that applies to tariff classifications and duty rate applications is equally applicable to disputes concerning customs valuation. The People's Court and the Customs administration exercise their functions independently from each other.

4.26 The import regulatory tax, imposed since July 1985, is a surcharge additional to the import tariff and not an internal tax. At present, only a few products for which the tariff rates are considered to be too low to provide the required protection are covered. The measure is considered to be temporary. Its abolition depends on the level of development of the domestic industry and the needs of the national economy. At present, there is no intention to incorporate the import regulatory tax into the tariff.

4.27 Under the agency system, foreign trade corporations conclude import and export transactions on behalf of production enterprises which pay service charges up to about three per cent of the contract value. This is a normal business practice. The service charges do not constitute an indirect protection for domestic products and are not treated as tariffs for budget purposes.

4.28 Products subject to import duties (including those subject to the import regulatory tax) accounted in 1987 for 64 per cent of total imports; the value of export products subject to export duties accounted for 1.6 per cent of total exports.

4.29 Production and export subsidies. The Government grants temporary incentives and economic assistance to enterprises. These include preferential and low interest loans for enterprises producing machinery and electronic products. They also include the foreign exchange retention scheme, the aim of which is to encourage enterprises to export and to earn

the foreign exchange income required to finance the import of goods and advanced technology. The portion of foreign exchange which may be retained is fixed in advance for a specified period of time. At present that portion is 25 per cent for most products. A number of enterprise groups in the electronics and automobile sectors are permitted to retain all their foreign exchange earnings. In the three sectors of light industrial products, arts and crafts, and clothing, a major portion of the foreign exchange export earnings may be retained.

4.30 The reasons for providing limited temporary economic assistance are the following: 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 significantly from the market rate. Some of the internal taxes levied on China's export products are not reimbursed entirely. The comparatively high prices for China's manufactured goods left over from the past have not yet been adjusted adequately.

4.31 At present, economic assistance comes from the central government revenue. The amount of the assistance represents about 4 per cent of the total export value. The level of assistance will decrease gradually; it is however not expected to disappear in the near future. 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 end of economic assistance.

(c) Internal taxes and border tax adjustment

4.32 Products are subject either to the Consolidated Industrial and Commercial Tax (CICT), or to the product tax or the value-added tax. The taxes are levied on imported products by customs at the customs entry points; on domestic goods they are levied at the production stage. Tax exemptions are granted for the products that are exported. Only the CICT

and the product tax levied at the last stage of production are reimbursed. The taxes levied on products sold by production enterprises to foreign trade enterprises for export are reimbursed when the products are actually exported.

4.33 According to a rough estimate, the CICT, the product tax and the value added tax account for about 50 per cent of total fiscal revenue.

(d) Internal regulations applied to products entering international trade

4.34 The State Inspection 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 Inspection Administration, together with other relevant authorities, may decide to apply an embargo. 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 is drawn up by the State Inspection Administration. In addition to compulsory inspection, the inspection bureaus also provide inspection services 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 standards applied to imported products may be classified into two categories: standards related to quality control and standards related to safety, health, workers' protection and environmental protection. Normally China does not establish uniform quality standards for all imports. Inspections are therefore made in accordance with the relevant clauses of commercial contracts, in accordance with standards established in the exporting countries or pursuant to generally applied international standards. In the absence of the above, China's national standards are used. China has

established such standards in the areas of safety, health, workers' protection and environmental protection.

4.35 Regulations on prices. The prices of imported products subject to State pricing are set with reference to the prices of similar 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. The elimination of price subsidies for 28 imported products is expected to take place gradually in the course of price reform, for which there is no specific time-table at present. The products in question include grains, timber and other other agricultural and forestry products. The relatively high pricing of manufactured products results from the past backwardness in production and technology. The problem, although eased with economic development, has not been entirely resolved.

(e) Controls applicable to specific areas of China only

4.36 The level of economic development of Tibet is different from that of the rest of China. In order to help the economic development of Tibet, a separate tariff with lower duty rates was established for imports from Nepal into Tibet. Imports of equipment and some consumer goods into the five SEZs, including Hainan Province, are subject to lower tariffs to attract foreign investment. These rates are applied to imports from all origins.

(f) China's bilateral trade relations

4.37 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 per cent 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.

4.38 Goods originating or destined for Hong Kong and Macao. 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 be applied to products originating in Hong Kong after 1997.

4.39 Quotas and licensing are applied to some products exported to Hong Kong, 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. These measures were adopted in light of the needs of the mainland market and the capacity of the Hong Kong market. It is too early to discuss the application of licenses to imports from Hong Kong and Macao after 1997 and 1999.

4.40 Frontier traffic with adjacent countries. China has border trade with Nepal, Burma, Pakistan, the Soviet Union and the Democratic People's Republic of Korea. 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 the Kingdom of Nepal, border trade does not involve preferential treatment. Similarly, there is no preferential treatment in the border trade between China and the Soviet Union.

4.41 Bilateral trade and payments agreements. China has bilateral trade agreements with some 75 developing countries. Some bilateral trade agreements have lists of products for mutual exchange attached which are intended to facilitate negotiations between the foreign trade corporations of both parties. They are binding on both parties to the agreement. The products transacted are subject to the general customs regulations and tariffs.

4.42 Under bilateral agreements with trade clearing account arrangements, import and export contracts are signed by the foreign trade corporations on the basis of commercial considerations without any preferential treatment. The clearing arrangements are a method of settlement to facilitate trade when both parties face a problem of foreign exchange shortage. Such arrangements provide for reciprocal rights and obligation without any privileges.

4.43 China has concluded protocols on barter trade with a few African countries setting out the quantities of products to be exchanged. These transactions are based on the prevailing international market prices. The traded products are subject to customs duties. 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. There are no plans to expand countertrade but the possibility to utilize countertrade as a last resort cannot be excluded.

4.44 With the socialist countries of Eastern Europe and the Soviet Union trade is generally conducted through bilateral agreements setting out the total value of exchange with attached lists of commodities for exchange. Every year, the two governments concerned negotiate a protocol on the exchange of goods with a list of import and export products. In accordance with the bilateral 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 foreign trade

corporations 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. No tariff preferences are accorded to the imports stipulated in the protocols. The licensing system also applies to trade conducted through clearing accounts.

4.45 Of the total value of China's trade with developing countries, 99.75 per cent is on the basis of cash payment trade, 0.05 per cent under trade clearing accounts and 0.2 per cent on the basis of barter trade; the border trade is negligible. From 1978 to 1987, China's trade with the USSR and the Eastern European countries represented on average 6.2 per cent of China's total foreign trade.

(g) Publication of trade regulations

4.46 China's customs laws and regulations, import and export duty rates, customs procedures and regulations on import and export licensing are published. 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 reductions, are published. There is an appeals procedure with respect to tariff classifications and customs value assessments.

4.47 The detailed targets established in the import and export plans constitute business secrets and are therefore not disclosed. The foreign exchange earning targets negotiated with the provinces and municipalities are also not published. This is consistent with Article X of the General Agreement and does not prevent producers in other countries from having equal competitive opportunities.

4.48 The rules and regulations applied by the China Import and Export Commodity Inspection Corporation and the Quality Administration are available to the public. The list of products subject to compulsory inspection is published by the State Inspection Administration.

(h) The relationship between China's foreign trade system and the GATT

4.49 China has at present an adequate basis and full capability to comply with GATT obligations and exercise GATT rights. A commitment to a timeframe for the accomplishment of economic reform is therefore not needed. The border mechanisms, such as tariffs, the import regulatory tax and the import licensing system serve to protect domestic industries and the external financial position. These measures are justified by Article XVIII of the General Agreement. 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, China intends to comply with the provisions of Article XVI when giving economic assistance to producers of export products. China does not believe that its production enterprises with foreign trade rights and its foreign trade corporations are within the meaning of GATT articles XVII merely because they are owned by the State.

4.50 China has as yet not enacted legislation to provide relief against imports which cause injury to domestic industry and has not established criteria to determine whether or not domestic products are competitive with imports. The question of domestic procedures for remedial measures against injurious imports under GATT Article XIX will be dealt with in the course of drafting the Foreign Trade Law.

4.51 Upon resuming its contracting party status, China will review its bilateral trade and payments agreements in light of relevant GATT rules.

4.52 China is studying the Anti-Dumping, the Subsidies and the Import Licensing codes. A decision whether or not to accept these codes has not yet been made. China's study of the Code on Technical Barriers to Trade indicates that it is possible that China might sign that Agreement at an appropriate time.