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AND  
SELECTED DOCUMENTS**

**Volume 7**

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**2001**

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## **PREFACE**

The 2001 volume of the WTO Basic Instruments and Selected Documents (BISD) contains Protocols, Decisions and Reports adopted in 2001. Certain documents have been numbered or renumbered to simplify indexing. WTO panel and Appellate Body reports, as well as arbitration awards, can be found in the Dispute Settlement Reports (DSR) series co-published by the WTO and Cambridge University Press.



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## WTO MEMBERS AND OBSERVERS

(as at 31 December 2001)

### A. MEMBERS (143)

Albania	Djibouti	Korea, Republic	Portugal
Angola	Dominica	of	Qatar
Antigua and Barbuda	Dominican Republic	Kuwait	Romania
Argentina	Ecuador	Kyrgyz Republic	Rwanda
Australia	Egypt	Latvia	Saint Kitts and Nevis
Austria	El Salvador	Lesotho	Saint Lucia
Bahrain	Estonia	Liechtenstein	Saint Vincent and the Grenadines
Bangladesh	European Communities	Lithuania	Senegal
Barbados	Fiji	Luxembourg	Sierra Leone
Belgium	Finland	Macau, China	Singapore
Belize	France	Madagascar	Slovak Republic
Benin	Gabon	Malawi	Slovenia
Bolivia	The Gambia	Malaysia	Solomon Islands
Botswana	Georgia	Maldives	South Africa
Brazil	Germany	Mali	Spain
Brunei Darussalam	Ghana	Malta	Sri Lanka
Bulgaria	Greece	Mauritania	Suriname
Burkina Faso	Grenada	Mauritius	Swaziland
Burundi	Guatemala	Mexico	Sweden
Cameroon	Guinea-Bissau	Moldova	Switzerland
Canada	Guinea, Republic of	Mongolia	Tanzania
Central African Republic	Guyana	Morocco	Thailand
Chad	Haiti	Mozambique	Togo
Chile	Honduras	Myanmar	Trinidad and Tobago
China	Hong Kong, China	Namibia	Tunisia
Colombia	Hungary	Netherlands	Turkey
Congo	Iceland	New Zealand	Uganda
Costa Rica	India	Nicaragua	United Arab Emirates
Côte d'Ivoire	Indonesia	Niger	United Kingdom
Croatia	Ireland	Nigeria	United States
Cuba	Israel	Norway	Uruguay
Cyprus	Italy	Oman	Venezuela
Czech Republic	Jamaica	Pakistan	Zambia
Democratic Republic of the Congo	Japan	Panama	Zimbabwe
Denmark	Jordan	Papua New Guinea	
	Kenya	Paraguay	
		Peru	
		Philippines	
		Poland	

## B. OBSERVERS (32)

Algeria	Holy See	Sudan
Andorra	Kazakhstan	Tajikistan
Armenia	Laos, P.D.R. of	Tonga
Azerbaijan	Lebanon	Ukraine
Bahamas	Nepal	Uzbekistan
Belarus	Russian Federation	Vanuatu
Bhutan	Samoa	Viet Nam
Bosnia and Herzegovina	Sao Tome and Principe	Yemen
Cambodia	Saudi Arabia	Yugoslavia, Federal
Cape Verde	Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu	Rep. of
Ethiopia		
Former Yugoslav Rep. of Macedonia	Seychelles	

# **OFFICERS OF THE MINISTERIAL CONFERENCE**

## **Fourth Session**

**(Doha, 9 - 14 November 2001)**

*Chairperson:*

Mr Youssef Hussain Kamal (Qatar)

*Vice-Chairpersons:*

Mrs Tebelelo Seretse (Botswana)

Mr Kimmo Sasi (Finland)

Mr Tomás Dueñas (Costa Rica)

## OFFICERS OF OTHER WTO BODIES (2001)

<i>General Council</i>	Mr Stuart Harbinson (Hong Kong, China)
<i>Dispute Settlement Body</i>	Mr Roger Farrell (New Zealand) followed by Mr Kåre Bryn (Norway)
<i>Trade Policy Review Body</i>	Mr Pekka Huhtaniemi (Finland)
<i>Council for Trade in Goods</i>	Mr István Major (Hungary) followed by Mr Milan Hovorka (Czech Republic)
- Committee on Agriculture	Mrs Apiradi Tantraporn (Thailand)
- Committee on Anti-Dumping Practices	Mrs Sahar Hosni Abdelaziz (Egypt)
- Committee on Customs Valuation	Mr K. J. Weerasinghe (Sri Lanka)
- Committee on Import Licensing	Ms Simone Rudder (Barbados)
- Committee on Market Access	Mr Yair Shiran (Israel)
- Committee on Rules of Origin	Mr Ho Young Ahn (Korea)
- Committee on Safeguards	Mr Martin Pospisil (Czech Republic)
- Committee on Sanitary and Phytosanitary Measures	Mr William Ehlers (Uruguay)
- Committee on Subsidies and Countervailing Measures	Mr Remo Moretta (Australia)
- Committee on Technical Barriers to Trade	Mr Joshua Phoho Setipa (Lesotho)
- Committee on Trade-Related Investment Measures	Mr Paul Bennett (Ireland)
- Working Party on State Trading Enterprises	Ms Maija Manika (Latvia)
- Committee of Participants on the Expansion of Trade in Information Technology Products	Mr Hiromi Yano (Japan)
<i>Council for Trade in Services</i>	Mr Celso Amorim (Brazil) followed by Mr Alejandro Jara (Chile)

- Committee on Specific Commitments	Ms Pimchanok Vonkhorporn (Thailand)
- Committee on Trade in Financial Services	Mr Jan-Peter Mout (Netherlands)
- Working Party on GATS Rules	Mr Hugo Cayrus (Uruguay)
- Working Party on Domestic Regulation	Mr Scott Gallacher (New Zealand)
<i>Council for Trade-Related Aspects of Intellectual Property Rights</i>	Mr Boniface Guwa Chidyausiku (Zimbabwe)
<i>Committee on Balance-of-Payments Restrictions</i>	Mr Hernando José Gomez (Colombia)
<i>Committee on Budget, Finance and Administration</i>	Mr M. Supperamaniam (Malaysia)
<i>Committee on Regional Trade Agreements</i>	Mrs Laurence Dubois-Destrizais (France)
<i>Committee on Trade and Development</i>	Mr Nathan Irumba (Uganda)
- Sub-Committee on Least-Developed Countries	Mr Simon Fuller (United Kingdom)
<i>Committee on Trade and Environment</i>	Mr Alejandro Jara (Chile)
<i>Working Group on the Relationship between Trade and Investment</i>	Mr Oguz Demiralp (Turkey)
<i>Working Group on the Interaction between Trade and Competition Policy</i>	Mr Frédéric Jenny (France)
<i>Working Group on Transparency in Government Procurement</i>	Mr Ronald Saborío Soto (Costa Rica)
<i>Plurilateral Trade Agreements:</i>	
<i>Committee on Government Procurement</i>	Mr Martin Loken (Canada)
<i>Committee on Trade in Civil Aircraft</i>	Mr Didier Chambovey (Switzerland)
- Sub-Committee of the Committee on Trade in Civil Aircraft	Mr Didier Chambovey (Switzerland)
- Technical Sub-Committee of the Committee on Trade in Civil Aircraft	Mr Didier Chambovey (Switzerland)



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## LEGAL INSTRUMENTS

### PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA (*Extract from WT/L/432*)

#### *Preamble*

The World Trade Organization ("WTO"), pursuant to the approval of the Ministerial Conference of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"), and the People's Republic of China ("China"),

*Recalling* that China was an original contracting party to the General Agreement on Tariffs and Trade 1947,

*Taking note* that China is a signatory to the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations,

*Taking note* of the Report of the Working Party on the Accession of China in document WT/ACC/CHN/49 ("Working Party Report"),

*Having regard* to the results of the negotiations concerning China's membership in the WTO,

*Agree* as follows:

#### *Part I - General Provisions*

##### 1. General

1. Upon accession, China accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.

2. The WTO Agreement to which China accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of accession. This Protocol, which shall include the commitments referred to in paragraph 342 of the Working Party Report, shall be an integral part of the WTO Agreement.

3. Except as otherwise provided for in this Protocol, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with entry into force of that Agreement shall be implemented by China as if it had accepted that Agreement on the date of its entry into force.

4. China may maintain a measure inconsistent with paragraph 1 of Article II of the General Agreement on Trade in Services ("GATS") provided that such a mea-

sure is recorded in the List of Article II Exemptions annexed to this Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.

2. Administration of the Trade Regime

(A) *Uniform Administration*

1. The provisions of the WTO Agreement and this Protocol shall apply to the entire customs territory of China, including border trade regions and minority autonomous areas, Special Economic Zones, open coastal cities, economic and technical development zones and other areas where special regimes for tariffs, taxes and regulations are established (collectively referred to as “special economic areas”).

2. China shall apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures of the central government as well as local regulations, rules and other measures issued or applied at the sub-national level (collectively referred to as “laws, regulations and other measures”) pertaining to or affecting trade in goods, services, trade-related aspects of intellectual property rights (“TRIPS”) or the control of foreign exchange.

3. China’s local regulations, rules and other measures of local governments at the sub-national level shall conform to the obligations undertaken in the WTO Agreement and this Protocol.

4. China shall establish a mechanism under which individuals and enterprises can bring to the attention of the national authorities cases of non-uniform application of the trade regime.

(B) *Special Economic Areas*

1. China shall notify to the WTO all the relevant laws, regulations and other measures relating to its special economic areas, listing these areas by name and indicating the geographic boundaries that define them. China shall notify the WTO promptly, but in any case within 60 days, of any additions or modifications to its special economic areas, including notification of the laws, regulations and other measures relating thereto.

2. China shall apply to imported products, including physically incorporated components, introduced into the other parts of China’s customs territory from the special economic areas, all taxes, charges and measures affecting imports, including import restrictions and customs and tariff charges, that are normally applied to imports into the other parts of China’s customs territory.

3. Except as otherwise provided for in this Protocol, in providing preferential arrangements for enterprises within such special economic areas, WTO provisions on non-discrimination and national treatment shall be fully observed.

(C) *Transparency*

1. China undertakes that only those laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange that are published and readily available to other WTO Members, individuals and enterprises, shall be enforced. In addition, China shall make available to WTO Members, upon request, all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange before such measures are implemented or enforced. In emergency situations, laws, regulations and other measures shall be made available at the latest when they are implemented or enforced.

2. China shall establish or designate an official journal dedicated to the publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange and, after publication of its laws, regulations or other measures in such journal, shall provide a reasonable period for comment to the appropriate authorities before such measures are implemented, except for those laws, regulations and other measures involving national security, specific measures setting foreign exchange rates or monetary policy and other measures the publication of which would impede law enforcement. China shall publish this journal on a regular basis and make copies of all issues of this journal readily available to individuals and enterprises.

3. China shall establish or designate an enquiry point where, upon request of any individual, enterprise or WTO Member all information relating to the measures required to be published under paragraph 2(C)1 of this Protocol may be obtained. Replies to requests for information shall generally be provided within 30 days after receipt of a request. In exceptional cases, replies may be provided within 45 days after receipt of a request. Notice of the delay and the reasons therefor shall be provided in writing to the interested party. Replies to WTO Members shall be complete and shall represent the authoritative view of the Chinese government. Accurate and reliable information shall be provided to individuals and enterprises.

(D) *Judicial Review*

1. China shall establish, or designate, and maintain tribunals, contact points and procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of the GATT 1994, Article VI of the GATS and the relevant provisions of the TRIPS Agreement. Such tribunals shall be impartial and independent of the agency entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Review procedures shall include the opportunity for appeal, without penalty, by individuals or enterprises affected by any administrative action subject to

review. If the initial right of appeal is to an administrative body, there shall in all cases be the opportunity to choose to appeal the decision to a judicial body. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any right to further appeal.

3. Non-discrimination

Except as otherwise provided for in this Protocol, foreign individuals and enterprises and foreign-funded enterprises shall be accorded treatment no less favourable than that accorded to other individuals and enterprises in respect of:

- (a) the procurement of inputs and goods and services necessary for production and the conditions under which their goods are produced, marketed or sold, in the domestic market and for export; and
- (b) the prices and availability of goods and services supplied by national and sub-national authorities and public or state enterprises, in areas including transportation, energy, basic telecommunications, other utilities and factors of production.

4. Special Trade Arrangements

Upon accession, China shall eliminate or bring into conformity with the WTO Agreement all special trade arrangements, including barter trade arrangements, with third countries and separate customs territories, which are not in conformity with the WTO Agreement.

5. Right to Trade

1. Without prejudice to China's right to regulate trade in a manner consistent with the WTO Agreement, China shall progressively liberalize the availability and scope of the right to trade, so that, within three years after accession, all enterprises in China shall have the right to trade in all goods throughout the customs territory of China, except for those goods listed in Annex 2A which continue to be subject to state trading in accordance with this Protocol. Such right to trade shall be the right to import and export goods. All such goods shall be accorded national treatment under Article III of the GATT 1994, especially paragraph 4 thereof, in respect of their internal sale, offering for sale, purchase, transportation, distribution or use, including their direct access to end-users. For those goods listed in Annex 2B, China shall phase out limitation on the grant of trading rights pursuant to the schedule in that Annex. China shall complete all necessary legislative procedures to implement these provisions during the transition period.

2. Except as otherwise provided for in this Protocol, all foreign individuals and enterprises, including those not invested or registered in China, shall be accorded treatment no less favourable than that accorded to enterprises in China with

respect to the right to trade.

#### 6. State Trading

1. China shall ensure that import purchasing procedures of state trading enterprises are fully transparent, and in compliance with the WTO Agreement, and shall refrain from taking any measure to influence or direct state trading enterprises as to the quantity, value, or country of origin of goods purchased or sold, except in accordance with the WTO Agreement.

2. As part of China's notification under the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, China shall also provide full information on the pricing mechanisms of its state trading enterprises for exported goods.

#### 7. Non-Tariff Measures

1. China shall implement the schedule for phased elimination of the measures contained in Annex 3. During the periods specified in Annex 3, the protection afforded by the measures listed in that Annex shall not be increased or expanded in size, scope or duration, nor shall any new measures be applied, unless in conformity with the provisions of the WTO Agreement.

2. In implementing the provisions of Articles III and XI of the GATT 1994 and the Agreement on Agriculture, China shall eliminate and shall not introduce, re-introduce or apply non-tariff measures that cannot be justified under the provisions of the WTO Agreement. For all non-tariff measures, whether or not referred to in Annex 3, that are applied after the date of accession, consistent with the WTO Agreement or this Protocol, China shall allocate and otherwise administer such measures in strict conformity with the provisions of the WTO Agreement, including GATT 1994 and Article XIII thereof, and the Agreement on Import Licensing Procedures, including notification requirements.

3. China shall, upon accession, comply with the TRIMs Agreement, without recourse to the provisions of Article 5 of the TRIMs Agreement. China shall eliminate and cease to enforce trade and foreign exchange balancing requirements, local content and export or performance requirements made effective through laws, regulations or other measures. Moreover, China will not enforce provisions of contracts imposing such requirements. Without prejudice to the relevant provisions of this Protocol, China shall ensure that the distribution of import licences, quotas, tariff-rate quotas, or any other means of approval for importation, the right of importation or investment by national and sub-national authorities, is not conditioned on: whether competing domestic suppliers of such products exist; or performance requirements of any kind, such as local content, offsets, the transfer of technology, export performance or the conduct of research and development in China.

4. Import and export prohibitions and restrictions, and licensing requirements

affecting imports and exports shall only be imposed and enforced by the national authorities or by sub-national authorities with authorization from the national authorities. Such measures which are not imposed by the national authorities or by sub-national authorities with authorization from the national authorities, shall not be implemented or enforced.

8. Import and Export Licensing

1. In implementing the WTO Agreement and provisions of the Agreement on Import Licensing Procedures, China shall undertake the following measures to facilitate compliance with these agreements:

(a) China shall publish on a regular basis the following in the official journal referred to in paragraph 2(C)2 of this Protocol:

– by product, the list of all organizations, including those organizations delegated such authority by the national authorities, that are responsible for authorizing or approving imports or exports, whether through grant of licence or other approval;

– procedures and criteria for obtaining such import or export licences or other approvals, and the conditions for deciding whether they should be granted;

– a list of all products, by tariff number, that are subject to tendering requirements, including information on products subject to such tendering requirements and any changes, pursuant to the Agreement on Import Licensing Procedures;

– a list of all goods and technologies whose import or export are restricted or prohibited; these goods shall also be notified to the Committee on Import Licensing;

– any changes to the list of goods and technologies whose import and export are restricted or prohibited.

Copies of these submissions in one or more official languages of the WTO shall be forwarded to the WTO for circulation to WTO Members and for submission to the Committee on Import Licensing within 75 days of each publication.

(b) China shall notify the WTO of all licensing and quota requirements remaining in effect after accession, listed separately by HS tariff line and with the quantities associated with the restriction, if any, and the justification for maintaining the restriction or its scheduled date of termination.

(c) China shall submit the notification of its import licensing procedures to the Committee on Import Licensing. China shall report annually to the Com-

mittee on Import Licensing on its automatic import licensing procedures, explaining the circumstances which give rise to these requirements and justifying the need for their continuation. This report shall also provide the information listed in Article 3 of the Agreement on Import Licensing Procedures.

- (d) China shall issue import licences for a minimum duration of validity of six months, except where exceptional circumstances make this impossible. In such cases, China shall promptly notify the Committee on Import Licensing of the exceptional circumstances requiring the shorter period of licence validity.

2. Except as otherwise provided for in this Protocol, foreign individuals and enterprises and foreign-funded enterprises shall be accorded treatment no less favourable than that accorded to other individuals and enterprises in respect of the distribution of import and export licences and quotas.

#### 9. Price Controls

1. China shall, subject to paragraph 2 below, allow prices for traded goods and services in every sector to be determined by market forces, and multi-tier pricing practices for such goods and services shall be eliminated.

2. The goods and services listed in Annex 4 may be subject to price controls, consistent with the WTO Agreement, in particular Article III of the GATT 1994 and Annex 2, paragraphs 3 and 4 of the Agreement on Agriculture. Except in exceptional circumstances, and subject to notification to the WTO, price controls shall not be extended to goods or services beyond those listed in Annex 4, and China shall make best efforts to reduce and eliminate these controls.

3. China shall publish in the official journal the list of goods and services subject to state pricing and changes thereto.

#### 10. Subsidies

1. China shall notify the WTO of any subsidy within the meaning of Article 1 of the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”), granted or maintained in its territory, organized by specific product, including those subsidies defined in Article 3 of the SCM Agreement. The information provided should be as specific as possible, following the requirements of the questionnaire on subsidies as noted in Article 25 of the SCM Agreement.

2. For purposes of applying Articles 1.2 and 2 of the SCM Agreement, subsidies provided to state-owned enterprises will be viewed as specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies.

3. China shall eliminate all subsidy programmes falling within the scope of Article 3 of the SCM Agreement upon accession.

11. Taxes and Charges Levied on Imports and Exports

1. China shall ensure that customs fees or charges applied or administered by national or sub-national authorities, shall be in conformity with the GATT 1994.

2. China shall ensure that internal taxes and charges, including value-added taxes, applied or administered by national or sub-national authorities shall be in conformity with the GATT 1994.

3. China shall eliminate all taxes and charges applied to exports unless specifically provided for in Annex 6 of this Protocol or applied in conformity with the provisions of Article VIII of the GATT 1994.

4. Foreign individuals and enterprises and foreign-funded enterprises shall, upon accession, be accorded treatment no less favourable than that accorded to other individuals and enterprises in respect of the provision of border tax adjustments.

12. Agriculture

1. China shall implement the provisions contained in China's Schedule of Concessions and Commitments on Goods and, as specifically provided in this Protocol, those of the Agreement on Agriculture. In this context, China shall not maintain or introduce any export subsidies on agricultural products.

2. China shall, under the Transitional Review Mechanism, notify fiscal and other transfers between or among state-owned enterprises in the agricultural sector (whether national or sub-national) and other enterprises that operate as state trading enterprises in the agricultural sector.

13. Technical Barriers to Trade

1. China shall publish in the official journal all criteria, whether formal or informal, that are the basis for a technical regulation, standard or conformity assessment procedure.

2. China shall, upon accession, bring into conformity with the TBT Agreement all technical regulations, standards and conformity assessment procedures.

3. China shall apply conformity assessment procedures to imported products only to determine compliance with technical regulations and standards that are consistent with the provisions of this Protocol and the WTO Agreement. Conformity assessment bodies will determine the conformity of imported products with commercial terms of contracts only if authorized by the parties to such contract. China shall ensure that such inspection of products for compliance with the commercial terms of contracts does not affect customs clearance or the granting of import li-

cences for such products.

4. (a) Upon accession, China shall ensure that the same technical regulations, standards and conformity assessment procedures are applied to both imported and domestic products. In order to ensure a smooth transition from the current system, China shall ensure that, upon accession, all certification, safety licensing, and quality licensing bodies and agencies are authorized to undertake these activities for both imported and domestic products, and that, one year after accession, all conformity assessment bodies and agencies are authorized to undertake conformity assessment for both imported and domestic products. The choice of body or agency shall be at the discretion of the applicant. For imported and domestic products, all bodies and agencies shall issue the same mark and charge the same fee. They shall also provide the same processing periods and complaint procedures. Imported products shall not be subject to more than one conformity assessment. China shall publish and make readily available to other WTO Members, individuals, and enterprises full information on the respective responsibilities of its conformity assessment bodies and agencies.

(b) No later than 18 months after accession, China shall assign the respective responsibilities of its conformity assessment bodies solely on the basis of the scope of work and type of product without any consideration of the origin of a product. The respective responsibilities that will be assigned to China's conformity assessment bodies will be notified to the TBT Committee 12 months after accession.

#### 14. Sanitary and Phytosanitary Measures

China shall notify to the WTO all laws, regulations and other measures relating to its sanitary and phytosanitary measures, including product coverage and relevant international standards, guidelines and recommendations, within 30 days after accession.

#### 15. Price Comparability in Determining Subsidies and Dumping

Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Anti-Dumping Agreement") and the SCM Agreement shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

(a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:

(i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product

with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;

(ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.

- (b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.
- (c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.
- (d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.

#### 16. Transitional Product-Specific Safeguard Mechanism

1. In cases where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products, the WTO Member so affected may request consultations with China with a view to seeking a mutually satisfactory solution, including whether the affected WTO Member should pursue application of a measure under the Agreement on Safeguards. Any such request shall be notified immediately to the Committee on Safeguards.

2. If, in the course of these bilateral consultations, it is agreed that imports of Chinese origin are such a cause and that action is necessary, China shall take such action as to prevent or remedy the market disruption. Any such action shall be notified immediately to the Committee on Safeguards.

3. If consultations do not lead to an agreement between China and the WTO Member concerned within 60 days of the receipt of a request for consultations, the WTO Member affected shall be free, in respect of such products, to withdraw concessions or otherwise to limit imports only to the extent necessary to prevent or remedy such market disruption. Any such action shall be notified immediately to the Committee on Safeguards.

4. Market disruption shall exist whenever imports of an article, like or directly competitive with an article produced by the domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury to the domestic industry. In determining if market disruption exists, the affected WTO Member shall consider objective factors, including the volume of imports, the effect of imports on prices for like or directly competitive articles, and the effect of such imports on the domestic industry producing like or directly competitive products.

5. Prior to application of a measure pursuant to paragraph 3, the WTO Member taking such action shall provide reasonable public notice to all interested parties and provide adequate opportunity for importers, exporters and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest. The WTO Member shall provide written notice of the decision to apply a measure, including the reasons for such measure and its scope and duration.

6. A WTO Member shall apply a measure pursuant to this Section only for such period of time as may be necessary to prevent or remedy the market disruption. If a measure is taken as a result of a relative increase in the level of imports, China has the right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the trade of the WTO Member applying the measure, if such measure remains in effect more than two years. However, if a measure is taken as a result of an absolute increase in imports, China has a right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the trade of the WTO Member applying the measure, if such measure remains in effect more than three years. Any such action by China shall be notified immediately to the Committee on Safeguards.

7. In critical circumstances, where delay would cause damage which it would be difficult to repair, the WTO Member so affected may take a provisional safeguard measure pursuant to a preliminary determination that imports have caused or threatened to cause market disruption. In this case, notification of the measures

taken to the Committee on Safeguards and a request for bilateral consultations shall be effected immediately thereafter. The duration of the provisional measure shall not exceed 200 days during which the pertinent requirements of paragraphs 1, 2 and 5 shall be met. The duration of any provisional measure shall be counted toward the period provided for under paragraph 6.

8. If a WTO Member considers that an action taken under paragraphs 2, 3 or 7 causes or threatens to cause significant diversions of trade into its market, it may request consultations with China and/or the WTO Member concerned. Such consultations shall be held within 30 days after the request is notified to the Committee on Safeguards. If such consultations fail to lead to an agreement between China and the WTO Member or Members concerned within 60 days after the notification, the requesting WTO Member shall be free, in respect of such product, to withdraw concessions accorded to or otherwise limit imports from China, to the extent necessary to prevent or remedy such diversions. Such action shall be notified immediately to the Committee on Safeguards.

9. Application of this Section shall be terminated 12 years after the date of accession.

#### 17. Reservations by WTO Members

All prohibitions, quantitative restrictions and other measures maintained by WTO Members against imports from China in a manner inconsistent with the WTO Agreement are listed in Annex 7. All such prohibitions, quantitative restrictions and other measures shall be phased out or dealt with in accordance with mutually agreed terms and timetables as specified in the said Annex.

#### 18. Transitional Review Mechanism

1. Those subsidiary bodies<sup>1</sup> of the WTO which have a mandate covering China's commitments under the WTO Agreement or this Protocol shall, within one year after accession and in accordance with paragraph 4 below, review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of this Protocol. China shall provide relevant information, including information specified in Annex 1A, to each subsidiary body in advance of the review. China can also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in this Protocol, in those subsidiary bodies which have a relevant mandate. Each subsidiary body shall report the results of such review promptly to the relevant Council established by

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<sup>1</sup> Council for Trade in Goods, Council for Trade-Related Aspects of Intellectual Property Rights, Council for Trade in Services, Committees on Balance-of-Payments Restrictions, Market Access (covering also ITA), Agriculture, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Subsidies and Countervailing Measures, Anti-Dumping Measures, Customs Valuation, Rules of Origin, Import Licensing, Trade-Related Investment Measures, Safeguards, Trade in Financial Services.

paragraph 5 of Article IV of the WTO Agreement, if applicable, which shall in turn report promptly to the General Council.

2. The General Council shall, within one year after accession, and in accordance with paragraph 4 below, review the implementation by China of the WTO Agreement and the provisions of this Protocol. The General Council shall conduct such review in accordance with the framework set out in Annex 1B and in the light of the results of any reviews held pursuant to paragraph 1. China also can raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in this Protocol. The General Council may make recommendations to China and to other Members in these respects.

3. Consideration of issues pursuant to this Section shall be without prejudice to the rights and obligations of any Member, including China, under the WTO Agreement or any Plurilateral Trade Agreement, and shall not preclude or be a precondition to recourse to consultation or other provisions of the WTO Agreement or this Protocol.

4. The review provided for in paragraphs 1 and 2 will take place after accession in each year for eight years. Thereafter there will be a final review in year 10 or at an earlier date decided by the General Council.

#### *Part II - Schedules*

1. The Schedules<sup>2</sup> annexed to this Protocol shall become the Schedule of Concessions and Commitments annexed to the GATT 1994 and the Schedule of Specific Commitments annexed to the GATS relating to China. The staging of concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the relevant Schedules.

2. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of accession.

#### *Part III - Final Provisions*

1. This Protocol shall be open for acceptance, by signature or otherwise, by China until 1 January 2002.

2. This Protocol shall enter into force on the thirtieth day following the day of its acceptance.

3. This Protocol shall be deposited with the Director-General of the WTO. The Director-General shall promptly furnish a certified copy of this Protocol and a

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<sup>2</sup> Not reproduced.

notification of acceptance by China thereof, pursuant to paragraph 1 of Part III of this Protocol, to each WTO Member and to China.

4. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Doha this tenth day of November two thousand and one, in a single copy, in the English, French and Spanish languages, each text being authentic, except that a Schedule annexed hereto may specify that it is authentic in only one or more of these languages.

## *ANNEX 1A*

### *INFORMATION<sup>3</sup> TO BE PROVIDED BY CHINA IN THE CONTEXT OF THE TRANSITIONAL REVIEW MECHANISM*

China is requested to provide information on the following in accordance with Article 18.1 of the Protocol of Accession. The requested information should be provided annually, except in those cases where China and the Members agree that it is no longer required for the review.

#### *I. ECONOMIC DATA*

- (a) most recently available import and export statistics by value and volume, by supplier country at the HS 8-digit level
- (b) current account data on services, by source and destination in line with the statistical requirements of the IMF
- (c) capital account data for inward- and outward-realized foreign direct investment by source and destination in line with the statistical requirements of the IMF
- (d) the value of tariff revenues, non-tariff taxes, and other border charges levied exclusively on imports by product or at the highest level of detail possible, but at least by HS heading (4-digit) at the beginning of the review mechanism
- (e) the value of export duties/taxes by product
- (f) the volume of trade subject to tariff exemptions by product or at the high-

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<sup>3</sup> This “information” refers to information other than that required by the general notification requirements for WTO Members. To avoid duplication, it is understood that Members will accept information provided on an annual basis by China to other WTO bodies as satisfying the information requirements in Annex 1.

est level of detail possible, but at least by HS heading (4-digit) at the beginning of the review mechanism

- (g) the value of commissions, mark ups and other fees charged on imports subject to state trading or designated trading imposed through government regulation or guidance, if any
- (h) the shares of imports and exports accounted for by the trading activities of state-owned enterprises
- (i) annual economic development programmes, China's five-year programmes and any industrial or sectoral programmes or policies (including programmes relating to investment, export, import, productions, pricing or other targets, if any) promulgated by central and sub-central government entities
- (j) annual receipts under the Value-Added Tax (VAT), with separate information for imports and domestic products as well as information on VAT rebates

## *II. ECONOMIC POLICIES*

1. Non-Discrimination (to be notified to the Council for Trade in Goods)
  - (a) the repeal and cessation of all WTO inconsistent laws, regulations and other measures on national treatment
  - (b) the repeal or modification to provide full GATT national treatment in respect of laws, regulations and other measures applying to internal sale, offering for sale, purchase, transportation, distribution or use of: after sales service, pharmaceutical products, cigarettes, spirits, chemicals and boiler and pressure vessels (for pharmaceutical products, chemicals and spirits there is a reservation of the right to use a transitional period of one year from the date of accession in order to amend or repeal relevant legislation)
2. Foreign Exchange and Payments (to be notified to the Committee on Balance-of-Payments Restrictions)
  - (a) exchange measures as required under Article VIII, Section 5 of the IMF's Articles of Agreement and such other information on China's exchange measures as was deemed necessary in the context of the transitional review mechanism
3. Investment Regime (to be notified to the Committee on Trade-Related Investment Measures)
  - (a) completed revisions to investment guidelines in conformity with the WTO Agreement

4. Pricing Policies (to be notified to the Committee on Subsidies and Countervailing Measures)
  - (a) application of existing or any other price controls and the reason for their use
  - (b) pricing mechanisms of China's state trading enterprises for exported products

*III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES*

1. Structure and Powers of the Government/Authority of Sub-Central Governments/Uniform Administration (to be notified to the General Council)
  - (a) revision or enactment of domestic laws, regulations and other measures related to China's commitments under the WTO Agreement and Protocol, including those of local governments at the sub-national level, that have been promulgated since accession or the previous meeting of the relevant body under the Transitional Review Mechanism
  - (b) establishment and operation (upon accession) of the mechanism pursuant to Section 2(A), paragraph 4 of the Protocol under which individuals and enterprises can bring cases of non-uniform application of the trade regime to the attention of national authorities

*IV. POLICIES AFFECTING TRADE IN GOODS*

1. Tariff Rate Quotas (to be notified to the Committee on Market Access)
  - (a) administration of TRQs on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified timeframes, administrative procedures and requirements and evidence of a consistent national allocation (and reallocation) policy including:
    - (i) provision of volume/value of the quota or TRQ made available;
    - (ii) reallocated quota or TRQ applied for;
    - (iii) the volume/value of requests for allocation or reallocation denied;
    - (iv) fill rates for the quota or TRQ;
    - (v) for TRQs, the amount of any goods entered at the over quota rate; and
    - (vi) time taken to grant a quota or TRQ allocation.
2. Non-Tariff Measures including Quantitative Import Restrictions (to be notified to the Committee on Market Access)
  - (a) the introduction, re-introduction or application of any non-tariff measures

- other than those listed in Annex 3 of the Protocol and elimination of non-tariff measures
- (b) implementation of the schedule for phased elimination of the measures contained in Annex 3
  - (c) quota allocation and reallocation in conformity with WTO requirements, including the Agreement on Licensing Procedures following criteria set out in the Report of the Working Party on the Accession of China (“Report “)
  - (d) distribution licences, quotas, tariff rate quotas or any other means of approval for importation are not subject to conditions set out in Section 7, paragraph 3 of the Protocol
3. Import Licensing (to be notified to the Committee on Import Licensing)
- (a) implementation of the provisions of the Agreement on Import Licensing Procedures and the WTO Agreement applying the measures set out in Section 8 of the Protocol including provision of the time taken to grant an import licence
4. Customs Valuation (to be notified to the Committee on Customs Valuation)
- (a) the use of valuation methods, other than the stated transaction value
5. Export Restrictions (to be notified to the Council for Trade in Goods)
- (a) any restrictions on exports through non-automatic licensing or other means justified by specific product under the WTO Agreement or the Protocol
6. Safeguards (to be notified to the Committee on Safeguards)
- (a) implementation of China’s Regulation on Safeguards
7. Technical Barriers to Trade (to be notified to the Committee on Technical Barriers to Trade)
- (a) notification of acceptance of the Code of Good Practice not later than four months after China’s accession
  - (b) periodic review of existing standards of government standardizing bodies and harmonization of the same with relevant international standards where appropriate
  - (c) revision of current voluntary national, local and sectoral standards so as to harmonize them with international standards
  - (d) use of the terms “technical regulations” and “standards” according to their meaning under the TBT Agreement in China’s notifications under the TBT Agreement, including under Article 15.2 thereof and publications refer-

- enced therein, and in modifications of existing measures
- (e) review of technical regulations every five years to ensure international standards are used in accordance with Article 2.4 of the Agreement and provision for adoption of international standards as the basis for technical regulation as part of its notification under Article 15.2 of the Agreement
  - (f) progress report on increase of the use of international standards as the basis for technical regulations by ten per cent in five years
  - (g) provision of procedures to implement Article 2.7 of the Agreement
  - (h) provision of a list of relevant local governmental and non-governmental bodies that are authorized to adopt technical regulations or conformity assessment procedures as part of China's notification under Article 15.2 of the Agreement
  - (i) ongoing updates on the conformity assessment bodies that are recognized by China
  - (j) enactment and implementation of a new law and relevant regulations regarding assessment and control of chemicals for the protection of the environment in which complete national treatment and full consistency with international practices would be ensured within one year after China's accession following conditions set out in 3(t) of the TBT Working Party Report
  - (k) information on whether, one year after accession, all conformity assessment bodies and agencies are authorized to undertake conformity assessment for both imported and domestic products and are following the conditions outlined in Section 13, subparagraph 4(a) of the Protocol
  - (l) assignment of the respective responsibilities of China's conformity assessment bodies solely on the basis of the scope of work and type of product without any consideration of the origin of a product no later than eighteen months after accession
  - (m) notification of the respective responsibilities assigned to China's conformity assessment bodies to the TBT committee 12 months after accession
8. Trade-Related Investment Measures (to be notified to the Committee on Trade-Related Investment Measures)
- (a) elimination and cessation of enforcement of trade and foreign exchange balancing requirements, local content and export performance offsets and technology transfer requirements made effective through laws, regulations or other measures
  - (b) amendments to ensure lifting of all measures applicable to motor vehicle

- producers restricting the categories, types or models of vehicles permitted for production (to be completely removed two years after accession)
- (c) increased limits within which investments in motor vehicle manufacturing could be approved at the provincial government at the levels outlined in the Report
9. State Trading Entities (to be notified to the Council for Trade in Goods)
- (a) progressive abolishment of state trading in respect of silk measures, increasing and extending trading rights, granting the right to trade to all individuals no later than 1 January 2005
  - (b) access to supplies of raw materials in the textiles sector at conditions no less favourable than for domestic users, and not adversely affected access to supplies of raw materials as enjoyed under existing arrangements
  - (c) progressive increases in access by non state trading entities to trade in fertilizer and oil and the filling of quantities available for import by non state trading entities
10. Government Procurement (to be notified to the Council for Trade in Goods)
- (a) laws, regulations and procedures
  - (b) procurement in a transparent manner and application of the MFN principle
- V. *POLICIES AFFECTING TRADE IN SERVICES (to be notified to the Council for Trade in Services)*
- (a) regularly updated lists of all laws, regulations, administrative guidelines and other measures affecting trade in each service sector or sub-sector indicating, in each case, the service sector(s) or sub-sector(s) they apply to, the date of publication and the date of entry into force
  - (b) China's licensing procedures and conditions, if any, between domestic and foreign service suppliers, measures implementing the free choice of partner and list of transport agreements covered by MFN exceptions
  - (c) regularly updated lists of the authorities, at all levels of government (including organizations with delegated authority) which are responsible for the adoption, implementation and reception of appeals for laws, regulations, administrative guidelines and other measures affecting trade in services
  - (d) independence of the regulatory authorities from the service suppliers
  - (e) foreign and domestic suppliers in sectors where specific commitments have been undertaken indicating the state of play of licensing applications

on sector and sub-sector levels (accepted, pending, rejected)

VI. *TRADE-RELATED INTELLECTUAL PROPERTY REGIME (to be notified to the Council for Trade-Related Aspects of Intellectual Property Rights)*

- (a) amendments to Copyright, Trademark and Patent Law, as well as relevant implementing rules covering different areas of the TRIPS Agreement bringing all such measures into full compliance with and full application of the TRIPS Agreement and the protection of undisclosed information
- (b) enhanced IPR enforcement efforts through the application of more effective administrative sanctions as described in the Report

VII. *SPECIFIC QUESTIONS IN THE CONTEXT OF THE TRANSITIONAL REVIEW MECHANISM (to be notified to the General Council or relevant subsidiary body)*

- (a) response to specific questions in the context of the transitional review mechanism received from the General Council or a subsidiary body

*ANNEX 1B*

*ISSUES TO BE ADDRESSED BY THE GENERAL COUNCIL IN ACCORDANCE WITH SECTION 18.2 OF CHINA'S PROTOCOL OF ACCESSION*

- Review of the reports and the issues referred to in Section 18.1 of China's Protocol of Accession.
- Development of China's trade with WTO Members and other trading partners, including the volume, direction and composition of trade.
- Recent developments and cross-sectoral issues regarding China's trade regime.

The Rules of Procedure of the WTO General Council shall apply unless specified otherwise. China shall submit any information and the documentation relating to the review no later than 30 days prior to the date of the review.

## ANNEX 2A1

## PRODUCTS SUBJECT TO STATE TRADING (IMPORT)

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	STATE TRADING ENTERPRISES
GRAIN	1	10011000	Durum wheat	China National Cereals, Oil & Foodstuff Import and Export Co.
	2	10019010	Seed of wheat & maslin, excl. durum wheat	
	3	10019090	Wheat & maslin, excl. for seeding and durum wheat	
	4	11010000	Wheat or maslin flour	
	5	11031100	Groats & meal of wheat	
	6	11032100	Pellets of wheat	
	7	10051000	Maize (corn) seed	
	8	10059000	Maize (corn), excl. for seeding	
	9	11022000	Maize (corn) flour	
	10	11031300	Groats & meal of maize (corn)	
	11	11042300	Other worked grains of maize (corn) (for example, hulled, pearled, sliced or kibbled)	
	12	10061010	Rice in husk (paddy or rough) seed	
	13	10061090	Rice in husk (paddy or rough), excl. for seeding	
	14	10062000	Husked (brown) rice	
	15	10063000	Semi-milled or wholly milled rice, whether or not polished or glazed	
	16	10064000	Broken rice	
	17	11023000	Rice flour	
	18	11031400	Groats & meal of rice	
VEGETABLE OIL	19	15071000	Crude soybean oil, whether or not degummed, but not chemically modified	1. China National Cereals, Oil & Foodstuff Import and Export Co. 2. China National Native Products and Animal By-products Import & Export Co. 3. China Resources Co. 4. China Nam Kwong National Import & Export Co. 5. China Liangfeng Cereals Import & Export Co. 6. China Cereals, Oil & Foodstuff Co.(Group)
	20	15079000	Soybean oil and its fractions, refined, but not chemically modified	
	21	15111000	Crude palm oil, but not chemically modified	
	22	15119000	Palm oil and its fractions, refined, but not chemically modified	
	23	15141010	Crude rape, colza oil, but not chemically modified	
	24	15141090	Crude mustard oil, but not chemically modified	
	25	15149000	Rape, colza or mustard oil and fractions thereof, refined, but not chemically modified	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	STATE TRADING ENTERPRISES
SUGAR	26	17011100	Raw cane sugar, in solid form, not containing added flavouring or colouring matter	1. China National Cereals, Oil & Foodstuff Import and Export Co. 2. China Export Commodities Base Construction Co. 3. China Overseas Trade Co. 4. China Sugar & Wine Co. (Group) 5. China Commerce Foreign Trade Co.
	27	17011200	Raw beet sugar, in solid form, not containing added flavouring or colouring matter	
	28	17019100	Cane or beet sugar and chemically pure sucrose, in solid form, containing added flavouring or colouring	
	29	17019910	Granulated sugar	
	30	17019920	Superfine sugar	
	31	17019990	Cane or beet sugar and chemically pure sucrose, in solid form, not containing added flavouring or colouring matter, excl. granulated sugar, superfine sugar and raw sugar	
TOBACCO	32	24011010	Flue-cured tobacco, not stemmed/stripped	China National Tobacco Import & Export Co.
	33	24011090	Tobacco other than flue-cured, not stemmed/stripped	
	34	24012010	Flue-cured tobacco, partly or wholly stemmed/stripped	
	35	24012090	Tobacco other than flue-cured, partly or wholly stemmed/stripped	
	36	24013000	Tobacco refuse	
	37	24021000	Cigars, cheroots & cigarillos, containing tobacco	
	38	24022000	Cigarettes containing tobacco	
	39	24029000	Cigars, cheroots, cigarillos and cigarettes, of tobacco substitutes	
	40	24031000	Smoking tobacco whether or not containing tobacco substitutes in any proportion	
	41	24039100	Homogenized or "reconstituted" tobacco	
	42	24039900	Manufactured tobacco and tobacco substitutes, nes; tobacco extracts and essences	
	43	48131000	Cigarette paper in the form of booklets or tubes	
	44	48132000	Cigarette paper in rolls of a width ≤5cm	
	45	48139000	Cigarette paper, nes	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	STATE TRADING ENTERPRISES
TOBACCO	46	55020010	Cellulose diacetate filament tow <sup>1</sup>	China National Tobacco Import & Export Co.
	47	56012210	Cigarette filter tips of man-made fibres	
	48	84781000	Machinery for preparing or making up tobacco, not elsewhere specified or included	
	49	84789000	Parts, of machinery for preparing or making up tobacco, not elsewhere specified or included	
CRUDE OIL	50	27090000	Petroleum oils & oils obtained from bituminous minerals, crude	1. China National Chemical Import & Export Co. 2. China International United Petroleum & Chemicals Co. 3. China National United Oil Co. 4. Zhuhai Zhenrong Company
PROCESSED OIL	51	27100011	Motor gasoline & aviation gasoline	
	52	27100013	Naphtha	
	53	27100023	Aviation kerosene	
	54	27100024	Lamp-kerosene	
	55	27100031	Light diesel oil	
	56	27100033	Fuel oil No.5 to No.7 (National Code)	
57	27100039	Diesel oils & preparations thereof and other fuel oils, nes		
CHEMICAL FERTILIZER	58	31021000	Urea, whether or not in aqueous solution	1. China National Chemical Import & Export Co. 2. China National Agricultural Means of Production Group Co.
	59	31022100	Ammonium sulphate	
	60	31022900	Double salts & mixtures of ammonium sulphate & ammonium nitrate	
	61	31023000	Ammonium nitrate, whether or not in aqueous solution	
	62	31024000	Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilizing substances	
	63	31025000	Sodium nitrate	
	64	31026000	Double salts & mixtures of calcium nitrate & ammonium nitrate	
	65	31027000	Calcium cyanamide	
	66	31028000	Mixtures of urea & ammonium nitrate in aqueous or ammoniacal solution	
	67	31029000	Mineral or chemical fertilizers, nitrogenous, nes, incl. mixtures not specified in the foregoing subheadings	
	68	31031000	Superphosphates	
	69	31032000	Basic slag	
	70	31039000	Mineral or chemical fertilizers, phosphatic, nes	
	71	31041000	Carnallite, sylvite & other crude natural potassium salts	

<sup>1</sup> Coverage is limited to cellulose diacetate filament tow used in the production of cigarettes.

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	STATE TRADING ENTERPRISES
CHEMICAL FERTILIZER	72	31042000	Potassium chloride	1. China National Chemical Import & Export Co. 2. China National Agricultural Means of Production Group Co.
	73	31043000	Potassium sulphate	
	74	31049000	Mineral or chemical fertilizers, potassic, nes	
	75	31051000	Goods of chapter 31 in tables or similar forms or in packages of a gross weight ≤10kg	
	76	31052000	Mineral or chemical fertilizers containing the three fertilizing elements nitrogen, phosphorus & potassium	
	77	31053000	Diammonium hydrogenorthophosphate (diammonium phosphate)	
	78	31054000	Ammonium dihydrogenorthophosphate (monoammonium phosphate) and mixtures thereof with diammonium hydrogenorthophosphate (diammonium phosphate)	
	79	31055100	Mineral or chemical fertilizers containing nitrates & phosphates	
	80	31055900	Mineral or chemical fertilizers containing the two fertilizing elements nitrogen & phosphorus, nes	
	81	31056000	Mineral or chemical fertilizers with phosphorus & potassium, nes	
	82	31059000	Mineral or chemical fertilizers, nes	
COTTON	83	52010000	Cotton, not carded or combed	1. China National Textiles Import & Export Co. 2. Beijing Jiuda Textiles Group Co. 3. Tianjing Textiles Industry Supply and Marketing Co. 4. Shanghai Textiles Raw Materials Co.
	84	52030000	Cotton, carded or combed	

<b>Product &amp; HS 2000</b>	<b>Volume to non-state traders on accession<sup>2)</sup></b>	<b>Annual growth in non-state trade volume<sup>3)</sup></b>
Oil--processed <sup>1)</sup> (HS 27.10)	4 million tonnes	15 %
Oil--crude (HS 27.09)	7.2 million tonnes	15 %

(1) Excludes LPG, which falls under HS 27 11, and has not been notified by China as subject to state trading. The present import quota (16.58 million tonnes rising by 15% per year) will be removed on 1 January 2004.

(2) Imports to be effected pursuant to the provisions of the WTO Agreement on Import Licensing Procedures.

(3) This growth rate shall be applied for a period of 10 years following accession, after which time it shall be reviewed with interested Members. Pending conclusion of the review talks, the volume available to non-state importers on that date shall be increased annually in line with the average growth in overall imports of the product concerned over the preceding 10 year period.

However, for processed oil, a review shall be carried out with interested Members by 2004 to establish whether the growth rate should be adjusted in the light of the evolution of trade volumes.

## ANNEX 2A2

*PRODUCTS SUBJECT TO STATE TRADING (EXPORT)*

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	STATE TRADING ENTERPRISES
TEA	1	09021010	Flavoured green tea (not fermented) in immediate packings of a content $\leq 3\text{kg}$	China National Native Products and Animal By-Products Import & Export Co.
	2	09021090	Unflavoured green tea (not fermented) in immediate packings of a content $\leq 3\text{kg}$	
	3	09022010	Flavoured green tea (not fermented) in immediate packings of a content $> 3\text{kg}$	
	4	09022090	Unflavoured green tea(not fermented) in immediate packings of a content $> 3\text{kg}$	
RICE	5	10061010	Rice in husk (paddy or rough) seed	1. China National Cereals Oil and Foodstuffs Import & Export Co. 2. Jilin Grain Import & Export Co. Ltd.
	6	10061090	Rice in husk (paddy or rough), excl. for seeding	
	7	10062000	Husked (brown) rice	
	8	10063000	Semi-milled or wholly milled rice, whether or not polished or glazed	
	9	10064000	Broken rice	
CORN	10	10051000	Maize (corn) seed	
	11	10059000	Maize (corn), excl. for seeding	
	12	11042300	Other worked grains of maize (corn) (for example, hulled, pearled, sliced or kibbled)	
SOY BEAN	13	12010010	Seed of soya beans	
	14	12010091	Yellow soya beans, not for seeding, whether or not broken	
	15	12010092	Black soya beans, not for seeding, whether or not broken	
	16	12010093	Green soya beans, not for seeding, whether or not broken	
	17	12010099	Soya beans, nes, not for seeding, whether or not broken	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	STATE TRADING ENTERPRISES
TUNGSTEN ORE	18	26110000	Tungsten ores & concentrates	1. China National Metals and Minerals Import & Export Co. 2. China National Non-ferrous Import & Export Co. 3. China Rare Earth and Metal Group Co. 4. China National Chemical Import & Export Co.
	19	26209010	Ash & residues containing mainly tungsten & compound thereof	
	20	26209090	Ash & residues containing metals & compound thereof, nes	
AMMONIUM PARATUNGSTATES	21	28418010	Ammonium paratungstate	
	22	28418040	Ammonium metatungstates	
TUNGSTATE PRODUCTS	23	28259011	Tungstic acid	
	24	28259012	Tungsten trioxides	
	25	28259019	Tungsten oxides and hydroxides, nes	
	26	28418020	Sodium tungstate	
	27	28418030	Calcium tungstate	
	28	28499020	Carbides of tungsten, whether or not chemically refined	
	29	81011000	Tungsten powders	
	30	81019100	Tungsten unwrought (incl. bars and rods simply sintered); tungsten waste and scrap	
COAL	31	27011100	Anthracite, not agglomerated, whether or not pulverized	1. China National Coal Industry Import & Export Co. 2. China National Metals and Minerals Import & Export Co. 3. Shanxi Coal Import & Export Group Co. 4. Shenhua Group Ltd.
	32	27011210	Bituminous coking coal, not agglomerated, whether or not pulverized	
	33	27011290	Other bituminous coal, other than coking coal, not agglomerated, whether or not pulverized	
	34	27011900	Coal nes, not agglomerated, whether or not pulverized	
	35	27021000	Lignite, not agglomerated, whether or not pulverized	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	STATE TRADING ENTERPRISES
CRUDE OIL	36	27090000	Petroleum oils & oils obtained from bituminous minerals, crude	1. China National Chemical Import & Export Co. 2. China International United Petroleum & Chemicals Co. 3. China National United Oil Co.
PROCESSED OIL	37	27100011	Motor gasoline & aviation gasoline	
	38	27100013	Naphtha	
	39	27100019	Gasoline distillages, nes & preparations thereof	
	40	27100023	Aviation kerosene	
	41	27100024	Lamp-kerosene	
	42	27100029	Kerosene distillages, nes & preparations thereof	
	43	27100031	Light diesel oil	
	44	27100033	Fuel oil No.5 to No.7 (National Code)	
	45	27100039	Diesel oils & preparations thereof and other fuel oils, nes	
	46	27100053	Lubricating greases	
	47	27100054	Lubricating oils	
	48	27100059	Heavy oils & preparations thereof, nes	
	49	27111100	Natural gas, liquefied	
SILK	50	50010010	Mulberry feeding silk-worm cocoons	China National Silk Import & Export Co.
	51	50010090	Silk-worm cocoons suitable for reeling (excl. Mulberry feeding silk-worm cocoons)	
	52	50020011	Plant reeled (Steam filature silk),not thrown	
	53	50020012	Steam filature silk ,home reeled, not thrown	
	54	50020013	Steam filature silk, doupion, not thrown	
	55	50020019	Steam filature raw silk (excl. Plant reeled, home reeled, doupion), not thrown	
	56	50020020	Tussah raw silk, not thrown	
	57	50020090	Raw silk, nes, not thrown	
	58	50031000	Silk waste (including cocoons unsuitable for reeling, yarn waste and garneted stock), not carded or combed	
	59	50039000	Silk waste (including cocoons unsuitable for reeling, yarn waste and garneted stock), carded or combed	
	60	50040000	Silk yarn (excl. spun from silk waste), not put up for retail sale	
	61	50050010	Yarn spun from noil, not put up for retail sale	
	62	50050090	Yarn spun from other silk waste (excl. Yarn spun from noil), not put up for retail sale	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	STATE TRADING ENTERPRISES
UN-BLEACHED SILK	63	50071010	Unbleached (unscoured or scoured) or bleached woven fabrics of noil silk	<ol style="list-style-type: none"> <li>1. China National Textiles Import &amp; Export Co.</li> <li>2. Qingdao Textiles United Import &amp; Export Co.</li> <li>3. Beijing No.2 Cotton Mill</li> <li>4. Beijing No.3 Cotton Mill</li> <li>5. Tianjin No.1 Cotton Mill</li> <li>6. Shanghai Shenda Co. Ltd</li> <li>7. Shanghai Huashen Textiles and Dying Co. (Group)</li> <li>8. Dalian Huanqiu Textiles Group Co.</li> <li>9. Shijiazhuang Changshan Textiles Group</li> <li>10. Luoyang Cotton Mill, Henan Province</li> </ol>
	64	50072011	Unbleached (unscoured or scoured) or bleached woven fabrics, containing 85% or more by weight of mulberry silk	
	65	50072021	Unbleached (unscoured or scoured) or bleached woven fabrics of tussah silk, containing 85% or more by weight of tussah silk	
	66	50072031	Unbleached (unscoured or scoured) or bleached woven fabrics of spun silk, containing 85% or more by weight of tussah silk	
COTTON	67	52010000	Cotton, not carded or combed	
	68	52030000	Cotton, carded or combed	
COTTON YARN, containing 85% or more by weight of cotton*	69	52041100	Cotton sewing thread, cotton by weight $\geq 85\%$ , not put up for retail sale	
	70	52051100	Uncombed single cotton yarn, cotton by weight $\geq 85\%$ , measuring $\leq 14$ metric number, not put up for retail sale	
	71	52051200	Uncombed single cotton yarn, cotton by weight $\geq 85\%$ , measuring, $> 14$ metric number but $\leq 43$ metric number, not put up for retail sale	
	72	52051300	Uncombed single cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 43$ metric number but $\leq 52$ metric number, not put up for retail sale	
	73	52051400	Uncombed single cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 52$ metric number but $\leq 80$ metric number, not put up for retail sale	
	74	52051500	Uncombed single cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 80$ metric number, not put up for retail sale	
	75	52052100	Combed single cotton yarn, cotton by weight $\geq 85\%$ , measuring $\leq 14$ metric number, not put up for retail sale	
	76	52052200	Combed single cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 14$ metric number but $\leq 43$ metric number, not put up for retail sale	
	77	52052300	Combed single cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 43$ metric number but $\leq 52$ metric number, not put up for retail sale	
	78	52052400	Combed single cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 52$ metric number but $\leq 80$ metric number, not put up for retail sale	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	STATE TRADING ENTERPRISES
COTTON YARN, containing less than 85% by weight of cotton*	79	52052600	Combed single cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 80$ metric number but $\leq 94$ metric number, not put up for retail sale	
	80	52053100	Uncombed multiple or cabled cotton yarn, cotton by weight $\geq 85\%$ , measuring $\leq 14$ metric number	
	81	52053200	Uncombed multiple or cabled cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 14$ metric number but $\leq 43$ metric number, not put up for retail sale	
	82	52053300	Uncombed multiple or cabled cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 43$ metric number but $\leq 52$ metric number, not put up for retail sale	
	83	52053400	Uncombed multiple or cabled cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 52$ metric number but $\leq 80$ metric number, not put up for retail sale	
	84	52053500	Uncombed cabled cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 80$ metric number, not put up for retail sale	
	85	52054100	Combed multiple or cabled cotton yarn, cotton by weight $\geq 85\%$ , measuring $\leq 14$ metric number, not put up for retail sale	
	86	52054200	Combed multiple or cabled cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 14$ metric number but $\leq 43$ metric number, not put up for retail sale	
	87	52054300	Combed multiple or cabled cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 43$ metric number but $\leq 52$ metric number, not put up for retail sale	
	88	52054400	Combed multiple or cabled cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 52$ metric number but $\leq 80$ metric number, not put up for retail sale	
	89	52054600	Combed multiple or cabled cotton yarn, cotton by weight $\geq 85\%$ , measuring $> 80$ metric number but $\leq 94$ metric number, not put up for retail sale	
	90	52071000	Cotton yarn (excl. sewing), put up for retail sale, cotton by weight $\geq 85\%$	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	STATE TRADING ENTERPRISES
COTTON YARN, containing less than 85% by weight of cotton*	91	52041900	Cotton sewing thread, cotton by weight <85%, not put up for retail sale	11. Songyue Textiles Industry Group, Henan Province 12. Dezhou Cotton Mill 13. Wuxi No.1 Cotton Mill 14. Puxin Textiles Mill, Hubei Province 15. Northwest No.1 Cotton Mill 16. Chengdu Jiuxing Textiles Group Co. 17. Suzhou Sulun Textiles Joint Company (Group) 18. Northwest No.7 Cotton Mill 19. Xiangmian Group Co., Hubei Province 20. Handan Lihua Textiles Group Co.
	92	52061100	Uncombed single cotton yarn, cotton by weight <85%, measuring ≤14metric number, not put up for retail sale	
	93	52061200	Uncombed single cotton yarn, cotton by weight <85%, measuring >14metric number but ≤43metric number, not put up for retail sale	
	94	52061300	Uncombed single cotton yarn, cotton by weight <85%, measuring >43metric number but ≤52metric number, not put up for retail sale	
	95	52061400	Uncombed single cotton yarn, cotton by weight <85%, measuring >52metric number but ≤80metric number, not put up for retail sale	
	96	52061500	Uncombed single cotton yarn, cotton by weight <85%, measuring >80metric number, not put up for retail sale	
	97	52062100	Combed single cotton yarn, cotton by weight <85%, measuring ≤14metric number, not put up for retail sale	
	98	52062200	Combed single cotton yarn, cotton by weight <85%, measuring >14metric number but ≤43metric number, not put up for retail sale	
	99	52062300	Combed single cotton yarn, cotton by weight <85%, measuring >43metric number but ≤52metric number, not put up for retail sale	
	100	52062400	Combed single cotton yarn, cotton by weight <85%, measuring >52metric number but ≤80metric number, not put up for retail sale	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	STATE TRADING ENTERPRISES
	101	52062500	Combed single cotton yarn, cotton by weight <85%, measuring >80metric number, not put up for retail sale	21. Xinjiang Textiles Industry Co. (Group) 22. Anqing Textiles Mill 23. Jinan No.2 Cotton Mill 24. Tianjin No.2 Cotton Mill 25. Jinhua Textiles Mill, Shanxi Province 26. Jinwei Group Co., Zhejiang Province 27. Northwest No.5 Cotton Mill 28. Baoding No.1 Cotton Mill 29. Liaoyang Textiles Mill 30. Changchun Textiles Mill 31. Huaxin Cotton Mill, Henan Province 32. Baotou Textiles Mill 33. Ninbo Hefeng Textiles Group Co. 34. Northwest No.4 Cotton Mill 35. Xinjiang Shihezi Bayi Cotton Mill
	102	52063100	Uncombed multiple or cabled cotton yarn, cotton by weight <85%, measuring ≤14metric number, not put up for retail sale	
	103	52063200	Uncombed multiple or cabled cotton yarn, cotton by weight <85%, measuring >14metric number but ≤43metric number, not put up for retail sale	
	104	52063300	Uncombed multiple or cabled cotton yarn, cotton by weight <85%, measuring >43metric number but ≤52metric number, not put up for retail sale	
	105	52063400	Uncombed multiple or cabled cotton yarn, cotton by weight <85%, measuring >52metric number but ≤80metric number, not put up for retail sale	
	106	52063500	Uncombed multiple or cabled cotton yarn, cotton by weight <85%, measuring >80metric number, not put up for retail sale	
	107	52064100	Combed multiple or cabled cotton yarn, cotton by weight <85%, measuring ≤14metric number, not put up for retail sale	
	108	52064200	Combed multiple or cabled cotton yarn, cotton by weight <85%, measuring >14metric number but ≤43metric number, not put up for retail sale	
	109	52064300	Combed multiple or cabled cotton yarn, cotton by weight <85%, measuring >43metric number but ≤52metric number, not put up for retail sale	
	110	52064400	Combed multiple or cabled cotton yarn, cotton by weight <85%, measuring >52metric number but ≤80metric number, not put up for retail sale	
	111	52064500	Combed multiple or cabled cotton yarn, cotton by weight <85%, measuring >80metric number, not put up for retail sale	
	112	52079000	Cotton yarn (excl. sewing), put up for retail sale, cotton by weight <85%	
WOVEN FABRICS OF COTTON, containing 85% or more by weight of cotton*	113	52081100	Unbleached plain cotton weave, cotton by weight ≥85%, a weight not exceeding 100g/m <sup>2</sup>	
	114	52081200	Unbleached plain cotton weave, cotton by weight ≥85%, a weight exceeding 100g/m <sup>2</sup> but not exceeding 200g/m <sup>2</sup>	
	115	52081300	Unbleached 3 or 4-thread twill, cotton by weight ≥85%, a weight not exceeding 200g/m <sup>2</sup>	
	116	52081900	Unbleached woven cotton fabrics, nes, cotton by weight ≥85%, a weight not exceeding 200g/m <sup>2</sup>	
	117	52091100	Unbleached plain cotton weave, cotton by weight ≥85%, a weight exceeding 200g/m <sup>2</sup>	
	118	52091200	Unbleached 3 or 4-thread twill, cotton by weight ≥85%, a weight exceeding 200g/m <sup>2</sup>	
	119	52091900	Unbleached cotton fabrics, cotton by weight ≥85%, a weight exceeding 200g/m <sup>2</sup> , nes	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	STATE TRADING ENTERPRISES
WOVEN FABRICS OF COTTON, containing less than 85% by weight of cotton*	120	52101100	Unbleached plain cotton weave, cotton by weight <85%,mixed mainly or solely with man-made fibres, a weight not exceeding 200g/m2	
	121	52101200	Unbleached 3 or 4-thread twill, cotton by weight <85%,mixed mainly or solely with man-made fibres, a weight not exceeding 200g/m2	
	122	52101900	Unbleached woven cotton fabrics, nes, cotton by weight <85%,mixed mainly or solely with man-made fibres, a weight not exceeding 200g/m2	
	123	52111100	Unbleached plain cotton weave, cotton by weight <85%,mixed mainly or solely with man-made fibres, a weight exceeding 200g/m2	
	124	52111200	Unbleached 3 or 4-thread twill, cotton by weight <85%,mixed mainly or solely with man-made fibres, a weight exceeding 200g/m2	
	125	52111900	Unbleached woven cotton fabrics, nes, cotton by weight <85%,mixed mainly or solely with man-made fibres, a weight exceeding 200g/m2	
ANTIMONY ORES	126	26171010	Crude antimony	1. China National Metals and Minerals Import & Export Co. 2. China National Non-ferrous Import & Export Co. 3. China Rare Earth and Metal Group Co.
	127	26171090	Antimony ores & concentrates, excl. crude	
ANTIMONY OXIDE	128	28258000	Antimony oxides	
ANTIMONY PRODUCTS	129	81100020	Antimony unwrought	
	130	81100030	Antimony waste and scrap; Antimony powders	
	131	81100090	Antimony and articles thereof, nes	
SILVER	132	71061000	Silver in powder	1. China Banknote Printing and Minting Corporation 2. China Copper Lead Zinc Group
	133	71069100	Silver (incl. Silver plated with gold or platinum) in unwrought forms	
	134	71069200	Silver (incl. Silver plated with gold or platinum) in semi-manufactured forms nes	

\* Each of the 35 State Trading Enterprises listed under products “Cotton Yarn, containing 85% or more by weight of cotton”, “Cotton Yarn, containing less than 85% by weight of cotton”, “Woven Fabrics of Cotton, containing 85% or more by weight of cotton”, “Woven Fabrics of Cotton, containing less than 85% by weight of cotton”, may trade in Product Numbers 69 through 125.

## ANNEX 2B

## PRODUCTS SUBJECT TO DESIGNATED TRADING

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
NATURAL RUBBER	1	40011000	Natural rubber latex, in primary forms or in plates, sheets or strip	Liberalized within 3 years after accession.
	2	40012100	Smoked sheets of natural rubber	
	3	40012200	Technically specified natural rubber, in primary forms or in plates, sheets or strip	
	4	40012900	Natural rubber, in primary forms or in plates, sheets or strip, nes	
TIMBER	5	44020000	Wood charcoal (incl. shell or nut charcoal), whether or not agglomerated	Liberalized within 3 years after accession.
	6	44031000	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared, treated with paint, stains, creosote or other preservatives	
	7	44032000	Coniferous wood in the rough, whether or not stripped of bark or sapwood, or roughly squared, excl. treated with preservatives	
	8	44034910	Teak wood in the rough, whether or not stripped of bark or sapwood, or roughly squared, excl. treated with preservatives	
	9	44034990	Specified tropical wood in the rough, nes, whether or not stripped of bark or sapwood, or roughly squared, excl. treated with preservatives	
	10	44039100	Oak ( <i>Quercus</i> spp.) wood in the rough, whether or not stripped of bark or sapwood, or roughly squared, excl. treated with preservatives	
	11	44039200	Beech ( <i>Fagus</i> spp.) wood in the rough, whether or not stripped of bark or sapwood, or roughly squared, excl. treated with preservatives	
	12	44039910	Nan mu ( <i>Phoebe</i> ) wood in the rough, whether or not stripped of bark or sapwood, or roughly squared, excl. treated with preservatives	
	13	44039920	Camphor wood in the rough, whether or not stripped of bark or sapwood, or roughly squared, excl. treated with preservatives	
	14	44039930	Rosewood in the rough, whether or not stripped of bark or sapwood, or roughly squared, excl. treated with preservatives	
	15	44039940	Kiri ( <i>Paulownia</i> ) wood in the rough, whether or not stripped of bark or sapwood, or roughly squared, excl. treated with preservatives	
	16	44039990	Wood, nes, in the rough, whether or not stripped of bark or sapwood, or roughly squared, excl. treated with preservatives	
	17	44041000	Hoopwood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked; chipwood and the like, coniferous	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
	18	44042000	Hoopwood; split poles; piles, pickets and stakes of wood, pointed but not sawn lengthwise; wooden sticks, roughly trimmed but not turned, bent or otherwise worked; chipwood and the like, non-coniferous	
	19	44050000	Wood wool; wood flour	
	20	44061000	Railway or tramway sleepers (cross-ties) of wood, not impregnated	
	21	44069000	Railway or tramway sleepers (cross-ties) of wood, impregnated	
	22	44071000	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm, conifers	
	23	44072400	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm, Virola, Mahogany (Swietenia spp.), Imbuia and Balsa	
	24	44072500	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm, Dark Red Meranti, Light Red Meranti and Meranti Bakau	
	25	44072600	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm, White Lauan, White Meranti, White Seraya, Yellow Meranti and Alan	
	26	44072910	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm, Teak wood	
	27	44072990	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm, specified tropical woods nes	
	28	44079100	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm, Oak (Quercus spp.) wood	
	29	44079200	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm, Beech (Fagus spp.) wood	
	30	44079910	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm, Nan mu, Camphor wood or Rosewood	
	31	44079920	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm, Paulownia wood	
	32	44079990	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6mm, wood nes	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
PLYWOOD	33	44121300	Plywood consisting solely of sheets of wood, each ply not exceeding 6mm thickness, with at least one outer ply of tropical wood specified	Liberalized within 3 years after accession.
	34	44121400	Plywood consisting solely of sheets of wood, each ply not exceeding 6mm thickness, with at least one outer ply of non-coniferous wood	
	35	44121900	Plywood consisting solely of sheets of wood, each ply not exceeding 6mm thickness, nes	
WOOL	36	51011100	Greasy shorn wool, not carded or combed	
	37	51011900	Greasy wool (excl. shorn), not carded or combed	
	38	51012100	Degreased shorn wool, not carbonised, not carded or combed	
	39	51012900	Degreased wool (excl. shorn), not carbonised, not carded or combed	
	40	51013000	Carbonized wool, not carded or combed	
	41	51031010	Noils of wool, excluding garnetted stock	
	42	51051000	Carded wool	
	43	51052100	Combed wool in fragments	
	44	51052900	Wool tops & combed wool (excl. Combed wool in fragments)	
ACRYLIC	45	54023910	Synthetic filament textured yarn of polypropylene, not for retail sale	
	46	54023990	Synthetic filament textured yarn, nes, not for retail sale	
	47	54024910	Single synthetic yarn of polypropylene, with $\leq 50$ turns/m, not for retail sale	
	48	54024920	Single synthetic yarn of polyurethane, with $\leq 50$ turns/m, not for retail sale	
	49	54024990	Single synthetic yarn, nes, with $\leq 50$ turns/m, not for retail sale	
	50	54025910	Single filament yarn of polypropylene, with $> 50$ turns/m, not for retail sale	
	51	54025990	Single synthetic filament yarn, nes, with $> 50$ turns/m, not for retail sale	
	52	54026910	Multiple or cabled yarn of polypropylene not for retail sale	
	53	54026920	Multiple or cabled yarn of polyurethane, not for retail sale	
	54	54026990	Multiple or cabled yarn of synthetic filament, nes, not for retail sale	
	55	55013000	Synthetic filament tow of acrylic or mod-acrylic	
	56	55033000	Synthetic staple fibres, of acrylic or mod-acrylic, not carded, combed or otherwise processed for spinning	
	57	55063000	Synthetic staple fibres of acrylic or modacrylic, carded, combed or otherwise processed for spinning	
	58	55093100	Single yarn, with $\geq 85\%$ acrylic or modacrylic staple fibres, not put up for retail sale	
	59	55093200	Multiple or cabled yarn, $\geq 85\%$ acrylic/mod-acrylic staple fibres, not put up for retail sale	
	60	55096100	Yarn, $< 85\%$ acrylic or modacrylic staple fibres, mixed mainly or solely with wool or fine animal hair, not put up for retail sale	

PRODUCTS	NO	HSNO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
ACRYLIC	61	55096200	Yarn, <85% acrylic or modacrylic staple fibres, mixed mainly or solely with cotton, not put up for retail sale	Liberalized within 3 years after accession.
	62	55096900	Yarn, <85% acrylic or modacrylic staple fibres, nes, not put up for retail sale	
STEEL	63	72081000	Iron or non-alloy steel in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, with patterns in relief	
	64	72082500	Flat-rolled products of iron or non-alloy steel, in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, pickled, of a thickness of 4.75mm or more	
	65	72082600	Flat-rolled products of iron or non-alloy steel, in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, pickled, of a thickness of 3mm or more but less than 4.75mm	
	66	72082700	Flat-rolled products of iron or non-alloy steel, in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, pickled, of a thickness of less than 3mm	
	67	72083600	Flat-rolled products of iron or non-alloy steel, in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, nes, of a thickness of 10mm or more	
	68	72083700	Flat-rolled products of iron or non-alloy steel, in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, nes, of a thickness of 4.75mm or more but less than 10mm	
	69	72083800	Flat-rolled products of iron or non-alloy steel, in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, nes, of a thickness of 3mm or more but less than 4.75mm	
	70	72083900	Flat-rolled products of iron or non-alloy steel, in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, nes, of a thickness of less than 3mm	
	71	72084000	Flat-rolled products of iron or non-alloy steel not in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, with patterns in relief	
	72	72085100	Flat-rolled products of iron or non-alloy steel, not in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, nes, of a thickness of 10mm or more	
	73	72085200	Flat-rolled products of iron or non-alloy steel, not in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, nes, of a thickness of 4.75mm or more but less than 10mm	
	74	72085300	Flat-rolled products of iron or non-alloy steel, not in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, nes, of a thickness of 3mm or more but less than 4.75mm	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
	75	72085400	Flat-rolled products of iron or non-alloy steel, not in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than hot-rolled, nes, of a thickness of less than 3mm	
	76	72089000	Flat-rolled products of iron or non-alloy steel, not clad or plated or coated, of a width of 600mm or more, hot-rolled, nes	
	77	72091500	Flat-rolled products of iron or non-alloy steel, in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than cold-rolled, of a thickness of 3mm or more	
	78	72091600	Flat-rolled products of iron or non-alloy steel, in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than cold-rolled, of a thickness exceeding 1mm but less than 3mm	
	79	72091700	Flat-rolled products of iron or non-alloy steel, in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than cold-rolled, of a thickness of 0.5mm or more but not exceeding 1mm	
	80	72091800	Flat-rolled products of iron or non-alloy steel, in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than cold-rolled, of a thickness of less than 0.5mm	
	81	72092500	Flat-rolled products of iron or non-alloy steel, not in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than cold-rolled, of a thickness of 3mm or more	
	82	72092600	Flat-rolled products of iron or non-alloy steel, not in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than cold-rolled, of a thickness exceeding 1mm but less than 3mm	
	83	72092700	Flat-rolled products of iron or non-alloy steel, not in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than cold-rolled, of a thickness of 0.5mm or more but not exceeding 1mm	
	84	72092800	Flat-rolled products of iron or non-alloy steel, not in coils, not clad or plated or coated, of a width of 600mm or more, not further worked than cold-rolled, of a thickness of less than 0.5mm	
	85	72099000	Flat-rolled products of iron or non-alloy steel, not clad or plated or coated, of a width of 600mm or more, cold-rolled, nes	
	86	72101100	Flat-rolled products of iron or non-alloy steel, plated or coated with tin, of a width of 600mm or more, of a thickness of 0.5mm or more	
	87	72101200	Flat-rolled products of iron or non-alloy steel, plated or coated with tin, of a width of 600mm or more, of a thickness of less than 0.5mm	
	88	72102000	Flat-rolled products of iron or non-alloy steel, plated or coated with lead, of a width of 600mm or more, including terneplate	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
	89	72103000	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, electrolytically plated or coated with zinc	
	90	72104100	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, corrugated, plated or coated with zinc nes	
	91	72104900	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, plated or coated with zinc, nes	
	92	72105000	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, plated or coated with chromium oxides or with chromium and chromium oxides	
	93	72106100	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, plated or coated with aluminium-zinc alloys	
	94	72106900	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, plated or coated with aluminium, nes	
	95	72107000	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, painted or plated with plastics	
	96	72109000	Flat-rolled products of iron or non-alloy steel, of a width of 600mm or more, plated or coated, nes	
	97	72111300	Flat-rolled products of iron or non-alloy steel, not in coils, not clad or plated or coated, rolled on four faces or in a closed box pass, 150mm < width > 600mm, and a thickness $\geq 4$ mm, without patterns in relief, not further worked than hot-rolled	
	98	72111400	Flat-rolled products of iron or non-alloy steel, not further worked than hot-rolled, not clad or plated or coated, of a width of less than 600mm, of a thickness of 4.75mm or more, nes	
	99	72111900	Flat-rolled products of iron or non-alloy steel, not further worked than hot-rolled, not clad or plated or coated, of a width of less than 600mm, nes	
	100	72112300	Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, not further worked than cold-rolled, containing by weight less than 0.25% of carbon	
	101	72112900	Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, not further worked than cold-rolled, containing by weight not less than 0.25% of carbon	
	102	72119000	Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, nes	
	103	72121000	Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, plated or coated with tin	
	104	72122000	Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, electrolytically plated or coated with zinc	
	105	72123000	Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, plated or coated with zinc, nes	
	106	72124000	Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, painted or plated or coated with plastics	
	107	72125000	Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, plated or coated, nes	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
	108	72126000	Flat-rolled products of iron or non-alloy steel, of a width of less than 600mm, clad	
	109	72131000	Bars & rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel, containing indentations & ribs & grooves & other deformations produced during the rolling process	
	110	72132000	Bars & rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel, of free cutting steel	
	111	72139100	Bars & rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel, of circular cross-section measuring less than 14 mm in diameter, nes	
	112	72139900	Bars & rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel, nes	
	113	72141000	Bars & rods of iron or non-alloy steel, not further worked than forged, nes	
	114	72142000	Bars & rods of iron or non-alloy steel, not further worked than forged or hot-rolled or hot-drawn or hot-extruded, containing indentations & ribs & grooves & other deformations produced during the rolling process or twisted after rolling, nes	
	115	72143000	Bars & rods of iron or non-alloy steel, not further worked than forged or hot-rolled or hot-drawn or hot-extruded (incl. twisted after rolling), of free cutting steel, nes	
	116	72149100	Bars & rods of iron or non-alloy steel, not further worked than forged or hot-rolled or hot-drawn or hot-extruded (incl. twisted after rolling), of rectangular (excl. square) cross-section, nes	
	117	72149900	Bars & rods of iron or non-alloy steel, not further worked than forged or hot-rolled or hot-drawn or hot-extruded (incl. twisted after rolling), nes	
	118	72151000	Bars & rods of free cutting steel, not further worked than cold- formed or cold-finished, nes	
	119	72155000	Bars & rods of iron or non-alloy steel, not further worked than cold- formed or cold-finished, nes	
	120	72159000	Bars & rods of iron or non-alloy steel, nes	
	121	72161010	H sections of iron or non-alloy steel, not further worked than hot-rolled or hot-drawn or hot-extruded, of a height less than 80mm	
	122	72161090	U & I sections of iron or non-alloy steel, not further worked than hot-rolled or hot-drawn or hot-extruded, of a height less than 80mm	
	123	72162100	L sections of iron or non-alloy steel, not further worked than hot-rolled or hot-drawn or hot-extruded, of a height less than 80mm	
	124	72162200	T sections of iron or non-alloy steel, not further worked than hot-rolled or hot-drawn or hot-extruded, of a height less than 80mm	
	125	72163100	U sections of iron or non-alloy steel, not further worked than hot-rolled or hot-drawn or hot-extruded, of a height of 80mm or more	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
	126	72163200	I sections of iron or non-alloy steel, not further worked than hot-rolled or hot-drawn or hot-extruded, of a height of 80mm or more	
	127	72163300	H sections of iron or non-alloy steel, not further worked than hot-rolled or hot-drawn or hot-extruded, of a height of 80mm or more	
	128	72164010	L sections of iron or non-alloy steel, not further worked than hot-rolled or hot-drawn or hot-extruded, of a height of 80mm or more	
	129	72164020	T sections of iron or non-alloy steel, not further worked than hot-rolled or hot-drawn or hot-extruded, of a height of 80mm or more	
	130	72165010	Z sections of iron or non-alloy steel, not further worked than hot-rolled or hot-drawn or hot-extruded	
	131	72165090	Angles & shapes & sections of iron or non-alloy steel, not further worked than hot-rolled or hot-drawn or hot-extruded, nes	
	132	72166100	Angles & shapes & sections of iron or non-alloy steel, not further worked than cold-rolled or cold-drawn or cold-extruded, obtained from flat-rolled products	
	133	72166900	Angles & shapes & sections of iron or non-alloy steel, not further worked than cold-rolled or cold-drawn or cold-extruded, nes	
	134	72169100	Angles & shapes & sections of iron or non-alloy steel, cold-rolled or cold-drawn or cold-extruded, obtained from flat-rolled products, nes	
	135	72169900	Angles & shapes & sections of iron or non-alloy steel, cold-rolled or cold-drawn or cold-extruded, nes	
	136	72171000	Wire of iron or non-alloy steel, not plated or coated, whether or not polished	
	137	72172000	Wire of iron or non-alloy steel, plated or coated with zinc	
	138	72173000	Wire of iron or non-alloy steel, plated or coated with other base metals	
	139	72179000	Wire of iron or non-alloy steel, nes	
	140	72181000	Ingots & other primary forms of stainless steel	
	141	72189100	Semi-finished products of stainless steel, of rectangular (other than square) cross-section	
	142	72189900	Semi-finished products of stainless steel, nes	
	143	72191100	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than hot-rolled, in coils, of a thickness exceeding 10mm	
	144	72191200	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than hot-rolled, in coils, of a thickness of 4.75mm or more but less than 10mm	
	145	72191300	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than hot-rolled, in coils, of a thickness of 3mm or more but less than 4.75mm	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
	146	72191400	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than hot-rolled, in coils, of a thickness of less than 3mm	
	147	72192100	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than hot-rolled, not in coils, of a thickness exceeding 10mm	
	148	72192200	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than hot-rolled, not in coils, of a thickness of 4.75mm or more but less than 10mm	
	149	72192300	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than hot-rolled, not in coils, of a thickness of 3mm or more but less than 4.75mm	
	150	72192400	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than hot-rolled, not in coils, of a thickness of less than 3mm	
	151	72193100	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than cold-rolled, of a thickness of 4.75mm or more	
	152	72193200	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than cold-rolled, of a thickness of 3mm or more but less than 4.75mm	
	153	72193300	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than cold-rolled, of a thickness exceeding 1mm but less than 3mm	
	154	72193400	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than cold-rolled, of a thickness of 0.5mm or more but not exceeding 1mm	
	155	72193500	Flat-rolled products of stainless steel, of a width of 600mm or more, not further worked than cold-rolled, of a thickness of less than 0.5mm	
	156	72199000	Flat-rolled products of stainless steel, of a width of 600mm or more, nes	
	157	72201100	Flat-rolled products of stainless steel, of a width of less than 600mm, not further worked than hot-rolled, of a thickness of 4.75mm or more	
	158	72201200	Flat-rolled products of stainless steel, of a width of less than 600mm, not further worked than hot-rolled, of a thickness of less than 4.75mm	
	159	72202000	Flat-rolled products of stainless steel, of a width of less than 600mm, not further worked than cold-rolled	
	160	72209000	Flat-rolled products of stainless steel, of a width of less than 600mm, nes	
	161	72210000	Bars & rods of stainless steel, hot-rolled, in irregularly wound coils	
	162	72221100	Bars & rods of stainless steel, not further worked than hot-rolled or hot-drawn or extruded, of circular cross-section, nes	
	163	72221900	Bars & rods of stainless steel, not further worked than hot-rolled or hot-drawn or extruded, nes	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
	164	72222000	Bars & rods of stainless steel, not further worked than cold- formed or cold-finished	
	165	72223000	Bars & rods of stainless steel, nes	
	166	72224000	Angles, shapes & sections, stainless steel	
	167	72230000	Wire of stainless steel	
	168	72241000	Ingots & other primary forms of alloy steel, other than stainless	
	169	72249010	Raw casting forging stocks, individual piece weight of 10T or more, of alloy steel, other than stainless	
	170	72249090	Semi-finished products of alloy steel other than stainless, nes	
	171	72251100	Flat rolled products of Si-electrical steel, width≥600mm, <b>grain-oriented</b>	
	172	72251900	Flat rolled products of silicon-electrical steel, width≥600mm, <b>nes</b>	
	173	72252000	Flat rolled products of high speed steel, width≥600mm	
	174	72253000	Flat rolled products, of alloy steel (excl. stainless, silicon-electrical steel, high speed steel), in coils, not further worked than hot-rolled, width≥600mm	
	175	72254000	Flat rolled products, of alloy steel (excl. stainless, silicon-electrical steel, high speed steel), not further worked than hot-rolled, width≥600mm, <b>nes</b>	
	176	72255000	Flat rolled products, of alloy steel (excl. stainless, silicon-electrical steel, high speed steel), not further worked than cold-rolled, width≥600mm	
	177	72259100	Flat rolled products, of alloy steel (excl. stainless, silicon-electrical steel, high speed steel), nes, width≥600mm, <b>electrolytically coated with zinc</b>	
	178	72259200	Flat rolled products, of alloy steel (excl. stainless, silicon-electrical steel, high speed steel), nes, width≥600mm, <b>otherwise coated with zinc</b>	
	179	72259900	Flat rolled products, of alloy steel, width≥600mm, <b>nes</b>	
	180	72261100	Flat rolled products of silicon -electrical steel, width <600mm <b>grain-oriented</b>	
	181	72261900	Flat rolled products of silicon -electrical steel, width <600mm, nes	
	182	72262000	Flat rolled products of high speed steel, width <600mm	
	183	72269100	Flat rolled products, of alloy steel (excl. stainless, silicon-electrical steel, high speed steel), not further worked than hot-rolled, width <600mm	
	184	72269200	Flat rolled products, of alloy steel (excl. stainless, silicon-electrical steel, high speed steel), not further worked than cold-rolled, width <600mm	
	185	72269300	Flat rolled products, of alloy steel (excl. stainless, silicon-electrical steel, high speed steel), nes, width <600mm, electrolytically coated with zinc	
	186	72269400	Flat rolled products, of alloy steel (excl. stainless, silicon-electrical steel, high speed steel), nes, width <600mm, otherwise coated with zinc	
	187	72269900	Flat rolled products, of alloy steel, width <600mm, nes	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
	188	72271000	Bars & rods, of high speed steel, hot-rolled, in irregularly wound coils	
	189	72272000	Bars & rods, of silico-manganese steel, hot-rolled, in irregular wound coils	
	190	72279000	Bars & rods, of alloy steel, hot-rolled, in irregularly wound coils, nes	
	191	72281000	Bars & rods of high speed steel, nes	
	192	72282000	Bars & rods of silico-manganese steel, nes	
	193	72283000	Bars & rods of alloy steel other than stainless, not further worked than hot-rolled or hot-drawn or extruded, nes	
	194	72284000	Bars & rods of alloy steel other than stainless, not further worked than forged	
	195	72285000	Bars & rods of alloy steel other than stainless, not further worked than cold formed or finished	
	196	72286000	Bars & rods of alloy steel other than stainless, nes	
	197	72287010	Shapes of crawler tread of alloy steel other than stainless	
	198	72287090	Angles, shapes & sections of alloy steel other than stainless, nes	
	199	72288000	Bars & rods, hollow drill, of alloy or non-alloy steel	
	200	72291000	Wire of high speed steel	
	201	72292000	Wire of silico-manganese steel	
	202	72299000	Wire of alloy steel, nes	
	203	73011000	Sheet piling of iron or steel, whether or not drilled, punched or made from assembled elements	
	204	73012000	Angles, shapes & sections, welded, of iron or steel	
	205	73021000	Rails, of iron or steel	
	206	73022000	Sleepers (cross-ties), of iron or steel	
	207	73023000	Switch blades & crossing frogs & point rods & other crossing pieces, of iron or steel	
	208	73024000	Fish plates & sole plates, of iron or steel	
	209	73029000	Rail or tramway construction material of iron or steel, nes	
	210	73030010	Tube, pipes of cast iron, of circular cross-section, inside diameter: <b>≥500mm</b>	
	211	73030090	Tubes, pipes & hollow profiles of cast iron, nes	
	212	73041000	Pipes, line, of iron (other than cast) or steel, seamless, of a kind used for oil or gas pipelines	
	213	73042100	Drill pipe, of iron (other than cast) or steel, seamless, for use in drilling for oil or gas	
	214	73042900	Casings, tubing pipe of iron (other than cast) or steel, seamless, for use in drilling for oil or gas	
	215	73043110	Boiler tubes & pipes, of iron (other than cast) or steel, seamless, of circular cross-section, cold drawn or rolled	
	216	73043120	Geological casing & drill pipe, of iron (other than cast) or steel, seamless, of circular cross-section, cold drawn or rolled	
	217	73043190	Tubes & pipe, of iron (other than cast) or steel, seamless, of circular cross-section, cold drawn or rolled, nes	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
	218	73043910	Boiler tubes & pipes, of iron (other than cast) or steel, seamless, of circular cross-section, not cold drawn or rolled	
	219	73043920	Geological casing & drill pipe, of iron (other than cast) or steel, seamless, of circular cross-section, not cold drawn or rolled	
	220	73043990	Tubes & pipe, of iron (other than cast) or steel, seamless, of circular cross-section, not cold drawn or rolled, nes	
	221	73044190	Tubes, pipe, of stainless steel, seamless, of circular cross-section, cold drawn or rolled, nes	
	222	73044910	Boiler tubes & pipes, of stainless steel, seamless, of circular cross-section, not cold drawn or rolled	
	223	73044990	Tubes & pipe, of stainless steel, seamless, of circular cross-section, cold drawn or rolled, nes	
	224	73045110	Boiler tube & pipe, of alloy steel other than stainless, seamless, of circular cross-section, cold drawn or rolled	
	225	73045120	Geological casing & drill pipe, of alloy steel other than stainless, seamless, of circular cross-section, cold drawn or rolled	
	226	73045190	Tubes & pipe, of alloy steel other than stainless, seamless, of circular cross-section, cold drawn or rolled, nes	
	227	73045910	Boiler tube & pipe, of alloy steel other than stainless, seamless, of circular cross-section, not cold drawn or rolled	
	228	73045920	Geological casing & drill pipe, of alloy steel other than stainless, seamless, of circular cross-section, not cold drawn or rolled	
	229	73045990	Tubes & pipe, of alloy steel other than stainless, seamless, of circular cross-section, not cold drawn or rolled, nes	
	230	73049000	Tubes, pipe & hollow profiles, of iron (other than cast) or steel, seamless, nes	
	231	73051100	Line pipes for oil or gas pipelines, of iron or steel, of circular cross-section, external diameter >406.4mm, longitudinally submerged arc welded	
	232	73051200	Line pipes for oil or gas pipelines, of iron or steel, of circular cross-section, external diameter >406.4mm, longitudinally welded nes	
	233	73051900	Line pipes for oil or gas pipelines, of iron or steel, of circular cross-section, external diameter >406.4mm, nes	
	234	73052000	Casings used in drilling for oil or gas, of iron or steel, of circular cross-section, external diameter >406.4mm, nes	
	235	73053100	Tubes & pipe, of iron or steel, longitudinally welded, of circular cross-section, external diameter >406.4mm, nes	
	236	73053900	Tubes & pipe, of iron or steel, welded (excl. longitudinally welded), , external diameter >406.4mm	
	237	73059000	Tubes & pipe, of iron or steel, riveted or similarly closed, external diameter >406.4mm, nes	
	238	73061000	Line pipes for oil or gas pipelines, of iron or steel, welded or open seam or riveted or similarly closed, nes	

PRODUCTS	NO	HS NO	DESCRIPTION OF PRODUCTS	LIBERALIZATION PROGRAM
	239	73062000	Casings used in drilling for oil or gas, of iron or steel, welded or open seam or riveted or similarly closed, nes	
	240	73063000	Tubes & pipes, of iron and non-alloy steel, welded, of circular cross-section, nes	
	241	73064000	Tubes & pipes, of stainless steel, welded, of circular cross-section, nes	
	242	73065000	Tubes & pipes, of alloy steel other than stainless, welded, of circular cross-section, nes	
	243	73066000	Tubes, pipe & hollow profiles, of iron or steel, welded, of non-circular cross-section, nes	
	244	73069000	Tubes, pipe & hollow profiles, of iron or steel, welded or open seam or riveted or similarly closed, nes	
	245	73121000	Stranded wire & ropes & cables, of iron or steel, not electrically insulated	

## ANNEX 3

## NON-TARIFF MEASURES SUBJECT TO PHASED ELIMINATION

Table One

Products Subject to Import Licence, Import Quota and Import Tendering

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
1	17011100	Raw cane sugar, in solid form, not containing added flavouring or colouring matter	L	Q		upon accession	
2	17011200	Raw beet sugar, in solid form, not containing added flavouring or colouring matter	L	Q		upon accession	
3	17019910	Granulated sugar	L	Q		upon accession	
4	17019920	Superfine sugar	L	Q		upon accession	
5	24011010	Flue-cured tobacco, not stemmed/stripped	L	Q		upon accession	
6	24011090	Tobacco other than flue-cured, not stemmed/stripped	L	Q		upon accession	
7	24012010	Flue-cured tobacco, partly or wholly stemmed/stripped	L	Q		upon accession	
8	24012090	Tobacco other than flue-cured, partly or wholly stemmed/stripped	L	Q		upon accession	
9	24013000	Tobacco refuse	L	Q		upon accession	
10	24029000	Cigars, cheroots, cigarillos and cigarettes, of tobacco substitutes	L	Q		upon accession	
11	24039100	Homogenized or "reconstituted" tobacco	L	Q		upon accession	
12	27100011	Motor gasoline & aviation gasoline	L	Q		2004	1
13	27100013	Naphtha	L	Q		2004	1
14	27100019	Gasoline distillages, nes & preparations thereof	L	Q		2004	1
15	27100023	Aviation kerosene	L	Q		2004	1
16	27100024	Lamp-kerosene	L	Q		2004	1
17	27100031	Light diesel oil	L	Q		2004	1

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
18	27100033	Fuel oil No.5 to No.7 (National Code)	L	Q		2004	1
19	27100039	Diesel oils & preparations thereof and other fuel oils, nes	L	Q		2004	1
20	28371110	Sodium cyanide	L	Q		2002	2
21	31021000	Urea, whether or not in aqueous solution	L	Q		upon accession	
22	31022100	Ammonium sulphate	L	Q		2002	3
23	31022900	Double salts & mixtures of ammonium sulphate & ammonium nitrate	L	Q		2002	3
24	31023000	Ammonium nitrate, whether or not in aqueous solution	L	Q		2002	3
25	31024000	Mixtures of ammonium nitrate with calcium carbonate or other inorganic non-fertilizing substances	L	Q		2002	3
26	31025000	Sodium nitrate	L	Q		upon accession	
27	31026000	Double salts & mixtures of calcium nitrate & ammonium nitrate	L	Q		upon accession	
28	31027000	Calcium cyanamide	L	Q		upon accession	
29	31028000	Mixtures of urea & ammonium nitrate in aqueous or ammoniacal solution	L	Q		2002	3
30	31029000	Mineral or chemical fertilizers, nitrogenous, nes, incl. mixtures not specified in the foregoing subheadings	L	Q		2002	3
31	31031000	Superphosphates	L	Q		2002	3
32	31032000	Basic slag	L	Q		2002	3
33	31039000	Mineral or chemical fertilizers, phosphatic, nes	L	Q		2002	3
34	31041000	Carnallite, sylvite & other crude natural potassium salts	L	Q		upon accession	
35	31042000	Potassium chloride	L	Q		upon accession	
36	31043000	Potassium sulphate	L	Q		2002	3
37	31049000	Mineral or chemical fertilizers, potassic, nes	L	Q		upon accession	
38	31051000	Goods of chapter 31 in tables or similar forms or in packages of a gross weight $\leq 10\text{kg}$	L	Q		2002	3
39	31052000	Mineral or chemical fertilizers containing the three fertilizing elements nitrogen, phosphorus & potassium	L	Q		upon accession	
40	31053000	Diammonium hydrogenorthophosphate (diammonium phosphate)	L	Q		upon accession	
41	31054000	Ammonium dihydrogenorthophosphate (monoammonium phosphate) and mixtures thereof with diammonium hydrogenorthophosphate (diammonium phosphate)	L	Q		2002	3
42	31055100	Mineral or chemical fertilizers containing nitrates & phosphates	L	Q		2002	3
43	31055900	Mineral or chemical fertilizers containing the two fertilizing elements nitrogen & phosphorus, nes	L	Q		2002	3
44	31056000	Mineral or chemical fertilizers with phosphorus & potassium, nes	L	Q		2002	3
45	31059000	Mineral or chemical fertilizers, nes	L	Q		2002	3
46	39076011	Polyethylene terephthalate in slices or chips, high viscosity	L	Q		upon accession	
47	39076019	Polyethylene terephthalate in slices or chips, nes	L	Q		upon accession	

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
48	40011000	Natural rubber latex, in primary forms or in plates, sheets or strip	L	Q		2004	4
49	40012100	Smoked sheets of natural rubber	L	Q		2004	4
50	40012200	Technically specified natural rubber, in primary forms or in plates, sheets or strip	L	Q		2004	4
51	40012900	Natural rubber, in primary forms or in plates, sheets or strip, nes	L	Q		2004	4
52	40111000	New pneumatic tyres, of rubber of a kind used on motor cars	L	Q		2004	5
53	40112000	New pneumatic tyres, of rubber of a kind used on buses or lorries	L	Q		2004	5
54	40119100	New pneumatic tyres, of rubber, nes, of herring-bone or similar tread	L	Q		2002	5
55	40121010	Retreaded tyres of rubber used on automobiles	L	Q		2002	5
56	40122010	Used pneumatic tyres of rubber used on automobiles	L	Q		2002	5
57	40129020	Solid/cushion rubber tyres, etc, used on automobiles	L	Q		upon accession	
58	40131000	Inner tubes, of rubber of a kind used on motor cars, buses or lorries	L	Q		upon accession	
59	51011100	Greasy shorn wool, not carded or combed	L	Q		upon accession	
60	51011900	Greasy wool (excl. shorn), not carded or combed	L	Q		upon accession	
61	51012100	Degreased shorn wool, not carbonised, not carded or combed	L	Q		upon accession	
62	51012900	Degreased wool (excl. shorn), not carbonised, not carded or combed	L	Q		upon accession	
63	51013000	Carbonized wool, not carded or combed	L	Q		upon accession	
64	51031010	Noils of wool, excluding garnetted stock	L	Q		upon accession	
65	51051000	Carded wool	L	Q		upon accession	
66	51052100	Combed wool in fragments	L	Q		upon accession	
67	51052900	Wool tops & combed wool (excl. Combed wool in fragments)	L	Q		upon accession	
68	52010000	Cotton, not carded or combed	L	Q		upon accession	
69	52030000	Cotton, carded or combed	L	Q		upon accession	
70	54022000	High tenacity yarn of polyesters	L	Q		upon accession	
71	54023310	Elastic filament of polyesters, not for retail sale	L	Q		upon accession	
72	54023390	Textured yarn of polyesters, nes, not for retail sale	L	Q		upon accession	
73	54023990	Synthetic filament textured yarn, nes, not for retail sale	L	Q		upon accession	
74	54024200	Single yarn of partially oriented polyesters, with $\leq 50$ turns/m, not for retail sale	L	Q		upon accession	
75	54024300	Single yarn of polyesters, nes, with $\leq 50$ turns/m, not for retail sale	L	Q		upon accession	
76	54024990	Single synthetic yarn, nes, with $\leq 50$ turns/m, not for retail sale	L	Q		upon accession	
77	54025200	Single yarn of polyesters, with $> 50$ turns/m, not for retail sale	L	Q		upon accession	
78	54025990	Single synthetic filament yarn, nes, with $> 50$ turns/m, not for retail sale	L	Q		upon accession	

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
79	54026200	Multiple or cabled yarn of polyesters, not for retail sale	L	Q		upon accession	
80	54026990	Multiple or cabled yarn of synthetic filament, nes, not for retail sale	L	Q		upon accession	
81	54033310	Single yarn of cellulose diacetate, not for retail sale	L	Q		upon accession	
82	54041000	Synthetic monofilament of $\geq 67$ decitex, or more and of which no cross-sectional dimension exceeds 1mm	L	Q		upon accession	
83	55012000	Synthetic filament tow of polyesters	L	Q		upon accession	
84	55013000	Synthetic filament tow of acrylic or modacrylic	L	Q		upon accession	
85	55020010	Cellulose diacetate filament tow	L	Q		upon accession	
86	55032000	Synthetic staple fibres, of polyesters, not carded, combed or otherwise processed for spinning	L	Q		upon accession	
87	55033000	Synthetic staple fibres, of acrylic or modacrylic, not carded, combed or otherwise processed for spinning	L	Q		upon accession	
88	55062000	Synthetic staple fibres, of polyesters, carded, combed or otherwise processed for spinning	L	Q		upon accession	
89	55063000	Synthetic staple fibres of acrylic or modacrylic, carded, combed or otherwise processed for spinning	L	Q		upon accession	
90	55092100	Single yarn, with $\geq 85\%$ polyester staple fibres, not put up for retail sale	L	Q		upon accession	
91	55092200	Multiple or cabled yarn, with $\geq 85\%$ polyester staple fibres, not put up for retail sale	L	Q		upon accession	
92	55093100	Single yarn, with $\geq 85\%$ acrylic or modacrylic staple fibres, not put up for retail sale	L	Q		upon accession	
93	55093200	Multiple or cabled yarn, $\geq 85\%$ acrylic/modacrylic staple fibres, not put up for retail sale	L	Q		upon accession	
94	55095100	Yarn, $< 85\%$ polyester staple fibres, mixed mainly or solely with artificial staple fibres, not put up for retail sale	L	Q		upon accession	
95	55095200	Yarn, $< 85\%$ polyester staple fibres, mixed mainly or solely with wool/fine animal hair, not put up for retail sale	L	Q		upon accession	
96	55095300	Yarn, $< 85\%$ polyester staple fibres, mixed mainly or solely with cotton, not put up for retail sale	L	Q		upon accession	
97	55095900	Yarn, $< 85\%$ polyester staple fibres, nes, not put up for retail sale	L	Q		upon accession	
98	55096100	Yarn, $< 85\%$ acrylic or modacrylic staple fibres, mixed mainly or solely with wool or fine animal hair, not put up for retail sale	L	Q		upon accession	
99	55096200	Yarn, $< 85\%$ acrylic or modacrylic staple fibres, mixed mainly or solely with cotton, not put up for retail sale	L	Q		upon accession	
100	55096900	Yarn, $< 85\%$ acrylic or modacrylic staple fibres, nes, not put up for retail sale	L	Q		upon accession	
101	84073100	Reciprocation piston engines of a kind used for the propulsion of vehicles of Chapter 87, with a cylinder capacity not exceeding 50cc	L	Q		2003	6

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
102	84073200	Reciprocation piston engines of a kind used for the propulsion of vehicles of Chapter 87, with a cylinder capacity exceeding 50cc but not exceeding 250cc	L	Q		2003	6
103	84073300	Reciprocation piston engines of a kind used for the propulsion of vehicles of Chapter 87, with a cylinder capacity exceeding 250cc but not exceeding 1000cc	L	Q		2003	6
104	84079090	Spark-ignition reciprocation or rotary internal combustion piston engines not elsewhere specified or included	L	Q		2003	7
105	84082010	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines) for the propulsion of vehicles of Chapter 87, with an output 132.39KW (180H.P.) or more	L	Q		2003	7
106	84082090	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines) for the propulsion of vehicles of Chapter 87, with an output less than 132.39KW (180H.P.)	L	Q		2003	7
107	84089092	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines) not elsewhere specified or included with an output exceeding 14KW but less than 132.39KW (180H.P.)			T	2004	
108	84143011	Compressors for refrigerators or freezers driven by a motor, of a motor power not exceeding 0.4KW	L	Q		upon accession	
109	84143012	Compressors for refrigerators or freezers driven by a motor, of a motor power exceeding 0.4KW but not exceeding 5KW	L	Q		upon accession	
110	84143013	Compressors for air conditioning machinery driven by a motor, of a motor power exceeding 0.4KW but not exceeding 5KW	L	Q		upon accession	
111	84143019	Compressors of a kind used in refrigerating equipment driven by a motor, not elsewhere specified or included	L	Q		upon accession	
112	84143090	Compressors of a kind used in refrigerating equipment driven by a non-motor	L	Q		upon accession	
113	84145930	Centrifugal ventilation fans			T	upon accession	
114	84151000	Window or wall types air conditioning machinery, self-contained	L	Q		2002	8
115	84152000	Air conditioning machinery used for persons in motor vehicles	L	Q		2002	7
116	84158110	Air conditioning machinery incorporating a refrigerating unit and a valve for reversal of the cooling/heat cycle, of a refrigerating effect not exceeding 4000 Kcal per hour	L	Q		upon accession	
117	84158210	Air conditioning machinery incorporating a refrigerating unit, of a refrigerating effect not exceeding 4000 Kcal per hour, nes	L	Q		upon accession	
118	84181010	Combined refrigerator-freezers fitted with separate external doors, of a capacity exceeding 500L	L	Q		upon accession	

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
119	84181020	Combined refrigerator-freezers fitted with separate external doors, of a capacity exceeding 200L but not exceeding 500L	L	Q		upon accession	
120	84181030	Combined refrigerator-freezers fitted with separate external doors, of a capacity not exceeding 200L	L	Q		upon accession	
121	84182110	Household-compression-type refrigerators, of a capacity exceeding 150L	L	Q		upon accession	
122	84182120	Household-compression-type refrigerators, of a capacity exceeding 50 l but not exceeding 150L	L	Q		upon accession	
123	84182130	Household-compression-type refrigerators, of a capacity not exceeding 50L	L	Q		upon accession	
124	84182200	Household-absorption-type refrigerators, electrical	L	Q		upon accession	
125	84183010	Chest-type freezers of a refrigerating temperature of -40°C or lower, capacity not exceeding 800L	L	Q		upon accession	
126	84183021	Chest-type freezers of a refrigerating temperature higher than -40°C, capacity exceeding 500L but not exceeding 800L	L	Q		upon accession	
127	84183029	Chest-type freezers of a refrigerating temperature higher than -40°C, capacity not exceeding 500L	L	Q		upon accession	
128	84184010	Upright-type freezers of a refrigerating temperature of -40°C or lower, capacity not exceeding 900L	L	Q		upon accession	
129	84184021	Upright-type freezers of a refrigerating temperature higher than -40°C, capacity exceeding 500L but not exceeding 900L	L	Q		upon accession	
130	84184029	Upright-type freezers of a refrigerating temperature higher than -40°C, capacity not exceeding 500L	L	Q		upon accession	
131	84185000	Refrigerating or freezing chests, cabinets, display counters, show-cases and similar refrigerating or freezing furniture, nes	L	Q		upon accession	
132	84254990	Hoists of a kind used for raising vehicles, not elsewhere specified or included			T	upon accession	
133	84261910	Overhead traveling Ship loading cranes			T	upon accession	
134	84261921	Overhead traveling Grab ship unloading cranes			T	upon accession	
135	84261929	Other Overhead traveling ship unloading cranes			T	upon accession	
136	84263000	Portal or pedestal jib cranes			T	upon accession	
137	84264110	Wheel-mounted cranes			T	upon accession	
138	84264190	Self-propelled machinery on tyres fitted with a crane, not elsewhere specified or included			T	upon accession	
139	84281010	Lifts and skip hoists designed for the transport of persons			T	2002	
140	84284000	Escalators and moving walkways			T	upon accession	
141	84291110	Track laying self-propelled bulldozers and angledozers with an engine of an output exceeding 235.36kW(320H.P.)			T	2004	

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
142	84294011	Self-propelled vibration-type road rollers, of a deadweight of 18t or more			T	2002	
143	84294019	Self-propelled road rollers, not elsewhere specified or included			T	2004	
144	84305020	Mining power shovels, self-propelled			T	upon accession	
145	84381000	Bakery machinery and machinery for the manufacture of macaroni, spaghetti or similar products			T	upon accession	
146	84391000	Machinery for making pulp of fibrous cellulosic material			T	2002	
147	84392000	Machinery for making paper or paperboard			T	2002	
148	84393000	Machinery for finishing paper or paperboard			T	2002	
149	84413090	Machinery for making cartons, boxes, cases, tubes, drums or similar containers in paper pulp, paper or paperboard, other than by moulding, not elsewhere specified or included			T	upon accession	
150	84414000	Machinery for moulding articles in paper pulp, paper or paperboard			T	upon accession	
151	84431910	Sheet fed offset printing machinery,			T	2004	
152	84431990	Offset printing machinery not elsewhere specified or included			T	2004	
153	84435912	Platen screen press printing machinery			T	upon accession	
154	84451110	Carding machinery, for cotton type fibres			T	upon accession	
155	84451120	Carding machinery, for wool type fibres			T	upon accession	
156	84451200	Combing machinery for textile fibres			T	upon accession	
157	84452020	Break spinning machinery (Rotor spinning frames)	L	Q		upon accession	
158	84454010	Automatic bobbin winders			T	upon accession	
159	84459010	Warping machinery for textile fibres			T	upon accession	
160	84463020	Rapier looms for weaving fabrics of a width exceeding 30cm			T	upon accession	
161	84463030	Carrier looms for weaving fabrics of width exceeding 30 cm			T	upon accession	
162	84501200	Washing machinery with built-in centrifugal drier, dry linen capacity not exceeding 10kg, including machinery which both wash and dry	L	Q		upon accession	
163	84501900	Washing machinery, dry linen capacity not exceeding 10kg, not elsewhere specified or included, including machinery which both wash and dry	L	Q		upon accession	
164	84522110	Automatic sewing machinery, flat-seam type, other than book-sewing machinery of heading 84.40			T	upon accession	
165	84522190	Automatic sewing machinery, other than flat-seam type & book-sewing machinery of heading 84.40			T	upon accession	
166	84542010	Fining equipments, outside of converters, used in metallurgy or in metal foundry			T	upon accession	
167	84543010	Cold chamber die-casting machinery			T	upon accession	
168	84563010	Machine-tools for working any material by removal of material, numerically controlled, operated by electro-discharge processes			T	2004	
169	84569910	Cutting machinery of plasma arc, for working any material by removal of material			T	2004	

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
170	84569900	Machine-tools for working any material by removal of material, operated by electro-chemical, electron beam, ionic-beam processes, not elsewhere specified or included			T	2004	
171	84571010	Machining centers, vertical type, for working metal			T	2004	
172	84571020	Machining centers, horizontal type, for working metal			T	2004	
173	84571030	Machining centers, plano type, for working metal			T	2004	
174	84571090	Machining centers, not elsewhere specified or included, for working metal			T	2004	
175	84581100	Horizontal lathes (including turning centers) for removing metal, numerically controlled			T	2004	
176	84621090	Non-numerically controlled Forging or die-stamping machinery (including presses) and hammers for working metal			T	2002	
177	84659600	Splitting, slicing, paring machinery for working wood, cork, bone, hard rubber, hard plastics or similar hard materials			T	upon accession	
178	84714991	Processing machinery for distributed control systems, presented in the form of systems			T	2004	
179	84742010	Crushing, grinding machinery for earth stone, ores or other mineral substances in solid (incl. power or paste) form, tothing roller type			T	upon accession	
180	84742090	Crushing, grinding machinery for earth stone, ores or other mineral substances in solid (incl. power or paste) form, other than tothing roller type			T	upon accession	
181	84743100	Concrete or mortar mixers			T	2004	
182	84775900	Machinery for moulding or otherwise forming, for working rubber or plastics or for the manufacture of products from these materials, not elsewhere specified or included			T	2002	
183	84781000	Machinery for preparing or making up tobacco, not elsewhere specified or included			T	2002	
184	84789000	Parts, of machinery for preparing or making up tobacco, not elsewhere specified or included			T	upon accession	
185	84791021	Machinery for spreading bituminous concrete			T	2002	
186	84791022	Stabilizer spreading machinery			T	2002	
187	84804100	Injection or compression types moulds for metal or metal carbides			T	2002	
188	84807100	Injection or compression types moulds for rubber or plastics			T	2002	
189	84834020	Planet decelerators			T	upon accession	
190	85042320	Liquid dielectric transformers, having a power handling capacity of 400MVA or more			T	2004	
191	85172100	Facsimile machinery			T	2002	
192	85175090	Apparatus for carrier-current line systems, not elsewhere specified or included			T	upon accession	
193	85184000	Audio-frequency electric amplifiers			T	2002	
194	85199910	Compact disc players for sound reproducing, not incorporating a sound recording device	L	Q		upon accession	

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
195	85203210	Digital audio cassette-tape recorders incorporating sound reproducing apparatus, not elsewhere specified or included	L	Q		upon accession	
196	85203290	Digital audio magnetic tape recorders incorporating sound reproducing apparatus, other than cassette-tape, not elsewhere specified or included	L	Q		upon accession	
197	85203300	Cassette-tape recorders incorporating sound reproducing apparatus, not elsewhere specified or included	L	Q		upon accession	
198	85203910	Open-reel tape recorders incorporating sound reproducing apparatus, not elsewhere specified or included	L	Q		upon accession	
199	85203990	Magnetic tape recorders incorporating sound reproducing apparatus, not elsewhere specified or included	L	Q		upon accession	
200	85209000	Magnetic tape recorders not incorporating sound reproducing apparatus; other sound recording apparatus, whether or not incorporating sound reproducing apparatus, not elsewhere specified or included	L	Q		upon accession	
201	85211011	Magnetic video tape recorders, broadcast quality, whether or not incorporating a video tuner	L	Q		2002	9
202	85211019	Magnetic video tape recorders, whether or not incorporating a video tuner, not elsewhere specified or included	L	Q		2002	9
203	85211020	Magnetic video tape reproducers, whether or not incorporating a video tuner	L	Q		2002	9
204	85219010	Laser video compact disk player, whether or not incorporating a video tuner	L	Q		2002	10
205	85219090	Video recording or reproducing apparatus, whether or not incorporating a video tuner, not elsewhere specified or included	L	Q		2002	10
206	85229021	Transport mechanisms of cassette magnetic tape recorders or reproducers, whether or not incorporating a magnetic head	L	Q		2002	11
207	85229030	Parts and accessories suitable for use solely or principally with the video recording or reproducing apparatus, not elsewhere specified or included	L	Q		2002	9
208	85252011	Satellite earth station for television, whether or not incorporating sound recording or reproducing apparatus			T	2004	
209	85252019	Satellite earth station other than for television, whether or not incorporating sound recording or reproducing apparatus			T	upon accession	
210	85252022	Radio telephone handsets, including vehicle installed, whether or not incorporating sound recording or reproducing apparatus			T	2002	
211	85252029	Mobile communication equipment incorporating reception apparatus, whether or not incorporating sound recording or reproducing apparatus, not elsewhere specified or included			T	2002	
212	85252092	Mobile communication base station, whether or not incorporating sound recording or reproducing apparatus			T	2002	

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
213	85252093	Wireless subscriber communicating equipments, whether or not incorporating sound recording or reproducing apparatus			T	2002	
214	85173013	Digital program-controlled mobile communication switching systems			T	2002	
215	85173091	Analogical mobile communication switching systems			T	2002	
216	85253010	Television cameras, for special purposes	L	Q		2002	9
217	85253091	Television cameras not for special purposes, broadcast quality	L	Q		2002	9
218	85253099	Television cameras, not elsewhere specified or included	L	Q		2002	9
219	85254010	Still image video cameras and other video camera recorder, for special purposes	L	Q		2002	9
220	85254020	Household video camera recorders	L	Q		2002	9
221	85254030	Still image video cameras with digital image storage	L	Q		2002	9
222	85254090	Still image video cameras and other video camera recorders, not elsewhere specified or included	L	Q		2002	9
223	85271200	Pocket-size radio cassette-players capable of operating without an external source of power, including apparatus capable of receiving also radio-telephony or radio-telegraphy, whether or not combined with a clock in the same housing	L	Q		upon accession	
224	85271300	Radio-broadcast receivers combined with sound recording or reproducing apparatus capable of operating without an external source of power, including apparatus capable of receiving also radio-telephony or radio-telegraphy, nes	L	Q		upon accession	
225	85271900	Radio-broadcast receivers capable of operating without external power, whether or not combined with a clock in the same housing, nes	L	Q		upon accession	
226	85272100	Radio-broadcast receivers combined with sound recording or reproducing apparatus not capable of operating with an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radio-telephony or radio-telegraphy	L	Q		upon accession	
227	85272900	Radio-broadcast receivers not capable of operating with an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radio-telephony or radio-telegraphy, nes	L	Q		upon accession	
228	85273100	Radio-broadcast receivers combined with sound recording or reproducing apparatus not capable of operating with an external source of power, including apparatus capable of receiving also radio-telephony or radio-telegraphy, nes	L	Q		upon accession	

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
229	85273200	Radio-broadcast receivers not combined with sound recording or reproducing apparatus but combined with a clock, nes, including apparatus capable of receiving also radio-telephony or radio-telegraphy	L	Q		upon accession	
230	85273900	Radio-broadcast receivers not capable of operating with an external source of power, including apparatus capable of receiving also radio-telephony or radio-telegraphy, not elsewhere specified or included	L	Q		upon accession	
231	85279010	Radio paging receivers			T	2002	
232	85281210	Colour satellite television receivers, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus			T	2004	
233	85281291	Colour television receivers, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus, with a diagonal measurement of the screen not exceeding 42cm	L	Q		upon accession	
234	85281292	Colour television receivers, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus, with a diagonal measurement of the screen exceeding 42cm but not exceeding 52cm	L	Q		upon accession	
235	85281293	Colour television receivers, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus, with a diagonal measurement of the screen exceeding 52cm	L	Q		2002	12
236	85282100	Colour video monitors	L	Q		2002	12
237	85283010	Colour video projectors	L	Q		2002	12
238	85291020	Aerials and aerial reflectors of all kinds and parts suitable for use therewith, for radio-broadcast receivers and their combinations or television receivers			T	2002	
239	85291090	Aerials and aerial reflectors of all kinds and parts suitable for use therewith, for apparatus of headings 85.25 to 85.28, not elsewhere specified or included			T	2004	
240	85299091	High frequency tuners, suitable for use solely or principally with television receivers			T	2004	
241	85311090	Burglar or fire alarms & similar apparatus, not elsewhere specified or included			T	2002	
242	85352900	Automatic circuit breakers, for voltage exceeding 72.5 KV			T	2004	
243	85401100	Cathode-ray television picture tubes, including video monitor tubes, color	L	Q		2002	12
244	85404000	Color data/graphic display tubes, with a phosphor dot screen pitch smaller than 0.4mm	L	Q		2002	12
245	85445910	Electric cable (including co-axial cable), without connectors, for voltage exceeding 80V but not exceeding 1000 V			T	upon accession	

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
246	85447000	Optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors			T	upon accession	
247	86040099	Railway or tramway maintenance or service vehicles, whether or not self-propelled, not elsewhere specified or included			T	upon accession	
248	87012000	Road tractors for semi-trailers, other than tractors of heading 87.09	L	Q		2004	7
249	87019000	Tractors not elsewhere specified or included, other than tractors of heading 87.09			T	upon accession	
250	87021020	Motor vehicles for the transport of ten or more persons (including the driver), with compression-ignition internal combustion piston engine (diesel or semi-diesel), for transport of passengers at aerodrome	L	Q		2004	7
251	87021091	Motor vehicles not elsewhere specified or included, with compression-ignition internal combustion piston engine (diesel or semi-diesel), with 30 seats or more (including the driver)	L	Q		2004	7
252	87021092	Motor vehicles not elsewhere specified or included, with compression-ignition internal combustion piston engine (diesel or semi-diesel), with 20 seats or more, but not exceeding 29 seats (including the driver)	L	Q		2005	7
253	87021093	Motor vehicles not elsewhere specified or included, with compression-ignition internal combustion piston engine (diesel or semi-diesel), with 10 seats or more, but not exceeding 19 seats (including the driver)	L	Q		2005	7
254	87029010	Motor vehicles not elsewhere specified or included, with 30 seats or more (including the driver)	L	Q		2004	7
255	87029020	Motor vehicles not elsewhere specified or included, with 20 seats or more, but not exceeding 29 seats (including the driver)	L	Q		2005	7
256	87029030	Motor vehicles not elsewhere specified or included, with 10 seats or more, but not exceeding 19 seats (including the driver)	L	Q		2005	7
257	87031000	Vehicles specially designed for traveling on snow; golf cars and similar vehicles	L	Q		upon accession	
258	87032130	Saloon cars, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity not exceeding 1000cc	L	Q		2005	7
259	87032190	Vehicles not elsewhere specified or included, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity not exceeding 1000cc	L	Q		2005	7
260	87032230	Saloon cars, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 1000cc but not exceeding 1500cc	L	Q		2005	7

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
261	87032240	Cross-country cars (4WD), with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 1000cc but not exceeding 1500cc	L	Q		2005	7
262	87032250	Station wagons (with 9 seats or less), with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 1000cc but not exceeding 1500cc	L	Q		2005	7
263	87032290	Vehicles not elsewhere specified or included, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 1000cc but not exceeding 1500cc	L	Q		2005	7
264	87032314	Saloon cars, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 1500cc but not exceeding 2500cc	L	Q		2005	7
265	87032315	Cross-country cars (4WD), with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 1500cc but not exceeding 2500cc	L	Q		2005	7
266	87032316	Station wagons (with 9 seats or less), with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 1500cc but not exceeding 2500cc	L	Q		2005	7
267	87032319	Vehicles not elsewhere specified or included, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 1500cc but not exceeding 2500cc	L	Q		2005	7
268	87032334	Saloon cars, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 2500cc but not exceeding 3000cc	L	Q		2005	7
269	87032335	Cross-country cars (4WD), with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 2500cc but not exceeding 3000cc	L	Q		2005	7
270	87032336	Station wagons (with 9 seats or less), with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 2500cc but not exceeding 3000cc	L	Q		2005	7
271	87032339	Vehicles not elsewhere specified or included, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 2500cc but not exceeding 3000cc	L	Q		2005	7
272	87032430	Saloon cars, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 3000cc	L	Q		2005	7
273	87032440	Cross-country cars (4WD), with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 3000cc	L	Q		2005	7
274	87032450	Station wagons (with 9 seats or less), with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 3000cc	L	Q		2005	7

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
275	87032490	Vehicles not elsewhere specified or included, with spark-ignition internal combustion reciprocating piston engine, of a cylinder capacity exceeding 3000cc	L	Q		2005	7
276	87033130	Saloon cars, with compression-ignition internal combustion piston engine (diesel or semi-diesel), of a cylinder capacity not exceeding 1500cc	L	Q		2005	7
277	87033140	Cross-country cars (4WD), with compression-ignition internal combustion piston engine (diesel or semi-diesel), of a cylinder capacity not exceeding 1500cc	L	Q		2005	7
278	87033150	Station wagons (with 9 seats or less), with compression-ignition internal combustion piston engine (diesel or semi-diesel), of a cylinder capacity not exceeding 1500cc	L	Q		2005	7
279	87033190	Vehicles not elsewhere specified or included, with compression-ignition internal combustion piston engine (diesel or semi-diesel), of a cylinder capacity not exceeding 1500cc	L	Q		2005	7
280	87033230	Saloon cars, with compression-ignition internal combustion piston engine (diesel or semi-diesel), of a cylinder capacity exceeding 1500cc but not exceeding 2500cc	L	Q		2005	7
281	87033240	Cross-country cars (4WD), with compression-ignition internal combustion reciprocating piston engine (diesel or semi-diesel), of a cylinder capacity exceeding 1500cc but not exceeding 2500cc	L	Q		2005	7
282	87033250	Station wagons (with 9 seats or less), with compression-ignition internal combustion piston engine (diesel or semi-diesel), of a cylinder capacity exceeding 1500cc but not exceeding 2500cc	L	Q		2005	7
283	87033290	Vehicles not elsewhere specified or included, with compression-ignition internal combustion piston engine (diesel or semi-diesel), of a cylinder capacity exceeding 1500cc but not exceeding 2500cc	L	Q		2005	7
284	87033330	Saloon cars, with compression-ignition internal combustion piston engine (diesel or semi-diesel), of a cylinder capacity exceeding 2500cc	L	Q		2005	7
285	87033340	Cross-country cars (4WD), with compression-ignition internal combustion piston engine (diesel or semi-diesel), of a cylinder capacity exceeding 2500cc	L	Q		2005	7
286	87033350	Station wagons (with 9 seats or less), with compression-ignition internal combustion piston engine (diesel or semi-diesel), of a cylinder capacity exceeding 2500cc	L	Q		2005	7
287	87033390	Vehicles not elsewhere specified or included, with compression-ignition internal combustion piston engine (diesel or semi-diesel), of a cylinder capacity exceeding 2500cc	L	Q		2005	7

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
288	87039000	Motor cars and other motor vehicles principally designed for the transport of persons, not elsewhere specified or included, including station wagons and racing cars	L	Q		2005	7
289	87041030	Electromobile dumpers for the transport of goods, designed for off-highway use			T	2004	
290	87042100	Motor vehicles for the transport of goods, with compression-ignition internal combustion piston engine (diesel or semi-diesel), gross vehicle weight not exceeding 5 tons, excl. dumpers for off-highway use	L	Q		2004	7
291	87042230	Motor vehicles for the transport of goods, with compression-ignition internal combustion piston engine (diesel or semi-diesel), gross vehicle weight exceeding 5 tons but not exceeding 14 tons, excl. dumpers for off-highway use	L	Q		2004	7
292	87042240	Motor vehicles for the transport of goods, with compression-ignition internal combustion piston engine (diesel or semi-diesel), gross vehicle weight exceeding 14 tons but not exceeding 20 tons, excl. dumpers for off-highway use	L	Q		2004	7
293	87042300	Motor vehicles for the transport of goods, with compression-ignition internal combustion piston engine (diesel or semi-diesel), gross vehicle weight exceeding 20 tons, excl. dumpers for off-highway use	L	Q		2004	7
294	87043100	Motor vehicles for the transport of goods, with spark-ignition internal combustion reciprocating piston engine, gross vehicle weight not exceeding 5 tons, excl. dumpers for off-highway use	L	Q		2004	7
295	87043230	Motor vehicles for the transport of goods, with spark-ignition internal combustion reciprocating piston engine, gross vehicle weight exceeding 5 tons but not exceeding 8 tons, excl. dumpers for off-highway use	L	Q		2002	7
296	87043240	Motor vehicles for the transport of goods, with spark-ignition internal combustion reciprocating piston engine, gross vehicle weight exceeding 8 tons, excl. dumpers for off-highway use	L	Q		2002	7
297	87049000	Motor vehicles for the transport of goods, not elsewhere specified or included	L	Q		2002	7
298	87051021	All-road crane lorries, of maximum lifting capacity not exceeding 50 tons	L	Q		2004	13
299	87051022	All-road crane lorries, of maximum lifting capacity exceeding 50 tons but not exceeding 100 tons	L	Q		2004	13
300	87051023	All-road crane lorries, of maximum lifting capacity exceeding 100 tons	L	Q		2004	13
301	87051091	Crane lorries not elsewhere specified or included, of maximum lifting capacity not exceeding 50 tons	L	Q		2004	13
302	87051092	Crane lorries not elsewhere specified or included, of maximum lifting capacity exceeding 50 tons but not exceeding 100 tons	L	Q		2004	13

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
303	87051093	Crane lorries not elsewhere specified or included, of maximum lifting capacity exceeding 100 tons	L	Q		2004	13
304	87052000	Mobile drilling derricks	L	Q		2002	7
305	87053010	Fire fighting vehicles, mounted with scaling ladder	L	Q		2002	7
306	87053090	Fire fighting vehicles, not elsewhere specified or included	L	Q		2002	7
307	87054000	Concrete-mixer lorries	L	Q		2002	7
308	87059020	Mobile radiological units	L	Q		2002	7
309	87059030	Mobile environmental monitoring units	L	Q		2002	7
310	87059040	Mobile clinics	L	Q		2002	7
311	87059051	Airplane charging vehicles (frequency=400Hz)	L	Q		2002	7
312	87059059	Mobile electric generator sets, not elsewhere specified or included	L	Q		2002	7
313	87059060	Mobile vehicles for aircraft refueling, air-conditioners or deicing	L	Q		2002	7
314	87059070	Snow sweep vehicles for cleansing streets airfield runways	L	Q		2002	7
315	87059080	Petroleum well logging trucks, fracturing unit trucks and mixing sand trucks	L	Q		2002	7
316	87059090	Special purpose motor vehicles, not elsewhere specified or included, other than those principally designed for the transport of persons or goods	L	Q		2002	7
317	87060040	Chassis fitted with engines for crane lorries	L	Q		2004	13
318	87071000	Bodies for the vehicles of heading 87.03	L	Q		2004	7
319	87111000	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with reciprocating internal combustion piston engine, of a cylinder capacity not exceeding 50cc	L	Q		2004	6
320	87112000	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with reciprocating internal combustion piston engine, of a cylinder capacity exceeding 50cc but not exceeding 250cc	L	Q		2004	6
321	87113010	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with reciprocating internal combustion piston engine, of cylinder capacity exceeding 250cc but not exceeding 400cc	L	Q		2004	6
322	87113020	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with reciprocating internal combustion piston engine, of cylinder capacity exceeding 400cc but not exceeding 500cc	L	Q		2004	6
323	87114000	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with reciprocating internal combustion piston engine, of cylinder capacity exceeding 500cc but not exceeding 800cc	L	Q		2004	6
324	87115000	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with reciprocating internal combustion piston engine, of cylinder capacity exceeding 800cc	L	Q		2004	6

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
325	87119000	Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, not elsewhere specified or included; side-cars	L	Q		2004	6
326	87141900	Parts and accessories of motorcycle (including moped), excl. saddles	L	Q		2004	6
327	89012011	Finished oil tankers, loading not exceeding 100000t			T	2004	
328	89012012	Finished oil tankers, loading exceeding 100000t, not exceeding 300000t			T	2004	
329	89012013	Finished oil tankers, loading exceeding 300000t			T	2004	
330	89012021	Crude oil tankers, loading not exceeding 150000t			T	2004	
331	89012022	Crude oil tankers, loading exceeding 150000t, not exceeding 300000t			T	2004	
332	89012023	Crude oil tankers, loading exceeding 300000t			T	2004	
333	89012031	Liquified petroleum gas carriers, volume with 20000m <sup>3</sup> or less			T	2004	
334	89012032	Liquified petroleum gas carriers, volume exceeding 20000m <sup>3</sup>			T	2004	
335	89012041	Liquified natural gas carriers, volume not exceeding 20000m <sup>3</sup>			T	2004	
336	89012042	Liquified natural gas carriers, volume exceeding 20000m <sup>3</sup>			T	2004	
337	89012090	Tankers, not elsewhere specified or included			T	2004	
338	89013000	Refrigerated vessels other than those of subheading 8901.20			T	upon accession	
339	89019021	Motor container vessels, capable loading standard containers with 6000 or less			T	2004	
340	89019022	Motor container vessels, capable loading standard containers more than 6000			T	2004	
341	89019031	Motor Ro-Ro carriers, loading not exceeding 2000t			T	2004	
342	89019032	Motor Ro-Ro carriers, loading exceeding 2000t			T	2004	
343	89019041	Motor bulk carriers, loading not exceeding 150000t			T	2004	
344	89019042	Motor bulk carriers, loading exceeding 150000t, not exceeding 300000t			T	2004	
345	89019043	Motor bulk carriers, loading exceeding 300000t			T	2004	
346	89019050	Multi-purposes motor vessels			T	2004	
347	89019080	Motor vessels for the transport of goods and motor vessels for the transport of both persons and goods, not elsewhere specified or included			T	2004	
348	89020010	Fishing vessels, factory ships and other vessels for processing or preserving fishery products, motorized			T	upon accession	
349	89040000	Tugs and pusher craft			T	2004	
350	89051000	Dredgers			T	2004	
351	90061010	Electronic colour scanners used for preparing printing plates or cylinders	L	Q		upon accession	

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
352	90065100	Cameras with a through-the-lens viewfinder (single lens reflex (SLR)), for roll film of a width not exceeding 35mm	L	Q		2003	14
353	90065200	Cameras for roll film of a width less than 35mm, not elsewhere specified or included	L	Q		2003	14
354	90065300	Cameras for roll film of a width of 35mm, not elsewhere specified or included	L	Q		2003	14
355	90065900	Cameras not elsewhere specified or included	L	Q		2003	14
356	90083010	Orthographical image projectors, other than cinematographic			T	upon accession	
357	90121000	Microscopes other than optical microscopes; and diffraction apparatus	L	Q		upon accession	
358	90158000	Surveying, hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses, not elsewhere specified or included			T	upon accession	
359	90181210	B-ultrasonic diagnostic equipment			T	upon accession	
360	90181291	Chromoscope ultrasonic diagnostic equipment			T	upon accession	
361	90184910	Dentists' chairs incorporating dental equipment			T	upon accession	
362	90189090	Instruments and appliances used in Medical, surgical or veterinary sciences, not elsewhere specified or included			T	upon accession	
363	90221300	X-ray apparatus for dental use			T	upon accession	
364	90221400	X-ray apparatus for medical, surgical or veterinary uses, not elsewhere specified or included			T	upon accession	
365	90221990	X-ray apparatus, not elsewhere specified or included, other than for medical use			T	upon accession	
366	90222100	Apparatus based on the use of alpha, beta or gamma radiations, including radiography or radio rapy apparatus, for medical surgical, dental or veterinary			T	upon accession	
367	90278090	Instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like, measuring or checking quantities of heat, sound or light; Instruments and apparatus for physical or chemical analysis, nes			T	upon accession	
368	90301000	Instruments and apparatus for measuring or detecting ionizing radiations			T	upon accession	
369	90304010	Frequency meters, digital, of test frequency less than 12.4GHz			T	upon accession	
370	90318010	Optical telecommunication and optical fibre performance testing instruments			T	upon accession	
371	90311000	Machines for balancing mechanical parts			T	2004	
372	91011100	Electrically operated wrist-watches, with mechanical display only, whether or not incorporating a stop-watch facility, with case of precious metal or of metal clad with precious metal	L	Q		2003	15
373	91012100	Non-electrically operated wrist-watches, automatic winding, whether or not incorporating a stop-watch facility, with case of precious metal or of metal clad with precious metal	L	Q		2003	15

Serial NO	HS NO	DESCRIPTION OF PRODUCTS	L	Q	T	Phasing-out Period	Quota Category
374	91012900	Non-electrically operated wrist-watches, not elsewhere specified and included, whether or not incorporating a stop-watch facility, with case of precious metal or of metal clad with precious metal	L	Q		2003	15
375	91021100	Electrically operated wrist-watches, with mechanical display only, whether or not incorporating a stop-watch facility, other than those of heading 91.01	L	Q		2003	15
376	91022100	Non-electrically operated wrist-watches, automatic winding, whether or not incorporating a stop-watch facility, other than those of heading 91.01	L	Q		2003	15
377	91022900	Non-electrically operated wrist-watches, not elsewhere specified and included, whether or not incorporating a stop-watch facility, other than those of heading 91.01	L	Q		2003	15

Notes:

1. “L” stands for “import licence”;  
“Q” stands for “import quota”; and  
“T” stands for “specific import tendering requirements for machinery and electronic products”.
2. The NTMs will be eliminated as of 1 January of each calendar year as specified in the column of Phasing-out Period.
3. The products covered by the Agreement on Trade in Civil Aircraft are not subject to any NTMs specified herein.

*Table Two*  
**Product Quota**  
 (Initial Quota Volume/Value and Annual Growth Rate)

Quota Category		Product Coverage (Serial No in Table One)	Unit	Initial Quota Volume/Value	Annual Growth Rate
1	Processed oil	12-19	Million Metric Tons	16.58	15%
2	Sodium cyanide	20	Million Metric Tons	0.018	15%
3	Chemical fertilizer	22-25, 29-33, 36, 38, 41-45	Million Metric Tons	8.9	15%
4	Natural rubber	48-51	Million Metric Tons	0.429	15%
5	Tires of rubber used on automobiles	52-56	Million Pieces	0.81	15%
6	Motorcycles and key parts	101-103, 319-326	US\$ Million	286	15%
7	Automobiles and key parts	104-106, 115, 248, 250-256, 258-288, 290-297, 304-316, 318	US\$ Million	6000	15%
8	Air conditioners and compressors	114	US\$ Million	286	15%
9	Recording apparatus and key parts	201-203, 207, 216-222	US\$ Million	293	15%
10	Magnetic sound and video recording apparatus	204, 205	US\$ Million	38	15%
11	Recorders and transport mechanisms	206	US\$ Million	387	15%
12	Color TV set and TV tuners	235-237, 243, 244	US\$ Million	325	15%
13	Crane lorries and chassis	298-303, 317	US\$ Million	88	15%
14	Cameras	352-355	US\$ Million	14	15%
15	Wrist watches	372-377	US\$ Million	33	15%

*Table Three*  
**Products Subject to Import Licence Only**

NO	HS NO	DESCRIPTION OF PRODUCTS	L	Phasing-out Period
1	10011000	Durum wheat	L	upon accession
2	10019010	Seed of wheat & maslin, excl. durum wheat	L	upon accession
3	10019090	Wheat & maslin, excl. for seeding and durum wheat	L	upon accession
4	10059000	Maize (corn), excl. for seeding	L	upon accession
5	10061010	Rice in husk (paddy or rough) seed	L	upon accession
6	10061090	Rice in husk (paddy or rough), excl. for seeding	L	upon accession
7	10062000	Husked (brown) rice	L	upon accession

NO	HS NO	DESCRIPTION OF PRODUCTS	L	Phasing-out Period
8	10063000	Semi-milled or wholly milled rice, whether or not polished or glazed	L	upon accession
9	10064000	Broken rice	L	upon accession
10	15071000	Crude soya-bean oil, whether or not degummed, but not chemically modified	L	upon accession
11	15079000	Soya-bean oil and its fractions, refined, but not chemically modified	L	upon accession
12	15081000	Crude ground-nut oil, but not chemically modified	L	upon accession
13	15089000	Ground-nut oil and its fractions, refined, but not chemically modified	L	upon accession
14	15111000	Crude palm oil, but not chemically modified	L	upon accession
15	15119000	Palm oil and its fractions, refined, but not chemically modified	L	upon accession
16	15121100	Crude sunflower-seed or safflower oil, but not chemically modified	L	upon accession
17	15122100	Crude cotton-seed oil, whether or not gossypol has been moved, but not chemically modified	L	upon accession
18	15122900	Cotton-seed oil and its fractions, refined, but not chemically modified	L	upon accession
19	15141010	Crude rape, colza oil, but not chemically modified	L	upon accession
20	15141090	Crude mustard oil, but not chemically modified	L	upon accession
21	15149000	Rape, colza or mustard oil and fractions thereof, refined, but not chemically modified	L	upon accession
22	15152100	Crude maize (corn) oil, but not chemically modified	L	upon accession
23	15155000	Sesame oil and its fractions, whether or not refined, but not chemically modified	L	upon accession
24	22051000	Vermouth & other wine of fresh grapes flavoured with plants or aromatic substance, in containers holding $\leq 2L$	L	upon accession
25	22059000	Vermouth & other wine of fresh grapes, flavoured with plants or aromatic substance, in containers holding $> 2L$	L	upon accession
26	22071000	Undenatured ethyl alcohol of an alcoholic strength by volume $\geq 80\%$	L	upon accession
27	22082000	Spirits from distilling grape wine or marc	L	upon accession
28	22083000	Whiskeys	L	upon accession
29	22084000	Rum & tafia	L	upon accession
30	22085000	Gin & Geneva	L	upon accession
31	22087000	Liqueurs and cordials	L	upon accession
32	22089000	Undenatured ethyl alcohol of an alcoholic strength by volume $< 80\%$ ; spirituous beverages, nes	L	upon accession
33	37013090	Photographic plates, in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles, any side exceeding 255mm, nes	L	upon accession
34	37019100	Photographic plates and film for colour photography, in the flat, sensitized, unexposed, of any material other than paper, paperboard or textiles, any side $\leq 255mm$	L	upon accession
35	37023100	Photographic film rolls, unexposed, without perforations, for colour photography, of any material other than paper, paperboard or textiles, width $\leq 105mm$	L	upon accession
36	37024100	Film rolls, for colour photography, unexposed, without perforations, of any material other than paper, paperboard or textiles, width $> 610mm$ , length $> 200m$	L	upon accession

NO	HS NO	DESCRIPTION OF PRODUCTS	L	Phasing-out Period
37	37024390	Film rolls, unexposed, without perforations, width >610mm, length ≤200m, of any material other than paper, paperboard or textiles, nes	L	upon accession
38	37024490	Film rolls , unexposed, without perforations, 105mm< width ≤610mm, of any material other than paper, paperboard or textiles, nes	L	upon accession
39	37025100	Film rolls for colour photography, unexposed, width ≤16mm, & length ≤14m, of any material other than paper, paperboard or textiles nes	L	upon accession
40	37025200	Film rolls for colour photography, unexposed, width ≤16mm, length >14m, of any material other than paper, paperboard or textiles, nes	L	upon accession
41	37025410	Film rolls for colour photography other than for slides, unexposed, width =35mm and length ≤2m, of any material other than paper, paperboard or textiles	L	upon accession
42	37025490	Film rolls for colour photography other than for slides, unexposed, 16 mm<width <35 mm, 2 m<length ≤30m, of any material other than paper, paperboard or textiles	L	upon accession
43	37025590	Colour film rolls for colour photography, unexposed, 16mm<width ≤35mm, length >30m, excl. cinematographic film	L	upon accession
44	37025690	Film in rolls for colour photography, unexposed, width >35mm, of any material other than paper, paperboard or textiles , excl. cinematographic film	L	upon accession
45	37029100	Film rolls of neutral colour , unexposed, width ≤16mm, length ≤14m, of any material other than paper, paperboard or textiles	L	upon accession
46	37031010	Photographic paper & paperboard in rolls, sensitized, unexposed, width >610mm	L	upon accession
47	37032010	Photographic paper and paperboard for colour photography, sensitized, unexposed, not in rolls or width ≤610mm	L	upon accession

#### ANNEX 4

#### PRODUCTS AND SERVICES SUBJECT TO PRICE CONTROLS

##### Products Subject to State Pricing

NO	PRODUCTS	HS NO	DESCRIPTION OF PRODUCTS
1	TOBACCO	24011010	Flue-cured tobacco, not stemmed/stripped
		24011090	Tobacco other than flue-cured, not stemmed/stripped
		24012010	Flue-cured tobacco, partly or wholly stemmed/stripped
		24012090	Tobacco other than flue-cured, partly or wholly stemmed/stripped
2	EDIBLE SALT	25010010	Salt, whether or not in aqueous solution or containing added anticaking or free-flowing agents
3	NATURAL GAS	27112100	Natural gas in gaseous state

NO	PRODUCTS	HS NO	DESCRIPTION OF PRODUCTS
4	PHARMA- CEUTICALS	30011000	Glands & other organs, dried, whether or not powdered
		30012000	Extracts of glands or other organs or of their secretions
		30019010	Heparin & its salts
		30019090	Substances of human or animal origin, for therapeutic or prophylactic uses, nes
		30021000	Antisera & other blood fractions & modified immunological products, whether or not obtained by means of biotechnological processes
		30022000	Vaccines for human medicine
		30023000	Vaccines for veterinary medicine
		30029010	Saxitoxin
		30029020	Ricitoxin
		30029090	Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; other toxins, cultures of micro-organisms (excl. yeasts) and similar products, nes
		30041011	Medicaments containing ampicillin, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale
		30041012	Medicaments containing amoxycillin, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale
		30041013	Medicaments containing penicillins V, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale
		30041019	Medicaments containing penicillins, nes, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale
		30041090	Medicaments containing penicillins or derivatives thereof nes, or streptomycins or their derivatives, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale
		30042011	Medicaments containing cefotaxime, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale
		30042012	Medicaments containing ceftazidime, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale
		30042013	Medicaments containing cefoxitin, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale
		30042014	Medicaments containing ceftazole, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale
		30042015	Medicaments containing cefaclor, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale
30042016	Medicaments containing cefuroxime, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale		
30042017	Medicaments containing ceftriaxone, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale		

NO	PRODUCTS	HS NO	DESCRIPTION OF PRODUCTS
		30042018	Medicaments containing cefoperazone, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale
		30042019	Medicaments containing other cephamycines, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms of packing for retail sale, nes
		30042090	Medicaments containing other antibiotics, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured does or in forms of packing for retail sale, nes
		30043100	Medicaments containing insulin, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured does or in forms of packing for retail sale
		30043200	Medicaments containing of adrenal cortical hormones, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured does or in forms of packing for retail sale
		30043900	Medicaments containing other hormones, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured does or in forms of packing for retail sale, nes
		30044010	Medicaments containing quinine or its salts, but not containing antibiotics or products of heading 29.37, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured does or in forms of packing for retail sale
		30044090	Medicaments containing alkaloids or their derivatives, but not containing hormones or other products of heading 29.37 or antibiotics, consisting of mixed or unmixed products put up in measured does or in forms of packing for retail sale, nes
		30045000	Other medicaments containing vitamins or other products of 29.36, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured does or in forms of packing for retail sale
		30049010	Medicaments containing sulfa drugs, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured does or in forms of packing for retail sale, nes
		30049020	Medicaments containing biphenyl dicarbxybte, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured does or in forms of packing for retail sale, nes
		30049053	Bai Yao, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured does or in forms of packing for retail sale
		30049059	Medicaments of Chinese type, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured does or in forms of packing for retail sale, nes
		30049090	Medicaments of products for therapeutic, prophylactic or diagnostic uses, consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured does or in forms of packing for retail sale, nes
		30051010	Adhesive plasters, impregnated or coated with pharmaceutical substances or put up in forms of packing for retail sale for medical, surgical, dental or veterinary purposes
		30063000	Opacifying preparations for X-ray examinations; diagnostic reagents designed to be administered to the patient
		30066000	Chemical contraceptive preparations based on hormones or spermicides
		40141000	Sheath contraceptives

*Products Subject to Government Guidance Pricing*

NO	PRODUCTS	HS NO	DESCRIPTION OF PRODUCTS
1	GRAIN	10011000	Durum wheat
		10019010	Seed of wheat & maslin, excl. durum wheat
		10019090	Wheat & maslin, excl. for seeding and durum wheat
		10051000	Maize (corn) seed
		10059000	Maize (corn), excl. for seeding
		10061010	Rice in husk (paddy or rough) seed
		10061090	Rice in husk (paddy or rough), excl. for seeding
		10062000	Husked (brown) rice
		10063000	Semi-milled or wholly milled rice, whether or not polished or glazed
		12010010	Seed of soybeans
		12010091	Yellow soybeans, not for seeding, whether or not broken
		12010092	Black soybeans, not for seeding, whether or not broken
12010093	Green soybeans, not for seeding, whether or not broken		
12010099	Soybeans, nes, not for seeding, whether or not broken		
2	VEGETABLE OIL	15071000	Crude soybean oil, whether or not degummed, but not chemically modified
		15079000	Soya-bean oil and its fractions, refined, but not chemically modified
		15141010	Crude rape, colza oil, but not chemically modified
		15141090	Crude mustard oil, but not chemically modified
3	PROCESSED OIL	27100011	Motor gasoline & aviation gasoline
		27100013	Naphtha
		27100023	Aviation kerosene
		27100024	Lamp-kerosene
		27100031	Light diesel oil
		27100033	Fuel oil No.5 to No.7 (National Code)
		27100039	Diesel oils & preparations thereof and other fuel oils, nes
4	FERTILIZER	31021000	Urea, whether or not in aqueous solution
5	SILKWORM COCOONS	50010010	Mulberry feeding silk-worm cocoons
		50010090	Other silk-worm cocoons suitable for reeling
6	COTTON	52010000	Cotton, not carded or combed

*Public Utilities Subject to Government Pricing*

NO	CPC	PUBLIC UTILITIES
1	1720	Price of gas for civil use.
2	1800	Price of tap water.
3	1710	Price of electricity.
4	1730	Price of heating power.
5	1800	Price of water supplied by irrigation works.

*Service Sectors Subject to Government Pricing*

NO	CPC	SERVICE	NOTES
1	7511 7512 7521 7522	Postal and telecommunication services charges	Including postal services charges, national and trans-provincial telecommunication services charges.

2	964	Entrance fee for tour sites	Referring to significant historical relics and natural landscape under protection.
3	921 922 923	Education services charges	

*Service Sectors Subject to Government Guidance Pricing*

NO	CPC	SERVICE	NOTES
1	7214 745** 731 7111 7112 743 7131 7139	Transport services charges	Including rail transport of both passenger and freight, air transport of freight, port services, and pipeline transport.
2	861 862 8671 8672	Professional services charges	Including architectural and engineering services, legal services, assets assessment services, authentication, arbitration, notarization and inspection.
3	621	Charges for commission agents' services	Including commission for trademark, advertisement taxation and bidding agents.
4	81339**	Charges for settlement, clearing and transmission services of banks	Including settlement, clearing and transmission services of the RMB, transaction fees and seat charges of national securities exchanges, as well as seat charges for China Foreign Exchange Center
5	82101	Selling price and renting fee of residential apartments	
6	931	Health related services	

Notes:

1. CPC classification is added to the service sectors subject to state pricing in this Annex in accordance with the GATT document MTN.GNS/W/120, 10 July 1991, which provided services sectoral classification for the purpose of services negotiations during the Uruguay Round.

2. The government pricing in the service sectors which are listed in China's Schedule of Specific Commitments shall be applied in a manner consistent with Article 6 of GATS and the Reference Paper on Basic Telecommunication.

*ANNEX 5A*

*NOTIFICATION PURSUANT TO ARTICLE XXV OF  
THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES*

- I. SUBSIDIES FROM CENTRAL BUDGET PROVIDED TO CERTAIN STATE-OWNED ENTERPRISES WHICH ARE RUNNING AT A LOSS
  1. Title of the subsidy program

Subsidies provided to certain State-owned enterprises which are running at a loss.
  2. Period covered by the notification

1990-1998.
  3. Policy objective and/or purpose of the subsidy

To promote restructuring of those State-owned enterprises which are running at a loss, while keeping employment by means of promoting rationalization and maintaining stable production and safety of the society(compensation for the lack of social security system).
  4. Background and authority for the subsidy

Ministry of Finance.
  5. Legislation under which it is granted

Assistance by budget.
  6. Form of the subsidy

Grant and Tax Forgiving
  7. To whom and how the subsidy is provided

Subsidy is provided to severe loss-making State-owned enterprises due to either fixed price of the products they produce or the increasing cost of exploitation of the resources.
  8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: 100 million RMB

Sector/Year	1990	1991	1992	1993	1994	1995	1996	1997	1998
Metallurgic industry	1.16	1.46	1.35	3.13	4.07	3.02	5.04	10.96	8.36
Ferrous-metal industry	0.63	0.86	1.28	1.51	5.80	5.86	4.78	6.58	4.65
Machinery industry	3.80	5.07	14.61	3.98	14.09	8.34	9.67	11.17	8.38
Coal industry	55.86	66.70	70.14	49.80	47.19	12.13	13.21	16.83	14.85
Oil industry	42.53	54.36	52.89	28.08	0.00	0.00	0.00	6.78	3.28
Chemical industry	3.83	4.03	3.70	4.11	6.90	3.47	4.26	5.32	4.96
Textile industry	1.90	2.39	2.07	3.09	2.65	3.38	6.97	16.41	15.36
Light industry	6.65	7.88	6.31	9.30	3.99	1.52	2.63	6.82	2.35
Tobacco industry	0.00	0.00	0.00	0.00	12.00	8.62	9.26	10.25	8.83
Total of the nine sectors	116.36	142.75	152.35	103.00	96.69	46.34	55.92	91.12	71.02
Other sectors	1.65	1.94	1.99	1.53	1.24	0.42	1.28	4.62	3.67
Total	118.01	144.69	154.34	104.53	97.93	46.76	57.2	95.74	74.69

9. Duration of the subsidy and/or any other time-limits attached to it  
1949-2000.
10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.
- II. SUBSIDIES FROM LOCAL BUDGET PROVIDED TO LOSS MAKING STATE OWNED ENTERPRISES
  1. Title of the subsidy program  
Subsidies provided to certain State-owned enterprises which are running at a loss.
  2. Period covered by the notification  
1990-1999.
  3. Policy objective and/or purpose of the subsidy  
To promote restructuring of those State-owned enterprises which are running at a loss, while keeping employment by means of promoting rationalization and maintaining stable production and safety of the society(compensation for the lack of social security system).
  4. Background and authority for the subsidy  
Ministry of Finance and local governments.
  5. Legislation under which it is granted  
Assistance by local budget.
  6. Form of the subsidy

Grant and Tax Forgiving

7. To whom and how the subsidy is provided

Subsidy is provided to severe loss-making State-owned enterprises due to either fixed price of the products they produce or the increasing cost of exploitation of the resources and restructuring of state owned enterprises.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: 100 million RMB

	1990	1991	1992	1993	1994	1995	1996	1997	1998
Beijing						57.69	59.28	63.26	63.11
Tianjin						9.23	8.79	7.29	7.29
Hebei						6.84	5.89	4.76	4.91
Shanxi						5.52	6.05	5.42	5.75
Inner-Mongolia						3.53	2.77	2.22	2.29
Liaoning						18.02	17.10	16.63	13.14
Jilin						6.07	5.88	5.75	4.02
Heilongjiang						11.77	7.07	5.21	4.47
Shanghai						44.95	45.50	45.88	45.94
Jiangsu						11.75	10.46	8.81	9.15
Zhejiang						25.06	30.10	34.79	37.85
Anhui						4.17	7.11	6.69	5.41
Fujian						2.53	1.40	1.05	0.78
Jiangxi						0.67	0.65	0.52	0.50
Shandong						8.48	8.12	6.37	4.92
Henan						4.27	3.80	3.66	2.66
Hubei						11.60	10.99	10.92	9.83
Hunan						4.57	5.16	4.23	5.18
Guangdong						17.52	17.35	15.39	13.60
Guangxi						2.22	2.01	1.60	1.33
Hainan						0.70	0.43	0.32	0.61
Chongqing								3.18	1.93
Sichuan						5.99	6.37	2.01	1.89
Guizhou						1.48	1.55	2.25	1.46
Yunnan						7.51	7.82	6.49	3.22
Tibet						0.87	1.16	1.19	1.18
Shaanxi						4.67	4.46	4.66	4.09
Gansu						0.47	0.22	0.18	0.56
Qinghai						0.91	0.96	0.51	0.44
Ningxia						0.18	0.16	0.20	0.19
Xingjiang						1.74	1.54	1.27	1.08
Total	460.87	365.55	290.62	306.76	268.29	281.01	280.20	272.75	258.81

9. Duration of the subsidy and/or any other time-limits attached to it 1949-2000.

10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.

III. THE PRIORITY IN OBTAINING LOANS AND FOREIGN CURRENCIES BASED ON EXPORT PERFORMANCE

1. Title of the subsidy program  
The priority in obtaining loans and foreign currencies based on export performance.
2. Period covered by the notification  
1994-1999.
3. Policy objective and/or purpose of the subsidy  
To promote the exportation of automobiles.
4. Background and authority for the subsidy  
State Planning Commission.
5. Legislation under which it is granted  
State Council Circular on Industrial Policy on Automobiles..
6. Form of the subsidy  
Priority in obtaining loans and foreign currencies.
7. To whom and how the subsidy is provided  
Priority is given to:
  - (1) Automotive production enterprises whose export of whole vehicle products has reached the percentage points in the volume of their sales as indicated in the following chart;

<b>Vehicles Types</b>	<b>Category</b>	<b>Percentages</b>
Passenger Vehicles	M1	3%
	M2	5%
	M3	8%
Freight Vehicles	N1	5%
	N2, N3	4%
Motorcycles	L	10%

and

- (2) Automobile and motorcycle components manufacturing enterprises whose exports account for 10 per cent of their total annual sales.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Zero, because no enterprises have reached the level for enjoying the priority up till now.

9. Duration of the subsidy and/or any other time-limits attached to it

China commits itself to eliminate this measure by the year of 2000.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Zero.

IV. PREFERENTIAL TARIFF RATES BASED ON LOCALIZATION RATE OF AUTOMOTIVE PRODUCTION.

1. Title of the subsidy program

Preferential tariff rates based on localization rate of automotive production.

2. Period covered by the notification

1994-1999.

3. Policy objective and/or purpose of the subsidy

To promote the localization process of automobile industry of China.

4. Background and authority for the subsidy

State Planning Commission.

5. Legislation under which it is granted

State Council Circular on Industrial Policy on Automobiles.

6. Form of the subsidy

Preferential tariff rates.

7. To whom and how the subsidy is provided

The preferential tariff rates are granted to the automotive enterprises whose localization reaches the following ratios:

- (1) Localization rate reaches 40 per cent, 60 per cent or 80 per cent on products that incorporate imported technology on whole vehicles of M Category;
- (2) Localization rate reaches 50 per cent, 70 per cent or 90 per cent on products that incorporate imported technology on whole vehicles of N and L Categories; and
- (3) Localization rate reaches 50 per cent, 70 per cent or 90 per cent on products that incorporate imported technology on automobile and motorcycle assemblies and key components.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
Not available.
  9. Duration of the subsidy and/or any other time-limits attached to it  
China commits itself to phase out this measure by the year of 2000.
  10. Statistical data permitting an assessment of the trade effects of a subsidy  
The trade effect is negligible.
- V. PREFERENTIAL POLICIES FOR THE SPECIAL ECONOMIC ZONES (EXCLUDING THE PUDONG AREA OF SHANGHAI)
1. Title of the subsidy program  
Preferential income tax policies for foreign-invested enterprises in the Special Economic Zones of Shenzhen, Zhuhai, Shantou, Xiamen, Hainan.
  2. Period covered by the notification  
1984 - now.
  3. Policy objective and/or purpose of the subsidy  
To promote regional development and absorb foreign investment.
  4. Background and authority for the subsidy  
State Administration of Taxation and local taxation authorities.
  5. Legislation under which it is granted  
Before 1991, Income Tax Law of the People's Republic of China Concerning Chinese-Foreign Equity Joint Ventures and Income Tax Law of the People's Republic of China for Foreign Enterprises.  
After 1991, Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises.
  6. Form of the subsidy  
Application of preferential income tax rate, and exemption of income tax.
  7. To whom and how the subsidy is provided
    - (1) For foreign-invested enterprises established in the Special Economic Zones and foreign enterprises engaging in production and business operation in the Special Economic Zones, preferential income tax rate of 15 per cent shall be applied.
    - (2) For foreign-invested productive enterprises established in the old areas of the cities where the Special Economic Zones are located,

preferential income tax rate of 24 per cent shall be applied; for technology intensive projects, projects having foreign investment more than \$ 30 million with a long paying back period, and projects within sectors encouraged by the State such as energy, transportation etc., preferential income tax rate may further be reduced to 15 per cent.

- (3) For enterprises in services sectors with foreign investment more than US\$ 5 million and operation term over 10 years, income tax for the first year shall be exempted and that for the second and third years shall be reduced by 50 per cent, subject to the application and approval by the local taxation authorities. The base year shall be the first profit-making year of the enterprises.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

The preferential income tax rate applied is 24 or 15 per cent.

9. Duration of the subsidy and/or any other time-limits attached to it

1984 -

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

## VI. PREFERENTIAL POLICIES FOR THE ECONOMIC AND TECHNOLOGY DEVELOPMENT AREAS

1. Title of the subsidy program

Preferential income tax policies for foreign-invested enterprises in the economic and technology development areas in Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Lianyungang, Nantong, Ningbo, Fuzhou, Guangzhou, Zhanjiang, Shanghai (Minhang, Hongqiao, Caohejing), Beihai, Shenyang, Wenzhou, Harbin, Changchun, Hangzhou, Wuhan, Chongqing, Wuhu, Xiaoshan, Huizhou, Nansha, Kunshan, Rongqiao, Weihai, Yingkou, Dongshan.

2. Period covered by the notification

1984 - now.

3. Policy objective and/or purpose of the subsidy

To accelerate the opening-up of the region and absorb foreign investment.

4. Background and authority for the subsidy

State Administration of Taxation and local taxation authorities.

5. Legislation under which it is granted  
 Before 1991, Income Tax Law of the People's Republic of China Concerning Chinese-Foreign Equity Joint Ventures and Income Tax Law of the People's Republic of China for Foreign Enterprises.  
 After 1991, Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises.
6. Form of the subsidy  
 Application of preferential income tax rate, and exemption of income tax..
7. To whom and how the subsidy is provided
  - (1) For foreign-invested productive enterprises established in the economic and technology development areas, preferential income tax rate of 15 per cent shall be applied.
  - (2) For foreign-invested productive enterprises established in the old areas of the cities where the economic and technology development areas are located, preferential income tax rate of 24 per cent shall be applied; for technology intensive projects, projects having foreign investment more than \$ 30 million with a long paying back period, and projects within sectors encouraged by the State such as energy, transportation etc., preferential income tax rate may further be reduced to 15 per cent.
8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
 The preferential income tax rate applied is 24 or 15 per cent.
9. Duration of the subsidy and/or any other time-limits attached to it  
 1984 -
10. Statistical data permitting an assessment of the trade effects of a subsidy  
 Not available.
- VII. PREFERENTIAL POLICIES FOR THE SPECIAL ECONOMIC ZONE OF THE PUDONG AREA OF SHANGHAI
  1. Title of the subsidy program  
 Preferential income tax policies for foreign-invested enterprises in the Special Economic Zone of the Pudong area of Shanghai.
  2. Period covered by the notification  
 1991 - now.

3. Policy objective and/or purpose of the subsidy  
To accelerate the opening-up of the region and absorb foreign investment.
4. Background and authority for the subsidy  
State Administration of Taxation and local taxation authorities.
5. Legislation under which it is granted  
Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises.
6. Form of the subsidy  
Application of preferential income tax rate, and exemption of income tax.
7. To whom and how the subsidy is provided
  - (1) For foreign-invested productive enterprises established in the Special Economic Zone of the Pudong area of Shanghai and for foreign-invested enterprises established there to engage in infrastructure constructions, preferential income tax rate of 15 per cent shall be applied.
  - (2) For foreign-invested enterprises established in the Special Economic Zone of the Pudong area of Shanghai, engaged in such energy and transportation construction projects as airport, ports, railways, power stations etc. with operation term longer than 15 years, income tax for the first five years shall be exempted and that for the sixth to the tenth years shall be reduced by 50 per cent. The base year shall be the first profit-making year of the enterprises.
8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
The preferential income tax rate applied is 15 per cent.
9. Duration of the subsidy and/or any other time-limits attached to it  
1991 -
10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.

VIII. PREFERENTIAL POLICIES FOR FOREIGN INVESTED ENTERPRISES

1. Title of the subsidy program  
 Preferential income tax policies for foreign-invested enterprises in China.
2. Period covered by the notification  
 1985 - now.
3. Policy objective and/or purpose of the subsidy  
 To absorb foreign investment and expand economic cooperation.
4. Background and authority for the subsidy  
 State Administration of Taxation and local taxation authorities.
5. Legislation under which it is granted  
 Before 1991, Income Tax Law of the People's Republic of China Concerning Chinese-Foreign Equity Joint Ventures and Income Tax Law of the People's Republic of China for Foreign Enterprises.  
 After 1991, Income Tax Law of the People's Republic of China for Enterprises with Foreign Investment and Foreign Enterprises.
6. Form of the subsidy  
 Application of preferential income tax rate, and exemption of income tax.
7. To whom and how the subsidy is provided
  - (1) For foreign-invested productive enterprises with operation term more than 10 years, the income tax for the first two years shall be exempted and that for the third to the fifth year shall be reduced by 50 per cent. The base year shall be the first profit-making year of the enterprises.
  - (2) For Chinese-foreign joint enterprises engaged in the construction of ports, docks and berths, preferential income tax rate of 15 per cent shall be applied, and for those with operation term longer than 15 years, income tax for the first five years shall be exempted and that for the sixth to the tenth years shall be reduced by 50 per cent. The base year shall be the first profit-making year of the enterprises.
  - (3) For foreign-invested advanced technology enterprises, in case that the technologies they possess or provide are still regarded as advanced when the initial income tax exemption and reduction period expires, income tax reduction of 50 per cent may continue to be applied, for another 3 years.

- (4) For foreign-invested enterprises engaged in agriculture, forestry and animal husbandry, and for foreign-invested enterprises established in remote areas with less developed economic level, income tax reduction of 15 to 30 per cent may continue to be applied for another ten years after the initial exemption and reduction period expires, subject to application and approval of local taxation authorities.
  - (5) For foreign-invested enterprises of industries and sectors in which foreign investment is encouraged by the State, provincial government may determine whether to reduce or exempt the local part of income tax.
  - (6) For profits of foreign investors which are re-invested into the enterprises to increase the register capital, or to set up other new enterprises with operation term more than 5 years, 40 per cent of their income tax payment for the re-invested profits shall be refunded subject to application and approval from the local taxation authorities. In case that the new or the expanded enterprises with the re-investment are hi-tech enterprises, or that profits are from foreign-invested enterprises in Hainan Special Economic Zone and re-invested into infrastructure projects or agriculture development projects of the same Special Economic Zone, 100 per cent of the paid income tax for the re-investment shall be refunded.
  - (7) For dividends, interests, rentals, franchising fees and other forms of income of foreign investors who have no commercial establishments in China, preferential income tax rate of 20 per cent shall be applied except for profits of foreign investors gained from the enterprises they have invested in China, which are subject to 100 per cent income tax exemption. For franchising fees gained from provision of special technology to scientific research, energy development, transportation development, agriculture, forestry and animal husbandry, preferential income tax rate of 10 per cent may be applied, subject to application and approval of local taxation authorities; in case that the technology is advanced or is provided with favorable conditions, income tax exemption may be applied.
8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
The preferential income tax rate applied is 20, 15 or 10 per cent.
9. Duration of the subsidy and/or any other time-limits attached to it  
1985-

10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.
- IX. LOANS FROM THE STATE POLICY BANKS
1. Title of the subsidy program  
Loans of the State Policy Banks (the State Development Bank, the Export and Import Bank of China, and the Agriculture Development Bank of China).
2. Period covered by the notification  
For the State Development Bank, 1994 - 1996;  
For the Export and Import Bank of China, 1991 - 1995  
For the Agriculture Development Bank of China., 1994 - 1996.
3. Policy objective and/or purpose of the subsidy  
To adjust investment structure.
4. Background and authority for the subsidy  
There are three State Policy Banks in China: the State Development Bank, the Export and Import Bank of China, and the Agriculture Development Bank of China. The three State Policy Banks accumulate capital by issuing treasury bonds to commercial banks and the market. Generally the State budget does not provide interest rate subsidy to the State Policy Banks. The interest rates of the State Policy Banks loans are usually the same as the market interest rates.
5. Legislation under which it is granted  
None.
6. Form of the subsidy  
Loans.
7. To whom and how the subsidy is provided  
Loans from the State Development Bank are mainly directed to infrastructure constructions in energy, transportation, telecommunications and water conservancy, resources development in the middle and western parts of China, as well as technology renovation of some enterprises.  
  
Loans from the Export and Import Bank of China are mostly directed to guarantee for export credit of commercial banks, and a small part is for direct export credit.

Loans from the Agriculture Development Bank of china are mainly provided for purchase and storage of agricultural and side-line products, forestry construction and water conservancy development.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

RMB 200 billion for the State Development Bank, and 9.6 per cent of which is directed to the manufacturing industry;

RMB 21 billion export credit (mainly sellers' credit) for the Export and Import Bank of China;

RMB 500 billion for the Agriculture Development of China.

9. Duration of the subsidy and/or any other time-limits attached to it

1991 -

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

X. FINANCIAL SUBSIDIES FOR POVERTY ALLEVIATION

1. Title of the subsidy program

Financial subsidies for poverty alleviation.

2. Period covered by the notification

For direct allocation of funds, 1991 - now

For poverty alleviation loans, 1994 - now.

3. Policy objective and/or purpose of the subsidy

To alleviate poverty.

4. Background and authority for the subsidy

For direct allocation of funds, State Planning Commission and Ministry of Finance.

For poverty alleviation loans, the Agriculture Development Bank of China.

5. Legislation under which it is granted

Assistance by budget.

6. Form of the subsidy

Direct appropriation and provision of poverty alleviation loans.

7. To whom and how the subsidy is provided  
The subsidies are provided to regions in China where annual income per capita is less than RMB 400.
8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
For direct appropriation from the central budget, the total from 1991 to 2000 is RMB 103.6 billion (RMB 18.3 billion from 1991 to 1995, RMB 4 billion in 1996, RMB 15.2 billion in 1997, RMB 17.8 billion for 1998, RMB 24.3 billion in 1999 and RMB 24.0 billion being planned in 2000 ).  
For poverty alleviation loans, RMB 30 billion.
9. Duration of the subsidy and/or any other time-limits attached to it  
1991 -
10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.
- XI. FUNDS FOR TECHNOLOGY RENOVATION, RESEARCH AND DEVELOPMENT
  1. Title of the subsidy program  
Funds for technology renovation, research and development.
  2. Period covered by the notification  
1991 - 1998
  3. Policy objective and/or purpose of the subsidy  
To encourage scientific research and technology development, and to promote application of science and technology in the rural areas.
  4. Background and authority for the subsidy  
Ministry of Finance
  5. Legislation under which it is granted  
State Council Circular No. 99, 1987.
  6. Form of the subsidy  
Grant and loans.
  7. To whom and how the subsidy is provided  
To scientific research institutes and some enterprises.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

RMB 301.9 billion (RMB 18.1 billion for 1991, RMB 22.3 billion for 1992, RMB 42.1 billion for 1993, RMB 41.5 billion for 1994, RMB 49.5 billion for 1995 and RMB 52.6 billion for 1996, RMB 64.3 billion for 1997, RMB 64.1 billion for 1998).

9. Duration of the subsidy and/or any other time-limits attached to it

1991 -

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

XII. INFRASTRUCTURE CONSTRUCTION FUNDS FOR AGRICULTURAL WATER CONSERVANCY AND FLOOD PROTECTING PROJECTS

1. Title of the subsidy program

Infrastructure construction funds for agricultural water conservancy projects

2. Period covered by the notification

1991 - 1999

3. Policy objective and/or purpose of the subsidy

To improve agricultural irrigation systems and flood-defending facilities.

4. Background and authority for the subsidy

Ministry of Finance and the Provincial Bureau of Finance

5. Legislation under which it is granted

Assistance by budget.

6. Form of the subsidy

Grant.

7. To whom and how the subsidy is provided

To key infrastructure projects in water conservancy and flood protection.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

RMB 35.5 billion (RMB 7.5 billion for 1991, RMB 8.5 billion for 1992, RMB 9.5 billion for 1993, RMB 10 billion for 1994, RMB 11.0 billion for 1995, RMB 14.1 billion for 1996, RMB 15.9 billion for 1997, RMB 20.89 billion for 1998 and 21.36 for 1999).

9. Duration of the subsidy and/or any other time-limits attached to it  
1991 -
  10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.
- XIII. TAX AND TARIFF REFUND FOR EXPORT PRODUCTS
1. Title of the subsidy program  
Tariff refund for imported contents of export products, and value-added tax refund for export products.
  2. Period covered by the notification  
1985 - now.
  3. Policy objective and/or purpose of the subsidy  
To alleviate unreasonable tax and tariff burdens of export enterprises.
  4. Background and authority for the subsidy  
For tariff refund, taxation and customs authorities; and for tax refund, taxation authorities.
  5. Legislation under which it is granted  
State Council Circular No. 43, 1985.
  6. Form of the subsidy  
Tax and tariff refund.
  7. To whom and how the subsidy is provided  
For raw materials, spare parts, assemblies and packing materials imported for the purpose of processing and assembling for overseas clients or manufacturing products for export, tariffs shall be exempted, or in the case that tariffs have been collected, refund of the collected tariffs shall be made, according to quantities of the final products exported.  
  
For agricultural products subject to the official value-added tax rate of 10%, the refund rate is 3%.  
  
For industrial products subject to the official value-added tax rate of 17%, which take agricultural products as their raw materials, the refund rate is 6%.  
  
For other products subject to the official value-added tax rate of 17%, the refund rate is 9%.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

No specific statistics available.

9. Duration of the subsidy and/or any other time-limits attached to it

1985 -

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

XIV. TARIFF AND IMPORT DUTIES REDUCTION AND EXEMPTION FOR ENTERPRISES

1. Title of the subsidy program

Tariff and import duties reduction and exemption for enterprises.

2. Period covered by the notification

1985 - 2000.

3. Policy objective and/or purpose of the subsidy

To attract foreign investment, to encourage technology renovations in domestic enterprises, and to promote such trade forms as border trade, processing trade, compensation trade etc..

4. Background and authority for the subsidy

Taxation and customs authorities.

5. Legislation under which it is granted

Regulation of import and export tariff of the People's Republic of China.

6. Form of the subsidy

Tariff and import duties reduction and exemption.

7. To whom and how the subsidy is provided

China adopted new taxation system on April 1, 1997. Under this new system, all domestic enterprises and institutes shall be subject to tariff and import duties in accordance with official rate except for the following few cases where tariff and import duties reduction and exemption are still applied:

- (1) goods imported for embassies, and offices of international organizations in China, donations from foreign governments and international organizations, and goods imported by Chinese diplomats, Chinese students studying abroad and etc. for personal consumption;

- (2) imports into the Yangpu Economic Development Area in Hainan Province, a bonded area;
- (3) equipment and materials imported during the period of 1996 to 2000 for drilling, petroleum and natural gas exploitation;
- (4) aircraft imported by domestic civil airlines during the period of 1996 to 2000;
- (5) spare parts of cars, of which tariff and import duties reduction and exemption shall be determined according to the localization rate;
- (6) materials imported for domestic manufacturing of aircraft.

Tariff and import duties reduction and exemption before April 1, 1996 of imported equipment and materials for foreign-invested enterprises, for domestic technology renovation and infrastructure construction projects, for Special Economic Zones and Economic and Technology Development Areas, and for border trade, processing trade and compensation trade, shall be terminated except for the following transitional period:

(1) for foreign-invested enterprises with total investment less than US\$ 30 million approved before April 1, 1996, tariff and import duties reduction and exemption of their imported equipment and materials shall remain valid within the transitional period till December 31, 1996; for those enterprises with total investment more than US\$ 30 million, the transitional period shall end on December 31, 1997;

(2) for industrial projects in such areas as energy, transportation, metallurgical industry with total investment more than RMB 50 million, and for technology renovation projects in manufacturing industries with total investment more than RMB 30 million, which were approved before April 1, 1996, tariff and import duties for their equipment importation shall be subject to 50 per cent reduction within the transitional period till December 31, 1997;

(3) goods imported into the five Special Economic Zones of Shenzhen, Zhuhai, Shantou, Xiamen, Hainan, as well as those into the Pudong area in Shanghai and the Industrial Development Zone in Suzhou, shall be subject to tariff and import duties after 1 April 1996 in accordance with the official tariff and import duties rates. However, refund of the tariff and import duties will be applied within the transitional period from 1996 to 2000, with the volume decreasing annually. The refund will terminate after the year 2000.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

No specific statistics available.

9. Duration of the subsidy and/or any other time-limits attached to it  
1985 - 2000.
10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.
- XV. PROVISION OF LOW-PRICE INPUTS FOR SPECIAL INDUSTRIAL SECTORS
  1. Title of the subsidy program  
State low pricing for certain percentage of coal for electricity generating, and for certain percentage of crude oil.
  2. Period covered by the notification  
1987 - now.
  3. Policy objective and/or purpose of the subsidy  
State pricing for certain percentage of the industrial inputs is to maintain the overall price level stable.
  4. Background and authority for the subsidy  
Reform of China's planning economic system began first with the reform of the pricing system, and by now 95 per cent of the commodities and services in China have already been determined by the market forces. State pricing remains only for certain percentage of those crucial products to maintain the ability of the government to curb the overall price level in emergent cases.
  5. Legislation under which it is granted  
Provisional regulation of the People's Republic of China on Pricing.
  6. Form of the subsidy  
State low pricing for inputs of certain industrial sectors.
  7. To whom and how the subsidy is provided  
37 per cent of coal in 1995 was subject to state pricing, and 70 per cent of the land oil production was subject to state pricing, price of the remaining 30 per cent as well as of all the off-shore oil production was determined by the market.
  8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
No specific statistics available.

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9. Duration of the subsidy and/or any other time-limits attached to it  
1987 -
10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.
- XVI. SUBSIDY TO CERTAIN ENTERPRISES IN THE FORESTRY INDUSTRY
1. Title of the subsidy program  
Subsidy to the forestry industry.
2. Period covered by the notification  
1994 - now.
3. Policy objective and/or purpose of the subsidy  
To encourage full utilization of forest resources.
4. Background and authority for the subsidy  
State Administration of Taxation and local taxation authorities.
5. Legislation under which it is granted  
Provisional regulation of the People's Republic of China on Value added Tax.
6. Form of the subsidy  
Refund of value-added tax.
7. To whom and how the subsidy is provided  
For certain enterprises in the forestry industry, when their products are based on the utilization of deficient timber resources, the collected value-added tax shall be refunded.
8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
No specific statistics available as the quantity is minimal.
9. Duration of the subsidy and/or any other time-limits attached to it  
1994 -
10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.

XVII. PREFERENTIAL INCOME TAX TREATMENT TO HIGH-TECH ENTERPRISES

1. Title of the subsidy program  
Preferential Income tax treatment to high-tech enterprises.
2. Period covered by the notification  
1994 - now.
3. Policy objective and/or purpose of the subsidy  
To accelerate the development of high-tech industries.
4. Background and authority for the subsidy  
State Administration of Taxation and local taxation authorities.
5. Legislation under which it is granted  
Provisional regulation of the People's Republic of China on Enterprises Income Tax.
6. Form of the subsidy  
Income tax reduction and exemption.
7. To whom and how the subsidy is provided  
For high-tech enterprises in the high-tech development zones approved by the State Council, the income tax rate applied shall be reduced to 15 per cent; for newly-established high-tech enterprises, income tax shall be exempted for the first two years since the operation.
8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
No specific statistics available.
9. Duration of the subsidy and/or any other time-limits attached to it  
1994 -
10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.

XVIII. PREFERENTIAL INCOME TAX TREATMENT TO ENTERPRISES UTILIZING WASTE

1. Title of the subsidy program  
Preferential income tax treatment to enterprises utilizing waste.
2. Period covered by the notification  
1993 - now.
3. Policy objective and/or purpose of the subsidy  
To encourage resources recycle.
4. Background and authority for the subsidy  
State Administration of Taxation and local taxation authorities.
5. Legislation under which it is granted  
Provisional regulation of the People's Republic of China on Enterprises Income Tax.
6. Form of the subsidy  
Income tax reduction and exemption.
7. To whom and how the subsidy is provided  
For enterprises utilizing waste gas, waste water and solid waste as major production inputs, income tax shall be reduced or exempted for five years.
8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
No specific statistics available.
9. Duration of the subsidy and/or any other time-limits attached to it  
1993 -
10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.

XIX. PREFERENTIAL INCOME TAX TREATMENT TO ENTERPRISES IN POVERTY STRICKEN REGIONS

1. Title of the subsidy program  
Preferential Income tax treatment to enterprises in poverty stricken regions

2. Period covered by the notification  
1993 - now.
  3. Policy objective and/or purpose of the subsidy  
To alleviate poverty.
  4. Background and authority for the subsidy  
State Administration of Taxation and local taxation authorities.
  5. Legislation under which it is granted  
Provisional regulation of the People's Republic of China on Enterprises Income Tax.
  6. Form of the subsidy  
Income tax reduction and exemption.
  7. To whom and how the subsidy is provided  
For newly-established enterprises in remote regions, poverty stricken regions, and regions with ethnic groups residence, income tax shall be reduced or exempted for three years.
  8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
No specific statistics available.
  9. Duration of the subsidy and/or any other time-limits attached to it  
1993 -
  10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.
- XX. PREFERENTIAL INCOME TAX TREATMENT TO ENTERPRISES TRANSFERRING TECHNOLOGIES
1. Title of the subsidy program  
Preferential Income tax treatment to enterprises transferring technologies.
  2. Period covered by the notification  
1993 - now.
  3. Policy objective and/or purpose of the subsidy  
To encourage technology transfer and extension.

- 
4. Background and authority for the subsidy  
State Administration of Taxation and local taxation authorities.
  5. Legislation under which it is granted  
Provisional regulation of the People's Republic of China on Enterprises Income Tax.
  6. Form of the subsidy  
Income reduction and exemption.
  7. To whom and how the subsidy is provided  
For income of enterprises generated from transferring technologies, or from such relevant services as technology consultancy, training and etc., income tax shall be exempted when such annual net income is below RMB 300 thousand; however, in the case that the income exceeds RMB 300 thousand, for the part which exceeds RMB 300 thousand, income tax shall be applied as usual.
  8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
No specific statistics available.
  9. Duration of the subsidy and/or any other time-limits attached to it  
1993 -
  10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.
- XXI. PREFERENTIAL INCOME TAX TREATMENT TO DISASTER STRICKEN ENTERPRISES
1. Title of the subsidy program  
Preferential Income tax treatment to disaster stricken enterprises
  2. Period covered by the notification  
1993 - now.
  3. Policy objective and/or purpose of the subsidy  
To bring down disaster losses.
  4. Background and authority for the subsidy  
State Administration of Taxation and local taxation authorities.

5. Legislation under which it is granted  
Provisional regulation of the People's Republic of China on Enterprises Income Tax.
  6. Form of the subsidy  
Income tax reduction and exemption.
  7. To whom and how the subsidy is provided  
In case that enterprises suffer from such disasters as fire, flood, tornado, earthquake and etc., income tax shall be exempted for one year subject to application to and approval from local taxation authorities.
  8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
No specific statistics available.
  9. Duration of the subsidy and/or any other time-limits attached to it  
1993 -
  10. Statistical data permitting an assessment of the trade effects of a subsidy  
Not available.
- XXII. PREFERENTIAL INCOME TAX TREATMENT TO ENTERPRISES WHICH PROVIDE JOB OPPORTUNITIES FOR THE UNEMPLOYED
1. Title of the subsidy program  
Preferential income tax treatment to enterprises which provide job opportunities for the unemployed
  2. Period covered by the notification  
1993 - now
  3. Policy objective and/or purpose of the subsidy  
To increase job opportunities.
  4. Background and authority for the subsidy  
State Administration of Taxation and local taxation authorities.
  5. Legislation under which it is granted  
Provisional regulation of the People's Republic of China on Enterprises Income Tax.
  6. Form of the subsidy

Income tax reduction and exemption.

7. To whom and how the subsidy is provided

For newly-established township enterprises, in case that the new jobs they provide in one certain year exceed 60 per cent of their total jobs, income tax shall be exempted for a period of three years, subject to their application to and approval from local taxation authorities. In the same year when the three year exemption period expires, in case the enterprises provide another 30 per cent more job opportunities, income tax shall be reduced by 50 per cent for another two years, subject to their application to and approval from local taxation authorities.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

No specific statistics available.

9. Duration of the subsidy and/or any other time-limits attached to it

1993 -

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

XXIII STATISTICS OF INCOME TAX REBATE TO ENTERPRISES SUBJECT TO NOTIFICATION XVII, XVIII, XIX, XX, XXI, XXII

Unit: 10,000 RMB

	1995	1996	1997
Beijing	19424	17492	33156
Tianjin	12793	6945	632
Hebei	184	50	5
Shanxi	11216	1519	1465
Inner-Mongolia	2525	445	129
Liaoning	665	477	8515
Jilin	130	1170	791
Heilongjiang	1218	734	1345
Shanghai	41960	110207	63659
Jiangsu	1343	1369	9
Zhejiang	41710	42220	61045
Anhui	14285	17490	23939
Fujian	2563	12953	15183
Jiangxi	28	2	0
Shandong	11586	3737	4277
Henan	192	918	221
Hubei	494	994	12230
Hunan	7019	12179	11915
Guangdong	10835	165	52
Guangxi	9013	6211	7716

	1995	1996	1997
Hainan	1194	1371	300
Chongqing			230
Sichuan	3548	3777	998
Guizhou	647	2006	3259
Yunnan	9027	6418	6563
Tibet	506	1173	228
Shaanxi	7320	4228	1230
Gansu	7519	251	1073
Qinghai	357	378	1815
Ningxia	532	465	2309
Xingjiang	6633	2812	1354
Total	226466	260156	265643

XXIV. TARIFF AND VAT EXEMPTION FOR IMPORTED TECHNOLOGY AND EQUIPMENT OF THE INVESTERS INVESTING IN AREAS ENCOURAGED BY THE GOVERNMENT

1. Title of the subsidy program

Tariff and VAT exemption for imported technologies and equipment imported by investors investing in the industrial areas encouraged by the state.

2. Period covered by the notification

1998 - 2000.

3. Policy objective and/or purpose of the subsidy

Reduce the investment cost of importing technologies and equipment from abroad, so as to attract foreign direct investment and promote domestic investment as well.

4. Background and authority for the subsidy

The State Council.

5. Legislation under which it is granted

The circular No. 37(1997) issued by the State Council.

6. Form of the subsidy

Tariff and VAT exemption for imported technologies and equipment.

7. To whom and how the subsidy is provided

For foreign investors investing in the encouraged industrial areas defined by the "The Industrial catalogues for Foreign Direct Investment"(jointly issued by SDPC, SETC and MOFTEC), their imported technologies and

equipment can enjoy treatment of tariff and VAT exemption.

For domestic investors investing in the encouraged industrial areas defined by the “The Catalogues of Current Priorities of Industrial Sectors, Products and Technologies Encouraged by the State” (issued by The State Development Planning Commission), their imported technologies and equipment can enjoy treatment of tariff and VAT exemption.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
No specific statistics available.
9. Duration of the subsidy and/or any other time-limits attached to it  
1998 - 2000.
10. Statistical data permitting an assessment of the trade effects of a subsidy  
The importation of technologies and equipment has been encouraged by the subsidies, no specific import volume has been calculated.

*ANNEX 5B*  
*SUBSIDIES TO BE PHASED OUT*

- I. SUBSIDIES PROVIDED TO CERTAIN STATE-OWNED ENTERPRISES WHICH ARE RUNNING AT A LOSS
  1. Title of the subsidy program  
Subsidies provided to certain State-owned enterprises which are running at a loss.
  2. Period covered by the notification  
1990-1998.
  3. Policy objective and/or purpose of the subsidy  
To promote structural adjustment of those State-owned enterprises which are running at a loss, especially those in coal-mining and oil-drilling sectors, while keeping employment by means of promoting rationalization and maintaining stable production and safety.
  4. Background and authority for the subsidy  
Ministry of Finance.
  5. Legislation under which it is granted  
Assistance by budget.

6. Form of the subsidy

Grant and tax forgiving

7. To whom and how the subsidy is provided

Subsidy is provided to severe loss-making State-owned enterprises due to either fixed price of the products they produce or the increasing cost of exploitation of the resources.

8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy

Unit: 100 million RMB

Sector/Year	1990	1991	1992	1993	1994	1995	1996	1997	1998
Metallurgic industry	1.16	1.46	1.35	3.13	4.07	3.02	5.04	10.96	8.36
Ferrous-metal industry	0.63	0.86	1.28	1.51	5.80	5.86	4.78	6.58	4.65
Machinery industry	3.80	5.07	14.61	3.98	14.09	8.34	9.67	11.17	8.38
Coal industry	55.86	66.70	70.14	49.80	47.19	12.13	13.21	16.83	14.85
Oil industry	42.53	54.36	52.89	28.08	0.00	0.00	0.00	6.78	3.28
Chemical industry	3.83	4.03	3.70	4.11	6.90	3.47	4.26	5.32	4.96
Textile industry	1.90	2.39	2.07	3.09	2.65	3.38	6.97	16.41	15.36
Light industry	6.65	7.88	6.31	9.30	3.99	1.52	2.63	6.82	2.35
Tobacco industry	0.00	0.00	0.00	0.00	12.00	8.62	9.26	10.25	8.83
Total of the nine sectors	116.36	142.75	152.35	103.00	96.69	46.34	55.92	91.12	71.02
Other sectors	1.65	1.94	1.99	1.53	1.24	0.42	1.28	4.62	3.67
Total	118.01	144.69	154.34	104.53	97.93	46.76	57.2	95.74	74.69

9. Duration of the subsidy and/or any other time-limits attached to it

1949-2000.

10. Statistical data permitting an assessment of the trade effects of a subsidy

Not available.

II. THE PRIORITY IN OBTAINING LOANS AND FOREIGN CURRENCIES BASED ON EXPORT PERFORMANCE

1. Title of the subsidy program

The priority in obtaining loans and foreign currencies based on export performance.

2. Period covered by the notification

1994-1999.

3. Policy objective and/or purpose of the subsidy

- To promote the exportation of automobiles.
4. Background and authority for the subsidy  
State Planning Commission.
  5. Legislation under which it is granted  
State Council Circular on Industrial Policy on Automobiles..
  6. Form of the subsidy  
Priority in obtaining loans and foreign currencies.
  7. To whom and how the subsidy is provided  
Priority is given to:
    - (1) Automotive production enterprises whose export of whole vehicle products has reached the percentage points in the volume of their sales as indicated in the following chart;

Vehicles Types	Category	Percentages
Passenger Vehicles	M1	3%
	M2	5%
	M3	8%
Freight Vehicles	N1	5%
	N2, N3	4%
Motorcycles	L	10%

and

- (2) Automobile and motorcycle components manufacturing enterprises whose exports account for 10 per cent of their total annual sales.
8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
Zero, because no enterprises have reached the level for enjoying the priority up till now.
9. Duration of the subsidy and/or any other time-limits attached to it  
China commits itself to eliminate this measure by the year of 2000.
10. Statistical data permitting an assessment of the trade effects of a subsidy  
Zero.

III. PREFERENTIAL TARIFF RATES BASED ON LOCALIZATION RATE OF AUTOMOTIVE PRODUCTION

1. Title of the subsidy program  
Preferential tariff rates based on localization rate of automotive production.
2. Period covered by the notification  
1994-1999
3. Policy objective and/or purpose of the subsidy  
To promote the localization process of automobile industry of China.
4. Background and authority for the subsidy  
State Planning Commission.
5. Legislation under which it is granted  
State Council Circular on Industrial Policy on Automobiles.
6. Form of the subsidy  
Preferential tariff rates.
7. To whom and how the subsidy is provided  
The preferential tariff rates are granted to the automotive enterprises whose localization reaches the following ratios:
  - (1) Localization rate reaches 40 per cent, 60 per cent or 80 per cent on products that incorporate imported technology on whole vehicles of M Category;
  - (2) Localization rate reaches 50 per cent, 70 per cent or 90 per cent on products that incorporate imported technology on whole vehicles of N and L Categories; and
  - (3) Localization rate reaches 50 per cent, 70 per cent or 90 per cent on products that incorporate imported technology on automobile and motorcycle assemblies and key components.
8. Subsidy per unit, or in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy  
Not available.
9. Duration of the subsidy and/or any other time-limits attached to it  
China commits itself to phase out this measure by the year of 2000.
10. Statistical data permitting an assessment of the trade effects of a subsidy  
The trade effect is negligible.

## ANNEX 6

## PRODUCTS SUBJECT TO EXPORT DUTY

NO	HS NO	DESCRIPTION OF PRODUCTS	EXPORT DUTY RATE (%)
1	03019210	Live eels fry	20.0
2	05061000	Ossein and bones treated with acid	40.0
3	05069010	Powder and waste of bones	40.0
4	05069090	Bones and horn-cores, unworked, defatted, simply prepared (but not cut to shape), treated with acid or degelatinized, excl. Ossein and bones treated with acid	40.0
5	26070000	Lead ores & concentrates	30.0
6	26080000	Zinc ores & concentrates	30.0
7	26090000	Tin ores & concentrates	50.0
8	26110000	Tungsten ores & concentrates	20.0
9	26159000	Niobium, tantalum & vanadium ores & concentrates	30.0
10	26171010	Crude antimony	20.0
11	28047010	Yellow phosphorus (white phosphorus)	20.0
12	28047090	Phosphorus, nes	20.0
13	28269000	Fluorosilicates and fluoroaluminates and complex fluorine salts, nes	30.0
14	29022000	Benzene	40.0
15	41031010	Slabs of goats, fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared, whether or not dehaired or split	20.0
16	72011000	Non-alloy pig iron containing by weight <0.5% of phosphorus in pigs, blocks or other primary forms	20.0
17	72012000	Non-alloy pig iron containing by weight >0.5% of phosphorus in pigs, blocks or other primary forms	20.0
18	72015000	Alloy pig iron and spiegeleisen, in pigs, blocks or other primary forms	20.0
19	72021100	Ferro-manganese, containing by weight more than 2% of carbon	20.0
20	72021900	Ferro-manganese, nes	20.0
21	72022100	Ferro-silicon, containing by weight more than 55% of silicon	25.0
22	72022900	Ferro-silicon, nes	25.0
23	72023000	Ferro-silico-manganese	20.0
24	72024100	Ferro-chromium containing by weight more than 4% of carbon	40.0
25	72024900	Ferro-chromium, nes	40.0
26	72041000	Waste & scrap, of cast iron	40.0
27	72042100	Waste & scrap, of stainless steel	40.0
28	72042900	Waste & scrap of alloy steel, other than stainless steel	40.0
29	72043000	Waste & scrap, of tinned iron or steel	40.0
30	72044100	Ferrous waste & scrap, nes, from turnings, shavings, chips, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles	40.0
31	72044900	Ferrous waste & scrap of iron or steel, nes	40.0
32	72045000	Remelting scrap ingots of iron or steel	40.0
33	74020000	Copper unrefined; copper anodes for electrolytic refining	30.0
34	74031100	Cathodes & sections of cathodes, of refined copper, unwrought	30.0
35	74031200	Wire bars, of refined copper, unwrought	30.0
36	74031300	Billets, of refined copper, unwrought	30.0
37	74031900	Refined copper, unwrought, nes	30.0
38	74032100	Copper-zinc base alloys (brass), unwrought	30.0
39	74032200	Copper-tin base alloys (bronze), unwrought	30.0

NO	HS NO	DESCRIPTION OF PRODUCTS	EXPORT DUTY RATE (%)
40	74032300	Copper - nickel base alloys (cupronickel) or copper-nickel-zinc base alloys (silver), unwrought	30.0
41	74032900	Copper alloys, unwrought (other than master alloys of heading 74.05)	30.0
42	74040000	Waste & scrap, of copper or copper alloys	30.0
43	74071000	Bars, rods & profiles of refined copper	30.0
44	74072100	Bars, rods & profiles, of copper-zinc base alloys	30.0
45	74072200	Bars, rods & profiles, of copper - nickel base alloys or copper-nickel-zinc base alloys	30.0
46	74072900	Bars, rods & profiles, of copper alloy nes	30.0
47	74081100	Wire of refined copper, of which the maximum cross-sectional dimension >6mm	30.0
48	74081900	Wire of refined copper, of which the maximum cross-sectional dimension ≤6mm	30.0
49	74082100	Wire of copper-zinc base alloys	30.0
50	74082200	Wire of copper - nickel base alloys or copper-nickel-zinc base alloy	30.0
51	74082900	Wire, of copper alloy nes	30.0
52	74091100	Plate, sheet & strip, thickness >0.15mm, of refined copper, in coil	30.0
53	74091900	Plate, sheet & strip, thickness >0.15mm, of refined copper, not in coil	30.0
54	74092100	Plate, sheet & strip, thickness >0.15mm, of copper-zinc base alloys, in coil	30.0
55	74092900	Plate, sheet & strip, thickness >0.15mm, of copper-zinc base alloys, not in coil	30.0
56	74093100	Plate, sheet & strip, thickness >0.15mm, of copper-tin base alloys, in coil	30.0
57	74093900	Plate, sheet & strip, thickness >0.15mm, of copper-tin base alloys, not in coil	30.0
58	74094000	Plate, sheet & strip, thickness >0.15mm, of copper - nickel base alloys or copper-nickel-zinc base alloy	30.0
59	74099000	Plate, sheet & strip, thickness >0.15mm, of copper alloy nes	30.0
60	75021000	Unwrought nickel, not alloyed	40.0
61	75022000	Unwrought nickel alloys	40.0
62	75089010	Electroplating anodes of nickel	40.0
63	76011000	Unwrought aluminium, not alloyed	30.0
64	76012000	Unwrought aluminium alloys	30.0
65	76020000	Aluminium waste & scrap	30.0
66	76041000	Bars, rods & profiles of aluminium, not alloyed	20.0
67	76042100	Hollow profiles of aluminium alloys	20.0
68	76042900	Bars, rods & profiles (excl. hollow profiles), of aluminium alloys	20.0
69	76051100	Wire of aluminium ,not alloyed, with the maximum cross-sectional dimension >7mm	20.0
70	76051900	Wire of aluminium, not alloyed, with the maximum cross-sectional dimension ≤7mm	20.0
71	76052100	Wire of aluminium alloys, with the maximum cross sectional dimension >7mm	20.0
72	76052900	Wire of aluminium alloys, with the maximum cross sectional dimension ≤7mm	20.0
73	76061120	Plates & sheets & strip, rectangular (incl. square), of aluminium, not alloyed, 0.30mm ≤ thickness ≤0.36mm	20.0
74	76061190	Plates & sheets & strip, rectangular (incl. square), of aluminium, not alloyed, 0.30mm > thickness >0.2mm	20.0
75	76061220	Plates & sheets & strip, rectangular (incl. square), of aluminium alloys, 0.2mm<thickness <0.28mm	20.0
76	76061230	Plates & sheets & strip, rectangular (incl. square), of aluminium alloys, 0.28mm ≤ thickness ≤0.35mm	20.0

NO	HS NO	DESCRIPTION OF PRODUCTS	EXPORT DUTY RATE (%)
77	76061240	Plates & sheets & strip, rectangular (incl. square), of aluminium alloys, 0.35mm<thickness	20.0
78	76069100	Plates & sheets & strip, of aluminium, not alloyed, thickness >0.2mm, nes	20.0
79	76069200	Plates & sheets & strip, of aluminium alloys, thickness >0.2mm, nes	20.0
80	79011100	Unwrought zinc, not alloyed, containing by weight $\geq 99.99\%$ of zinc	20.0
81	79011200	Unwrought zinc, not alloyed, containing by weight <99.99% of zinc	20.0
82	79012000	Unwrought zinc alloys	20.0
83	81100020	Antimony unwrought	20.0
84	81100030	Antimony waste and scrap; Antimony powders	20.0

Note:

China confirmed that the tariff levels included in this Annex are maximum levels which will not be exceeded. China confirmed furthermore that it would not increase the presently applied rates, except under exceptional circumstances. If such circumstances occurred, China would consult with affected members prior to increasing applied tariffs with a view to finding a mutually acceptable solution.

## ANNEX 7

### RESERVATIONS BY WTO MEMBERS

#### ARGENTINA: restrictions maintained on imports from China

Argentina intends to maintain restrictions on certain products originating in China, such as textiles and clothing, footwear not used for sporting activities and toys, after the accession of China, as follows:

PRODUCT	HS CODE
Textiles and Clothing	51.11; 51.12; 51.13; 52.08; 52.09; 52.10; 52.11; 52.12; 53.09; 53.10; 53.11; 54.07; 54.08; 55.12; 55.13; 55.14; 55.15; 55.16; 56.02; 56.03; 57.01; 57.02; 57.03; 57.04; 57.05; 58.01; 58.02; 58.03; 58.04; 58.05; 58.06; 58.07; 58.08; 58.09; 58.10; 58.11; 59.03; 60.01; 60.02; 61.01; 61.02; 61.03; 61.04; 61.05; 61.06; 61.07; 61.08; 61.09; 61.10; 61.11; 61.12; 61.13; 61.14; 61.15; 61.16; 61.17; 62.01; 62.02; 62.03; 62.04; 62.05; 62.06; 62.07; 62.08; 62.09; 62.10; 62.11; 62.12; 62.13; 62.14; 62.15; 62.16; 62.17; 63.01; 63.02; 63.03; 63.04; 63.05; 63.06; 63.07; 63.08; 63.09; 63.10
Footwear not used for sporting activities	64.01; 64.02; 64.03; 64.04; 64.05
Toys	95.02; 95.03

Quotas (Resolution 862/1999): to be eliminated by 31 July 2002.

Specific duties: phasing out will be in line with the following methodology:

1. The base level of specific duties will be that in force at the time of the accession of China and the *ad valorem* equivalent of each specific duty applied to each tariff position.

2. The transition period will be five years from the date of accession of China, after which a 35% *ad valorem* duty will apply.
3. Duties in excess of 35% will be phased out as follows:
  - First year: a 10% reduction of the amount in excess of 35%
  - Second year: a 20% reduction
  - Third year: a 40% reduction
  - Fourth year: a 60% reduction
  - Fifth year: an 80% reduction— Sixth year: As of 1 January of the sixth year, the ceiling of the 35% *ad valorem* equivalent to the minimum specific import duties (DIEMs) will apply.

EUROPEAN COMMUNITIES: phasing-out timetable of industrial (non-textile) quotas on imports from China

Product	HS/CN Code	2001	2002	2003	2004	2005
Footwear falling within HS/CN codes	ex 6402 99 <sup>1</sup>	5% increase	5% increase	10% increase	15% increase	proposed removal
	6403 51 6403 59	5% increase	10% increase	15% increase	15% increase	proposed removal
	ex 6403 91 ex 6403 99	5% increase	5% increase	10% increase	15% increase	proposed removal
	ex 6404 11 <sup>2</sup>	5% increase	5% increase	10% increase	15% increase	proposed removal
	6404 19 10	5% increase	5% increase	10% increase	15% increase	proposed removal
Tableware, kitchenware of porcelain or china	6911 10	15% increase	15% increase	15% increase	15% increase	proposed removal
Ceramic tableware or kitchenware	6912 00	15% increase	15% increase	15% increase	15% increase	proposed removal

<sup>1</sup> Excluding footwear involving special technology: shoes which have a cif price per pair of not less than ECU 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers.

<sup>2</sup> Excluding:

(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bats or the like, with a non-injected sole;

(b) footwear involving special technology: shoes which have a cif price per pair of not less than ECU 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers.

HUNGARY: quantitative restrictions maintained on imports from China

Hungary undertakes to phase out these restrictions by the year 2005. The restraint levels are based on the import data of the year 1999. The annual quota growth and the carry over and carry forward rates in the case of textiles and clothing products are included in the notification.

Product	HS	Import from China in 1999	Increase of quotas in per cent				
			2001	2002	2003	2004	2005
Footwear falling within HS codes	6401	71 000 pairs	5	5	10	15	proposed removal
	6402	10 625 000 pairs	5	5	10	15	proposed removal
	6403	600000 pairs	5	5	10	15	proposed removal
	6404	4 450 000 pairs	5	5	10	15	proposed removal
	6405	2 140 000 pairs	5	5	10	15	proposed removal
Overwear Flexibility rates: 10% of which carry forward shall not represent more than 5%	4203, ex 4303, ex 4304, 6101, 6102, 6103, 6104, 6106, 6110, 6112, 6113, 6114, 6201, 6202, 6203, 6204, 6206, 6210, 6211	15 900 000 \$	6	6	6	6	proposed removal
Other clothing and ready-made clothing products Flexibility rates: 10% of which carry forward shall not represent more than 5%	ex 4303, ex 4304, 6117, 6213, 6214, 6215, 6301, 6302, 6304, 6306, 6307, 9404	4 570 000 \$	6	6	6	6	proposed removal

MEXICO: anti-dumping measures maintained against imports from China

Notwithstanding any other provisions of this Protocol, during six years after the accession of China, Mexico's existing measures listed below shall not be subject to the provisions of either the WTO Agreement or the anti-dumping provisions of this Protocol.

PRODUCT	TARIFF CLASSIFICATION
Bicycles	8712.00.01 8712.00.02 8712.00.03 8712.00.04 8712.00.99
Footwear and parts thereof	56 tariff lines covered under the headings 6401, 6402, 6403, 6404, 6405
Brass padlocks	8301.10.01
Baby carriages	8715.00.01
Door knob locks	8301.40.01
Malleable iron connections	7307.19.02 7307.19.03 7307.19.99 7307.99.99
Non-refillable pocket lighters, gas-fuelled	9613.10.01

PRODUCT	TARIFF CLASSIFICATION
Fluorite	2529.22.01
Furazolidone	2934.90.01
Tools	48 tariff lines under the headings 8201, 8203, 8204, 8205, 8206
Textiles (yarns and fabrics of artificial and synthetic fiber)	403 tariff lines under the headings 3005 5204, 5205, 5206, 5207, 5208, 5209, 5210, 5211, 5212, 5307, 5308, 5309, 5310, 5311 5401, 5402, 5404, 5407, 5408, 5501, 5506, 5508, 5509, 5510, 5511, 5512, 5513, 5514, 5515, 5516 5803, 5911
Toys	21 tariff lines under the headings 9501, 9502, 9503, 9504, 9505, 9506
Pencils	9609.10.01
Bicycle tires and inner tubes	4011.50.01 4013.20.01
Electrical machines, appliances and equipment and parts thereof	78 tariff lines under the headings 8501, 8502, 8503, 8504, 8506, 8507, 8509, 8511, 8512, 8513, 8515, 8516, 8517, 8518, 8519, 8520, 8523, 8525, 8527, 8529, 8531, 8532, 8533, 8536, 8537, 8544
Parathion-methyl	3808.10.99
Clothing	415 tariff lines under the headings 6101, 6102, 6103, 6104, 6105, 6106, 6107, 6108, 6109, 6110, 6111, 6112, 6113, 6114, 6115, 6116, 6117, 6201, 6202, 6203, 6204, 6205, 6206, 6207, 6208, 6209, 6210, 6211, 6212, 6213, 6214, 6215, 6216, 6217, 6301, 6302, 6303, 6304, 6305, 6306, 6307, 6308, 6309, 6310,
Organic chemicals	258 tariff lines under the headings 2901, 2902, 2903, 2904, 2905, 2906, 2907, 2909, 2910, 2911, 2912, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2927
Ceramic and porcelain dishware and loose articles	6911.10.01 6912.00.01
Iron and steel valves	8481.20.01 8481.20.04 8481.20.99 8481.30.04 8481.30.99 8481.80.04 8481.80.18 8481.80.20 8481.80.24
Candles	3406.00.01

POLAND: anti-dumping measures and safeguard measures maintained on imports from China

Poland intends to continue the application of the below mentioned measures after China's accession.

1. Anti-dumping duties:

PCN 9613 10 00 0 (pocket lighters, gas fuelled, non-fillable)

PCN 9613 20 90 0 (pocket lighters, gas fuelled refillable, with other ignition system)

The bringing of these measures into conformity with the WTO Agreement<sup>1</sup> will be effected by the end of 2002.

2. Safeguard measures:

PCN 6402 (other footwear with outer soles and uppers of rubber or plastics).

PCN 6403 (footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather).

PCN 6404 (footwear with outer soles of rubber, plastics, leather or composition leather and upper of textile materials).

PCN 6405 (other footwear)

PCN 8516 40 10 0 (electric smoothing irons, steam smoothing)

PCN 8516 40 90 0 (electric smoothing irons, other)

The phasing out of these measures will be effected by the end of 2004.

SLOVAK REPUBLIC: quantitative restrictions maintained on imports from China

The Slovak Republic has concluded the bilaterals talks with China over the quantitative restrictions on imports of footwear falling within HS/CN Code 6401, 6402, 6403, 6404 and 6405.

Phasing-out Timetable on Footwear Quotas by the Slovak Republic

HS/CN Code	2001	2002	2003	2004	2005
6401 to 6405	15% increase	15% increase	15% increase	15% increase	proposed removal

TURKEY: quantitative restrictions for non-textile products maintained on imports from China

Turkey maintains quantitative restrictions on the goods specified below. Turkey undertakes to eliminate these restrictions by 1 January 2005.

	CN CODE	DESCRIPTION OF GOODS	Quota (2000)
(1)	6402.99	Footwear	110 000 Pairs
	6403.51 6403.59)	Footwear	26 826 Pairs
(1)	6403.91)	Footwear	185 742 Pairs
(1)	6403.99)		
(2)	6404.11.00.00.00	Footwear	754 350 Pairs

<sup>1</sup> The WTO Agreement as defined in the Protocol on the Accession of China, Section 1, para. 2.

6404.19.10.00.11) 6404.19.10.00.12) 6404.19.10.00.13)	Footwear	472 300 Pairs
6911.10	Tableware, kitchenware of porcelain or china	15 225 kg
6912.00	Ceramic tableware or kitchenware, other than of porcelain or china	45 675 kg

(1) Excluding footwear involving special technology: shoes which have a c.i.f. price per pair of not less than \$ 11,5 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers.

(2) Excluding:

(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of spikes, springs, stops, clips, bats or the like, with a non-injected sole,

(b) footwear involving special technology: shoes which have a c.i.f. price per pair of not less than \$ 11,5 for use in sporting activities, with a single- or multi-layered moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralize impact or materials such as low-density polymers.

PROTOCOL OF ACCESSION OF THE REPUBLIC OF MOLDOVA  
(WT/ACC/MOL/40)

The World Trade Organization (hereinafter referred to as the “WTO”), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as “WTO Agreement”), and the Republic of Moldova (hereinafter referred to as “Moldova”),

*Taking note* of the Report of the Working Party on the Accession of Moldova to the WTO in document WT/ACC/MOL/37 and Corr.1-4 (hereinafter referred to as the “Working Party Report”),

*Having regard* to the results of the negotiations on the accession of Moldova to the WTO,

*Agree* as follows:

*Part I – General*

1. Upon entry into force of this Protocol, Moldova accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.
2. The WTO Agreement to which Moldova accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol, which shall include the commitments referred to in paragraph 237 of the Working Party Report, shall be an integral part of the WTO Agreement.
3. Except as otherwise provided for in the paragraphs referred to in paragraph 237 of the Working Party Report, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by Moldova as if it had accepted that Agreement on the date of its entry into force.
4. Moldova may maintain a measure inconsistent with paragraph 1 of Article II of the GATS provided that such a measure is recorded in the list of Article II Exemptions annexed to this Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.

*Part II - Schedules*

5. The Schedules annexed<sup>1</sup> to this Protocol shall become the schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the “GATT 1994”) and the Schedule of Specific Commitments annexed to the General Agreement on Trade in Services (hereinafter referred to as “GATS”) relating to Moldova. The staging of concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

6. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

*Part III - Final Provisions*

7. This Protocol shall be open for acceptance, by signature or otherwise, by Moldova until 1 July 2001.

8. This Protocol shall enter into force on the thirtieth day following the day of its acceptance.

9. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of acceptance thereto pursuant to paragraph 7 to each member of the WTO and Moldova.

10. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this eighth day of May two thousand and one, in a single copy in the English, French and Spanish languages each text being authentic, except that a Schedule annexed hereto may specify that it is authentic in only one or more of these languages.

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<sup>1</sup> Not reproduced.

PROTOCOL OF ACCESSION OF THE SEPARATE CUSTOMS  
TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU  
(WT/L/433)

The World Trade Organization (hereinafter referred to as the “WTO”), pursuant to the approval of the General Council of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the “WTO Agreement”), and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (hereinafter referred to as “Chinese Taipei”),

*Taking note* of the Report of the Working Party on the Accession of Chinese Taipei to the WTO Agreement reproduced in document WT/ACC/TPKM/18, dated 5 October 2001 (hereinafter referred to as the “Working Party Report”),

*Having regard* to the results of the negotiations on the accession of Chinese Taipei to the WTO Agreement,

*Agree* as follows:

*Part I - General*

1. Upon entry into force of this Protocol pursuant to paragraph 10, Chinese Taipei accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.
2. The WTO Agreement to which Chinese Taipei accedes shall be the WTO Agreement, including the Explanatory Notes to that Agreement, as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of entry into force of this Protocol. This Protocol, which shall include the commitments referred to in paragraph 224 of the Working Party Report, shall be an integral part of the WTO Agreement.
3. Except as otherwise provided for in paragraph 224 of the Working Party Report, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with the entry into force of that Agreement shall be implemented by Chinese Taipei as if it had accepted that Agreement on the date of its entry into force.
4. The Special Exchange Agreement between the WTO and Chinese Taipei reproduced in Annex II to this Protocol forms an integral part of this Protocol.
5. Chinese Taipei shall at the time of its accession to the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement) accept the Plurilateral Trade Agreement on Trade in Civil Aircraft listed in Annex 4 of the WTO Agreement.
6. Chinese Taipei may maintain a measure inconsistent with paragraph 1 of

Article II of the GATS provided that such a measure was recorded in the list of Article II Exemptions annexed to this Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.

*Part II - Schedules*

7. The Schedules reproduced<sup>1</sup> in Annex I to this Protocol shall become the Schedule of Concessions and Commitments annexed to the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the “GATT 1994”) and the Schedule of Specific Commitments annexed to the General Agreement on Trade in Services (hereinafter referred to as “GATS”) relating to Chinese Taipei. The staging of the concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the respective Schedules.

8. For the purpose of the reference in paragraph 6(a) of Article II of the GATT 1994 to the date of that Agreement, the applicable date in respect of the Schedules of Concessions and Commitments annexed to this Protocol shall be the date of entry into force of this Protocol.

*Part III - Final Provisions*

9. This Protocol shall be open for acceptance, by signature or otherwise, by Chinese Taipei until 31 March 2002.

10. This Protocol shall enter into force on the thirtieth day following the day upon which it shall have been accepted by Chinese Taipei.

11. This Protocol shall be deposited with the Director-General of the WTO. The Director-General of the WTO shall promptly furnish a certified copy of this Protocol and a notification of acceptance by Chinese Taipei thereto pursuant to paragraph 9 to each Member of the WTO and to Chinese Taipei.

This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Doha this eleventh day of November two thousand and one, in a single copy in the English, French and Spanish languages, each text being authentic, except that a Schedule annexed hereto may specify that it is authentic in only one of these languages.

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<sup>1</sup> Not reproduced.

ANNEX II

SPECIAL EXCHANGE AGREEMENT  
BETWEEN  
THE SEPARATE CUSTOMS TERRITORY OF  
TAIWAN, PENGHU, KINMEN AND MATSU  
AND  
THE WORLD TRADE ORGANIZATION  
(HEREINAFTER REFERRED TO AS THE “WTO”)

*Whereas* paragraph 6 of Article XV of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the General Agreement 1994), provides that any WTO Member which was not a member of the International Monetary Fund (hereinafter referred to as the “Fund”) shall, within a time to be determined by the WTO after consultation with the Fund, become a member of the Fund, or, failing that, enter into a special exchange agreement with the WTO;

*Whereas* paragraph 7 of the said Article provides that such special exchange agreement shall provide to the satisfaction of the WTO that the objective of the General Agreement 1994 will not be frustrated as a result of action in exchange matters by the Member in question, and taking into account that the terms of such an agreement shall not impose obligations inconsistent with those imposed by the Fund;

*Whereas* the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (hereinafter referred to as “Chinese Taipei”) desires to accede to the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the “WTO Agreement”) in pursuance of Article XII thereof;

The World Trade Organization

and

Chinese Taipei, acting through its representative duly authorized for this purpose,

*Hereby agree as follows:*

Article I

Orderly Exchange Arrangements

1. Chinese Taipei shall collaborate with the WTO to promote exchange rates which reflect underlying economic fundamentals, to maintain orderly exchange arrangements with other Members of the WTO, to avoid competitive exchange alterations, and to assist, in accordance with Articles II and III of this Special Exchange Agreement, in the elimination of restrictions on the making of international payments and transfers within the multilateral system, and to promote international trade and investment.

2. Recognizing that the essential purpose of the international monetary system is to provide a framework that facilitates the exchange of goods, services, and capital among countries, and that helps sustain non-inflationary economic growth, Chinese Taipei undertakes to assure orderly exchange arrangements and to promote a stable system of exchange rates. In particular, Chinese Taipei shall:

- (i) Endeavour to direct its economic and financial policies toward the objective of fostering sustained, non-inflationary economic growth with macroeconomic stability;
- (ii) Permit exchange rates to reflect underlying economic and financial conditions;
- (iii) Avoid manipulating exchange rates or the international monetary system in order to prevent effective balance-of-payments adjustment or to gain an unfair competitive advantage over other members; and
- (iv) Follow exchange policies compatible with the undertakings under this Article.

## Article II

### Avoidance of Restrictions on Current Payments and Multiple Currency Practices

1. Chinese Taipei shall not, without the approval of the WTO, impose restrictions on the making of payments and transfers related to current account transactions.
2. Chinese Taipei shall not engage in, nor permit its Ministry of Finance, Central Bank, Stabilization Fund, or other agency, to engage in any discriminatory currency arrangements or multiple currency practices except as approved by the WTO.
3. Exchange contracts which involve the currency of any Member or Chinese Taipei and which are contrary to the exchange control regulations of that Member or Chinese Taipei maintained or imposed consistently with the Articles of Agreement of the Fund or with the provisions of a special exchange agreement entered into pursuant to paragraph 6 of Article XV of the General Agreement 1994 or this Special Exchange Agreement, shall be unenforceable in the territories of Chinese Taipei or in the territories of any Member.

## Article III

### Controls of Capital Transfers

1. Chinese Taipei undertakes that it shall seek to avoid the imposition of capital controls to address balance-of-payments and macroeconomic objectives. However, Chinese Taipei may exercise such controls as are necessary to regulate international capital movements, if these movements are destabilizing to the balance of payments

or jeopardize macroeconomic stability, so long as Chinese Taipei does not exercise these controls in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments.

2. Chinese Taipei undertakes that measures affecting capital flows will be in accordance with this Special Exchange Agreement, the General Agreement 1994, and the WTO Agreement.

3. If Chinese Taipei institutes new capital controls or tightens existing capital controls, it shall immediately after instituting or tightening such controls consult with the WTO.

#### Article IV

##### Restrictions on Payments - General

1. In the event that Chinese Taipei, with the approval of the WTO, as provided in Article II, or consistent with consultations with the WTO, as provided in Article III, as the case may be, imposes a measure to restrict payments and transfers for balance-of-payments and macroeconomic stability purposes, it shall:

- (a) initiate good faith consultations with the WTO on economic adjustment measures to address the fundamental underlying economic problems giving rise to the measures; and
- (b) adopt or maintain economic policies consistent with such consultations.

2. A measure adopted or maintained under Article II of this Special Exchange Agreement shall:

- (a) avoid unnecessary damage to the commercial, economic or financial interests of another Member;
- (b) be temporary and be phased out within a clearly-specified time-frame;
- (c) be the least burdensome type of action available;
- (d) be consistent with this Special Exchange Agreement and the economic policies adopted pursuant to paragraph 1(b) of this Article; and
- (e) be applied on a most-favoured-nation treatment basis.

3. A measure adopted or maintained under Article III of this Special Exchange Agreement shall to the extent practicable conform to the provisions set forth in sub-paragraphs (a) through (e) of paragraph 2 of this Article.

#### Article V

##### Furnishing of Information

1. Chinese Taipei shall furnish the WTO with such information within the general scope of section 5 of Article VIII of the Articles of Agreement of the International

Monetary Fund as the WTO may require in order to carry out its functions under the WTO Agreement.

2. Chinese Taipei shall be under no obligation to furnish information in such detail that the affairs of individuals or corporations are disclosed. Chinese Taipei undertakes, however, to furnish the desired information in as detailed and accurate a manner as is practicable.

#### Article VI

##### Miscellaneous Provisions

1. For purposes of this Special Exchange Agreement, the term “Payments for current transactions” means payments which are not for the purpose of transferring capital, as defined by the International Monetary Fund.

2. The WTO shall at all times have the right to communicate its views informally to Chinese Taipei on any matter arising under this Agreement.

3. Whenever the WTO consults with the Fund on exchange matters or in other appropriate cases particularly affecting Chinese Taipei, the WTO shall take measures, as are satisfactory to the Fund, to ensure effective presentation of Chinese Taipei’s case to the Fund, including, without limitation, the transmission to the Fund of any views communicated by Chinese Taipei to the WTO.

4. The Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO shall apply to disputes arising under this Agreement.

5. This Agreement shall enter into force on the date of entry into force of the Protocol of Accession of Chinese Taipei to the WTO.

MARRAKESH AGREEMENT ESTABLISHING  
THE WORLD TRADE ORGANIZATION  
DONE AT MARRAKESH ON 15 APRIL 1994

AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

PROCES-VERBAL OF RECTIFICATION  
(*WT/Let/371*)

I, the undersigned, Mike Moore, Director-General of the World Trade Organization, having examined the authentic text of the Agreement on Subsidies and Countervailing Measures included in Annex 1A of the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994, have found a technical error in the Agreement that should be rectified.

The error which requires rectification is the following:

ANNEX VII  
DEVELOPING COUNTRY MEMBERS REFERRED TO IN  
PARAGRAPH 2(A) OF ARTICLE 27

...

Paragraph (b): Honduras has been omitted from the list of developing countries which are Members of the WTO subject to the provisions which are applicable to other developing country Members according to paragraph 2(b) of Article 27 when GNP per capita has reached \$1,000 per annum, and should be added to the list between Guyana and India.

Honduras was eligible for inclusion in the list of developing countries which appears in paragraph (b) of Annex VII since it became a contracting party to the General Agreement on Tariffs and Trade on 10 April 1994 and satisfied the criteria, but time for an adaptation of the text before its opening for acceptance at Marrakesh on 15 April 1994 was lacking.

Acting as depositary of the above-mentioned Agreement, having notified the Members of my intention and having received no objection thereto, I have caused the correction to be made and have initialled this correction in the margin of the authentic text of the Agreement on Subsidies and Countervailing Measures. As a consequence, paragraph (b) of Annex VII of the Agreement now reads as follows:

“(b) Each of the following developing countries which are Members of the WTO shall be subject to the provisions which are applicable to other developing country Members according to paragraph 2(b) of Article 27 when GNP per capita has reached \$1,000 per annum<sup>68</sup>: Bolivia, Cameroon, Congo, Côte d’Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, Honduras, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe.”

IN WITNESS WHEREOF I have signed the present Procès-Verbal of Rectification, drawn up in the English, French and Spanish languages, on 20 January 2001.

**Mike Moore**  
Director-General

**CERTIFICATIONS OF MODIFICATIONS AND RECTIFICATIONS OF  
SCHEDULES OF CONCESSIONS AND COMMITMENTS TO GATT 1994**

The following table lists all the modifications and rectifications to Schedules of Concessions and Commitments to GATT 1994 certified in 2001. Modifications resulting from the introduction of the Harmonized System, from the Harmonized System 1996 changes (HS96), and from commitments undertaken in the context of the Ministerial Declaration on Trade in Information Technology Products (IT) have been indicated in brackets after the date of certification.

<b>Member</b>	<b>Type</b>	<b>Date of certification</b>	<b>Document</b>
Bolivia	Certification of Modifications and Rectifications to Schedule LXXXIV	16 March 2001 (HS96)	WT/Let/387
Brunei Darussalam	Certification of Modifications and Rectifications to Schedule CII	12 March 2001 (HS96)	WT/Let/385
Bulgaria	Certification of Modifications and Rectifications to Schedule CXXXIX	26 February 2001 (HS96)	WT/Let/379 and Corr.1
Costa Rica	Certification of Modifications and Rectifications to Schedule LXXXV	15 June 2001 (HS96)	WT/Let/397
Cyprus	Certification of Modifications and Rectifications to Schedule CVII	16 February 2001 (IT)	WT/Let/377
Czech Republic	Certification of Modifications and Rectifications to Schedule XCII	23 January 2001 (HS96)	WT/Let/372
	Certification of Modifications and Rectifications to Schedule XCII	9 March 2001	WT/Let/383
Honduras	Certification of Modifications and Rectifications to Schedule XCV	12 October 2001 (HS96)	WT/Let/403
Hong Kong, China	Certification of Modifications and Rectifications to Schedule LXXXII	12 March 2001	WT/Let/384
India	Certification of Modifications and Rectifications to Schedule XII	23 January 2001	WT/Let/374
Korea, Republic of	Certification of Modifications and Rectifications to Schedule LX	14 February 2001 (IT)	WT/Let/376
Macao, China	Certification of Modifications and Rectifications to Schedule LXXXIX	17 October 2001	WT/Let/405
Mexico	Certification of Modifications and Rectifications to Schedule LXXVII	12 October 2001 (HS96)	WT/Let/404
Philippines	Certification of Modifications and Rectifications to Schedule LXXV	12 October 2001 (HS96)	WT/Let/402
Poland	Certification of Modifications to Schedule LXV	8 March 2001(IT)	WT/Let/381
Slovak Republic	Certification of Modifications and Rectifications to Schedule XCIII	23 January 2001 (HS96)	WT/Let/373
	Certification of Modifications and Rectifications to Schedule XCIII	9 March 2001	WT/Let/382
Slovenia	Certification of Modifications and Rectifications to Schedule XCVI	25 October 2001 (IT)	WT/Let/406
Sri Lanka	Certification of Modifications and Rectifications to Schedule VI	22 June 2001	WT/Let/398

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PROTOCOL (2001) AMENDING THE ANNEX  
TO THE AGREEMENT ON TRADE IN CIVIL AIRCRAFT  
(TCA/4)

Signatories to the Agreement on Trade in Civil Aircraft (hereinafter referred to as “the Agreement”),

HAVING carried out negotiations with a view to transposing into the Annex to the Agreement the changes introduced in the 1992, 1996 and 2002 versions of the Harmonized Commodity Description and Coding System (hereinafter referred to as “the Harmonized System”), as well as extending the product coverage of the Agreement,

HAVE, through their representatives, agreed as follows:

1. The Annex attached to this Protocol shall, upon its entry into force pursuant to paragraph 3, replace the Annex to the Agreement as established heretofore by the Protocol (1986) Amending the Annex to the Agreement on Trade in Civil Aircraft.
2. This Protocol shall be open for acceptance by Signatories to the Agreement, by signature or otherwise, until 31 October 2001, or a later date to be decided by the Committee on Trade in Civil Aircraft.<sup>1</sup>
3. This Protocol shall enter into force, for those Signatories who have accepted it, on 1 January 2002. For each other Signatory it shall enter into force on the day following the date of its acceptance.
4. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Signatory and each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 2.
5. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.
6. This Protocol deals only with customs duties and charges under Article 2 of the Agreement. Except with respect to requiring duty-free treatment for products covered by this Protocol, nothing in this Protocol or the Agreement, as modified thereby, changes or affects a Signatory’s rights and obligations, as they exist on the day prior to the entry into force of this Protocol, under any of the WTO Agreements referenced in Article II of the *Marrakesh Agreement Establishing the World Trade Organization*.

DONE at Geneva this sixth day of June 2001, in a single copy, in the English, French and Spanish languages, each text being authentic.

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<sup>1</sup> On 21 November 2001, the Committee decided to extend the date for acceptance of the Protocol indefinitely (TCA/7).

ANNEX  
PRODUCT COVERAGE

1. The product coverage is defined in Article 1 of the Agreement on Trade in Civil Aircraft.
2. Signatories agree that products covered by the descriptions listed below<sup>4</sup> and properly classified under the Harmonized System headings and subheadings shown alongside shall be accorded duty-free or duty-exempt treatment, if such products are for use in civil aircraft or ground flying trainers\* and for incorporation therein, in the course of their manufacture, repair, maintenance, rebuilding, modification or conversion.
3. These products shall not include:
  - an incomplete or unfinished product, unless it has the essential character of a complete or finished part, component, sub-assembly or item of equipment of a civil aircraft or ground flying trainer\*, (e.g. an article which has a civil aircraft manufacturer's part number),
  - materials in any form (e.g. sheets, plates, profile shapes, strips, bars, pipes, tubes or other shapes) unless they have been cut to size or shape and/or shaped for incorporation in a civil aircraft or a ground flying trainer\* (e.g. an article which has a civil aircraft manufacturer's part number),
  - raw materials and consumable goods.
4. For the purpose of this Annex, "Ex" has been included to indicate that the product description referred to does not exhaust the entire range of products within the Harmonized System headings and subheadings listed below.

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<sup>1</sup> Not reproduced.

\* For the purpose of Article 1.1 of this Agreement "ground flight simulators" are to be regarded as ground flying trainers as provided for under 8805.29 of the Harmonized System.

CERTIFICATIONS OF MODIFICATIONS AND RECTIFICATIONS  
TO APPENDICES I-IV OF THE AGREEMENT ON GOVERNMENT  
PROCUREMENT (1994)

The following table lists all the modifications and rectifications to the Appendices to the Agreement on Government Procurement (1994) certified in 2001. The Appendices are in the form of a loose-leaf system which was given legal effect pursuant to the decision of the Committee on Government Procurement of 4 June 1996 (GPA/M/2).

Party	Type	Date of certification	Document
Hong Kong, China	Certification of replacement pages to Appendix I, Annex 3, and Appendices II, III and IV	6 January 2001	WT/Let/370
Iceland	Additional and replacement pages resulting from the accession of Iceland to the Agreement	28 April 2001	WT/Let/396
Japan	Procès-verbal of rectification to Appendix I, Annex 3 Certification of replacement pages to Appendix I – Annex 3, Annex 5 and General Notes	18 April 2001 3 October 2001	WT/Let/391 WT/Let/400
Korea	Certification of replacement pages to Appendix I – Annex 1 and Annex 3	3 October 2001	WT/Let/401
United States	Certification of replacement pages to Appendices I and II	9 November 2001	WT/Let/407

## DECISIONS AND REPORTS

### MINISTERIAL CONFERENCE

Fourth Session, Doha 2001

### MINISTERIAL DECLARATION

*Adopted by the Ministerial Conference on 14 November 2001  
(WT/MIN(01)/DEC/1)*

1. The multilateral trading system embodied in the World Trade Organization has contributed significantly to economic growth, development and employment throughout the past fifty years. We are determined, particularly in the light of the global economic slowdown, to maintain the process of reform and liberalization of trade policies, thus ensuring that the system plays its full part in promoting recovery, growth and development. We therefore strongly reaffirm the principles and objectives set out in the Marrakesh Agreement Establishing the World Trade Organization, and pledge to reject the use of protectionism.

2. International trade can play a major role in the promotion of economic development and the alleviation of poverty. We recognize the need for all our peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system generates. The majority of WTO Members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration. Recalling the Preamble to the Marrakesh Agreement, we shall continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development. In this context, enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity-building programmes have important roles to play.

3. We recognize the particular vulnerability of the least-developed countries and the special structural difficulties they face in the global economy. We are committed to addressing the marginalization of least-developed countries in international trade and to improving their effective participation in the multilateral trading system. We recall the commitments made by Ministers at our meetings in Marrakesh, Singapore and Geneva, and by the international community at the Third UN Conference on Least-Developed Countries in Brussels, to help least-developed countries secure beneficial and meaningful integration into the multilateral trading system and the global economy. We are determined that the WTO will play its part in building effectively on these commitments under the Work Programme we are establishing.

4. We stress our commitment to the WTO as the unique forum for global trade rule-making and liberalization, while also recognizing that regional trade agreements can play an important role in promoting the liberalization and expansion of trade and in fostering development.

5. We are aware that the challenges Members face in a rapidly changing international environment cannot be addressed through measures taken in the trade field alone. We shall continue to work with the Bretton Woods institutions for greater coherence in global economic policy-making.

6. We strongly reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakesh Agreement. We are convinced that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can and must be mutually supportive. We take note of the efforts by Members to conduct national environmental assessments of trade policies on a voluntary basis. We recognize that under WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO Agreements. We welcome the WTO's continued cooperation with UNEP and other inter-governmental environmental organizations. We encourage efforts to promote cooperation between the WTO and relevant international environmental and developmental organizations, especially in the lead-up to the World Summit on Sustainable Development to be held in Johannesburg, South Africa, in September 2002.

7. We reaffirm the right of Members under the General Agreement on Trade in Services to regulate, and to introduce new regulations on, the supply of services.

8. We reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognized core labour standards. We take note of work under way in the International Labour Organization (ILO) on the social dimension of globalization.

9. We note with particular satisfaction that this Conference has completed the WTO accession procedures for China and Chinese Taipei. We also welcome the accession as new Members, since our last Session, of Albania, Croatia, Georgia, Jordan, Lithuania, Moldova and Oman, and note the extensive market-access commitments already made by these countries on accession. These accessions will greatly strengthen the multilateral trading system, as will those of the 28 countries now negotiating their accession. We therefore attach great importance to concluding accession proceedings as quickly as possible. In particular, we are committed

to accelerating the accession of least-developed countries.

10. Recognizing the challenges posed by an expanding WTO membership, we confirm our collective responsibility to ensure internal transparency and the effective participation of all Members. While emphasizing the intergovernmental character of the organization, we are committed to making the WTO's operations more transparent, including through more effective and prompt dissemination of information, and to improve dialogue with the public. We shall therefore at the national and multilateral levels continue to promote a better public understanding of the WTO and to communicate the benefits of a liberal, rules-based multilateral trading system.

11. In view of these considerations, we hereby agree to undertake the broad and balanced Work Programme set out below. This incorporates both an expanded negotiating agenda and other important decisions and activities necessary to address the challenges facing the multilateral trading system.

#### WORK PROGRAMME

##### IMPLEMENTATION-RELATED ISSUES AND CONCERNS

12. We attach the utmost importance to the implementation-related issues and concerns raised by Members and are determined to find appropriate solutions to them. In this connection, and having regard to the General Council Decisions of 3 May and 15 December 2000, we further adopt the Decision on Implementation-Related Issues and Concerns in document WT/MIN(01)/17 to address a number of implementation problems faced by Members. We agree that negotiations on outstanding implementation issues shall be an integral part of the Work Programme we are establishing, and that agreements reached at an early stage in these negotiations shall be treated in accordance with the provisions of paragraph 47 below. In this regard, we shall proceed as follows: (a) where we provide a specific negotiating mandate in this Declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee, established under paragraph 46 below, by the end of 2002 for appropriate action.

##### AGRICULTURE

13. We recognize the work already undertaken in the negotiations initiated in early 2000 under Article 20 of the Agreement on Agriculture, including the large number of negotiating proposals submitted on behalf of a total of 121 Members. We recall the long-term objective referred to in the Agreement to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural

markets. We reconfirm our commitment to this programme. Building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support. We agree that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development. We take note of the non-trade concerns reflected in the negotiating proposals submitted by Members and confirm that non-trade concerns will be taken into account in the negotiations as provided for in the Agreement on Agriculture.

14. Modalities for the further commitments, including provisions for special and differential treatment, shall be established no later than 31 March 2003. Participants shall submit their comprehensive draft Schedules based on these modalities no later than the date of the Fifth Session of the Ministerial Conference. The negotiations, including with respect to rules and disciplines and related legal texts, shall be concluded as part and at the date of conclusion of the negotiating agenda as a whole.

#### SERVICES

15. The negotiations on trade in services shall be conducted with a view to promoting the economic growth of all trading partners and the development of developing and least-developed countries. We recognize the work already undertaken in the negotiations, initiated in January 2000 under Article XIX of the General Agreement on Trade in Services, and the large number of proposals submitted by Members on a wide range of sectors and several horizontal issues, as well as on movement of natural persons. We reaffirm the Guidelines and Procedures for the Negotiations adopted by the Council for Trade in Services on 28 March 2001 as the basis for continuing the negotiations, with a view to achieving the objectives of the General Agreement on Trade in Services, as stipulated in the Preamble, Article IV and Article XIX of that Agreement. Participants shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003.

#### MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

16. We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without *a priori* exclusions. The negotiations shall take fully into account the special needs and interests of developing and least-devel-

oped country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII *bis* of GATT 1994 and the provisions cited in paragraph 50 below. To this end, the modalities to be agreed will include appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations.

#### TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

17. We stress the importance we attach to implementation and interpretation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in a manner supportive of public health, by promoting both access to existing medicines and research and development into new medicines and, in this connection, are adopting a separate Declaration.

18. With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of this Declaration.

19. We instruct the Council for TRIPS, in pursuing its work programme including under the review of Article 27.3(b), the review of the implementation of the TRIPS Agreement under Article 71.1 and the work foreseen pursuant to paragraph 12 of this Declaration, to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by Members pursuant to Article 71.1. In undertaking this work, the TRIPS Council shall be guided by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and shall take fully into account the development dimension.

#### RELATIONSHIP BETWEEN TRADE AND INVESTMENT

20. Recognizing the case for a multilateral framework to secure transparent, stable and predictable conditions for long-term cross-border investment, particularly foreign direct investment, that will contribute to the expansion of trade, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 21, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.

21. We recognize the needs of developing and least-developed countries for enhanced support for technical assistance and capacity building in this area, including policy analysis and development so that they may better evaluate the implications

of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organisations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs.

22. In the period until the Fifth Session, further work in the Working Group on the Relationship Between Trade and Investment will focus on the clarification of: scope and definition; transparency; non-discrimination; modalities for pre-establishment commitments based on a GATS-type, positive list approach; development provisions; exceptions and balance-of-payments safeguards; consultation and the settlement of disputes between Members. Any framework should reflect in a balanced manner the interests of home and host countries, and take due account of the development policies and objectives of host governments as well as their right to regulate in the public interest. The special development, trade and financial needs of developing and least-developed countries should be taken into account as an integral part of any framework, which should enable Members to undertake obligations and commitments commensurate with their individual needs and circumstances. Due regard should be paid to other relevant WTO provisions. Account should be taken, as appropriate, of existing bilateral and regional arrangements on investment.

#### INTERACTION BETWEEN TRADE AND COMPETITION POLICY

23. Recognizing the case for a multilateral framework to enhance the contribution of competition policy to international trade and development, and the need for enhanced technical assistance and capacity-building in this area as referred to in paragraph 24, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.

24. We recognize the needs of developing and least-developed countries for enhanced support for technical assistance and capacity building in this area, including policy analysis and development so that they may better evaluate the implications of closer multilateral cooperation for their development policies and objectives, and human and institutional development. To this end, we shall work in cooperation with other relevant intergovernmental organisations, including UNCTAD, and through appropriate regional and bilateral channels, to provide strengthened and adequately resourced assistance to respond to these needs.

25. In the period until the Fifth Session, further work in the Working Group on the Interaction between Trade and Competition Policy will focus on the clarification of: core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in develop-

ing countries through capacity building. Full account shall be taken of the needs of developing and least-developed country participants and appropriate flexibility provided to address them.

#### TRANSPARENCY IN GOVERNMENT PROCUREMENT

26. Recognizing the case for a multilateral agreement on transparency in government procurement and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. These negotiations will build on the progress made in the Working Group on Transparency in Government Procurement by that time and take into account participants' development priorities, especially those of least-developed country participants. Negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers. We commit ourselves to ensuring adequate technical assistance and support for capacity building both during the negotiations and after their conclusion.

#### TRADE FACILITATION

27. Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area.

#### WTO RULES

28. In the light of experience and of the increasing application of these instruments by Members, we agree to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants. In the initial phase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices, that they seek to clarify and improve in the subsequent phase. In the context of these negotiations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries. We note that fisheries subsidies are also referred to in paragraph 31.

29. We also agree to negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements.

#### DISPUTE SETTLEMENT UNDERSTANDING

30. We agree to negotiations on improvements and clarifications of the Dispute Settlement Understanding. The negotiations should be based on the work done thus far as well as any additional proposals by Members, and aim to agree on improvements and clarifications not later than May 2003, at which time we will take steps to ensure that the results enter into force as soon as possible thereafter.

#### TRADE AND ENVIRONMENT

31. With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:

- (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;
- (ii) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;
- (iii) the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.

We note that fisheries subsidies form part of the negotiations provided for in paragraph 28.

32. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:

- (i) the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;
- (ii) the relevant provisions of the Agreement on Trade-Related Aspects

- of Intellectual Property Rights; and
- (iii) labelling requirements for environmental purposes.

Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations. The outcome of this work as well as the negotiations carried out under paragraph 31(i) and (ii) shall be compatible with the open and non-discriminatory nature of the multilateral trading system, shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least-developed countries.

33. We recognize the importance of technical assistance and capacity building in the field of trade and environment to developing countries, in particular the least-developed among them. We also encourage that expertise and experience be shared with Members wishing to perform environmental reviews at the national level. A report shall be prepared on these activities for the Fifth Session.

#### ELECTRONIC COMMERCE

34. We take note of the work which has been done in the General Council and other relevant bodies since the Ministerial Declaration of 20 May 1998 and agree to continue the Work Programme on Electronic Commerce. The work to date demonstrates that electronic commerce creates new challenges and opportunities for trade for Members at all stages of development, and we recognize the importance of creating and maintaining an environment which is favourable to the future development of electronic commerce. We instruct the General Council to consider the most appropriate institutional arrangements for handling the Work Programme, and to report on further progress to the Fifth Session of the Ministerial Conference. We declare that Members will maintain their current practice of not imposing customs duties on electronic transmissions until the Fifth Session.

#### SMALL ECONOMIES

35. We agree to a work programme, under the auspices of the General Council, to examine issues relating to the trade of small economies. The objective of this work is to frame responses to the trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system, and to create a sub-category of WTO Members. The General Council shall review the work programme and make recommendations for action to the Fifth Session of the Ministerial Conference.

## TRADE, DEBT AND FINANCE

36. We agree to an examination, in a Working Group under the auspices of the General Council, of the relationship between trade, debt and finance, and of any possible recommendations on steps that might be taken within the mandate and competence of the WTO to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed countries, and to strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability. The General Council shall report to the Fifth Session of the Ministerial Conference on progress in the examination.

## TRADE AND TRANSFER OF TECHNOLOGY

37. We agree to an examination, in a Working Group under the auspices of the General Council, of the relationship between trade and transfer of technology, and of any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. The General Council shall report to the Fifth Session of the Ministerial Conference on progress in the examination.

## TECHNICAL COOPERATION AND CAPACITY BUILDING

38. We confirm that technical cooperation and capacity building are core elements of the development dimension of the multilateral trading system, and we welcome and endorse the New Strategy for WTO Technical Cooperation for Capacity Building, Growth and Integration. We instruct the Secretariat, in coordination with other relevant agencies, to support domestic efforts for mainstreaming trade into national plans for economic development and strategies for poverty reduction. The delivery of WTO technical assistance shall be designed to assist developing and least-developed countries and low-income countries in transition to adjust to WTO rules and disciplines, implement obligations and exercise the rights of membership, including drawing on the benefits of an open, rules-based multilateral trading system. Priority shall also be accorded to small, vulnerable, and transition economies, as well as to Members and Observers without representation in Geneva. We reaffirm our support for the valuable work of the International Trade Centre, which should be enhanced.

39. We underscore the urgent necessity for the effective coordinated delivery of technical assistance with bilateral donors, in the OECD Development Assistance Committee and relevant international and regional intergovernmental institutions, within a coherent policy framework and timetable. In the coordinated delivery of technical assistance, we instruct the Director-General to consult with the relevant agencies, bilateral donors and beneficiaries, to identify ways of enhancing and rationalizing the Integrated Framework for Trade-Related Technical Assistance

to Least-Developed Countries and the Joint Integrated Technical Assistance Programme (JITAP).

40. We agree that there is a need for technical assistance to benefit from secure and predictable funding. We therefore instruct the Committee on Budget, Finance and Administration to develop a plan for adoption by the General Council in December 2001 that will ensure long-term funding for WTO technical assistance at an overall level no lower than that of the current year and commensurate with the activities outlined above.

41. We have established firm commitments on technical cooperation and capacity building in various paragraphs in this Ministerial Declaration. We reaffirm these specific commitments contained in paragraphs 16, 21, 24, 26, 27, 33, 38-40, 42 and 43, and also reaffirm the understanding in paragraph 2 on the important role of sustainably financed technical assistance and capacity-building programmes. We instruct the Director-General to report to the Fifth Session of the Ministerial Conference, with an interim report to the General Council in December 2002 on the implementation and adequacy of these commitments in the identified paragraphs.

#### LEAST-DEVELOPED COUNTRIES

42. We acknowledge the seriousness of the concerns expressed by the least-developed countries (LDCs) in the Zanzibar Declaration adopted by their Ministers in July 2001. We recognize that the integration of the LDCs into the multilateral trading system requires meaningful market access, support for the diversification of their production and export base, and trade-related technical assistance and capacity building. We agree that the meaningful integration of LDCs into the trading system and the global economy will involve efforts by all WTO Members. We commit ourselves to the objective of duty-free, quota-free market access for products originating from LDCs. In this regard, we welcome the significant market access improvements by WTO Members in advance of the Third UN Conference on LDCs (LDC-III), in Brussels, May 2001. We further commit ourselves to consider additional measures for progressive improvements in market access for LDCs. Accession of LDCs remains a priority for the Membership. We agree to work to facilitate and accelerate negotiations with acceding LDCs. We instruct the Secretariat to reflect the priority we attach to LDCs' accessions in the annual plans for technical assistance. We reaffirm the commitments we undertook at LDC-III, and agree that the WTO should take into account, in designing its work programme for LDCs, the trade-related elements of the Brussels Declaration and Programme of Action, consistent with the WTO's mandate, adopted at LDC-III. We instruct the Sub-Committee for Least-Developed Countries to design such a work programme and to report on the agreed work programme to the General Council at its first meeting in 2002.

43. We endorse the Integrated Framework for Trade-Related Technical Assistance to Least-Developed Countries (IF) as a viable model for LDCs' trade development. We urge development partners to significantly increase contributions to the

IF Trust Fund and WTO extra-budgetary trust funds in favour of LDCs. We urge the core agencies, in coordination with development partners, to explore the enhancement of the IF with a view to addressing the supply-side constraints of LDCs and the extension of the model to all LDCs, following the review of the IF and the appraisal of the ongoing Pilot Scheme in selected LDCs. We request the Director-General, following coordination with heads of the other agencies, to provide an interim report to the General Council in December 2002 and a full report to the Fifth Session of the Ministerial Conference on all issues affecting LDCs.

#### SPECIAL AND DIFFERENTIAL TREATMENT

44. We reaffirm that provisions for special and differential treatment are an integral part of the WTO Agreements. We note the concerns expressed regarding their operation in addressing specific constraints faced by developing countries, particularly least-developed countries. In that connection, we also note that some Members have proposed a Framework Agreement on Special and Differential Treatment (WT/GC/W/442). We therefore agree that all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. In this connection, we endorse the work programme on special and differential treatment set out in the Decision on Implementation-Related Issues and Concerns.

#### ORGANIZATION AND MANAGEMENT OF THE WORK PROGRAMME

45. The negotiations to be pursued under the terms of this Declaration shall be concluded not later than 1 January 2005. The Fifth Session of the Ministerial Conference will take stock of progress in the negotiations, provide any necessary political guidance, and take decisions as necessary. When the results of the negotiations in all areas have been established, a Special Session of the Ministerial Conference will be held to take decisions regarding the adoption and implementation of those results.

46. The overall conduct of the negotiations shall be supervised by a Trade Negotiations Committee under the authority of the General Council. The Trade Negotiations Committee shall hold its first meeting not later than 31 January 2002. It shall establish appropriate negotiating mechanisms as required and supervise the progress of the negotiations.

47. With the exception of the improvements and clarifications of the Dispute Settlement Understanding, the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis. Early agreements shall be taken into account in assessing the overall balance of the negotiations.

48. Negotiations shall be open to:
- (i) all Members of the WTO; and
  - (ii) States and separate customs territories currently in the process of accession and those that inform Members, at a regular meeting of the General Council, of their intention to negotiate the terms of their membership and for whom an accession working party is established.

Decisions on the outcomes of the negotiations shall be taken only by WTO Members.

49. The negotiations shall be conducted in a transparent manner among participants, in order to facilitate the effective participation of all. They shall be conducted with a view to ensuring benefits to all participants and to achieving an overall balance in the outcome of the negotiations.

50. The negotiations and the other aspects of the Work Programme shall take fully into account the principle of special and differential treatment for developing and least-developed countries embodied in: Part IV of the GATT 1994; the Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries; the Uruguay Round Decision on Measures in Favour of Least-Developed Countries; and all other relevant WTO provisions.

51. The Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.

52. Those elements of the Work Programme which do not involve negotiations are also accorded a high priority. They shall be pursued under the overall supervision of the General Council, which shall report on progress to the Fifth Session of the Ministerial Conference.

DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH

*Adopted by the Ministerial Conference on 14 November 2001*

*(WT/MIN(01)/DEC/2)*

1. We recognize the gravity of the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics.
2. We stress the need for the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to be part of the wider national and international action to address these problems.
3. We recognize that intellectual property protection is important for the development of new medicines. We also recognize the concerns about its effects on prices.
4. We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all.

In this connection, we reaffirm the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose.

5. Accordingly and in the light of paragraph 4 above, while maintaining our commitments in the TRIPS Agreement, we recognize that these flexibilities include:
  - (a) In applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles.
  - (b) Each Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted.
  - (c) Each Member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics,

can represent a national emergency or other circumstances of extreme urgency.

- (d) The effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each Member free to establish its own regime for such exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4.

6. We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002.

7. We reaffirm the commitment of developed-country Members to provide incentives to their enterprises and institutions to promote and encourage technology transfer to least-developed country Members pursuant to Article 66.2. We also agree that the least-developed country Members will not be obliged, with respect to pharmaceutical products, to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections until 1 January 2016, without prejudice to the right of least-developed country Members to seek other extensions of the transition periods as provided for in Article 66.1 of the TRIPS Agreement. We instruct the Council for TRIPS to take the necessary action to give effect to this pursuant to Article 66.1 of the TRIPS Agreement.

## IMPLEMENTATION-RELATED ISSUES AND CONCERNS

### *Decision of the Ministerial Conference on 14 November 2001 (WT/MIN(01)/17)*

The Ministerial Conference,

*Having regard to* Articles IV.1, IV.5 and IX of the Marrakesh Agreement Establishing the World Trade Organization (WTO);

*Mindful* of the importance that Members attach to the increased participation of developing countries in the multilateral trading system, and of the need to ensure that the system responds fully to the needs and interests of all participants;

*Determined* to take concrete action to address issues and concerns that have been raised by many developing-country Members regarding the implementation of some WTO Agreements and Decisions, including the difficulties and resource constraints that have been encountered in the implementation of obligations

in various areas;

*Recalling* the 3 May 2000 Decision of the General Council to meet in special sessions to address outstanding implementation issues, and to assess the existing difficulties, identify ways needed to resolve them, and take decisions for appropriate action not later than the Fourth Session of the Ministerial Conference;

*Noting* the actions taken by the General Council in pursuance of this mandate at its Special Sessions in October and December 2000 (WT/L/384), as well as the review and further discussion undertaken at the Special Sessions held in April, July and October 2001, including the referral of additional issues to relevant WTO bodies or their chairpersons for further work;

*Noting also* the reports on the issues referred to the General Council from subsidiary bodies and their chairpersons and from the Director-General, and the discussions as well as the clarifications provided and understandings reached on implementation issues in the intensive informal and formal meetings held under this process since May 2000;

*Decides* as follows:

1. General Agreement on Tariffs and Trade 1994 (GATT 1994)
  - 1.1 Reaffirms that Article XVIII of the GATT 1994 is a special and differential treatment provision for developing countries and that recourse to it should be less onerous than to Article XII of the GATT 1994.
  - 1.2 Noting the issues raised in the report of the Chairperson of the Committee on Market Access (WT/GC/50) concerning the meaning to be given to the phrase “substantial interest” in paragraph 2(d) of Article XIII of the GATT 1994, the Market Access Committee is directed to give further consideration to the issue and make recommendations to the General Council as expeditiously as possible but in any event not later than the end of 2002.
2. Agreement on Agriculture
  - 2.1 Urges Members to exercise restraint in challenging measures notified under the green box by developing countries to promote rural development and adequately address food security concerns.
  - 2.2 Takes note of the report of the Committee on Agriculture (G/AG/11) regarding the implementation of the Decision on Measures Concerning the Possible Negative Effects of the Reform

Programme on Least-Developed and Net Food-Importing Developing Countries, and approves the recommendations contained therein regarding (i) food aid; (ii) technical and financial assistance in the context of aid programmes to improve agricultural productivity and infrastructure; (iii) financing normal levels of commercial imports of basic foodstuffs; and (iv) review of follow-up.

- 2.3 Takes note of the report of the Committee on Agriculture (G/AG/11) regarding the implementation of Article 10.2 of the Agreement on Agriculture, and approves the recommendations and reporting requirements contained therein.
- 2.4 Takes note of the report of the Committee on Agriculture (G/AG/11) regarding the administration of tariff rate quotas and the submission by Members of addenda to their notifications, and endorses the decision by the Committee to keep this matter under review.

3. Agreement on the Application of Sanitary and Phytosanitary Measures

- 3.1 Where the appropriate level of sanitary and phytosanitary protection allows scope for the phased introduction of new sanitary and phytosanitary measures, the phrase “longer time-frame for compliance” referred to in Article 10.2 of the Agreement on the Application of Sanitary and Phytosanitary Measures, shall be understood to mean normally a period of not less than 6 months. Where the appropriate level of sanitary and phytosanitary protection does not allow scope for the phased introduction of a new measure, but specific problems are identified by a Member, the Member applying the measure shall upon request enter into consultations with the country with a view to finding a mutually satisfactory solution to the problem while continuing to achieve the importing Member’s appropriate level of protection.
- 3.2 Subject to the conditions specified in paragraph 2 of Annex B to the Agreement on the Application of Sanitary and Phytosanitary Measures, the phrase “reasonable interval” shall be understood to mean normally a period of not less than 6 months. It is understood that timeframes for specific measures have to be considered in the context of the particular circumstances of the measure and actions necessary to implement it. The entry into force of measures which contribute to the liberalization of trade should not be unnecessarily delayed.
- 3.3 Takes note of the Decision of the Committee on Sanitary and

Phyosanitary Measures (G/SPS/19) regarding equivalence, and instructs the Committee to develop expeditiously the specific programme to further the implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures.

- 3.4 Pursuant to the provisions of Article 12.7 of the Agreement on the Application of Sanitary and Phytosanitary Measures, the Committee on Sanitary and Phytosanitary Measures is instructed to review the operation and implementation of the Agreement on Sanitary and Phytosanitary Measures at least once every four years.
- 3.5 (i) Takes note of the actions taken to date by the Director-General to facilitate the increased participation of Members at different levels of development in the work of the relevant international standard setting organizations as well as his efforts to coordinate with these organizations and financial institutions in identifying SPS-related technical assistance needs and how best to address them; and
- (ii) urges the Director-General to continue his cooperative efforts with these organizations and institutions in this regard, including with a view to according priority to the effective participation of least-developed countries and facilitating the provision of technical and financial assistance for this purpose.
- 3.6 (i) Urges Members to provide, to the extent possible, the financial and technical assistance necessary to enable least-developed countries to respond adequately to the introduction of any new SPS measures which may have significant negative effects on their trade; and
- (ii) urges Members to ensure that technical assistance is provided to least-developed countries with a view to responding to the special problems faced by them in implementing the Agreement on the Application of Sanitary and Phytosanitary Measures.

#### 4. Agreement on Textiles and Clothing

Reaffirms the commitment to full and faithful implementation of the Agreement on Textiles and Clothing, and agrees:

- 4.1 that the provisions of the Agreement relating to the early integration of products and the elimination of quota restrictions should

be effectively utilised.

- 4.2 that Members will exercise particular consideration before initiating investigations in the context of antidumping remedies on textile and clothing exports from developing countries previously subject to quantitative restrictions under the Agreement for a period of two years following full integration of this Agreement into the WTO.
- 4.3 that without prejudice to their rights and obligations, Members shall notify any changes in their rules of origin concerning products falling under the coverage of the Agreement to the Committee on Rules of Origin which may decide to examine them.

Requests the Council for Trade in Goods to examine the following proposals:

- 4.4 that when calculating the quota levels for small suppliers for the remaining years of the Agreement, Members will apply the most favourable methodology available in respect of those Members under the growth-on-growth provisions from the beginning of the implementation period; extend the same treatment to least-developed countries; and, where possible, eliminate quota restrictions on imports of such Members;
- 4.5 that Members will calculate the quota levels for the remaining years of the Agreement with respect to other restrained Members as if implementation of the growth-on-growth provision for stage 3 had been advanced to 1 January 2000;

and make recommendations to the General Council by 31 July 2002 for appropriate action.

5. Agreement on Technical Barriers to Trade

- 5.1 Confirms the approach to technical assistance being developed by the Committee on Technical Barriers to Trade, reflecting the results of the triennial review work in this area, and mandates this work to continue.
- 5.2 Subject to the conditions specified in paragraph 12 of Article 2 of the Agreement on Technical Barriers to Trade, the phrase “reasonable interval” shall be understood to mean normally a period of not less than 6 months, except when this would be ineffective in fulfilling the legitimate objectives pursued.
- 5.3 (i) Takes note of the actions taken to date by the Director-General to facilitate the increased participation of Members at different levels of development in the work of the relevant international

standard setting organizations as well as his efforts to coordinate with these organizations and financial institutions in identifying TBT-related technical assistance needs and how best to address them; and

(ii) urges the Director-General to continue his cooperative efforts with these organizations and institutions, including with a view to according priority to the effective participation of least-developed countries and facilitating the provision of technical and financial assistance for this purpose.

5.4 (i) Urges Members to provide, to the extent possible, the financial and technical assistance necessary to enable least-developed countries to respond adequately to the introduction of any new TBT measures which may have significant negative effects on their trade; and

(ii) urges Members to ensure that technical assistance is provided to least-developed countries with a view to responding to the special problems faced by them in implementing the Agreement on Technical Barriers to Trade.

6. Agreement on Trade-Related Investment Measures

6.1 Takes note of the actions taken by the Council for Trade in Goods in regard to requests from some developing-country Members for the extension of the five-year transitional period provided for in Article 5.2 of Agreement on Trade-Related Investment Measures.

6.2 Urges the Council for Trade in Goods to consider positively requests that may be made by least-developed countries under Article 5.3 of the TRIMs Agreement or Article IX.3 of the WTO Agreement, as well as to take into consideration the particular circumstances of least-developed countries when setting the terms and conditions including time-frames.

7. Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

7.1 Agrees that investigating authorities shall examine with special care any application for the initiation of an anti-dumping investigation where an investigation of the same product from the same Member resulted in a negative finding within the 365 days prior to the filing of the application and that, unless this pre-initiation examination indicates that circumstances have changed, the investigation shall not proceed.

- 7.2 Recognizes that, while Article 15 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 is a mandatory provision, the modalities for its application would benefit from clarification. Accordingly, the Committee on Anti-Dumping Practices is instructed, through its working group on Implementation, to examine this issue and to draw up appropriate recommendations within twelve months on how to operationalize this provision.
  - 7.3 Takes note that Article 5.8 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 does not specify the time-frame to be used in determining the volume of dumped imports, and that this lack of specificity creates uncertainties in the implementation of the provision. The Committee on Anti-Dumping Practices is instructed, through its working group on Implementation, to study this issue and draw up recommendations within 12 months, with a view to ensuring the maximum possible predictability and objectivity in the application of time frames.
  - 7.4 Takes note that Article 18.6 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 requires the Committee on Anti-Dumping Practices to review annually the implementation and operation of the Agreement taking into account the objectives thereof. The Committee on Anti-dumping Practices is instructed to draw up guidelines for the improvement of annual reviews and to report its views and recommendations to the General Council for subsequent decision within 12 months.
8. Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994
- 8.1 Takes note of the actions taken by the Committee on Customs Valuation in regard to the requests from a number of developing-country Members for the extension of the five-year transitional period provided for in Article 20.1 of Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994.
  - 8.2 Urges the Council for Trade in Goods to give positive consideration to requests that may be made by least-developed country Members under paragraphs 1 and 2 of Annex III of the Customs Valuation Agreement or under Article IX.3 of the WTO Agreement, as well as to take into consideration the particular circumstances of least-developed countries when setting the terms and

conditions including time-frames.

- 8.3 Underlines the importance of strengthening cooperation between the customs administrations of Members in the prevention of customs fraud. In this regard, it is agreed that, further to the 1994 Ministerial Decision Regarding Cases Where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value, when the customs administration of an importing Member has reasonable grounds to doubt the truth or accuracy of the declared value, it may seek assistance from the customs administration of an exporting Member on the value of the good concerned. In such cases, the exporting Member shall offer cooperation and assistance, consistent with its domestic laws and procedures, including furnishing information on the export value of the good concerned. Any information provided in this context shall be treated in accordance with Article 10 of the Customs Valuation Agreement. Furthermore, recognizing the legitimate concerns expressed by the customs administrations of several importing Members on the accuracy of the declared value, the Committee on Customs Valuation is directed to identify and assess practical means to address such concerns, including the exchange of information on export values and to report to the General Council by the end of 2002 at the latest.

9. Agreement on Rules of Origin

- 9.1 Takes note of the report of the Committee on Rules of Origin (G/RO/48) regarding progress on the harmonization work programme, and urges the Committee to complete its work by the end of 2001.
- 9.2 Agrees that any interim arrangements on rules of origin implemented by Members in the transitional period before the entry into force of the results of the harmonisation work programme shall be consistent with the Agreement on Rules of Origin, particularly Articles 2 and 5 thereof. Without prejudice to Members' rights and obligations, such arrangements may be examined by the Committee on Rules of Origin.

10. Agreement on Subsidies and Countervailing Measures

- 10.1 Agrees that Annex VII(b) to the Agreement on Subsidies and Countervailing Measures includes the Members that are listed therein until their GNP per capita reaches US \$1,000 in constant 1990 dollars for three consecutive years. This decision will enter into effect upon the adoption by the Committee on Subsidies and Countervailing Measures of an appropriate methodology for

calculating constant 1990 dollars. If, however, the Committee on Subsidies and Countervailing Measures does not reach a consensus agreement on an appropriate methodology by 1 January 2003, the methodology proposed by the Chairman of the Committee set forth in G/SCM/38, Appendix 2 shall be applied. A Member shall not leave Annex VII(b) so long as its GNP per capita in current dollars has not reached US \$1000 based upon the most recent data from the World Bank.

- 10.2 Takes note of the proposal to treat measures implemented by developing countries with a view to achieving legitimate development goals, such as regional growth, technology research and development funding, production diversification and development and implementation of environmentally sound methods of production as non-actionable subsidies, and agrees that this issue be addressed in accordance with paragraph 13 below. During the course of the negotiations, Members are urged to exercise due restraint with respect to challenging such measures.
- 10.3 Agrees that the Committee on Subsidies and Countervailing Measures shall continue its review of the provisions of the Agreement on Subsidies and Countervailing Measures regarding countervailing duty investigations and report to the General Council by 31 July 2002.
- 10.4 Agrees that if a Member has been excluded from the list in paragraph (b) of Annex VII to the Agreement on Subsidies and Countervailing Measures, it shall be re-included in it when its GNP per capita falls back below US\$ 1,000.
- 10.5 Subject to the provisions of Articles 27.5 and 27.6, it is reaffirmed that least-developed country Members are exempt from the prohibition on export subsidies set forth in Article 3.1(a) of the Agreement on Subsidies and Countervailing Measures, and thus have flexibility to finance their exporters, consistent with their development needs. It is understood that the eight-year period in Article 27.5 within which a least-developed country Member must phase out its export subsidies in respect of a product in which it is export-competitive begins from the date export competitiveness exists within the meaning of Article 27.6.
- 10.6 Having regard to the particular situation of certain developing-country Members, directs the Committee on Subsidies and Countervailing Measures to extend the transition period, under the rubric of Article 27.4 of the Agreement on Subsidies and

Countervailing Measures, for certain export subsidies provided by such Members, pursuant to the procedures set forth in document G/SCM/39. Furthermore, when considering a request for an extension of the transition period under the rubric of Article 27.4 of the Agreement on Subsidies and Countervailing Measures, and in order to avoid that Members at similar stages of development and having a similar order of magnitude of share in world trade are treated differently in terms of receiving such extensions for the same eligible programmes and the length of such extensions, directs the Committee to extend the transition period for those developing countries, after taking into account the relative competitiveness in relation to other developing-country Members who have requested extension of the transition period following the procedures set forth in document G/SCM/39.

11. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
  - 11.1 The TRIPS Council is directed to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations to the Fifth Session of the Ministerial Conference. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement.
  - 11.2 Reaffirming that the provisions of Article 66.2 of the TRIPS Agreement are mandatory, it is agreed that the TRIPS Council shall put in place a mechanism for ensuring the monitoring and full implementation of the obligations in question. To this end, developed-country Members shall submit prior to the end of 2002 detailed reports on the functioning in practice of the incentives provided to their enterprises for the transfer of technology in pursuance of their commitments under Article 66.2. These submissions shall be subject to a review in the TRIPS Council and information shall be updated by Members annually.
12. Cross-cutting Issues
  - 12.1 The Committee on Trade and Development is instructed:
    - (i) to identify those special and differential treatment provisions that are already mandatory in nature and those that are non-binding in character, to consider the legal and practical implications for developed and developing Members of converting special and differential treatment measures into mandatory provisions, to identify those that Members consider should be made mandatory,

and to report to the General Council with clear recommendations for a decision by July 2002;

- (ii) to examine additional ways in which special and differential treatment provisions can be made more effective, to consider ways, including improved information flows, in which developing countries, in particular the least-developed countries, may be assisted to make best use of special and differential treatment provisions, and to report to the General Council with clear recommendations for a decision by July 2002; and
- (iii) to consider, in the context of the work programme adopted at the Fourth Session of the Ministerial Conference, how special and differential treatment may be incorporated into the architecture of WTO rules.

The work of the Committee on Trade and Development in this regard shall take fully into consideration previous work undertaken as noted in WT/COMTD/W/77/Rev.1. It will also be without prejudice to work in respect of implementation of WTO Agreements in the General Council and in other Councils and Committees.

- 12.2 Reaffirms that preferences granted to developing countries pursuant to the Decision of the Contracting Parties of 28 November 1979 (“Enabling Clause”)<sup>1</sup> should be generalised, non-reciprocal and non-discriminatory.

### 13. Outstanding Implementation Issues<sup>2</sup>

Agrees that outstanding implementation issues be addressed in accordance with paragraph 12 of the Ministerial Declaration (WT/MIN(01)/DEC/1).

### 14. Final Provisions

Requests the Director-General, consistent with paragraphs 38 to 43 of the Ministerial Declaration (WT/MIN(01)/DEC/1), to ensure that WTO technical assistance focuses, on a priority basis, on assisting developing countries to implement existing WTO obligations as well as on increasing their capacity to participate more effectively in future multilateral trade negotiations. In carrying out this mandate, the WTO Secretariat should cooperate more closely with international and regional intergovernmental organisations so as to increase efficiency and synergies and avoid duplication of programmes.

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<sup>1</sup> BISD 26S/203

<sup>2</sup> A list of these issues is compiled in document Job(01)/152/Rev.1..

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## ACCESSIONS

### ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

*Report of the Working Party adopted by the Ministerial Conference on  
10 November 2001*

*(WT/MIN(01)/3)*

#### I. INTRODUCTION

1. At its meeting on 4 March 1987, the Council established a Working Party to examine the request of the Government of the People's Republic of China ("China") (L/6017, submitted on 10 July 1986) for resumption of its status as a GATT contracting party, and to submit to the Council recommendations which may include a Draft Protocol on the Status of China. In a communication dated 7 December 1995, the Government of China applied for accession to the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") pursuant to Article XII of the WTO Agreement. Following China's application and pursuant to the decision of the General Council on 31 January 1995, the existing Working Party on China's Status as a GATT 1947 Contracting Party was transformed into a WTO Accession Working Party, effective from 7 December 1995. The terms of reference and the membership of the Working Party are reproduced in document WT/ACC/CHN/2/Rev.11 and Corr.1.

2. The Working Party on China's Status as a Contracting Party met on 20 occasions between 1987 and 1995 under the Chairmanship of H.E. Mr. Pierre-Louis Girard (Switzerland). The Working Party on the Accession of China met on 22 March 1996, 1 November 1996, 6 March 1997, 23 May 1997, 1 August 1997, 5 December 1997, 8 April 1998, 24 July 1998, 21 March 2000, 23 June 2000, 27 July 2000, 28 September 2000, 9 November 2000, 8 December 2000, 17 January 2001, 4 July 2001, 20 July 2001 and 17 September 2001 under the same Chairman. At meetings held on 9 November 2000, 8 December 2000 and 17 January 2001, Mr. Paul-Henri Ravier, Deputy Director-General of the WTO, served as Acting Chairman.

#### *1. Documentation Provided*

3. The Working Party had before it, to serve as a basis for its discussion, a Memorandum on China's Foreign Trade Regime (L/6125) and questions posed by members of the Working Party on the foreign trade regime of China, together with replies of the Chinese authorities thereto. In addition, the Government of China made available to the Working Party a substantial amount of documentation, which is listed in document WT/ACC/CHN/23/Rev.1.

2. *Introductory Statements*

4. In statements to the GATT 1947 Working Party and subsequently to the Working Party on the Accession of China, the representative of China stated that China's consistent efforts to resume its status as a contracting party to GATT and accession to the WTO Agreement were in line with its objective of economic reform to establish a socialist market economy as well as its basic national policy of opening to the outside world. China's WTO accession would increase its economic growth and enhance its economic and trade relations with WTO Members.

5. Members of the Working Party welcomed China's accession to the WTO Agreement and considered that its accession would contribute to a strengthening of the multilateral trading system, enhancing the universality of the WTO, bringing mutual benefits to China and to the other Members of the WTO, and ensuring the steady development of the world economy.

6. The representative of China said that China had a territory of 9.6 million square kilometres and, at the end of 1998 a population of 1.25 billion. Since 1979, China had been progressively reforming its economic system, with the objective of establishing and improving the socialist market economy. The reform package introduced in 1994, covering the banking, finance, taxation, investment, foreign exchange ("forex") and foreign trade sectors, had brought about major breakthroughs in China's socialist market economy. State-owned enterprises had been reformed by a clear definition of property rights and responsibilities, a separation of government from enterprise, and scientific management. A modern enterprise system had been created for the state-owned sector, and the latter was gradually getting on the track of growth through independent operation, responsible for its own profits and losses. A nation-wide unified and open market system had been developed. An improved macroeconomic regulatory system used indirect means and market forces to play a central role in economic management and the allocation of resources. A new tax and financial system was functioning effectively. Financial policy had been separated from commercial operations of the central bank, which now focussed on financial regulation and supervision. The exchange rate of the Chinese currency Renminbi (also "RMB") had been unified and remained stable. The Renminbi had been made convertible on current account. Further liberalization of pricing policy had resulted in the majority of consumer and producer products being subject to market prices. The market now played a much more significant role in boosting supply and meeting demand.

7. The representative of China further noted that as a result, in 1999, the Gross Domestic Product ("GDP") of China totaled RMB 8.2054 trillion yuan (approximately US\$ 990 billion). In 1998, the net per capita income for rural residents was RMB 2,160 yuan (approximately US\$ 260), and the per capita

dispensable income for urban dwellers was RMB 5,425 yuan (approximately US\$ 655). In recent years, foreign trade had grown substantially. In 1999, total imports and exports of goods reached US\$ 360.65 billion, of which exports stood at US\$ 194.93 billion, and imports, US\$ 165.72 billion. Exports from China in 1998 accounted for 3.4 per cent of the world's total.

8. The representative of China stated that although important achievements have been made in its economic development, China was still a developing country and therefore should have the right to enjoy all the differential and more favourable treatment accorded to developing country Members pursuant to the WTO Agreement.

9. Some members of the Working Party indicated that because of the significant size, rapid growth and transitional nature of the Chinese economy, a pragmatic approach should be taken in determining China's need for recourse to transitional periods and other special provisions in the WTO Agreement available to developing country WTO Members. Each agreement and China's situation should be carefully considered and specifically addressed. In this regard it was stressed that this pragmatic approach would be tailored to fit the specific cases of China's accession in a few areas, which were reflected in the relevant provisions set forth in China's Draft Protocol and Working Party Report. Noting the preceding statements, Members reiterated that all commitments taken by China in her accession process were solely those of China and would prejudice neither existing rights and obligations of Members under the WTO Agreement nor on-going and future WTO negotiations and any other process of accession. While noting the pragmatic approach taken in China's case in a few areas, Members also recognized the importance of differential and more favourable treatment for developing countries embodied in the WTO Agreement.

10. At the request of interested members of the Working Party, the representative of China agreed that China would undertake bilateral market access negotiations with respect to industrial and agricultural products, and initial commitments in services.

11. Some members of the Working Party stated that in addition to undertaking market access negotiations in goods and services, close attention should also be paid to China's multilateral commitments, in particular China's future obligations under the Multilateral Agreements on Trade in Goods and the General Agreement on Trade in Services ("GATS"). This was of vital importance to ensure that China would be able to take full benefit of WTO membership as quickly as possible, as well as to ensure that the value of any market access conditions undertaken were not adversely affected by inconsistent measures such as some types of non-tariff measures.

12. The representative of China stated that the achievement of balance between rights and obligations was the basic principle in its negotiation of WTO accession.

13. Some members of the Working Party expressed concern over discrepancies in statistical information supplied by the Government of China on trade volume/value. Members and China pursued this issue separately in an Informal Group of Experts on Export Statistics.

14. The Working Party reviewed the foreign trade regime of China. The discussions and commitments resulting therefrom are contained in paragraphs 15-342 below and in the Draft Protocol of Accession (“Draft Protocol”), including the annexes.

## II. ECONOMIC POLICIES

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

15. Some members expressed concern regarding the application of the principle of non-discrimination in relation to foreign individuals and enterprises (whether wholly or partly foreign funded). Those members stated that China should enter a commitment to accord non-discriminatory treatment to all foreign individuals and enterprises and foreign-funded enterprises in respect of the procurement of inputs and goods and services necessary for production of goods and the conditions under which their goods were produced, marketed or sold, in the domestic market and for export. In addition, those members said that China should also enter a commitment to guarantee non-discriminatory treatment in respect of the prices and availability of goods and services supplied by national and sub-national authorities and public or state enterprises, in areas including transportation, energy, basic telecommunications, other utilities and factors of production.

16. Some members of the Working Party also raised concerns over China’s practice of conditioning or imposing restrictions upon participation in the Chinese economy based upon the nationality of the entity concerned. Those members in particular raised concerns over such practices in relation to the pricing and procurement of goods and services, and the distribution of import and export licences. Members of the Working Party requested that China enter into a commitment not to condition such practices on the nationality of the entity concerned.

17. In response, the representative of China emphasized the importance of the commitments that the government was undertaking on non-discrimination. The representative of China noted, however, that any commitment to provide non-discriminatory treatment to Chinese enterprises, including foreign-funded enterprises, and foreign enterprises and individuals in China, would be subject to other provisions of the Draft Protocol and, in particular, would not prejudice China’s

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rights under the GATS, China's Schedule of Specific Commitments or commitments undertaken in relation to trade-related investment measures.

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

19. The representative of China confirmed that, consistent with China's rights and obligations under the WTO Agreement and the Draft Protocol, China would provide non-discriminatory treatment to all WTO Members, including Members of the WTO that were separate customs territories. The Working Party took note of this commitment.

20. Some members of the Working Party expressed concern about certain provisions of Chinese laws, regulations, administrative notices and other requirements which could, directly or indirectly, result in less favourable treatment of imported products in contravention of Article III of the General Agreement on Tariffs and Trade ("GATT 1994"). Such requirements included product registration and certification, internal taxation, price and profit controls and all distinct forms of licensing for imports, and distribution or sale of imported goods. Even where such requirements existed in relation to domestically produced goods, those members reiterated that any de facto or de jure less favourable treatment of imported goods had to be eliminated in order to ensure full conformity with the principle of national treatment.

21. Some members of the Working Party drew China's attention to the variety of types of requirements which could contravene Article III of the GATT 1994. Specific reference was made to the procedures, charges and conditions for granting of business licences, whether to import, distribute, re-sell or retail goods of non-Chinese origin. Reference was also made to taxes and fiscal provisions whose impact depended, directly or indirectly, upon the Chinese or non-Chinese origin of the goods imported or traded. Those members drew the attention of China to its obligation to ensure that product testing and certification requirements, including procedures for in situ inspections, posed no greater burden – whether financial or practical - on goods of non-Chinese origin than on domestic goods. Those members underlined that conformity assessment procedures and standards, including safety and other compliance requirements, had to respect the terms of the WTO Agreement on Technical Barriers to Trade ("TBT Agreement") as well as Article III of the GATT 1994.

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

23. In particular, the representative of China confirmed that measures would be taken at national and sub-national level, including repeal or modification of legislation, to provide full GATT national treatment in respect of laws, regulations and other measures applying to internal sale, offering for sale, purchase, transportation, distribution or use of the following:

- After sales service (repair, maintenance and assistance), including any conditions applying to its provision, such as the MOFTEC third Decree of 6 September 1993, imposing mandatory licensing procedures for the supply of after-sales service on various imported products;
- Pharmaceutical products, including regulations, notices and measures which subjected imported pharmaceuticals to distinct procedures and formulas for pricing and classification, or which set limits on profit margins attainable and imports, or which created any other conditions regarding price or local content which could result in less favourable treatment of imported products;
- Cigarettes, including unification of the licensing requirements so that a single licence authorized the sale of all cigarettes, irrespective of their country of origin, and elimination of any other restrictions regarding points of sale for imported products, such as could be imposed by the China National Tobacco Corporation (“CNTC”). It was understood that in the case of cigarettes, China could avail itself of a transitional period of two years to fully unify the licensing requirements. Immediately upon accession, and during the two year transitional period, the number of retail outlets selling imported cigarettes would be substantially increased throughout the territory of China;
- Spirits, including requirements applied under China's “Administrative Measures on Imported Spirits in the Domestic Market”, and other provi-

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sions which imposed distinct criteria and licensing for the distribution and sale of different categories of spirits, including unification of the licensing requirements so that a single licence authorized the sale of all spirits irrespective of their country of origin;

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

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

2. *Monetary and Fiscal Policy*

24. The representative of China stated that through the reform and opening up in the last two decades, China had established a fiscal management system which was compatible with the principles of a market economy. With respect to fiscal revenue, a taxation system with a value-added tax as the main element had been established since the taxation reform in 1994. With respect to fiscal expenditure, over recent years the government had, in line with the public fiscal requirement generally exercised by market economies, strengthened its adjustment of the structure of expenditure and given priority to public needs so as to ensure the normal operations of the government.

25. The representative of China further stated that in recent years, while pursuing proactive fiscal policy, China had implemented proper monetary policy and had taken a series of adjusting and reform measures which included lowering the interest rate for loans from financial institutions, improving the system of required deposit reserves and lowering the ratio of required reserves, positively increasing the input of base money and encouraging the commercial banks to expand their credit.

26. In respect of future fiscal policy, the representative of China noted that the Government of China would further improve its taxation system and would continue to improve the efficiency of fiscal expenditure through implementing reform

measures such as sectoral budget, centralized payment by the national treasury and zero base budget, as well as improving management of fiscal expenditure. With respect to future monetary policy, the central bank would continue to pursue a prudent policy, maintain the stability of RMB, promote interest rate liberalization and establish a modern commercial banking system.

### 3. *Foreign Exchange and Payments*

27. Some members of the Working Party raised concerns about China's use of forex controls to regulate the level and composition of trade in goods and services. In response, the representative of China stated that China was now a member of the International Monetary Fund ("IMF") and that recently its system of forex had undergone rapid change. Significant moves had been taken to reform, rationalize and liberalize the forex market. The practice of multiple exchange rates in swap centres had been abolished. China had already unified its forex market and removed many of the restrictions on the use of forex.

28. Outlining the historical development of China's forex reform, the representative of China stated that the purpose of China's forex reform was to reduce administrative intervention and increase the role of market forces. From 1979, a forex retention system was applied in China, although forex swap was gradually developing. In early 1994, official RMB exchange rates were unified with the market rates. The banking exchange system was adopted and a nationwide unified inter-bank forex market was established, with conditional convertibility of the Renminbi on current accounts. Since 1996, foreign invested enterprises ("FIEs") were also permitted into the banking exchange system, and the remaining exchange restrictions on current accounts were eliminated. On 1 December 1996, China had formally accepted the obligations of Article VIII of the IMF's Articles of Agreement, removing exchange restrictions on current account transactions. Accordingly, since then the Renminbi had been fully convertible on current accounts. It was confirmed by the IMF in its Staff Report on Article IV Consultations with China in 2000 that China had no existing forex restrictions for current account transactions.

29. The representative of China stated that the State Administration of Foreign Exchange ("SAFE") was under the auspices of the People's Bank of China ("PBC"), and was the administrative organ empowered to regulate forex. Its main functions were to monitor and advise on balance-of-payments and forex matters. SAFE was also required to draft appropriate regulations and monitor compliance. He further noted that domestic and foreign banks, and financial institutions could engage in forex business, with the approval of the PBC.

30. In response to requests from members of the Working Party for further information, the representative of China added that for forex payments under

current accounts, domestic entities (including FIEs) could purchase forex at market exchange rates from designated banks or debit their forex accounts directly upon presentation of valid documents. For payments such as pre-payment, commission, etc., exceeding the proportion or limit, the entities could also purchase forex from the banks upon meeting the bona fide test administered by SAFE. Forex for personal use by individuals could be purchased directly from the banks upon presentation of valid documents (within a specified limit). For amounts exceeding the limit, individuals able to prove their need for additional forex could purchase it from the banks. He also noted that current account forex receipts owned by domestic entities had to be repatriated into China, some of which could be retained and some sold to the designated banks at market rates. A verification system for forex payment (imports) and forex receipt (exports) had also been adopted.

31. Concerning the exchange rate regime in particular, the representative of China noted that since the unification of exchange rates on 1 January 1994, China had adopted a single and managed floating exchange rate regime based on supply and demand. PBC published the reference rates of RMB against the US dollar, the HK dollar and Japanese yen based on the weighted average prices of forex transactions at the interbank forex market during the previous day's trading. The buying and selling rates of RMB against the US dollar on the inter-bank forex market could fluctuate within 0.3 per cent of the reference rate. For the HK dollar and Japanese yen, the permitted range was 1 per cent. Designated forex banks could deal with their clients at an agreed rate. Under such contracts the exchange rate of the US dollar was required to be within 0.15 per cent of the reference rate, whereas for the HK dollar and Japanese yen, the permitted range was 1 per cent. The exchange rates for other foreign currencies were based on the rates of RMB against the US dollar and cross-exchange rates of other foreign currency on the international market. The permitted margin between the buying and selling rate could not exceed 0.5 per cent.

32. The representative of China further noted that since 1 January 1994, designated forex banks had become major participants in forex transactions. On 1 April 1994, the China Foreign Exchange Trading System was set up in Shanghai and branches were opened in dozens of cities. The Foreign Exchange Trading System had adopted a system of membership, respective quotation, concentrated trading and forex market settlement. Designated forex banks dealt on the inter-bank market according to the turnover position limit on banking exchange stipulated by SAFE and covered the position on the market. Depending on its macro-economic objectives, the PBC could intervene in the forex open market in order to regulate market supply and demand, and maintain the stability of the RMB exchange rate.

33. The representative of China noted that since 1 July 1996, forex dealing of

the FIEs was carried out through the banking exchange system. He further noted that to encourage foreign direct investment, China had granted national treatment to FIEs in exchange administration. Accordingly, FIEs were allowed to open and hold forex settlement accounts to retain receipts under current accounts, up to a maximum amount stipulated by SAFE. Receipts in excess of the maximum amount were required to be sold to designated forex banks. No restrictions were maintained on the payment and transfer of current transactions by FIEs, and FIEs could purchase forex from designated forex banks or debit their forex accounts for any payment under current transactions, upon the presentation of valid documents to the designated forex banks or SAFE for the bona fide test. FIEs could also open forex accounts to hold foreign-invested capital, and they could sell from these accounts upon the approval of SAFE. FIEs could also borrow forex directly from domestic and overseas banks, but were required to register with SAFE afterwards, and obtain approval by SAFE for debt repayment and services. FIEs could make payments from their forex accounts or in forex purchased from designated forex banks after liquidation, upon approval by SAFE according to law.

34. The representative of China further noted that the laws and regulations mentioned above were: Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture; Law of the People's Republic of China on Chinese-Foreign Contractual Joint Venture; Regulations on the Exchange System of the People's Republic of China; and Regulations on the Sale and Purchase of and Payment in Foreign Exchange.

35. The representative of China stated that China would implement its obligations with respect to forex matters in accordance with the provisions of the WTO Agreement and related declarations and decisions of the WTO that concerned the IMF. The representative further recalled China's acceptance of Article VIII of the IMF's Articles of Agreement, which provided that "no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions". He stated that, in accordance with these obligations, and unless otherwise provided for in the IMF's Articles of Agreement, China would not resort to any laws, regulations or other measures, including any requirements with respect to contractual terms, that would restrict the availability to any individual or enterprise of forex for current international transactions within its customs territory to an amount related to the forex inflows attributable to that individual or enterprise. The Working Party took note of these commitments.

36. In addition, the representative of China stated that China would provide information on exchange measures as required under Article VIII, Section 5 of the IMF's Articles of Agreement, and such other information on its exchange measures as was deemed necessary in the context of the transitional review mechanism. The Working Party took note of this commitment.

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#### 4. *Balance-of-Payments Measures*

37. Some members of the Working Party stated that China should apply balance-of-payments (“BOPs”) measures only under the circumstances provided for in the WTO Agreement and not as a justification for imposition of restrictions on imports for other protectionist purposes. Those members stated that measures taken for BOPs reasons should have the least trade disruptive effect possible and should be limited to temporary import surcharges, import deposit requirements or other equivalent price-based trade measures, and those measures should not be used to provide import protection for specific sectors, industries or products.

38. Those members of the Working Party further stated that any such measures should be notified pursuant to the Understanding on the Balance-of-Payments Provisions of the GATT 1994 (“BOPs Understanding”) to the General Council not later than the imposition of the measures, together with a time schedule for their elimination and a programme of external and domestic policy measures to be used to restore BOPs equilibrium. Those members also stated that following deposit of such a notification, the Committee on Balance-of-Payments Restrictions (“BOPs Committee”) should meet to examine the notification. It was noted that paragraph 4 of the BOPs Understanding would be available to China in the case of “essential products”. Some members stated that the BOPs Committee should review the operation of any BOPs measures taken by China, if so requested by China or a WTO Member.

39. Some other members of the Working Party considered that, in respect of measures taken for BOP purposes, China should enjoy the same rights as those accorded to other developing country WTO Members, as provided in GATT Article XVIII:B and the BOPs Understanding.

40. In response, the representative of China stated that China considered that it should have the right to make full use of WTO BOPs provisions to protect, if necessary, its BOPs situation. He confirmed that China would fully comply with the provisions of the GATT 1994 and the BOPs Understanding. Further to such compliance, China would give preference to application of price-based measures as set forth in the BOPs Understanding. If China resorted to measures that were not price-based, it would transform such measures into price-based measures as soon as possible. Any measures taken would be maintained strictly in accordance with the GATT 1994 and the BOPs Understanding, and would not exceed what was necessary to address the particular BOPs situation. The representative of China also confirmed that measures taken for BOPs reasons would only be applied to control the general level of imports and not to protect specific sectors, industries or products, except as noted in paragraph 38. The Working Party took note of these commitments.

5. *Investment Regime*

41. The representative of China stated that since the inception of the reform and opening up policy in the late 1970's, China had carried out a series of reforms of its investment regime. The highly centralized investment administration under the planned economy had been progressively transformed into a new pattern of diversification of investors, multi-channelling of capital sources and diversification of investment modalities. The government encouraged foreign investment into the Chinese market and had uninterruptedly opened and expanded the scope for investment. At the same time, the Government of China also encouraged the development of the non-state-operated economy and was speeding up the opening of areas for non-state investment. With China's programme in the establishment of its market economy, the construction projects of various enterprises utilizing free capital and financed by the credit of the enterprise would be fully subject to the decision-making of the enterprise concerned and at their own risk. The commercial banks' credit activities to all kinds of investors would be based on their own evaluation and decision-making, and would be at their own risk. The business activities of intermediate investment agencies would be fully subject to the market and would provide service at the instruction of the investors. These agencies would break up their administrative relations with government agencies and the service activities financed by the government would also be subject to the terms and conditions agreed in the contracts concerned.

42. The representative of China further stated that China had promulgated investment guidelines and that the Government of China was in the process of revising and completing these guidelines. Responding to concerns raised by certain members of the Working Party, he confirmed that these investment guidelines and their implementation would be in full conformity with the WTO Agreement. The Working Party took note of this commitment.

6. *State-Owned and State-Invested Enterprises*

43. The representative of China stated that the state-owned enterprises of China basically operated in accordance with rules of market economy. The government would no longer directly administer the human, finance and material resources, and operational activities such as production, supply and marketing. The prices of commodities produced by state-owned enterprises were decided by the market and resources in operational areas were fundamentally allocated by the market. The state-owned banks had been commercialized and lending to state-owned enterprises took place exclusively under market conditions. China was furthering its reform of state-owned enterprises and establishing a modern enterprise system.

44. In light of the role that state-owned and state-invested enterprises played in China's economy, some members of the Working Party expressed concerns

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

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

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

47. The representative of China confirmed that, without prejudice to China's rights in future negotiations in the Government Procurement Agreement, all laws, regulations and measures relating to the procurement by state-owned and state-invested enterprises of goods and services for commercial sale, production of goods or supply of services for commercial sale, or for non-governmental purposes would not be considered to be laws, regulations and measures relating to government procurement. Thus, such purchases or sales would be subject to the provisions of Articles II, XVI and XVII of the GATS and Article III of the GATT 1994. The Working Party took note of this commitment.

48. Certain members of the Working Party expressed concern about laws, regulations and measures in China affecting the transfer of technology, in particular in the context of investment decisions. Moreover, these members expressed concern

about measures conditioning the receipt of benefits, including investment approvals, upon technology transfer. In their view, the terms and conditions of technology transfer, particularly in the context of an investment, should be agreed between the parties to the investment without government interference. The government should not, for example, condition investment approval upon technology transfer.

49. The representative of China confirmed that China would only impose, apply or enforce laws, regulations or measures relating to the transfer of technology, production processes, or other proprietary knowledge to an individual or enterprise in its territory that were not inconsistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”) and the Agreement on Trade-Related Investment Measures (“TRIMs Agreement”). He confirmed that the terms and conditions of technology transfer, production processes or other proprietary knowledge, particularly in the context of an investment, would only require agreement between the parties to the investment. The Working Party took note of these commitments.

#### 7. *Pricing Policies*

50. Some members of the Working Party noted that China had made extensive use of price controls, for example in the agricultural sector. Those members requested that China undertake specific commitments concerning its system of state pricing. In particular, those members stated that China should allow prices for traded goods and services in every sector to be determined by market forces, and multi-tier pricing practices for such goods and services should be eliminated. Those members noted, however, that China expected to maintain price controls on the goods and services listed in Annex 4 to the Draft Protocol, and stated that any such controls should be maintained in a manner consistent with the WTO Agreement, in particular Article III of the GATT 1994 and Annex 2, paragraphs 3 and 4, of the Agreement on Agriculture. Those members noted that except in exceptional circumstances, and subject to notification to the WTO Secretariat, price controls should not be extended to goods or services beyond those listed in Annex 4, and China should make its best efforts to reduce and eliminate those controls. They also asked that China publish in the appropriate official journal the list of goods and services subject to state pricing and changes thereto.

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

52. The representative of China said that China currently applied a mechanism of market-based pricing under macro-economic adjustment. He noted that national treatment was applied in the areas of government pricing for all imported goods. There were presently three types of prices: government price, government guidance price and market-regulated price. The government price was set by price administration authorities and could not be changed without the approval of these authorities. Products and services subject to government pricing were those having a direct bearing on the national economy and the basic needs of the people's livelihood, including those products that were scarce in China.

53. The representative of China stated that when government prices or government guidance prices needed to be adjusted or reset, the agencies or operators concerned should apply or propose to the competent pricing authorities for that purpose. There was not a fixed time frame for the adjustment of government prices or government guidance prices. Competent agencies or operators could, in the light of market changes and according to relevant provisions of the Price Law, submit applications or proposals to the competent pricing authorities for pricing or adjustment of the original prices. The government pricing authorities would, in the light of such factors as market demand and supply, operational costs, effect on consumers as well as the quality of services, determine specific prices for the services concerned, or set guidance prices and floating ranges within which operators could determine specific prices. When setting prices for public utilities, important public welfare services and goods subject to natural monopolies and services which were of vital interest to the general public, government pricing authorities would hold public hearings and invite consumers, operators and other concerned parties to comment and debate on the necessity and impact of a price adjustment. The prices of important services were subject to the approval of the State Council. This mechanism had helped to significantly improve the rationality and transparency of government pricing. All enterprises, regardless of their nature and ownership, were free to participate in such hearings and voice their opinions and concerns which would be taken into consideration by the competent pricing authorities. Meanwhile, government pricing was product- or service-specific, regardless of the ownership of the enterprises concerned. All the enterprises and individuals enjoyed the same treatment in terms of participating in the process of setting government prices and government guidance prices.

54. The representative of China added that the government guidance price mechanism was a more flexible form of pricing. The price administration authorities stipulated either a basic price or floating ranges. The floating range of guidance pricing was generally 5 per cent to 15 per cent. Enterprises could, within the limits of the guidance and taking into account the market situation, make their own decisions on prices. With market-regulated prices, enterprises were free to set

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

55. The representative of China stated that in formulating government prices and government guidance prices, the following criteria were taken into account: normal production costs, supply and demand situation, relevant government policies and prices of related products. When fixing prices of consumer goods, consideration was given to the limits of consumers' purchasing power. He noted that due to the continued reform of China's price system, the share of government prices had dropped substantially and that of market-regulated prices had increased; of social retailing products, the share of government prices was about 4 per cent, that of government guidance prices 1.2 per cent, and that of market-regulated prices 94.7 per cent. For agricultural products, the share of government prices was 9.1 per cent, government guidance prices 7.1 per cent, and market-regulated 83.3 per cent. For production inputs, the share of government prices was 9.6 per cent, that of government guidance prices 4.4 per cent, and market-regulated prices 86 per cent. The share of directly government-controlled prices had been much reduced. China's price system was becoming increasingly rationalized, creating a relatively fair marketplace for all enterprises to compete on an equal footing.

56. The representative of China recalled that Annex 4 of the Draft Protocol contained a comprehensive listing of all products and services presently subject to government guidance pricing and government pricing. He stated that the services subject to price controls were listed in Annex 4 by their respective CPC codes.

57. Some members of the Working Party requested additional information on the specific activities subject to government pricing or government guidance pricing. In particular, those members requested information on professional services, educational services, and charges for settlement clearing and transmission services of banks. In response, the representative of China stated that "The Administrative Rules on Intermediate Services" promulgated in 1999 by six central government agencies led by the State Development and Planning Commission ("SDPC") dealt with government pricing on intermediate services such as inspection authentication, notarization and arbitration and services which were in limited supply due to their special requirements. For legal services, the Interim Regulation on Charges and Fees of Legal Services, jointly promulgated by the SDPC and the Ministry of Justice stipulated that for law firms practising Chinese law, charges and fees for the following activities were subject to the approval of the SDPC: (1) representing a client in a civil case, including an appeal; (2) representing a client in a case contesting an administrative agency's decision; (3) providing legal advice to criminal suspects, acting for a client in connection with an appeal or prosecution, applying for bail, representing a defendant or victim in a criminal case; and (4)

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representing a client in an arbitration. For foreign legal service providers engaged in activities such as those listed in China's GATS schedule, the foreign legal service providers would determine the appropriate charges and fees which would not be subject to government pricing or guidance pricing.

58. The representative of China noted that regulations also existed for the other services included in Annex 4. Government pricing and guidance pricing covered auditing services. For architectural services, advisory and pre-design architectural services and contract administration activities were subject to government pricing or government guidance pricing. For engineering services, advisory and consultative services, engineering design services for the construction of foundations and building structures, design services for mechanical and electrical installations for buildings, construction of civil engineering works, and industrial processes and production were subject to government pricing or government guidance pricing. Primary, secondary and higher education services were subject to government pricing.

59. The representative of China further explained that charges for settlement, clearing and transmission services of banks referred to in Annex 4 related to the charges and fees collected by banks for the services provided to enterprises and individuals when the banks conducted currency payments and transmission and fund settlements by using clearance methods such as bills and notes, collections and acceptances. These mainly included commission charges of bills, cashier's cheques, cheques, remittances, entrusted collections of payment, and collections and acceptances of banks.

60. The representative of China confirmed that it would publish in the official journal the list of goods and services subject to state pricing and changes thereto, together with price-setting mechanisms and policies. The Working Party took note of these commitments.

61. The representative of China confirmed that the official journal providing price information was the Pricing Monthly of the People's Republic of China, published in Beijing. It was a monthly magazine listing all products and services priced by the State. He further stated that China would continue to further its price reform, adjusting the catalogue subject to state pricing and further liberalize its pricing policies.

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

63. Some members of the Working Party expressed a concern that China could maintain prices below market-based ones in order to limit imports.

64. In response, the representative of China confirmed that China would apply its current price controls and any other price controls upon accession in a WTO-consistent fashion, and would take account of the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994. He also confirmed that price controls would not have the effect of limiting or otherwise impairing China's market-access commitments on goods and services. The Working Party took note of these commitments.

#### 8. *Competition Policy*

65. The representative of China noted that the Government of China encouraged fair competition and was against acts of unfair competition of all kinds. The Law of the People's Republic of China on Combating Unfair Competition, promulgated on 2 September 1993 and implemented on 1 December 1993, was the basic law to maintain the order of competition in the market. In addition, the Price Law, the Law on Tendering and Bidding, the Criminal Law and other relevant laws also contained provisions on anti-monopoly and unfair competition. China was now formulating the Law on Anti-Monopoly.

### III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

#### 1. *Structure and Powers of the Government*

66. The representative of China informed members of the Working Party that in accordance with the Constitution and the Law on Legislation of the People's Republic of China, the National People's Congress was the highest organ of state power. Its permanent body was its Standing Committee. The National People's Congress and its Standing Committee exercised the legislative power of the State. They had the power to formulate the Constitution and laws. The State Council, i.e., the Central People's Government of China, was the executive body of the highest organ of state power. The State Council, in accordance with the Constitution and relevant laws, was entrusted with the power to formulate administrative regulations. The ministries, commissions and other competent departments (collectively referred to as "departments") of the State Council could issue departmental rules within the jurisdiction of their respective departments and in accordance with the laws and administrative regulations. The provincial people's congresses and their standing committees could adopt local regulations. The provincial governments had the power to make local government rules. The National People's Congress and its Standing Committee had the power to annul the administrative regulations that contradicted the Constitution and laws as well as the local regulations that

contradicted the Constitution, laws and administrative regulations. The State Council had the power to annul departmental rules and local government rules that were inconsistent with the Constitution, laws or administrative regulations. These features of the Chinese legal system would ensure an effective and uniform implementation of the obligations after China's accession.

67. The representative of China stated that China had been consistently performing its international treaty obligations in good faith. According to the Constitution and the Law on the Procedures of Conclusion of Treaties, the WTO Agreement fell within the category of "important international agreements" subject to the ratification by the Standing Committee of the National People's Congress. China would ensure that its laws and regulations pertaining to or affecting trade were in conformity with the WTO Agreement and with its commitments so as to fully perform its international obligations. For this purpose, China had commenced a plan to systematically revise its relevant domestic laws. Therefore, the WTO Agreement would be implemented by China in an effective and uniform manner through revising its existing domestic laws and enacting new ones fully in compliance with the WTO Agreement.

68. The representative of China confirmed that administrative regulations, departmental rules and other central government measures would be promulgated in a timely manner so that China's commitments would be fully implemented within the relevant time frames. If administrative regulations, departmental rules or other measures were not in place within such time frames, authorities would still honour China's obligations under the WTO Agreement and Draft Protocol. The representative of China further confirmed that the central government would undertake in a timely manner to revise or annul administrative regulations or departmental rules if they were inconsistent with China's obligations under the WTO Agreement and Draft Protocol. The Working Party took note of these commitments.

## 2. *Authority of Sub-National Governments*

69. Several members of the Working Party raised concerns about the continued presence of multiple trade instruments used by different levels of government within China. Those members considered that this situation resulted in a lessening of the security and predictability of access to the Chinese market. These Members raised specific concerns regarding the authority of sub-national governments in the areas of fiscal, financial and budgetary activities, specifically with respect to subsidies, taxation, trade policy and other issues covered by the WTO Agreement and the Draft Protocol. In addition, some members expressed concerns about whether the central government could effectively ensure that trade-related measures introduced at the sub-national level would conform to China's commitments in the WTO Agreement and the Draft Protocol.

70. The representative of China stated that sub-national governments had no autonomous authority over issues of trade policy to the extent that they were related to the WTO Agreement and the Draft Protocol. The representative of China confirmed that China would in a timely manner annul local regulations, government rules and other local measures that were inconsistent with China's obligations. The representative of China further confirmed that the central government would ensure that China's laws, regulations and other measures, including those of local governments at the sub-national level, conformed to China's obligations undertaken in the WTO Agreement and the Draft Protocol. The Working Party took note of these commitments.

### 3. *Uniform Administration of the Trade Regime*

71. Some members of the Working Party stated that it should be made clear that China would apply the requirements of the WTO Agreement and its other accession commitments throughout China's entire customs territory, including border trade regions, minority autonomous areas, Special Economic Zones ("SEZs"), open coastal cities, economic and technical development zones and other special economic areas and at all levels of government.

72. Those members of the Working Party also raised concerns about whether China's central government would be sufficiently informed about non-uniform practices and would take necessary enforcement actions. Those members stated that China should establish a mechanism by which any concerned person could bring to the attention of the central government cases of non-uniform application of the trade regime and receive prompt and effective action to address situations in which non-uniform application was established.

73. The representative of China confirmed that the provisions of the WTO Agreement, including the Draft Protocol, would be applied uniformly throughout its customs territory, including in SEZs and other areas where special regimes for tariffs, taxes and regulations were established and at all levels of government. The Working Party took note of this commitment.

74. In response to questions from certain members of the Working Party, the representative of China confirmed that laws, regulations and other measures included decrees, orders, directives, administrative guidance and provisional and interim measures. He stated that in China, local governments included provincial governments, including autonomous regions and municipalities directly under the central government, cities, counties and townships. The representative of China further stated that local regulations, rules and other measures were issued by local governments at the provincial, city and county levels acting within their respective constitutional powers and functions and applied at their corresponding local level.

Townships were only authorized to implement measures. Special economic areas were also authorized to issue and implement local rules and regulations.

75. The representative of China further confirmed that the mechanism established pursuant to Section 2(A) of the Draft Protocol would be operative upon accession. All individuals and entities could bring to the attention of central government authorities cases of non-uniform application of China's trade regime, including its commitments under the WTO Agreement and the Draft Protocol. Such cases would be referred promptly to the responsible government agency, and when non-uniform application was established, the authorities would act promptly to address the situation utilizing the remedies available under China's laws, taking into consideration China's international obligations and the need to provide a meaningful remedy. The individual or entity notifying China's authorities would be informed promptly in writing of any decision and action taken. The Working Party took note of these commitments.

#### 4. *Judicial Review*

76. Some members of the Working Party stated that China should designate independent tribunals, contact points, and procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of the GATT 1994, including administrative actions relating to import or export licences, non-tariff measures and tariff-rate quota administration, conformity assessment procedures and other measures. These members sought explicit confirmation that certain types of measures, such as decisions relating to standards and chemical registration, would be subject to judicial review. Some members of the Working Party also stated that the administrative actions subject to review should also include any actions required to be reviewed under the relevant provisions of the TRIPS Agreement and the GATS. These members stated that such tribunals should be independent of the agencies entrusted with administrative enforcement of the matter and should not have any substantial interest in the outcome of the matter.

77. Those members of the Working Party stated that such review procedures should include the opportunity for appeal, without penalty, by individuals or enterprises affected by any administrative action subject to review. If an initial right of appeal were to an administrative body, there should be an opportunity to choose to make a further appeal to a judicial body. Any decision by any appellate body and the reasons therefore would be communicated in writing to the appellant, together with notification of any right to further appeal.

78. The representative of China confirmed that it would revise its relevant laws and regulations so that its relevant domestic laws and regulations would be

consistent with the requirements of the WTO Agreement and the Draft Protocol on procedures for judicial review of administrative actions. He further stated that the tribunals responsible for such reviews would be impartial and independent of the agency entrusted with administrative enforcement, and would not have any substantial interest in the outcome of the matter. The Working Party took note of these commitments.

79. In response to questions from certain members of the Working Party, the representative of China confirmed that administrative actions related to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of the GATT 1994, Article VI of the GATS and the relevant provisions of the TRIPS Agreement included those relating to the implementation of national treatment, conformity assessment, the regulation, control, supply or promotion of a service, including the grant or denial of a licence to provide a service and other matters, and that such administrative actions would be subject to the procedures established for prompt review under Section 2(D)(2) of the Draft Protocol, and information on such procedures would be available through the enquiry point that China would establish upon accession. The Working Party took note of these commitments.

#### IV. POLICIES AFFECTING TRADE IN GOODS

##### A. TRADING RIGHTS

###### *1. General*

80. Some members of the Working Party noted that China was in the process of liberalizing the availability of the right to import and export goods from China, but that such rights were now only available to some Chinese enterprises (totalling 35,000). In addition, foreign-invested enterprises had the right to trade, although this was restricted to the importation for production purposes and exportation, according to the enterprises' scope of business. Those members stated their view that such restrictions were inconsistent with WTO requirements, including Articles XI and III of GATT 1994, and welcomed China's commitment to progressively liberalize the availability and scope of the right to trade so that within three years after accession all enterprises would have the right to import and export all goods (except for the share of products listed in Annex 2A to the Draft Protocol reserved for importation and exportation by state trading enterprises) throughout the customs territory of China. Those members requested that China provide detailed information on the process and criteria that it would use to increase the number of enterprises with trading rights and the scope of products that enterprises could import and export during the transition period.

81. Some members of the Working Party also noted China's commitment to accord foreign enterprises and individuals, including those not invested or registered as enterprises in China, no less favorable treatment than that accorded enterprises in China with respect to the right to trade except as otherwise provided for in the Draft Protocol. Members of the Working Party requested that China provide detailed information regarding the process for such enterprises and individuals to obtain the right to import and export goods.

82. Some members of the Working Party expressed concerns that after the transition period any linkage between an enterprise's scope of business or business licence and the right to trade would constitute a restriction on the right to import and export. Those members noted that within three years after accession, China would have to permit all enterprises in China to trade in all goods throughout the customs territory of China (except as otherwise provided in the Draft Protocol).

83. The representative of China confirmed that during the three years of transition, China would progressively liberalize the scope and availability of trading rights.

- (a) The representative of China confirmed that, upon accession, China would eliminate for both Chinese and foreign-invested enterprises any export performance, trade balancing, foreign exchange balancing and prior experience requirements, such as in importing and exporting, as criteria for obtaining or maintaining the right to import and export.
- (b) With respect to wholly Chinese-invested enterprises, the representative of China stated that although foreign-invested enterprises obtained limited trading rights based on their approved scope of business, wholly Chinese-invested enterprises were now required to apply for such rights and the relevant authorities applied a threshold in approving such applications. In order to accelerate this approval process and increase the availability of trading rights, the representative of China confirmed that China would reduce the minimum registered capital requirement (which applied only to wholly Chinese-invested enterprises) to obtain trading rights to RMB 5,000,000 for year one, RMB 3,000,000 for year two, RMB 1,000,000 for year three and would eliminate the examination and approval system at the end of the phase-in period for trading rights.
- (c) The representative of China also confirmed that during the phase-in period, China would progressively liberalize the scope and availability of trading rights for foreign-invested enterprises. Such enterprises would be granted new or additional trading rights based on the following sched-

ule. Beginning one year after accession, joint-venture enterprises with minority share foreign-investment would be granted full rights to trade and beginning two years after accession majority share foreign-invested joint-ventures would be granted full rights to trade.

- (d) The representative of China also confirmed that within three years after accession, all enterprises in China would be granted the right to trade. Foreign-invested enterprises would not be required to establish in a particular form or as a separate entity to engage in importing and exporting nor would new business licence encompassing distribution be required to engage in importing and exporting.

The Working Party took note of these commitments.

84. (a) The representative of China reconfirmed that China would eliminate its system of examination and approval of trading rights within three years after accession. At that time, China would permit all enterprises in China and foreign enterprises and individuals, including sole proprietorships of other WTO Members, to export and import all goods (except for the share of products listed in Annex 2A to the Draft Protocol reserved for importation and exportation by state trading enterprises) throughout the customs territory of China. Such right, however, did not permit importers to distribute goods within China. Providing distribution services would be done in accordance with China's Schedule of Specific Commitments under the GATS.
- (b) With respect to the grant of trading rights to foreign enterprises and individuals, including sole proprietorships of other WTO members, the representative of China confirmed that such rights would be granted in a non-discriminatory and non-discretionary way. He further confirmed that any requirements for obtaining trading rights would be for customs and fiscal purposes only and would not constitute a barrier to trade. The representative of China emphasized that foreign enterprises and individuals with trading rights had to comply with all WTO-consistent requirements related to importing and exporting, such as those concerning import licensing, TBT and SPS, but confirmed that requirements relating to minimum capital and prior experience would not apply.

The Working Party took note of these commitments.

## 2. *Designated Trading*

85. The representative of China stated that China would adjust and expand its

list of enterprises under its designated trading regime annually during the transition period, leading up to full implementation of the commitment contained in Annex 2B. The current criteria for enterprises under the designated trading regime included registered capital, import and export volume and the import volume of products subject to designated trading in the previous year, bank credit rating and profits and losses.

86. Members of the Working Party noted China's commitment that it would phase out the limitation on the grant of trading rights for goods specified in Annex 2B of its Draft Protocol within three years after accession. In responding to questions raised by some members of the Working Party, the representative of China confirmed that China would progressively liberalize the right to trade in such goods by increasing the number of designated entities permitted to import goods in each of the three years of the transition period specified in Annex 2B. The representative of China added that China would eliminate import and export volume as a criterion for obtaining the right to trade these products, reduce minimum capitalization requirements and extend the right to register as designated importing and exporting enterprises to enterprises that used such goods in the production of finished goods and enterprises that distributed such goods in China. At the end of three years, all enterprises in China and all foreign enterprises and individuals would be permitted to import and export such goods throughout the customs territory of China. During the transition period, none of the criteria applicable under the designated trading regime would constitute a quantitative restriction on imports or exports. The Working Party took note of these commitments.

## B. IMPORT REGULATION

### *1. Ordinary Customs Duties*

87. Members of the Working Party welcomed China's decision to bind tariffs for all products in its schedule on market access for goods. This action would increase the certainty and predictability of this aspect of China's trade regime. Members also noted the substantial unilateral tariff reductions made in many sectors by China in recent years.

88. The representative of China provided members of the Working Party with a copy of the Customs Import and Export Tariff of the People's Republic of China ("Customs Tariff") and related laws and regulations. He noted that the Customs Tariff of China was a charge imposed on imported goods. The purpose of levying tariffs was twofold: (a) to regulate imports so as to promote and support domestic production; and (b) to serve as an important source of revenue for the treasury of the central government. China's tariff policy was to promote economic reform and opening of the economy. The basic principles for establishing duty rates were

as follows. Duty-free or low duty rates were applied to imported goods which were needed for the national economy and the people's livelihood but which were not produced sufficiently domestically. Import duty rates on raw materials were generally lower than those on semi-manufactured or manufactured products. For parts or components of machinery, equipment and instruments which were not produced domestically, or at a sufficiently high standard, the import duty was lower than the duty on finished products. Higher duty rates were applied to products which were produced domestically or which were considered non-essential for the national economy and the people's livelihood. A higher duty was applied to imported products, the equivalent of which were produced domestically and the local manufacturer of which needed protection.

89. The representative of China said that China had adopted the Harmonized Commodity Description and Coding System ("HS") as from 1 January 1992 and joined the International Convention on the Harmonized Commodity Description and Coding System in the same year. There were 21 sections, 97 chapters and 7062 eight-digit tariff headings based on the six-digit HS'96 version in the Customs Tariff for the year 2000. Tariff rates were fixed by the State Council. Partial adjustment to the duty rates was subject to deliberation and final decision by the State Council Tariff Commission. The simple average of China's import duties in 2000 was 16.4 per cent. Among the 7062 tariff headings, tariff rates for 525 headings were below 5 per cent, 1488 were between 5 per cent (inclusive) and 10 per cent (exclusive), 2022 between 10 per cent (inclusive) and 15 per cent (inclusive) and 3027 were above 15 per cent. Information on tariff rates for specific products and import statistical data for recent years had been provided to the Working Party.

90. He also noted that currently there were two columns of import duty rates: general rates and preferential rates. The preferential rates applied to imports originating in countries and regions with which China had concluded reciprocal tariff agreements, whereas the general rates applied to imports from other sources.

91. The representative of China confirmed that for wood and paper products, the same rates of duty, including the rates applied under a preference programme, customs union or free-trade area, would be applied to all imports of wood and paper products. The Working Party took note of this commitment.

92. The representative of China confirmed that upon accession China would participate in the Information Technology Agreement ("ITA") and would eliminate tariffs on all information technology products as set out in China's schedule. Furthermore, upon accession, China would eliminate all other duties and charges for ITA products. The Working Party took note of these commitments.

93. Certain members of the Working Party expressed particular concerns about tariff treatment in the auto sector. In response to questions about the tariff treatment for kits for motor vehicles, the representative of China confirmed that China had no tariff lines for completely knocked-down kits for motor vehicles or semi-knocked down kits for motor vehicles. If China created such tariff lines, the tariff rates would be no more than 10 per cent. The Working Party took note of this commitment.

94. Without prejudice to its rights to participate in the WTO process, the representative of China confirmed China's commitment to support the tariff liberalization proposal outlined in WT/GC/W/138/Add.1 (22 April 1999) and that it would participate fully in any tariff liberalization initiative based on this proposal that WTO Members might accept for implementation.

95. China undertook bilateral market access negotiations on goods with members of the Working Party. The results of those negotiations were contained in the Schedule of Concessions and Commitments on Goods and formed Annex 8 to the Draft Protocol.

## 2. *Other Duties and Charges*

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

## 3. *Rules of Origin*

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

98. The representative of China noted that the criteria for making the determination of substantial transformation was: (a) change in tariff classification of a four-digit tariff line in the Customs Tariff; or (b) the value-added component was 30 per cent or more in the total value of a new product.

99. He further noted that under current arrangements, and in accordance with the criteria outlined above, when an imported product was processed and manufactured in several countries, the country of origin of the product was determined to be the last country in which the product underwent substantial transformation. The rules

of origin applied for statistical purposes were the same.

100. The representative of China stated that China's rules of origin for import and export were non-preferential rules of origin. Once the international harmonization of non-preferential rules of origin was concluded, China would fully adopt and apply the internationally harmonized non-preferential rules of origin. A mechanism that met the requirements of Articles 2(h) and 3(f), and Annex II, paragraph 3(d) of the Agreement, which required provision upon request of an assessment of the origin of an import or an export and outlined the terms under which it would be provided, would be established in China's legal framework by the date of accession. The Working Party took note of these commitments.

101. The representative of China further stated that China would not use the rules of origin as an instrument to pursue trade objectives directly or indirectly. He also confirmed that China would apply rules of origin equally for all purposes. The Working Party took note of these commitments.

102. The representative of China confirmed that from the date of accession, China would ensure that its laws, regulations and other measures relating to rules of origin would be in full conformity with the WTO Agreement on Rules of Origin and that it would implement such laws, regulations and other measures in full conformity with that Agreement. The Working Party took note of this commitment.

#### *4. Fees and Charges for Services Rendered*

103. Members of the Working Party noted that as a condition of accession, China should undertake a commitment to ensure conformity of customs fees and charges with Article VIII of the GATT 1994. The representative of China confirmed that China would comply with Article VIII of GATT 1994 in this regard. The Working Party took note of this commitment.

#### *5. Application of Internal Taxes to Imports*

104. Some members of the Working Party expressed concern that some internal taxes applied to imports, including a value-added tax ("VAT") were not administered in conformity with the requirements of the GATT 1994, particularly Article III. Those members of the Working Party noted that China appeared to permit the application of discriminatory internal taxes and charges to imported goods and services, including taxes and charges applied by sub-national authorities. Those members requested that China reaffirm that all such internal taxes and charges would be in conformity with the requirements of the GATT 1994.

105. In response, the representative of China noted that there were three major

types of taxes levied on products and services: (a) VAT levied on goods and services for processing, maintenance and assembling; (b) the Consumption Tax on some selected consumer products; and (c) the Business Tax on providing services, transferring intangible assets and selling real estate. Both the VAT and the Consumption Tax were applicable to entities importing goods. VAT and the Consumption Tax on imported goods were collected by General Customs Administration (“Customs”) at the point of entry. He noted that VAT was reimbursed once goods were exported. Exported goods were exempted from the Consumption Tax.

106. He further noted that the State Council determined all policies concerning the levying of VAT and the Consumption Tax, adjustment of tax types and tax rates (tax value), as well as the tax exemption of VAT, the Consumption Tax and the Business Tax. The laws and regulations were interpreted and implemented by the Ministry of Finance and the State Administration of Taxation. VAT and the Consumption Tax were levied and administered by the State competent departments of taxation, while the Business Tax was collected and administered by the local competent departments of taxation.

107. The representative of China confirmed that from the date of accession, China would ensure that its laws, regulations and other measures relating to internal taxes and charges levied on imports would be in full conformity with its WTO obligations and that it would implement such laws, regulations and other measures in full conformity with those obligations. The Working Party took note of this commitment.

#### 6. *Tariff Exemptions*

108. The representative of China stated that the tariff exemption policy of China was **developed and implemented in accordance with the Customs Law of the People's Republic of China and the Regulations of the People's Republic of China on Import and Export Duties. The coverage of specific tariff reduction or exemption was provided for by the State Council. All the tariff reductions and exemptions were applied on an MFN basis.**

109. The representative of China noted that in accordance with international practices and provisions of China's Customs Law, import duty reductions or exemptions were available for the following goods:

- (a) A consignment of goods, on which customs duties were estimated below RMB 10 yuan;
- (b) advertising articles and samples, which were of no commercial value;

- (c) goods and materials, which were rendered gratis by international organizations or foreign governments;
- (d) fuels, stores, beverages and provisions for use en route loaded by any means of transport, which were in transit across the border;
- (e) exported goods being replaced;
- (f) goods damaged prior to Customs release;
- (g) goods covered by international treaties providing for tariff reductions and exemptions which China had entered into or acceded to;
- (h) goods temporarily imported;
- (i) goods imported under inward processing programmes;
- (j) goods imported at zero cost for replacement purposes;
- (k) domestic- or foreign-funded projects encouraged by the government;
- (l) articles for scientific research, education and the disabled.

He noted that goods so imported were required to be put under Customs supervision and control. The Customs duty was required to be recovered if such goods were sold, transferred or used for other purposes during the time period of supervision and control.

110. Some members of the Working Party expressed concerns over the availability and application of tariff reductions and exemptions for a variety of enterprises and other entities, including state trading enterprises, state-owned enterprises, foreign-invested enterprises and not-for-profit entities. Similar concerns also existed for exemptions from application of other duties, taxes and charges. These members noted the negative effect such reductions or exemptions could have on revenues and predictability and certainty in application of tariff and other trade measures.

111. The representative of China confirmed that upon accession, China would adopt and apply tariff reductions and exemptions so as to ensure MFN treatment for imported goods. The Working Party took note of this commitment.

#### 7. *Tariff Rate Quotas*

112. Several members of the Working Party expressed concern over the lack of

transparency, uniformity and predictability of China's administration of its tariff rate quota ("TRQ") regime. Those members requested that China enter a commitment to administer TRQs in a simple, transparent, timely, predictable, uniform, non-discriminatory, and non-trade restrictive manner, and in a way that would not cause trade distortions. Those members asked that China ensure that its TRQ arrangements be no more administratively burdensome than absolutely necessary, and also expressed the hope that China would move as quickly as possible to a market-based TRQ allocation process.

113. Those members of the Working Party also raised concerns regarding the administration of China's TRQ system and the practices of state trading enterprises in relation to importing such products. These concerns included the current lack of transparent regulations for administering TRQs; use of administrative guidance; distortions introduced into the market due to allocations based on government determinations of sub-national supply and utilization rather than consumer preferences and end-user demand; failure to establish and publish annual TRQ quantities; trade-restrictive and non-competitive practices of state trading enterprises; and general uncertainty, inconsistency and discrimination in trade of bulk commodities. Those members expressed similar concerns about the operation of China's TRQ system for products subject to designated trading. Those members requested that China reduce tariffs for commodities subject to TRQs, enter into access commitments for these commodities, improve the administration of the TRQ regime, and ensure that trade would not be distorted by unjustified government regulation. Certain members of the Working Party also requested that a number of specified products be removed from China's TRQ system and that, upon import, these products be subject only to tariffs.

114. The representative of China noted that in 1996, for the first time, China published a list of import products subject to TRQs, together with the tariff rates applicable to imports both in and out of quota. Allocation of TRQ was based on historical performance and administration of the state trading regime, although China had also tried several other ways of administration, including import at applied tariff rates, first-come-first-served at the point of entry. China was trying to simplify the TRQ administration regime and procedures in a bid to facilitate use, enhance efficiency and implement further reform.

115. The representative of China further noted that, in undertaking market-oriented reform in the agricultural sector, China had made progress in freeing agricultural products from state pricing and in guiding farmers to adjust the structure of agricultural production based on the demands of the market. In connection with that reform process, in the bilateral negotiations with Members, China committed that, upon accession, it would eliminate TRQs on a number of products and subject

these only to tariffs. The products concerned were barley, soybeans, rapeseed, peanut oil, sunflower seed oil, corn oil, and cottonseed oil. In addition, China would replace quantitative import restrictions on sugar, cotton and three types of fertilizers (DAP, NPK and urea) by TRQs. The Working Party took note of these commitments.

116. The representative of China stated that upon accession, China would ensure that TRQs were administered on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified timeframes, administrative procedures and requirements that would provide effective import opportunities; that would reflect consumer preferences and end-user demand; and that would not inhibit the filling of each TRQ. China would apply TRQs fully in accordance with WTO rules and principles and with the provisions set out in China's Schedule of Concessions and Commitments on Goods. The Working Party took note of these commitments.

117. The representative of China confirmed that for the goods listed in Annex 2 of the Draft Protocol that were subject to a TRQ, China would also apply the provisions of its Schedule relating to TRQ administration and related commitments in the Draft Protocol, including the grant of trading rights to non-state trading entities to import the TRQ allocations set aside for importation by such entities. For products in Annex 2 of the Draft Protocol that were subject to designated trading, the representative of China confirmed that China would ensure that additional enterprises granted trading rights in accordance with China's commitments to phase out designated trading would not be disadvantaged in the allocation of TRQ. The Working Party took note of these commitments.

118. Some members of the Working Party expressed the view that allocation decisions were based, in large part, on government-determined provincial supply and utilization rather than on commercial market criteria that reflected consumer preferences and end-user demand. Those members expressed concern that China's stated intention to allocate quota to sub-national authorities and to authorize those authorities to then allocate that quota to end-users in separate processes would add an unnecessary, burdensome step in the procedures and reduce the likelihood that quotas would be filled. Further, those members stated that China's stated intention with regards to TRQ procedures would not be consistent with China's commitments to uniform administration of its trade regime. Those members sought confirmation that China would not establish a separate process of allocation to sub-national authorities, as well as confirmation that all allocation and reallocation decisions would be made by a single, central authority in China.

119. The representative of China confirmed that the role of sub-national bodies would be limited to purely administrative operations, such as receiving applications

from end-users and forwarding them to the central authority; receiving queries and transmitting these to the central authority; reporting on allocation and reallocation decisions made by the central authority and providing information regarding such allocations and reallocations upon request; checking the information in the applications to verify that it met the published criteria; notifying applicants of any deficiencies in their applications; and providing applicants with an opportunity to cure deficiencies in their applications. After the central authority decided on allocations of quota to end-users, the sub-national bodies would issue TRQ certificates accordingly. The representative of China also confirmed that China would administer a consistent national allocation (and reallocation) policy for TRQs, that it would not establish a separate process of allocation to sub-national authorities and that decisions regarding all allocations and reallocations to end-users would be made by a single, central authority. The Working Party took note of these commitments.

120. The representative of China further confirmed that China would grant to any enterprise possessing the right to trade any product pursuant to Section 5 of the Draft Protocol, the right to import goods in Annex 2A of the Draft Protocol that were subject to a TRQ or to an agreed volume of imports by non-state trading enterprises. Such right to import would not extend to the quantity of goods specifically reserved for importation by state trading enterprises. Any enterprise possessing the right to trade pursuant to Section 5 of the Draft Protocol would also have the right to import that portion of a TRQ reallocated to non-state trading enterprises pursuant to the agreed rules on TRQ administration. The representative of China also confirmed that for goods in Annex 2A of the Draft Protocol subject to a TRQ, any enterprise granted the right to trade, pursuant to Section 5 of the Draft Protocol, would be permitted to import such goods at the out-of-quota rate. The Working Party took note of these commitments.

#### 8. *Quantitative Import Restrictions, including Prohibitions and Quotas*

121. In response to requests for information from members of the Working Party, the representative of China noted that China prohibited or restricted the importation of certain commodities, including weapons, ammunition and explosives, narcotic drugs, poisons, obscene materials and those foodstuffs, medicines, animals and plants which were inconsistent with China's technical regulations on food, medicines, animals and plants.

122. Some members of the Working Party noted that there were a large number of non-tariff measures in existence in China, both at the national and sub-national levels, which appeared to have a trade restrictive or trade distorting effect. Those members requested that China undertake a commitment to eliminate and not to introduce, re-introduce or apply non-tariff measures other than those specifically

identified and subject to phased elimination in Annex 3 to the Draft Protocol. The representative of China confirmed that China would not introduce, re-introduce or apply non-tariff measures other than listed in Annex 3 of the Draft Protocol unless justified under the WTO Agreement. The Working Party took note of this commitment.

123. Some members of the Working Party also raised concerns that many non-tariff measures were imposed by sub-national authorities in China on a non-transparent, discretionary and discriminatory basis. Those members of the Working Party asked that China undertake a commitment to ensure that non-tariff measures would only be imposed by the central government or by sub-national authorities with clear authorization from the central government. Actions lacking authorization from the national authorities should not be implemented or enforced. The representative of China clarified that only the central government could issue regulations on non-tariff measures and that these measures would be implemented or enforced only by the central government or sub-national authorities with authorization from the central government. He further stated that sub-national authorities had no right to formulate non-tariff measures. The Working Party took note of these commitments.

124. Some members of the Working Party noted that China had provided a list of non-tariff measures in respect of which China was prepared to commence phased elimination, contained in Annex 3 of the Draft Protocol. Those members stated that China should eliminate the measures listed in accordance with the schedule provided in Annex 3, during the periods specified in Annex 3. For measures subject to phased elimination, China should provide for growth in the quota over the relevant period specified in Annex 3. Those members also noted that the protection afforded by the measures listed in Annex 3 should not be increased or expanded in size, scope, or duration, nor any new measures be applied, unless justified under the provisions of the WTO Agreement.

125. Those members of the Working Party noted that all non-tariff measures administered by China, whether or not referred to in Annex 3 of the Draft Protocol, which were applied after China's accession, should be allocated and otherwise administered in strict conformity with the provisions of the WTO Agreement, including Article XIII of the GATT 1994 and the Agreement on Import Licensing Procedures, including notification requirements.

126. The representative of China stated that China had modified Annex 3 on the basis of the comments raised by certain members of the Working Party. He confirmed that only the machinery and electronic products listed in Annex 3 were subject to specific tendering requirements and that these requirements would be administered pursuant to Chapter III of the Regulation entitled "Interim Measures

for Import Administration of Machinery and Electronics Products” (approved by the State Council on 22 September 1993 and promulgated in Order No. 1 by the State Economic and Trade Commission and Ministry of Foreign Trade and Economic Cooperation on 7 October 1993). He also confirmed that Annex 3 contained all of the products subject to quotas, licences and such tendering requirements in China and that, during the relevant phase-out period, China would implement the growth rates for quotas as indicated in Annex 3. The Working Party took note of these commitments.

127. Some members of the Working Party requested information on how China would implement the quota and licensing requirements for products listed in Annex 3, in particular the procedures and criteria for grant of quota allocations and licensing during the phase-out period for these restrictions. Those members expressed concerns about requirements for obtaining a licence or quota allocation which often required approvals from various authorities within an organization as well as approval from both the central and sub-national level. Those members sought a transparent, streamlined system that would issue quota allocations and licences through a simple, consolidated approval process that would ensure full use of the quota and its equitable distribution among importers. Those members also requested information on how China would establish the value of imports for those products whose quota was established in terms of value of imports. The representative of China confirmed that the administration of quotas and import licences would be consistent with the WTO Agreement, including Article XIII of the GATT 1994 and the Agreement on Import Licensing Procedures. The allocation of quotas and issuance of import licences would go through a simple and transparent procedure, so as to ensure the full utilization of quota. He further stated that the establishment of value of imports would be based on the information collected by the Customs authorities and provisions of the WTO Customs Valuation Agreement. For quota quantities specified in terms of value, China would determine the value of any shipment based on the c.i.f. ship value listed on the bill of lading. The Working Party took note of these commitments.

128. The representative of China confirmed that the products currently covered under the HS categories listed in Annex 3 as of the date of accession were the only products that would be subject to these quotas during the agreed phase-out periods. Any non-tariff measures covering additional products would need to be justified under the WTO Agreement. Further, the representative of China stated that for products listed in Annex 3 as being subject to quota and licensing requirements, any entity that will possess the right to trade in the quota year, including enterprises possessing trading rights to import such products or inputs for production purposes under a particular quota category, could apply for a quota allocation and licence to import products listed in Annex 3. The Working Party took note of these

commitments.

129. The representative of China further confirmed that for products listed in Annex 3, China's system for quota allocation and licensing would ensure that those entities with quota allocations would also receive any necessary import licence. This system would conform to WTO rules, including the WTO Agreement on Import Licensing Procedures, and would be transparent, timely, responsive to market conditions and would minimize the burden on trade. Applications for a quota allocation would need to be submitted to only one organization, at one level (central or sub-national) for approval. The relevant organization would then issue an import licence based on the quota allocation, in most cases within 3 working days and, in exceptional cases, within a maximum of 10 working days after a request for the licence. A licence would be issued for the full amount of the quota and would be valid for the calendar year issued. Such licence would be extended once, upon request, for up to 3 months, if the request was made before 15 December of the current quota year. Imports occurring under an extended licence would be counted against the relevant quota amount for the year in which the allocation took place. The representative of China confirmed that the relevant organization for issuing quota allocations and licences, amount of quota, including the growth in quota provided for in Annex 3, the eight-digit tariff codes and full descriptions of all products covered by each quota and procedures for application for a quota allocation and licence, including the beginning and end date of the application period and any other relevant procedures or criteria, would be published in the official journal referred to in Section 2(C)(2) of the Draft Protocol at least 21 days prior to the beginning of the application period. Such application period would be from 1-31 August. Quotas would be allocated to applicants no later than 60 days after closure of the application period. The Working Party took note of these commitments.

130. The representative of China stated that China would allocate quotas in accordance with the following criteria and procedures which would be published in advance and would be applied in conformity with WTO requirements, including the Agreement on Import Licensing Procedures. In applying these criteria, China would consider the need to allow for equitable participation by producers from WTO Members and take into account the need to maximize the potential for quota fill.

- (a) (i) If the relevant quota quantity exceeded total requests for quota allocations, all requests would be approved.
- (ii) In other cases, the criteria for allocation would be as follows:

Historical performance of applicants where relevant (in cases in which average imports over the 3-year period immediately prior to

the year of China's accession, for which data was available, amounted to less than 75 per cent of the relevant quota, it would be necessary to take into account other criteria *inter alia* as set forth below);

- Production or processing capacity, in the case of intermediate products and raw materials;
  - Experience and ability in producing, importing, marketing, or servicing in international markets, in the case of finished products or products destined for wholesale or retail distribution;
- (b) (i) In cases in which average imports over the 3-year period immediately prior to the year of China's accession, for which data was available, exceeded 75 per cent of the relevant quota, applicants that had not previously been allocated quota would be allocated 10 per cent of the total quota in the first year and the majority of any quota growth in any subsequent year.
- (ii) In other cases :
- In the first year, 25 per cent of the total quota would be allocated to applicants that had not previously been allocated quota; however, an applicant that had imported under a quota on the relevant products in the year prior to China's accession would not receive a decrease in the absolute amount of its quota allocation;
  - In the second year, for the amount of the quota growth as well as an amount equivalent to the amount of any quota that had not been filled in the previous year, China would give priority consideration to requests from enterprises with foreign ownership equal to or less than 50 per cent;
  - In the third and fourth year, if relevant, for the amount of the quota growth as well as an amount equivalent to the amount of any quota that had not been filled in the previous year, China would give priority consideration to requests from enterprises with foreign ownership greater than 50 per cent.
- (c) In all cases, a quota-holder receiving an initial allocation that had fully utilized or contracted for its quota allocation would, upon application, receive an allocation in the following year for a quantity no less than the quantity imported in the previous year. A quota-holder that did not import its full allocation would receive a proportional reduction in its quota allocation in the subsequent year unless the quantity was returned for reallocation by 1 September.

The Working Party took note of these commitments.

131. The representative of China confirmed that all commercial terms of trade, including product specifications, product mix, pricing, and packaging, would be at the sole discretion of the quota holder, so long as the products are within the relevant quota category. Allocations would be valid for any article or mixture of articles subject to the same quota as specified in Annex 3 of the Draft Protocol. Allocations would be valid for a period of one calendar year from the opening of the quota import period. However, if the holder of a quota allocation had not contracted for import of the total quantity allocated to the holder by 1 September, the holder was to immediately return the unused portion of the allocation to the relevant authority which would reallocate the quota immediately, if unfilled requests were pending, or otherwise within 10 days after receipt of a request for an allocation. The relevant organization would publish notice of the availability of additional allocations after collecting any unused quotas returned by the quota holders. Licences for goods imported under reallocated quota would be extended once, upon request, for up to 3 months, if the request was made before 15 December of the current quota year. Imports occurring under an extended licence would be counted against the relevant quota amount for the year in which the re-allocation took place. The Working Party took note of these commitments.

#### 9. *Import Licensing*

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

133. In response to requests for additional information about its system of import licensing, the representative of China said that the import licensing system was administered without discrimination among countries or regions. In 1984, the State Council had promulgated the “Interim Regulations on Licensing System for Import Commodities”, and MOFTEC and Customs had issued “Detailed Rules for the Implementation of the Interim Regulations on Licensing System for Import Commodities”. The Interim Regulations were uniformly implemented throughout China. In 1999, of the total import value of US\$ 165.7 billion, imports subject to licensing represented 8.45 per cent, covering US\$ 14 billion. MOFTEC determined which products should be subject to import licensing according to the relevant provisions of the “Foreign Trade Law”.

134. The representative of China further stated that in 1993, China had applied import restrictions to 53 product categories. By 1999, the number had been reduced to 35. Products covered were (1) Processed oil; (2) Wool; (3) Polyester fibre; (4) Acrylic fibres; (5) Polyester fillet; (6) Natural rubber; (7) Vehicles tyres; (8) Sodium cyanide; (9) Sugar; (10) Fertilizer; (11) Tobacco and its products;

(12) Acetate tow; (13) Cotton; (14) Motor vehicles and their key parts; (15) Motorcycles and their engines and chassises; (16) Colour television sets and TV kinescope; (17) Radios, tape recorders and their main parts; (18) Refrigerators and their compressor; (19) Washing machines; (20) Recording equipment and its key parts; (21) Cameras and their bodies (without lenses); (22) Watches; (23) Air conditioners and their compressor; (24) Audio and video tape duplication equipment; (25) Crane lorries and their chassises; (26) Electronic microscopes; (27) Open-end spinning machines; (28) Electronic colour scanners; (29) Grain; (30) Vegetable oil; (31) Wine; (32) Colour sensitive material; (33) Chemical under supervision and control that were used for chemical weapon; (34) Chemicals used to produce narcotics; and (35) Laser disc production facilities. He also noted that in 1999, there were 13 commodity categories which were imported by the foreign trade companies designated by MOFTEC. These categories were as follows: (1) Processed oil; (2) Fertilizer; (3) Tobacco; (4) Vegetable oil; (5) Grain; (6) Natural rubber; (7) Wool; (8) Acrylic fibers; (9) Sugar; (10) Cotton; (11) Crude oil; (12) Steel; and (13) Plywood.

135. Concerning the granting and administration of import licences, the representative of China said that the examination and approval of the licence took two to three working days. Applications for import licences could be submitted to the Quota and Licence Administrative Bureau of MOFTEC, or Special Commissioner Offices in 16 provinces, or Commissions of Foreign Economic Relations and Trade of various provinces, autonomous regions, and municipalities directly under the central government and those with independent budgetary status. Licensing agencies authorized by MOFTEC could issue import licences on the basis of import documents submitted by the applicants, approved by the competent departments. A licence could not be bought, sold or transferred, and was valid for one calendar year. Import licences could be extended once for up to three months.

136. Some members of the Working Party expressed concern that China's Provisional Procedures for the Administration of Automatic Registration for the Import of Special Commodities (13 August 1994), in particular the criteria for approval of registration, would act as a restraint on imports. The representative of China emphasized that the purpose of the registration system was only to gather statistical information. He confirmed that China would bring its automatic licensing system into conformity with Article 2 of the Agreement on Import Licensing Procedures upon accession. The Working Party took note of this commitment.

137. Some members of the Working Party noted that enterprises and individuals seeking to import products subject to tariff quota administration requirements had to go through extensive procedures to receive a quota allocation and that the quota certificate would indicate whether the subject good was to be imported through a

state trading enterprise or a non-state trading enterprise and would be valid for a certain period of time. Moreover, the entity importing the good would need trading rights. In the light of these multiple requirements, a quota allocation certificate should satisfy any import licensing requirement that might apply.

138. The representative of China confirmed that China would not require a separate import licence approval for goods subject to a TRQ allocation requirement but would provide any necessary import licence in the procedure that granted a quota allocation. The Working Party took note of this commitment.

#### 10. *Customs Valuation*

139. Some members of the Working Party expressed concern regarding the methods used by China to determine the customs value of goods, in particular regarding the practice of using minimum or reference prices for certain goods, which would be inconsistent with the Agreement on Implementation of Article VII of the GATT 1994 (“Customs Valuation Agreement”). Other WTO-consistent means were available to Members doubting the veracity of declared transaction values.

140. In response, the representative of China stated that China had ceased to use and would not reintroduce minimum or reference prices as a means to determine customs value. The Working Party took note of this commitment.

141. The representative of China **considered that there would not be situations** where the “customs value” could not be “ascertained” since the Customs Valuation Agreement provided **several methods for valuation.**

142. The representative of China recalled that the overwhelming majority of China’s customs duties were *ad valorem* duties. The customs value of imported goods was assessed according to the c.i.f. price based on the transaction value, as defined in the Customs Valuation Agreement. If the transaction value of imported goods could not be determined, the customs value was determined based on other means provided for in the Customs Valuation Agreement. He also noted that the Customs Law provided for appeal procedures. In the event of a dispute over calculation of duty paid or payable with the Customs, the dissatisfied importer could apply to Customs for a reconsideration of the case. If the appeal was rejected the importer could sue at the People’s Court.

143. The representative of China confirmed that, upon accession, China would apply fully the Customs Valuation Agreement, including the customs valuation methodologies set forth in Articles 1 through 8 of the Agreement. In addition, China would apply the provisions of the Decision on the Treatment of Interest

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Charges in Customs Value of Imported Goods, and the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, adopted by the WTO Committee on Customs Valuation (G/VAL/5), as soon as practicable, but in any event no later than two years from the date of accession. The Working Party took note of these commitments.

*11. Other Customs Formalities*

144. The representative of China said that China joined the International Convention on the Simplification and Harmonisation of Customs Procedures in 1988 and on 15 June 2000 signed the Draft Protocol on the Amendment of the International Convention on the Simplification and Harmonisation of Customs Procedures. The Customs authorities of China had only adopted such customs formalities as declaration, examination, levying of duties and release which were consistent with international practices.

*12. Preshipment Inspection*

145. The representative of China stated that, currently, there were trade and commerce inspection agencies (including joint-venture agencies) engaged in preshipment inspection. He further stated that China would comply with the Agreement on Preshipment Inspection, and would regulate the existing trade and commerce inspection agencies and permit the qualified agencies to be engaged in preshipment inspection in line with the government mandate or the terms and conditions of commercial contracts. The Working Party took note of this commitment.

146. Some members of the Working Party requested information on whether China used the services of a private preshipment inspection entity. The representative of China confirmed that China would ensure that, upon accession, any laws and regulations relating to preshipment inspection by any inspection agency, including private entities, would be consistent with relevant WTO agreements, in particular, the Agreement on Preshipment Inspection and the Customs Valuation Agreement. Moreover, any fees charged in connection with such preshipment inspection would be commensurate with the service provided, in conformity with Article VIII:1 of the GATT 1994. The Working Party took note of these commitments.

*13. Anti-Dumping, Countervailing Duties*

147. Some members of the Working Party raised concerns that the current investigations by the Chinese authority would be judged to be inconsistent with the Agreement on Implementation of Article VI of GATT 1994 (“Anti-Dumping Agreement”) if China were a Member of the WTO today. In certain cases, the basis for calculating dumping margins for a preliminary affirmative determination was

not disclosed to interested parties. Furthermore, the determination of injury and causation did not appear to have been made on an objective examination of sufficient evidence. In the views of these members, bringing the Chinese anti-dumping rules into compliance with the WTO Agreement on its face was not sufficient. WTO-consistency had to be secured substantively as well.

148. In response, the representative of China stated that China promulgated regulations and procedures on anti-dumping and countervailing duties in 1997 with reference to the Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures. He committed to revising China's current regulations and procedures prior to its accession in order to fully implement China's obligations under the Anti-Dumping and SCM Agreements. The Working Party took note of this commitment.

149. Members of the Working Party and the representative of China agreed that the term "national law" in subparagraph (d) of Section 15 of the Draft Protocol, should be interpreted to cover not only laws but also decrees, regulations and administrative rules.

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

151. The representative of China expressed concern with regard to past measures taken by certain WTO Members which had treated China as a non-market economy and imposed anti-dumping duties on Chinese companies without identifying or publishing the criteria used, without giving Chinese companies sufficient opportunity to present evidence and defend their interests in a fair manner, and without explaining the rationale underlying their determinations, including with respect to the method of price comparison in the determinations. In response to these concerns, members of the Working Party confirmed that in implementing subparagraph (a)(ii) of Section 15 of the Draft Protocol, WTO Members would comply with the following:

- (a) When determining price comparability in a particular case in a manner not based on a strict comparison with domestic prices or costs in China, the importing WTO Member should ensure that it had estab-

lished and published in advance (1) the criteria that it used for determining whether market economy conditions prevailed in the industry or company producing the like product and (2) the methodology that it used in determining price comparability. With regard to importing WTO Members other than those that had an established practice of applying a methodology that included, inter alia, guidelines that the investigating authorities should normally utilize, to the extent possible, and where necessary cooperation was received, the prices or costs in one or more market economy countries that were significant producers of comparable merchandise and that either were at a level of economic development comparable to that of China or were otherwise an appropriate source for the prices or costs to be utilized in light of the nature of the industry under investigation, they should make best efforts to ensure that their methodology for determining price comparability included provisions similar to those described above.

- (b) The importing WTO Member should ensure that it had notified its market-economy criteria and its methodology for determining price comparability to the Committee on Anti-Dumping Practices before they were applied.
- (c) The process of investigation should be transparent and sufficient opportunities should be given to Chinese producers or exporters to make comments, especially comments on the application of the methodology for determining price comparability in a particular case.
- (d) The importing WTO Member should give notice of information which it required and provide Chinese producers and exporters ample opportunity to present evidence in writing in a particular case.
- (e) The importing WTO Member should provide Chinese producers and exporters a full opportunity for the defence of their interests in a particular case.
- (f) The importing WTO Member should provide a sufficiently detailed reasoning of its preliminary and final determinations in a particular case.

152. The representative of China stated that determinations made by China during investigations initiated pursuant to applications made before accession should be free from challenge under the Anti-Dumping Agreement by the Members of the WTO. He further confirmed that, notwithstanding Article 18.3 of the Anti-

Dumping Agreement,

- (a) China would apply the provisions of the Anti-Dumping Agreement to:
  - (i) proceedings under Article 9.3, including the calculation of margins of dumping, in connection with anti-dumping measures adopted before accession (“existing measures”); and
  - (ii) reviews of existing measures initiated under Articles 9.5, 11.2, and 11.3 pursuant to requests made following accession. Any review of an existing measure under Article 11.3 would be initiated no later than five years from the date of its imposition.
- (b) China would also provide the type of judicial review described in Article 13 of the Anti-Dumping Agreement with regard to proceedings under Article 9.3 and reviews under Articles 9.5, 11.2, and 11.3.

The Working Party took note of these commitments.

153. The representative of China noted that pursuant to the provisions of “Regulation on Anti-dumping and Countervailing Measures of the People’s Republic of China”, there were four Chinese government bodies responsible for anti-dumping and countervailing duty investigations. Their identities and responsibilities were as follows:

- (a) Ministry of Foreign Trade and Economic Cooperation (“MOFTEC”)

Receiving anti-dumping and countervailing petitions; Conducting investigations on foreign subsidies and on dumping and dumping margins and issuing relevant preliminary determination decisions and notices; Negotiating with foreign interested parties on “Price Undertaking” if necessary; Providing proposal on imposition of definitive anti-dumping or countervailing duties or proposals on duty refund, etc. There was an Anti-dumping Division established under the Department of Treaties and Law of MOFTEC, with responsibility to handle anti-dumping and countervailing investigations on alleged imports.
- (b) State Economics and Trade Commission (“SETC”)

Responsible for the investigation of injury caused to the domestic industry by the dumped or subsidized imports, the extent of such injury and making injury findings. There was a non-permanent decision and policy-making body in SETC, named the Injury Investigation and Determination Committee (“IIDC”), which was composed of six commissioners from the relevant departments of SETC. There was a permanent executive office in charge of the investigation of injury to the industry and submitting its findings to the IIDC for approval.

(c) General Customs Administration (“Customs”)

Coordinating anti-dumping investigations with MOFTEC; enforcing anti-dumping measures such as collecting cash deposits and dumping duties, enforcing countervailing measures by collecting countervailing duties, and monitoring implementation.

(d) Tariff Commission of the State Council (“TCSC”)

Making final decisions on whether or not to levy the anti-dumping or countervailing duties based on the suggestions by MOFTEC with regard to imposing anti-dumping or countervailing duties and reimbursing excess amount of duties, respectively.

14. *Safeguards*

154. The representative of China stated that upon accession, China would implement its Regulation on Safeguard by which the future safeguard measures would be regulated. The contents of this new regulation would be fully consistent with the Agreement on Safeguards. China was in the process of drafting safeguard legislation in accordance with Article 29 of the Foreign Trade Law and the Agreement on Safeguards. The Working Party took note of this commitment.

C. EXPORT REGULATIONS

1. *Customs Tariffs, Fees and Charges for Services Rendered, Application of Internal Taxes to Exports*

155. Some members of the Working Party raised concerns over taxes and charges applied exclusively to exports. In their view, such taxes and charges should be eliminated unless applied in conformity with GATT Article VIII or listed in Annex 6 to the Draft Protocol.

156. The representative of China noted that the majority of products were free of export duty, although 84 items, including tungsten ore, ferrosilicon and some aluminum products, were subject to export duties. He noted that the customs value of exported goods was the F.O.B. price of the goods.

2. *Export Licensing and Export Restrictions*

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

158. The representative of China said that China applied its export licence system to certain **agricultural products, resource products and chemicals**. China's export licencing system was administered in accordance with the "Interim Procedures for the Export Licencing System". In 1992, there were 143 categories of products subject to export licencing which accounted for 48.3 per cent of the total value of the China's exports, but by 1999, the total number of products subject to export licencing had been reduced to 58 categories and 73 items with an export value of US\$ 18.5 billion, taking up only 9.5 per cent of total exports. Export licences for these products were issued according to the stipulated commodity scope respectively by the Administrative Bureau of Quota and Licence ("ABQL"), the Special Commissioner Offices ("SCO") located in 16 provinces and the Commissions of Foreign Economic Relations and Trade ("COFTEC") of various provinces, autonomous regions, municipalities directly under the central government and those with independent budgetary status. The main criteria used in determining whether a product was subject to export licencing, as set down in the Foreign Trade Law, were: (1) maintenance of national security or public interests; (2) protection against shortage of supply in the domestic market or exhaustion of natural resources; (3) limited market capacity of importing countries or regions; or (4) obligations stipulated in international treaties. Export licencing was also used for statistical purposes.

159. He further noted that an application for an export licence had to be submitted to the licence issuing institutions authorized by MOFTEC, together with documents approving the export by the competent departments, and other relevant materials (such as the Export Qualification Certificate for the enterprises, export contract and so on). The procedures were the same for all export destinations. A decision on the request for an export licence normally took three working days. Licences were valid for six months and could be extended once. FIEs engaged in exporting products were required to obtain export licences if the products to be exported were subject to the licencing requirement. If the products were not subject to licencing, customs clearance would be given after examination by Customs on the basis of export contracts and other relevant documents.

160. Certain members of the Working Party noted the conditions in the GATT 1994 in regard to non-automatic licencing and export restrictions. They pointed out that export prohibitions, restrictions and non-automatic licencing could only temporarily be applied under Article XI of the GATT 1994 to prevent or relieve critical shortages of foodstuffs or other products essential to an exporting WTO Member. Article XX of the GATT 1994 also allowed for restrictive export measures, but only if such measures were made effective in conjunction with restrictions on domestic production or consumption. These members noted that some of the criteria of the Foreign Trade Law referred to above did not at present meet the specific conditions laid down in Articles XI and XX of the GATT 1994.

161. Members of the Working Party welcomed the steady reduction in the number of products subject to export licensing in China. Certain members reiterated their request for the submission of a complete list of restrictions presently applied. These members expressed concern that the remaining number was still high, covering about ten per cent of export trade, and requested that they be either reduced further or eliminated by the date of accession in order to achieve full compatibility with GATT requirements. Some members expressed particular concern about export restrictions on raw materials or intermediate products that could be subject to further processing, such as tungsten ore concentrates, rare earths and other metals.

162. The representative of China confirmed that China would abide by WTO rules in respect of non-automatic export licensing and export restrictions. The Foreign Trade Law would also be brought into conformity with GATT requirements. Moreover, export restrictions and licensing would only be applied, after the date of accession, in those cases where this was justified by GATT provisions. The Working Party took note of these commitments.

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

164. Some members of the Working Party expressed concern about China's restrictions on exports of silk. Certain other members expressed concern about export restrictions on other goods, in particular raw materials or intermediate products that could be subject to further processing, such as tungsten ore concentrates, rare earths and other metals. Members of the Working Party urged China to ensure that any such restrictions that were imposed or maintained complied with the terms of the WTO Agreement and the Draft Protocol.

165. The representative of China confirmed that upon accession, remaining non-automatic restrictions on exports would be notified to the WTO annually and would be eliminated unless they could be justified under the WTO Agreement or the Draft Protocol. The Working Party took note of this commitment.

### 3. *Export Subsidies*

166. Some members of the Working Party noted that China had provided a list of prohibited subsidies falling within the scope of Article 3 of the SCM Agreement and a timetable for their elimination, in Annex 5B of the Draft Protocol. Those members considered this list to be incomplete.

167. The representative of China confirmed, as provided in Section 10.3 of the Draft Protocol, that it would eliminate all export subsidies, within the meaning of

Article 3.1(a) of the SCM Agreement, by the time of accession. To this end, China would, by accession, cease to maintain all pre-existing export subsidy programmes and, upon accession, make no further payments or disbursements, nor forego revenue or confer any other benefit, under such programmes. This commitment covered subsidies granted at all levels of government which were contingent, in law or in fact, upon an obligation to export. The Working Party took note of this commitment.

168. On the same basis, the representative of China confirmed that China would eliminate, upon accession, all subsidies contingent upon the use of domestic over imported goods, within the meaning of Article 3.1(b) of the SCM Agreement. The Working Party took note of this commitment.

#### D. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

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

169. Some members of the Working Party expressed concern about the application of the VAT and additional charges levied by sub-national governments on imports. Non-discriminatory application of the VAT and other internal taxes was deemed essential.

170. The representative of China confirmed that upon accession, China would ensure that its laws and regulations relating to all fees, charges or taxes levied on imports and exports would be in full conformity with its WTO obligations, including Articles I, III:2 and 4, and XI:1 of the GATT 1994, and that it would also implement such laws and regulations in full conformity with these obligations. The Working Party took note of this commitment.

##### 2. *Industrial Policy, including Subsidies*

171. Some members of the Working Party expressed concern that the special features of China's economy, in its present state of reform, still created the potential for a certain level of trade-distorting subsidization; this could have an impact not only on access to China's domestic market, but also on the performance of Chinese exports in the markets of other WTO Members, and should be subject to effective SCM Agreement disciplines. In view of this, some members felt that it would be inappropriate for China to benefit from certain provisions of Article 27. The representative of China, in turn, considered that certain provisions of this Article should be available to China, and informed the Working Party of the efforts being undertaken, as part of its ongoing reform process, to reduce the availability of certain types of subsidies. China was committed to implementing the SCM Agreement in a manner that was fair and equitable to China and to other WTO Members. In line

with this approach, the representative of China stated his intention to reserve the right to benefit from the provisions of Articles 27.10, 27.11, 27.12 and 27.15 of the SCM Agreement, while confirming that China would not seek to invoke Articles 27.8, 27.9 and 27.13 of the SCM Agreement. The Working Party took note of these commitments.

172. Some members of the Working Party, in view of the special characteristics of China's economy, sought to clarify that when state-owned enterprises (including banks) provided financial contributions, they were doing so as government actors within the scope of Article 1.1(a) of the SCM Agreement. The representative of China noted, however, that such financial contributions would not necessarily give rise to a benefit within the meaning of Article 1.1(b) of the SCM Agreement. He pointed out that China's objective was that state-owned enterprises, including banks, should be run on a commercial basis and be responsible for their own profits and losses. The Working Party took note of this commitment.

173. Some members of the Working Party, while understanding the difficulties involved in gathering information, raised concerns over the comprehensiveness of the subsidy notification which China had provided in Annexes 5A and 5B to the Draft Protocol, as last modified on 31 May 2000. Some members of the Working Party explained that, as an illustration of the above, certain types of subsidies did not appear in Annexes 5A and 5B. Those members of the Working Party first identified state support through the banking system, notably government-owned banks, in the form of policy loans, the automatic roll-over of unpaid principal and interest, forgiven and non-performing loans, and the selective use of below-market interest rates. Some members also referred to unreported tax subsidies, investment subsidies and subsidies provided by sub-national governments, some of which favoured exporting firms. Other members mentioned subsidies granted to the telecommunications, footwear, coal and shipbuilding sectors. The representative of China explained that, in common with many other Members, China had experienced difficulty in obtaining accurate data about all types of subsidies. He also indicated that China was attempting to reduce the availability of certain types of subsidies, in particular by reforming its tax system and making government-owned banks operate on a commercial basis. The representative of China stated that China would progressively work towards a full notification of subsidies, as contemplated by Article 25 of the SCM Agreement. The Working Party took note of this commitment.

174. Some members of the Working Party also raised concerns regarding the subsidies that China provided in connection with SEZs and other special economic areas. Some of these appeared to be contingent upon export performance or on the use of domestic goods. The representative of China noted that the main purpose of such subsidies was to promote regional development and foreign investment. He

confirmed that China would, upon accession, eliminate any such subsidies which were inconsistent with the SCM Agreement. The Working Party took note of this commitment.

175. Some members of the Working Party requested information from China on the Steel Import Substitution Programme, which appeared to provide export subsidies to the big four steel groups in China. In response, the representative of China clarified that China did not collect VAT on imported and domestically produced steel used as raw material for the processing trade. Such a policy, in his view, was consistent with WTO rules and the practices of many WTO Members, and thus should not be considered as subsidies.

176. Some members of the Working Party requested information from China on the “China High-Tech Product Export Catalogue”, which set forth central government export policies for the telecommunications, computer software, aviation and aerospace, lasers, pharmaceuticals, medical equipment, new materials and energy industries. In response, the representative of China clarified that products listed in the Catalogue would enjoy full VAT rebate treatment, while other exported products would only be given partial VAT rebate treatment. Such a policy, in his view, was consistent with Article XVI of the GATT 1994 and relevant Annexes of the SCM Agreement. He further confirmed that the VAT rebates were applied only to exported products and not to domestically consumed products.

### 3. *Technical Barriers to Trade*

177. The representative of China stated that China had set up a TBT notification authority and two enquiry points which had been notified to the TBT Committee. Upon accession, notices of adopted and proposed technical regulations, standards and conformity assessment procedures would be published. The names of the publications where this information could be found would be included in China’s Statement of Implementation and Administration under Article 15.2 of the TBT Agreement, which would be submitted upon accession. The Working Party took note of this commitment.

178. The representative of China stated that, further to China’s implementation of WTO provisions, internal mechanisms would exist, upon accession, to inform and consult with, on an ongoing basis, government agencies and ministries (at national and sub-national levels), and private sector interests on the rights and obligations under the GATT 1994 and the TBT Agreement. Concerning questions from some members of the Working Party on the opportunity for public consultation and comment on proposed standards and technical regulations, the representative of China confirmed that, upon accession, China’s procedures would clearly indicate that such opportunity existed and that comments would be given due consideration

regardless of origin. The representative of China also confirmed that, upon accession, China would have in place minimum timeframes for allowing public comment on proposed technical regulations, standards and conformity assessment procedures as set out in the TBT Agreement and relevant decisions and recommendations adopted by the TBT Committee. The Working Party took note of these commitments.

179. Several members of the Working Party requested information on the extent to which international standards were used as the basis for existing Chinese standards, details on China's plans for using international standards as the basis for new standards, and details on China's plans for reviewing existing standards so as to harmonize them with relevant international standards.

180. In response, the representative of China stated that, as a full member of, for example, ISO, IEC and ITU, China actively participated in the development of relevant international standards. With China's efforts in restructuring government agencies, China would, not later than four months after accession, notify acceptance of the Code of Good Practice. The representative of China stated that for government standardizing bodies, a clear policy existed to periodically review existing standards, *inter alia*, to harmonize them with relevant international standards where appropriate. Furthermore, China would speed up its process of revising the current voluntary national, local and sectoral standards so as to harmonize them with international standards. The Working Party took note of these commitments.

181. Some members of the Working Party expressed concern that China's use of the terms "technical regulations" and "standards" was not always consistent with the definitions found in the TBT Agreement, e.g., China sometimes used the word "standards" to refer to mandatory requirements that fell within the definition of "technical regulations". These members noted that China had developed a number of different types of measures, referred to as "standards", at levels other than the central government, in particular, regional, sectoral, and enterprise levels.

182. In response, the representative of China stated that China, in its notifications under the TBT Agreement, including its notifications under Article 15.2 and in publications referenced therein, and in modifications of existing measures, would use the terms "technical regulations" and "standards" according to their meanings under the TBT Agreement. The Working Party took note of these commitments.

183. Some members of the Working Party also expressed concern that China did not use relevant and available international standards as the basis for some of its existing technical regulations. Several members asked for information on the extent to which international standards were used as the basis for existing technical regulations, details on China's plans for using international standards as the basis for new technical regulations, and details on China's plans for reviewing

existing technical regulations so as to harmonize standards referenced in them with international standards or their relevant parts.

184. In response, the representative of China stated that since 1980, China had taken the active adoption of international standards as the basis for technical regulations as a basic policy of accelerating industrial modernization and promoting economic growth. The representative of China confirmed that this policy also required technical regulations to be reviewed every five years, *inter alia*, to ensure that international standards were used in accordance with Article 2.4 of the Agreement. He also confirmed that China would provide this policy as part of its notification under Article 15.2 of the Agreement. He noted that as a result of China's efforts in the past 20 years, the use of international standards as the basis for technical regulations had increased from 12 per cent to 40 per cent. China had begun formulating a standardization development programme in a bid to meet the challenges of the 21st century and the requirements provided for in the TBT Agreement, and had undertaken to further increase the use of international standards as the basis for technical regulations by 10 per cent in five years. The representative of China also confirmed that China would make publicly available procedures to implement Article 2.7 of the Agreement. The Working Party took note of these commitments.

185. Bearing in mind the relevant provisions of the TBT Agreement, some members of the Working Party asked China to identify local government bodies, directly below the central government level, and non-governmental organizations, that were authorized to adopt technical regulations or conformity assessment procedures. The representative of China replied that China would provide a list of relevant local governmental and non-governmental bodies, upon accession, as part of its notification under Article 15.2 of the TBT Agreement. The Working Party took note of this commitment.

186. With respect to conformity assessment procedures, several members of the Working Party asked for information about the extent to which international guides and recommendations were used as the basis for existing conformity assessment procedures, details on China's plans for using such guides and recommendations as the basis for new conformity assessment procedures, and details on China's plans for reviewing existing conformity assessment procedures so as to harmonize them with relevant international guides and recommendations.

187. In response, the representative of China stated that China played a full part in the preparation by appropriate international standardizing bodies of guides and recommendations for conformity assessment procedures, e.g., as a full member of ISO CASCO. He stated that it was difficult to quantify the extent to which such guides and recommendations were used as the basis for existing conformity

assessment procedures. He confirmed that China would use relevant guides or recommendations issued by international standardizing bodies as the basis for new conformity assessment procedures in accordance with Article 5.4 of the TBT Agreement. The representative of China also stated that existing conformity assessment procedures were reviewed concurrently with and under the same policy as related technical regulations, *inter alia*, to ensure the use of relevant international guides or recommendations in accordance with Article 5.4 of the TBT Agreement. He also confirmed that, upon accession, China would ensure that the same conformity assessment procedures were applied to both imported and domestic products. The Working Party took note of these commitments.

188. Some members of the Working Party expressed concerns about the complexity and inconsistency of China's conformity assessment regime with TBT Agreement requirements. In particular, those members noted that conformity assessment on imported and domestic products was not performed by the same governmental entities and that this situation could result in less favourable treatment for imports. In response, the representative of China stated that the Chinese government had already decided to merge CIQ-SA and CSBTS into the State General Administration of the People's Republic of China for Quality Supervision and Inspection and Quarantine ("AQSIQ"), under its policy of development of market economy and further reform and opening up in China. The representative of China confirmed that the AQSIQ was responsible for all policies and procedures related to conformity assessment in China. He further stated that other government ministries and agencies developed conformity assessment policies and procedures but that these had to be authorized by AQSIQ before they could be enacted.

189. Some members of the Working Party expressed concern about the consistency of the Law of the People's Republic of China on Import-Export Commodity Inspection ("the Law"), and the Regulations for the Implementation of that Law ("the Implementing Regulations"), with the TBT Agreement. In particular, provisions for technical regulations and conformity assessment procedures did not adequately address fundamental obligations such as transparency, non-discrimination, national treatment, and the avoidance of unnecessary barriers to trade.

190. Some members of the Working Party expressed concern about a conformity assessment procedure known as Statutory Inspection, which was described, *inter alia*, in Articles 4, 5, and 6 of the Law and Articles 4, 5, and 9 of the Implementing Regulations. They stated that it was inconsistent with the principle of national treatment and constituted an unnecessary obstacle to international trade. Members of the Working Party agreed that WT/ACC/CHN/31 and WT/ACC/CHN/32, lists of products subject to Statutory Inspection, did not prejudice the legal status, nature or effects of notified technical regulations and standards under the WTO Agreement. The representative of China stated that China would bring the Law and Implementing

Regulations, as well as other relevant legislation and regulations, into conformity with the TBT Agreement by the date of accession. The Working Party took note of this commitment.

191. Some members of the Working Party expressed concern about a conformity assessment procedure, and the application thereof, known as the Safety Licence System for Import Commodities (“the System”), which was described in Article 22 of the Law and Article 38 of the Implementing Regulations. They stated that it was inconsistent with the principle of national treatment and constituted an unnecessary obstacle to international trade (e.g., due to the frequent plant inspections required). In response, the representative of China confirmed that, for technical regulations and conformity assessment procedures related to goods currently subject to the Safety Licence System for Import Commodities, relevant legislation and regulations would be brought into full conformity with the TBT Agreement by the date of accession. The Working Party took note of this commitment

192. Responding to the concerns of members of the Working Party, the representative of China confirmed that to eliminate unnecessary barriers to trade, China would not maintain multiple or duplicative conformity assessment procedures, nor would it impose requirements exclusively on imported products. The Working Party took note of this commitment.

193. Some members of the Working Party expressed concern with respect to the confidentiality of information in connection with conformity assessment procedures undertaken by China. In response, the representative of China confirmed that China would fully implement the obligations of Article 5.2.4 of the TBT Agreement in this regard. The Working Party took note of this commitment.

194. Some members of the Working Party expressed concern about China’s practice of not accepting the results of conformity assessment by bodies in other WTO Members. In this regard, those members noted the obligation of unilateral acceptance of the results of conformity assessment as described in Article 6.1 of the TBT Agreement. The representative of China responded that products certified by bodies recognized by China would require no additional conformity assessment procedures in China, except for random sampling of said products. Furthermore, where random sampling was undertaken and China’s test results differed from the test results of competent bodies in other WTO Members, the representative of China confirmed that China would act in accordance with international guidelines and recommendations, where these existed, or would provide a process of review with the objective of resolving such differences. Some members of the Working Party requested China to make public and update on an ongoing basis information on conformity assessment bodies that were recognized by China. The representative

of China confirmed that China would provide this information. The Working Party took note of these commitments.

195. Concerning foreign and joint-venture conformity assessment bodies, certain members of the Working Party noted that China should not maintain requirements which had the effect of acting as barriers to their operation, unless otherwise specified in China's Schedule of Specific Commitments. The representative of China replied that China would not maintain such requirements. Some members also observed that all foreign or joint venture conformity assessment bodies that met China's requirements should be eligible for accreditation and accorded national treatment. The representative of China confirmed that the accreditation requirements would be transparent and provide national treatment to foreign conformity assessment bodies. The Working Party took note of these commitments.

196. Some members of the Working Party raised specific concerns regarding such matters as (a) registration of initial imports of chemical products, (b) procedures to obtain and apply "CCIB" safety mark and the "Great Wall" mark, (c) automobiles and parts, and (d) the safety and quality licence system for boilers and pressure vessels. In response, the representative of China stated that China would implement the following measures prior to accession, unless otherwise indicated:

(a) Registration of Initial Imports of Chemical Products

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

(b) CCIB Safety Mark and the "Great Wall" Mark

- Unify the existing certification marks, i.e., the "CCIB" mark and the "Great Wall" mark into a new certification mark. For like imported and domestic goods, all bodies and agencies would issue the same mark and charge the same fee.
- Accept testing reports for products subject to the International Electrotechnical Commission's System for Conformity Testing to Stand-

ards for Safety of Electrical Equipment (“IECEE CB Scheme”) to which China was a party, and simplify the procedures for obtaining the new, unified certification mark

- Shorten the time period needed for importers to obtain both marks regarding the same products, to no more than three months.

(c) Automobiles and Parts

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

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

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

The Working Party took note of these commitments.

197. The representative of China confirmed that, except as otherwise specified in the Draft Protocol, China would apply all obligations under the TBT Agreement from the date of accession. The Working Party took note of this commitment.

#### 4. *Sanitary and Phytosanitary Measures*

198. Some Members of the Working Party expressed concerns in relation to the use by China of sanitary and phytosanitary (“SPS”) procedures as non-tariff barriers and raised specific instances where they considered that China’s measures were not consistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (“SPS Agreement”). Members sought assurances that China would only use SPS measures to the extent necessary to protect human, animal or plant life or health, and that such measures would be based fully on scientific principles.

199. The representative of China stated that pursuant to the provisions of the SPS Agreement, China applied SPS measures only to the extent necessary to protect the life and health of human beings, animals and plants. He also noted that most

of China's SPS measures were based on international standards, guidelines and recommendations. China would not apply SPS measures in a manner which would act as a disguised restriction on trade. In accordance with the SPS Agreement, China would ensure that SPS measures would not be maintained without sufficient scientific evidence. The Working Party took note of these commitments.

200. Members of the Working Party expressed the view that China should comply with the SPS Agreement from the date of China's accession and should ensure conformity with the SPS Agreement of all its laws, regulations, decrees, requirements and procedures relating to SPS measures. In response, the representative of China confirmed that China would fully comply with the SPS Agreement and would ensure the conformity with the SPS Agreement of all of its laws, regulations, decrees, requirements and procedures relating to SPS measures from the date of accession. The Working Party took note of these commitments.

201. Members of the Working Party noted that China's notification of laws, regulations and other SPS measures, referred to in the Draft Protocol, was provided in document WT/ACC/CHN/33. Members of the Working Party agreed that this notification did not prejudice the legal status under the WTO Agreement of the nature or effects of the notified laws, regulations and other SPS measures.

202. The representative of China said that China had set up an SPS notification authority and an SPS enquiry point which would be notified to the SPS Committee. SPS measures, including those relating to inspection, had been published in publications such as the MOFTEC Gazette. Information could also be gathered from the SPS notification authority or from China's SPS enquiry point.

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

203. The representative of China confirmed that upon accession, as set forth in the Draft Protocol, China would comply fully with the TRIMs Agreement, without recourse to Article 5 thereof, and would eliminate foreign-exchange balancing and trade balancing requirements, local content requirements and export performance requirements. Chinese authorities would not enforce the terms of contracts containing such requirements. The allocation, permission or rights for importation and investment would not be conditional upon performance requirements set by national or sub-national authorities, or subject to secondary conditions covering, for example, the conduct of research, the provision of offsets or other forms of industrial compensation including specified types or volumes of business opportunities, the use of local inputs or the transfer of technology. Permission to invest, import licences, quotas and tariff rate quotas would be granted without regard to the existence of competing Chinese domestic suppliers. Consistent with its obligations under the WTO Agreement and the Draft Protocol, the freedom of contract of enterprises

would be respected by China. The Working Party took note of this commitment.

204. In the context of discussions on the government's Industrial Policy for the Automotive Sector, the representative of China confirmed that this policy would be amended to ensure compatibility with WTO rules and principles. The Working Party took note of this commitment.

205. The representative of China added that amendments would be made to ensure that all measures applicable to motor vehicle producers restricting the categories, types or models of vehicle permitted for production, would gradually be lifted. Such measures would be completely removed two years after accession, thus ensuring that motor vehicle producers would be free to choose the categories, types and models they produced. However, it was understood that category authorizations by the government could continue to distinguish between trucks and buses, light commercial vehicles, and passenger cars (including multi-purpose vehicles and sport utility vehicles). The Working Party took note of this commitment.

206. The representative of China confirmed that China also agreed to raise the limit within which investments in motor vehicle manufacturing could be approved at provincial government level only, from the current level of US\$30 million, to US\$60 million one year after accession, US\$90 million two years after accession, and US\$150 million four years after accession. The Working Party took note of this commitment.

207. With respect to the manufacture of motor vehicle engines, the representative of China also confirmed that China agreed to remove the 50 per cent foreign equity limit for joint-ventures upon accession. The Working Party took note of this commitment.

#### 6. *State Trading Entities*

208. Some members of the Working Party expressed concern that the activities of China's state trading enterprises were not sufficiently transparent and were not in accordance with WTO obligations. The representative of China indicated, however, that China's state trading enterprises had full management autonomy and responsibility for their own profits and losses and that China had undertaken broad and significant commitments to improve the transparency of state trading enterprises' operation and the measures relating to such operation.

209. The same members of the Working Party also stated that China should ensure that the import purchasing practices and procedures of state trading enterprises were fully transparent, and in compliance with the requirements of the WTO Agreement. They considered that China should also refrain from taking any measure to influence

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or direct state trading enterprises as to the quantity, value, or country of origin of goods purchased or sold, except in accordance with the requirements of the WTO Agreement. Those members also stated that as part of China's notification under the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, China should also notify information on state trading, including, in the case of state trading of exported goods, domestic procurement prices, contract terms for delivery and financing terms and conditions.

210. In response, the representative of China stated that its state trading enterprises had full management autonomy and responsibility for their own profits and losses. However, some members of the Working Party again stated that China should undertake a commitment to ensure that all state trading enterprises complied with the requirements of the WTO Agreement. The representative of China noted that a list of products subject to state trading had been provided in Annex 2A of the Draft Protocol. He also confirmed that information on state trading enterprises, as required by the Draft Protocol, would be supplied, consistent with the requirements of paragraph 333 of this Report. The Working Party took note of this commitment.

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

212. Some members of the Working Party requested assurances that, for oil products, quantities reserved for non-state traders would be allocated in such a manner that they would be fully utilized. In this respect, the representative of China confirmed that imports allocated to non-state traders of crude and processed oil, as specified in Annex 2A of the Draft Protocol, would be carried over to the next year if they were not fully utilized. In addition, the representative of China agreed that China would publish, on a quarterly basis, the requests for imports that had been made by non-state traders, as well as the licences granted, and would supply information relevant to such traders upon request. The Working Party took note of these commitments.

213. Some members of the Working Party noted that prior to accession, some enterprises in China were permitted to import goods for their production purposes, including those goods included in Annex 2A. The representative of China confirmed that, notwithstanding Section 5, paragraph 1, of the Draft Protocol, non-state trading enterprises, including private enterprises, would still be permitted to import such goods for production purposes and that national treatment would be provided to such imports. The Working Party took note of these commitments.

214. Some members of the Working Party expressed concerns about supplies of raw materials in the textiles sector, and particularly in regard to supplies of silk, in the light of China's position as the major world supplier of silk, currently subject to state trading rights concerning exports.

215. In this regard, the representative of China confirmed that China would progressively abolish the system of state trading in respect of silk by measures increasing and extending trading rights, with the result that China would remove completely the silk products set out in numbers 10 and 11 of Annex 2A2 to the Draft Protocol (list of products subject to state trading on exports) and grant the right to trade in such products to all individuals and enterprises no later than 1 January 2005. Pending the implementation of this right, China undertook not to introduce any changes of a more restrictive nature to the existing structures in place for the supply of silk. The representative of China further confirmed that access to supplies of raw materials in the textiles sector would remain at conditions no less favorable than for domestic users, and gave his assurance that access to supplies of raw materials as enjoyed under existing arrangements would not be adversely affected following China's accession. The Working Party took note of these commitments.

216. Members of the Working Party noted that domestic prices for most agricultural commodities in China were higher than world prices, and this differential allowed China's state trading enterprises to import at low prices and then mark up the price when selling the product to wholesalers and end-users. Some members expressed concern that this practice could become more widespread when access opportunities were created under TRQs. Those members were particularly concerned that mark-ups could be used to reduce the competitiveness of imported products and limit the range of qualities and grades available to end-users in China. The representative of China stated that currently state trading enterprises did not mark up imported products; instead, they only charged a nominal transaction fee. Consequently, China's practice was consistent with WTO obligations, did not result in any trade-distorting effect, and that under China's law limits existed on the fees that could be charged by state trading enterprises.

217. The representative of China stated that China would ensure that no price increase in respect to imports, in particular by state trading enterprises, would result in protection beyond that allowed in its Schedule of Concessions and Commitments on Goods or that was not otherwise justified under WTO rules. The Working Party took note of this commitment.

#### *7. Special Economic Areas*

218. Members of the Working Party noted that there was insufficient information available concerning special economic areas within China's customs territory,

including border trade regions and minority autonomous areas, SEZs, open coastal cities, economic and technical development zones and other areas where special regimes for tariffs, taxes and regulations had been established (collectively referred to as “special economic areas”), in particular their names, geographic boundaries, and relevant laws, regulations and other measures relating thereto.

219. In response, the representative of China stated that since 1979 China had established a number of special economic areas where more open policies were applied. They included five SEZs, 14 open coastal cities, six open cities along the Yangtze River, 21 provincial capital cities and 13 inland boundary cities. Those special economic areas enjoyed greater flexibility in utilizing foreign capital, introducing foreign technology and conducting economic cooperation overseas. At present, foreign investors were entitled to certain preferential treatment.

220. The representative of China further stated that FIEs located in SEZs or the Economic and Technical Development Zones of open coastal cities were entitled to a corporate income tax rate of 15 per cent (the normal income tax was 33 per cent). Profits remitted abroad by foreign investors were exempted from income tax. The preferential income tax rate of 15 per cent was applicable to technology-intensive or knowledge-intensive items or projects with foreign investment of over US\$30 million, as well as enterprises that operated in the fields of energy, transport and port construction.

221. The representative of China noted that throughout the customs territory of China, a socialist market economy system was applied. In 1999, the foreign trade volume of SEZs accounted for nearly one fifth of the nation’s total. The national laws and regulations on taxation were applicable to SEZs in a uniform manner.

222. In response to further requests for information, the representative of China indicated that there was no plan to establish any new SEZs. The special preferential tariff policies applied to SEZs had been eliminated. With the development of China’s economic reform and opening up, China would implement its tariff policy uniformly throughout its customs territory. Members of the Working Party expressed concern that imported products introduced from these special economic areas into other parts of China’s customs territory should be subject to the same treatment in the application of all taxes, import restrictions and customs duties and other charges as that normally applied to imports into the other parts of China’s customs territory. The representative of China stated that China would undertake to ensure such non-discriminatory treatment. The Working Party took note of this commitment.

223. Some members of the Working Party also raised concerns as to whether the assistance provided to minority autonomous regions and other areas of economic poverty was consistent with WTO requirements. In response, the representative of

China confirmed that China had a clear commitment to uniform administration of the trade regime within each such area and that, upon accession, China would ensure that such assistance would be implemented consistent with WTO obligations. The Working Party took note of this commitment.

224. Some members of the Working Party requested that China take steps to ensure that all products imported into the other parts of the customs territory of China from special economic areas would be subject to the same normal customs duties and charges as any other product imported into the customs territory of China. In particular, those members requested that China undertake a commitment to apply all taxes, charges and measures affecting imports, including import restrictions and customs and tariff charges, that were normally applied to imports into the other parts of China's customs territory to all imported products, including physically incorporated components, entering China's customs territory from the special economic areas.

225. The representative of China confirmed that China would strengthen the uniform enforcement of taxes, tariffs and non-tariff measures on trade between its special economic areas and the other parts of China's customs territory. The representative of China further confirmed that statistics on trade between China's special economic areas and the other parts of its customs territory would be maintained and improved, and would be notified to the WTO on a regular basis. The Working Party took note of these commitments.

226. Some members of the Working Party requested that China notify the WTO of all the relevant laws, regulations and other measures relating to its special economic areas. They asked that the notification list and identify all those special economic areas. Those members also requested that China notify the WTO promptly, but in any case within 60 days, of any additions or modifications to its special economic areas, including notification of the laws, regulations and other measures relating thereto.

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

228. In response to concerns raised by some members of the Working Party, the representative of China confirmed that any preferential arrangements provided to foreign invested enterprises located within the special economic areas would be provided on a non-discriminatory basis. The Working Party took note of this commitment.

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8. *Transit*

229. The representative of China stated that **the current regulation of transit in China, the Regulations of the Customs of the People's Republic of China on the Supervision and Administration of Transit Goods, was consistent with Article V of the GATT 1994.**

9. *Agricultural Policies*

230. The representative of China stated that since China was a country with a vast agricultural base, as well as a vast population, agricultural security and food security in particular, was an issue of supreme importance. China based its policies on domestic agricultural supply, especially on balanced supply and demand of grains. Meanwhile, China actively sought international resources as a necessary supplement.

231. While noting this statement, some members of the Working Party expressed concerns about China's linkage of import policies for agriculture, including TRQ allocations, to domestic production policy and the sub-national supply and utilization situation. Those members requested that China undertake an appropriate commitment to eliminate these practices. In response, the representative of China confirmed that China would base import policies for agriculture on commercial considerations only. The Working Party took note of this commitment.

232. Some members of the Working Party expressed further concerns in relation to administrative guidance provided at the national and sub-national level which could have the effect of influencing the quantity and composition of agricultural imports. Those members considered reform of these practices toward full WTO consistency as an essential element of China's accession. To ensure effective market access opportunities were created for imported products, some members requested assurances from China that agricultural and trade policies would not discriminate in a WTO inconsistent manner against imported products. Consistent with China's commitment to uniform administration, the representative of China confirmed that, by the date of accession, China would not maintain, resort or revert to guidance plans or administrative guidance at the national or sub-national level that regulate the quantity, quality or treatment of imports, or constitute import substitution practices or other non-tariff measures, including those maintained through state trading enterprises at the national or sub-national level. The Working Party took note of this commitment.

233. Some members of the Working Party expressed concern that large stocks in China of grain and cotton had been procured at relatively high prices by state-trading enterprises or other state-affiliated, state-run, or state-controlled entities and noted that exports of these or other government-purchased products at prices lower

than the comparable price charged for the like product to buyers in the domestic market could be challenged as an export subsidy or as inconsistent with other WTO obligations. These members requested that China ensure that all entities, including state trading enterprises and any other state-affiliated, state-run, or state-controlled entity at the national or sub-national level operated in accordance with China's WTO obligations, including those on export subsidies. In response, the representative of China confirmed that all entities in China would operate in accordance with China's WTO obligations, including those on export subsidies. Further, the representative of China stated that national and sub-national authorities would not provide fund transfers or other benefits to any entities in China that would be inconsistent with its WTO obligations, including to offset losses accrued through exports. The Working Party took note of these commitments.

234. The representative of China confirmed that by the date of accession, China would not maintain or introduce any export subsidies on agricultural products. The Working Party took note of this commitment.

235. In implementing Article 6.2 and 6.4 of the Agreement on Agriculture, the representative of China confirmed that while China could provide support through government measures of the types described in Article 6.2, the amount of such support would be included in China's calculation of its Aggregate Measurement of Support ("AMS"). He noted that China's Total AMS Commitment Level was set forth in Part IV, Section I of China's Schedule. The representative of China further confirmed that China would have recourse to a *de minimis* exemption for product-specific support equivalent to 8.5 per cent of the total value of production of a basic agricultural product during the relevant year. The representative of China confirmed that China would have recourse to a *de minimis* exemption for non-product-specific support of 8.5 per cent of the value of China's total agricultural production during the relevant year. Accordingly, these percentages would constitute China's *de minimis* exemption under Article 6.4 of the Agreement on Agriculture. The Working Party took note of these commitments.

236. China's concessions on agricultural tariffs, and commitments on domestic support and on export subsidies for agricultural products were contained in the Schedule of Concessions and Commitments on Goods annexed to the Draft Protocol as Annex 8.

237. Some members of the Working Party noted that the domestic support tables of China in WT/ACC/CHN/38/Rev.3 showed China's base total AMS as zero in DS:4. They also noted that product specific support was negative in DS:5.

238. Some members of the Working Party noted that although WT/ACC/CHN/38/Rev.3 did provide a basis for supporting the commitments in China's

Schedule, this document still contained issues which required further methodological clarification relating to policy classification. The representative of China confirmed that this clarification would be addressed in the context of China's notification obligations under the Agreement on Agriculture. The Working Party took note of this commitment.

#### *10. Trade in Civil Aircraft*

239. In response to questions from members of the Working Party, the representative of China indicated that **China was not in a position to commit to joining the Agreement on Trade in Civil Aircraft at the present stage.**

240. The representative of China confirmed that China would not impose any provisions of offsets or other forms of industrial compensation when purchasing civil aircraft, including specified types or volumes of business opportunities. The Working Party took note of this commitment.

#### *11. Textiles*

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

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

- (a) In the event that a WTO Member believed that imports of Chinese origin of textiles and apparel products covered by the ATC as of the date the WTO Agreement entered into force, were, due to market disruption, threatening to impede the orderly development of trade in these products, such Member could request consultations with China with a view to easing or avoiding such market disruption. The Member requesting consultations would provide China, at the time of the

request, with a detailed factual statement of reasons and justifications for its request for consultations with current data which, in the view of the requesting Member, showed: (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption;

- (b) Consultations would be held within 30 days of receipt of the request. Every effort would be made to reach agreement on a mutually satisfactory solution within 90 days of the receipt of such request, unless extended by mutual agreement;
- (c) Upon receipt of the request for consultations, China agreed to hold its shipments to the requesting Member of textile or textile products in the category or categories subject to these consultations to a level no greater than 7.5 per cent (6 per cent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made;
- (d) If no mutually satisfactory solution were reached during the 90-day consultation period, consultations would continue and the Member requesting consultations could continue the limits under subparagraph (c) for textiles or textile products in the category or categories subject to these consultations;
- (e) The term of any restraint limit established under subparagraph (d) would be effective for the period beginning on the date of the request for consultations and ending on 31 December of the year in which consultations were requested, or where three or fewer months remained in the year at the time of the request for consultations, for the period ending 12 months after the request for consultations;
- (f) No action taken under this provision would remain in effect beyond one year, without reapplication, unless otherwise agreed between the Member concerned and China; and
- (g) Measures could not be applied to the same product at the same time under this provision and the provisions of Section 16 of the Draft Protocol.

The Working Party took note of these commitments.

12. *Measures Maintained Against China*

243. The representative of China stated that WTO Members should eliminate all discriminatory non-tariff measures maintained against Chinese exports from the date of China's accession. In response, some members of the Working Party stated

that, in their view, such measures did not need to be phased out until such time as China's foreign trade regime fully conformed to WTO obligations.

244. In light of the above, it was agreed that any prohibitions, quantitative restrictions or other measures maintained against imports from China in a manner inconsistent with the WTO Agreement would be listed in Annex 7 to the Draft Protocol. It was further agreed that all such measures would be phased out or otherwise dealt with in accordance with mutually agreed terms and timetables as specified in said annex.

### 13. *Transitional Safeguards*

245. With respect to implementation of the product-specific safeguard, the representative of China expressed particular concern that WTO Members provide due process and use objective criteria in determining the existence of market disruption or trade diversion, because WTO Members did not have wide experience in implementing the provisions of Section 16 of the Draft Protocol. He stated that with respect to trade diversion, WTO Members needed to apply objective criteria to determine whether an action by China or another WTO Member under the product-specific safeguard to prevent or remedy market disruption caused or threatened to cause significant diversion of trade. Such criteria should include the actual or imminent increase in market share or volume of imports from China, the nature or extent of the action taken by China or the other WTO Member and other similar criteria. In addition, WTO Members should provide an opportunity for importers, exporters and all interested parties to submit their views on the matter.

246. Members of the Working Party noted that the Draft Protocol included specific requirements that WTO Members needed to follow in connection with an action under that Section. Members of the Working Party confirmed that in implementing the provisions on market disruption, WTO Members would comply with those provisions and the following:

- (a) An action to address market disruption would be taken only after an investigation by the competent authorities of the importing WTO Member pursuant to procedures previously established and made available to the public;
- (b) The competent authority of the importing Member would publish notice of the commencement of any investigation under the product-specific safeguard provisions of the Draft Protocol and would, within a reasonable time thereafter, hold a public hearing or provide other appropriate means for the purpose of permitting interested parties to present evidence and their views as to the appropriateness of whether

- or not to take a measure and to respond to the presentations of other parties;
- (c) In determining whether market disruption existed, including the causal link between imports which were increasing rapidly, either absolutely or relatively, and any material injury or threat of material injury to the domestic industry, the competent authorities would consider objective factors, including (1) the volume of imports of the product which was the subject of the investigation; (2) the effect of imports of such product on prices in the importing WTO Member's market for the like or directly competitive products; (3) the effect of imports of such product on the domestic industry producing like or directly competitive products;
  - (d) The competent authorities would publish any measure proposed to be taken and provide the opportunity, including a public hearing, if requested, or provide other appropriate means, for importers, exporters and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest;
  - (e) The competent authority would promptly publish notice of the decision to apply a measure, including an explanation of the basis for the decision and the scope and duration of the measure;
  - (f) The period of application of the measure could be extended, provided that the competent authorities of the importing WTO Member had determined that action continued to be necessary to prevent or remedy market disruption. The competent authorities of the importing WTO Member would publish notice of the commencement of any proceeding to consider whether to extend the duration of an action and would, within a reasonable time thereafter, hold a public hearing or provide other appropriate means for the purpose of permitting all interested parties to have an opportunity to present evidence or their views and to respond to the presentations of other parties;
  - (g) Except for good cause, no investigation under Section 16 of the Protocol on the same subject matter could be initiated less than one year after the completion of a previous investigation; and
  - (h) A WTO Member would apply a measure only for such period of time as was necessary to prevent or remedy market disruption.

247. Trade diversion referred to an increase in imports from China of a product into a WTO Member as the result of an action by China or other WTO Members pursuant to paragraphs 2, 3 or 7 of Section 16 of the Draft Protocol. Members

of the Working Party also noted that the Draft Protocol required a determination that any trade diversion was significant and that the action taken to address market disruption had caused or threatened to cause the diversion.

248. Members of the Working Party agreed that objective criteria had to be applied in determining whether actions to prevent or remedy market disruption caused or threatened to cause significant diversion of trade. Among the factors to be examined were:

- (a) the actual or imminent increase in market share of imports from China in the importing WTO Member;
- (b) the nature or extent of the action taken or proposed by China or other WTO Members;
- (c) the actual or imminent increase in the volume of imports from China due to the action taken or proposed;
- (d) conditions of demand and supply in the importing WTO Member's market for the products at issue; and
- (e) the extent of exports from China to the WTO Member(s) applying a measure pursuant to paragraphs 2, 3 or 7 of Section 16 of the Draft Protocol and to the importing WTO Member.

249. A measure taken to address significant diversions of trade would be terminated not later than 30 days after the expiration of the action taken by the WTO Member or Members involved against imports from China.

250. If the WTO Member or Members taking an action to address market disruption notified the WTO Committee on Safeguards of any modification of an action, the competent authorities of the WTO Member addressing trade diversion would determine whether a significant diversion of trade continued to exist and determine whether to modify, withdraw or keep in place the action taken.

## V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

### A. GENERAL

#### *I. Overview*

251. The representative of China stated that China had made the protection of intellectual property rights ("IPRs") an essential component of its reform and opening-up policy and socialist legal construction. The formulation of laws and regulations in this field could be traced back to the late 1970s. Since then, China

had joined relevant international conventions and had actively participated in the activities sponsored by relevant international organizations. It had intensified its exchanges and cooperation with countries throughout the world in the field of IPR protection. As a result, notwithstanding the initial stage of its development, China's IPR protection system aimed at achieving world dimension and world standards. Lists of **administrative rules concerning intellectual property rights currently in force in China** were presented below in **Table A. The status of ongoing reforms and other relevant information** was presented in **Table B in the following paragraph**. Other laws, regulations and measures relating to the implementation of the TRIPS Agreement had been or would be notified to the WTO and would be made available upon request.

Table A: The Administrative Rules of China Concerning Intellectual Property Rights

<p>The following three parts were the administrative rules regarding protection of intellectual property right, which were still in force in China. As an important part of China's IPR legal system, these rules had a great effect on IPR protection, enforcing the IPR law, etc.</p>	
Part I	List of Administrative Rules Regarding Protection of Patent Right
Part II	List of Administrative Rules Regarding Protection of Trademark
Part III	List of Administrative Rules Regarding Protection of Copyright
<p>Part I List of Administrative Rules Regarding Protection of Patent Right</p> <ul style="list-style-type: none"> <li>(i) Methods on the Showing the Identification of Right of Priority to Applicant made by Patent Office of China (1 March 1988)</li> <li>(ii) Opinions of the Patent Office of China concerning the Implementation of the Regulations on Patent Commissioning (19 April 1991)</li> <li>(iii) Explanation of the Patent Office of China on Certain Matters Relating to the Commissioning Involving Foreign Interests (16 November 1987)</li> <li>(iv) Decree of Patent Office of China (No.26) (20 November 1989)</li> <li>(v) Decree of Patent Office of China (No.27) (21 December 1989)</li> <li>(vi) Decree of Patent Office of China (No.31) (14 March 1991)</li> <li>(vii) Procedures for Administrative Reconsideration of Patent Office of the People's Republic of China (for Trial Implementation) (21 December 1992)</li> <li>(viii) Methods of Handling the Patent Disputes by the Administrative Authorities for Patent Affairs (4 December 1989)</li> </ul>	

<b>Part II List of Administrative Rules Regarding Protection of Trademark</b>	
(i)	Circular on the Commodities Demanded to Use Registered Trademark made by the State Administration for Industry and Commerce (14 January 1988)
(ii)	Circular on the Prohibition from Registering the Other Person's Trademark Abroad without Being Authorized made by State Administration for Industry and Commerce and the Ministry of Foreign Economy and Trade (19 November 1990)
(iii)	Interim Provisions on Claims for Priority in Applying for Registration of Trademarks made by State Administration for Industry and Commerce (15 March 1983)
(iv)	Methods of the Application International Registration of Trademark of Madrid made by the State Administration for Industry and Commerce (2 March 1989)
(v)	Circular on the Stopping Using the Literal of "Xiang Bin" or "Champagne" in Varieties of Commodities of Alcohol made by the State Administration for Industry and Commerce (26 October 1989)
(vi)	Circular on Printing and distributing "the Rules regarding the Question of Using Trademark in Can Food for Export" (15 October 1991)
(vii)	Provisions on the Control over the Surrogate of Trademark
(viii)	Provisions on the Registration of and the Control over the Collective Trademark and Certified Trademark (issued on 30 December 1994, revised on 3 December 1998)
(ix)	Provisions on the Control over the Printing of Trademark (issued on 5 September 1996, revised on 3 December 1998)
<b>Part III List of Administrative Rules Regarding Protection of Copyright</b>	
(i)	Opinions of the National Copyright Administration on Questions Relating to Reprinting the Programs in Advance in Broadcast and Television (12 December 1987)
(ii)	Circular of the National Copyright Administration of Printing and Distribution "Report Relating to Appropriate Handling the Copyright Question in the Process of Culture Communication with Taiwan" and "Interim Provisions Relating to the Copyright Question of Pressing the Works Written by Taiwan Compatriots" (8 February 1988)
(iii)	Circular of National Copyright Administration regarding the Points for Attention of Transferring Copyright to Taiwan's Press Person (26 December 1987)
(iv)	Opinions of National Copyright Administration on Matters Relating to Local Work on Copyright Management (May 1988)
(v)	Circular of the National Copyright Administration concerning Procedures of Examining and Verifying the Copyright Trading Contract Between the Mainland and Hong Kong, Macao and Taiwan (2 November 1988)
(vi)	Opinions on Certain Matters of the National Copyright Administration concerning Handling Copyright Cases (27 December 1988)
(vii)	Circular of the National Copyright Administration concerning the Standard of Paying Author's Remuneration When the Press Reprint and Extract the Published Works at Present (27 August 1991)
(viii)	Interim Provisions of the Standard of Paying Author's Remuneration When the Press Reprint and Extract the Published Works with the Consent by Law (1 August 1993)
(ix)	Interim Provisions of the Standard of Paying Author's Remuneration When Perform the Published Works with the Consent by Law (1 August 1993)

(x)	Interim Provisions of the Standard of Paying Author's Remuneration When Record the Published Works with the Consent by Law (1 August 1993)
(xi)	Direction of the Chinese Center of Receiving and Transmitting Author's Remuneration concerning Receiving and Transmitting Remuneration About the Press Extract the Published Works
(xii)	Circular of the National Copyright Administration concerning Enforcing "the Memorandum of Understanding between the Government of the People's Republic of China and the Government of the United States of America on the Protection of Intellectual Property" (29 February 1992)
(xiii)	Urgent Circular concerning Strengthening Administration of Reproducing Compact Discs and Laser Discs (12 April 1994)
(xiv)	Circular of Enforcing "Urgent Circular concerning Strengthening Administration of Reproducing Compact Discs and Laser Discs" (12 May 1994)
(xv)	Cooperate Circular of the Ministry of Judicial and National Copyright Administration concerning Bringing Notary Office into Play in Dealing with the Infringing Copyright Cases (29 August 1994)
(xvi)	Measures of the Registration of Copyright of Computer Software (4 June 1992)
(xvii)	Guide to Classified Coding of Software in Computer Software's Registration
(xviii)	The Item and Standard of Registration Expenses of Computer Software (18 April 1992)

252. The representative of China stated that for accession to the WTO Agreement and compliance with the TRIPS Agreement, further amendments had been made to the Patent Law. The amendments to the Copyright Law and the Trademark Law, as well as relevant implementing rules covering different areas of the TRIPS Agreement, would also be accomplished upon China's accession. The representative of China stated that laws adopted by the National People's Congress and administrative regulations, including implementing rules, issued by the State Council were applied and enforced by the people's courts. The Working Party took note of these commitments.

Table B: Revision of China's IPR Laws in Conformity with the TRIPS Agreement

The People's Republic of China had conducted an intensive work programme to examine and revise the IPR laws, administrative regulations and department rules relating to the implementation of the WTO Agreement and China's accession commitments. A list of China's IPR laws, administrative regulations and department rules to be revised and abolished was hereby notified to the Working Party. Part I of the list contained eight laws and regulations. Part II of the list contained four department rules to be revised or abolished for the same reason. This list included the names of laws, regulations and department rules, reasons for revision or abolishment, and dates of implementation.	
Part I Laws and Administrative Regulations	
Laws and Regulations	Date of Implementation
1. Copyright Law of the People's Republic of China	Upon accession
2. Regulations for the Implementation of the Copyright Law of the People's Republic of China	Upon accession
3. Regulations for the Protection of Computer Software	Upon accession

The People's Republic of China had conducted an intensive work programme to examine and revise the IPR laws, administrative regulations and department rules relating to the implementation of the WTO Agreement and China's accession commitments. A list of China's IPR laws, administrative regulations and department rules to be revised and abolished was hereby notified to the Working Party. Part I of the list contained <b>eight</b> laws and regulations. Part II of the list <b>contained four department rules to be revised or abolished for the same reason</b> . This list <b>included the names of laws, regulations and department rules, reasons for revision or abolishment, and dates of implementation.</b>	
4. Trademark Law of the People's Republic of China	Upon accession
5. Detailed Rules for the Implementation of the Trademark Law of the People's Republic of China	Upon accession
6. Regulations of the People's Republic of China on the Protection of New Varieties of Plants	Effective as of 1 October 1997
7. Law of the People's Republic of China Against Unfair Competition	Effective as of 1 December 1993
8. Regulations on the Implementation of the Integrated Circuit Layout Design	To be effective as of 10 October 2001
<b>Part II Department Rules</b>	
Department Rules	Date of Implementation
1. Interim Rules on the Administration of Patents in Agriculture, Animal Husbandry and Fisheries	To be abolished upon accession
2. Notice on the Interim Regulation on the Protection of Copyright of Books and Magazines	To be abolished upon accession
3. Notice on the Issuance of the "Detailed Rules of Interim Regulations on the Protection of Copyright of Books and Magazines", "Publication Intention Contracts" and "Publication Contracts"	To be abolished upon accession
4. Interpretation of Article 15(4) of the "Interim Regulation on the Protection Copyright of Books and Magazines"	To be abolished upon accession

## 2. *Responsible agencies for policy formulation and implementation*

253. The representative of China stated **that, at present, different agencies were responsible for IPR policy formulation and implementation.** The State Intellectual Property Office ("SIPO") was responsible for patent approval; the Trademarks Office under the State Administration for Industry and Commerce ("SAIC") was responsible for trademarks registration; the Copyright Office was responsible for copyright policy making; SAIC was responsible for anti-unfair competition, including the protection of trade secrets; the State Drug Administration ("SDA") was responsible for administrative protection of pharmaceuticals; the General Customs Administration was responsible for border measures; the Ministry of Agriculture and the State Administration of Forestry **were responsible for protection of plant varieties;** the Ministry of Information Industry was responsible for the protection of layout designs of integrated circuits; and the State General Administration of the People's Republic of China for Quality Supervision and Inspection and Quarantine and SAIC were responsible for combating counterfeiting activities. Other agencies like the agency for press and publications, **the people's courts and police were also involved in the protection of IPR in China.**

3. *Participation in international intellectual property agreements*

254. The representative of China stated that China became a member of the World Intellectual Property Organization in 1980. In 1985, China became a member of the Paris Convention for the Protection of Industrial Property. China was one of the first countries that signed the Treaty on Intellectual Property in Respect of Integrated Circuits, the negotiation of which was concluded in 1989. In 1989, China became a member of the Madrid Agreement Concerning the International Registration of Marks and in 1992, China became a member of the Berne Convention for the Protection of Literary and Artistic Works. In 1993, China became a member of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. In 1994, China became a member of the Patent Cooperation Treaty and a member of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. In 1995, China became a member of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure and applied for membership in the Protocols of the Madrid Agreement Concerning the International Registration of Marks. In 1996, China became a member of the Locarno Agreement on Establishing an International Classification for Industrial Designs; and in 1997, China became a member of the Strasbourg Agreement Concerning the International Patent Classification. Besides the above efforts, China participated in the TRIPS negotiations during the Uruguay Round and initialled the Final Act.

4. *Application of national and MFN treatment to foreign nationals*

255. Some members of the Working Party expressed concern that certain provisions of China's copyright and trademark laws, as well as China's Rules on Banning the Infringement of Business Secrets (23 November 1995) did not provide national treatment to foreign right-holders. The Rules on Banning Infringements of Business Secrets, for example, defined the "owner" of a trade secret as a "citizen, corporation, and other organization" and did not explicitly provide protection for foreign individuals or organizations. Some members of the Working Party further stated that national treatment should be fully applied, so that copyright enforcement action by local copyright bureaux involving foreign right-holders, would no longer require clearance by the National Copyright Administration in Beijing.

256. The representative of China responded that China's IPR laws provided that any foreigner would be treated in accordance with any agreement concluded between the foreign country and China, or in accordance with any international treaty to which both countries were party, or on the basis of the principle of reciprocity. The representative of China further confirmed that China would modify relevant laws, regulations and other measures so as to ensure national and MFN treatment to foreign right-holders regarding all intellectual property rights across the board

in compliance with the TRIPS Agreement. **This would include adjustments of the clearance requirement mentioned in the previous paragraph to ensure national treatment. The Working Party took note of these commitments.**

B. SUBSTANTIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

1. *Copyright protection*

257. The representative of China stated that the **Copyright Law, which was promulgated in 1990, established the basic copyright protection system in China together with the Implementing Rules of the Copyright Law (30 May 1991), the Provisions on the Implementation of the International Copyright Treaty (25 September 1992) and other related laws and regulations. In principle, this system was in compliance with the international IPR treaties and practices. For the protection of copyright and neighbouring rights, not only civil and criminal liabilities but also administrative liabilities, were provided for in this system. Hence the infringing activities could be curbed in a timely and effective manner and the legitimate rights of the right-holders could be protected.**

258. Some members of the **Working Party expressed concerns about the consistency of China's current law on the protection of copyright and related rights with the TRIPS Agreement. In particular, members noted the need to clarify the rights of performers and producers to bring them into conformity with the requirements of Article 14 of the TRIPS Agreement. In addition, improvements were needed with respect to enforcement of copyright to provide expressly for provisional measures to preserve evidence, including documentary evidence and for remedies sufficient to deter further infringements.**

259. The representative of China responded that, **realizing that there were some existing differences between China's copyright laws and the TRIPS Agreement, the amendment to the Copyright Law had been accelerated. The proposed amendments would clarify the payment system by broadcasting organizations which use the recording products and also include the following provisions: rental rights in respect of computer programs and movies, mechanical performance rights, rights of communication to the public and related protection measures, protection of database compilations, provisional measures, increasing the legitimate compensation amount and strengthening the measures against infringing activities. China's copyright regime including Regulations for the Implementation of the Copyright Law and the Provisions on the Implementation of the International Copyright Treaty would be amended so as to ensure full consistency with China's obligations under the TRIPS Agreement. The Working Party took note of these commitments.**

2. *Trademarks, including service marks*

260. The representative of China stated that the Trademark Law, its implementing rules and other relevant laws, administrative regulations and department rules constituted **the existing trademark legal system in China**. The objective of these laws was to **provide protection to right-holders in line with the international conventions and prevailing practices regarding intellectual property rights**, which was embodied both in the regulations on the substance and procedures for trademark registration and in the protection of trademark exclusive rights. In order to protect the trademark owner's exclusive rights, China's Trademark Law contained not only civil and criminal liabilities but also provided for administrative punishment of trademark infringers. This "double-track system" **for the protection of exclusive rights in trademarks could prevent trademark infringements in a timely and effective manner and protect the legitimate rights and interests of these exclusive rights**. In recent years, China's judicial and administrative bodies had stepped up their efforts to protect trademark exclusive rights within their respective authority. They had settled a large number of cases that were influential, domestically and abroad, **which provided adequate protection to the legitimate rights and interests of both Chinese and foreign holders of exclusive rights in trademarks**, and received a positive response from domestic and foreign right-holders.

261. Some members of the Working Party reiterated their concerns about whether certain provisions of China's trademark law provided national treatment to foreign owners of trademarks. They noted that China's law required foreign owners of trademarks to use designated trademark agents, while Chinese nationals were permitted to file directly with China's Trademark Office. Members also noted that China's trademark law did not consider certain signs as eligible for protection as required under the TRIPS Agreement. These included names, letters, numerals and colours **capable of distinguishing goods and services**. **In addition, if registrability of a trademark depends on use, China's trademark law should provide that a non-distinctive mark could qualify for registration when it has acquired distinctiveness based on use**. Members also noted that it was not clear under China's law that actual use of a mark was not required before a party could file to register a mark.

262. Some members of the Working Party also raised concerns about the protection of well-known trademarks in China, in particular those not registered in China. China's laws and regulations did not specifically state the criteria for determining whether a mark was well-known and therefore members could not determine if it conformed to the requirements of Article 16 of the TRIPS Agreement. Moreover, while China had provided protection to "well-known trademarks" owned by nationals, such protection had, as yet, not been granted to the well-known trademarks of foreigners. Members also noted that certain provisions of China's trademark law needed to be extended to unregistered well-known trademarks.

263. The representative of China stated that with the development of China's market economy and the further implementation of the TRIPS Agreement, China's legislative and law enforcement bodies had also realized that the existing trademark law fell somewhat short of fulfilling the requirements of the TRIPS Agreement and the Paris Convention in a few aspects and were therefore preparing to amend the existing trademark law to fully meet the requirements of the TRIPS Agreement. Modifications would mainly be made to the following aspects: to include the trademark registration of three-dimensional symbols, combinations of colours, alphabets and figures; to add the content of collective trademark and certification trademark (including geographical indications); to introduce official symbol protection; to protect well-known trademarks; **to include priority rights; to modify** the existing trademark right confirmation system and offer interested parties the opportunity for judicial review concerning the confirmation of trademark rights; to crack down on all serious infringements; and to improve the system for providing damages for trademark infringement. The Working Party took note of these commitments.

3. *Geographical indications, including appellations of origin*

264. The representative of China stated that the relevant rules of the SAIC and the State General Administration of the People's Republic of China for Quality Supervision and Inspection and Quarantine partly provided protection for geographical indications, including appellations of origin, and **that the amendments** to the trademark law would have a specific provision on the protection of geographical indications.

265. Members of the Working Party took note of the progress achieved on providing protection for geographical indications and reiterated the importance of China's legislation complying with the obligations under the TRIPS Agreement (Articles 22, 23 and 24). **The representative of China shared this assessment and** reiterated China's intention to fully comply with relevant articles in the TRIPS Agreement on geographical indications. The Working Party took note of this commitment.

4. *Industrial designs*

266. Some members of the Working Party noted that the industrial design provisions of China's patent law appeared to implement substantial portions of the TRIPS Agreement requirements relating to industrial designs. One notable exception was the area of textile designs. These members noted that designs of WTO Members could be protected under China's Provisions on the Implementation of the International Copyright Treaty as works of applied art. Members urged China to incorporate this protection into its law and to provide such protection to domestic

textile designs.

5. *Patents*

267. The representative of China stated that in preparation for its accession, China revised its patent law in 1992 for the first time. China had taken measures to enhance consistency with the TRIPS Agreement in terms of major provisions and protection standards. In order to increase the awareness of the general public on IPR protection, and patent protection in particular, to be consistent with the TRIPS Agreement, and to build up a sound social environment for the promotion and commercialization of inventions, the National People's Congress approved the second revision of the Patent Law on 25 August 2000. The revised patent law, which would take effect on 1 July 2001, included the following elements: (1) patent owners would have the right to prevent others from offering for sale the patented product without their consent (Article 11); (2) for utility model and design applications or patents, the final decision on re-examination and invalidation would be made by the people's courts other than for inventions that were patented prior to the amendment (Articles 41 and 46); (3) patent owners could, before instituting legal proceedings, request the people's court to take provisional measures such as to order the suspension of infringing acts and to provide property preservation (Article 61); and (4) conditions for granting a compulsory licence would be further clarified and made consistent with the TRIPS Agreement.

268. The representative of China further stated that since its establishment, SIPO had paid great attention to strengthening its contacts and coordination with relevant departments and ministries in the field of IPR law enforcement, especially in the areas of settling inter-agency problems and resolving key cases. At the same time, SIPO had taken appropriate measures to improve the performance of local patent authorities in law enforcement. For example, in June 1999, SIPO convened a nationwide working conference, which was attended by representatives from local patent administrative authorities. The participants summarized their law enforcement practices over the previous two years and also exchanged information on their experiences in their local legislative work with a view to intensifying patent protection. The conference also called for the introduction of important patent cases reporting and recording system.

269. The representative of China stated that so far as the range of patent protection and protection for new plant varieties were concerned, China had already met the requirements of Article 27 of the TRIPS Agreement. When amending the Patent Law in 1992, China modified Article 25 therein with reference to the relevant stipulations in the draft of the TRIPS Agreement and expanded the coverage of patent protection to food, beverages, flavourings, pharmaceuticals and materials obtained by chemical methods. The scope of patent exclusions would be limited to

"scientific discoveries, rules and methods of intellectual activities, diagnostic and therapeutic methods for the treatment of diseases, animals and plant varieties, as well as materials obtained by the change of nucleus".

270. He further stated that Article 5 of China's Patent Law stipulated that inventions that violate laws of China or social morality or prejudice public interest would not be entitled to patent right. While literally there was a difference between Article 5 of China's Patent Law and the TRIPS Agreement, in practice, during the review of patent applications, the interpretation of "violating laws of China" had been restricted to "if laws of China prohibit the sale of a certain patented product, or prohibit the sale of products manufactured by a patented method, the granting of patent right cannot be denied to this product invention or this invention of product manufacturing method by relying on Article 5 of the Patent Law". Hence, in essence, he concluded that there was no difference between Article 5 of the Patent Law as applied and the TRIPS Agreement. Nonetheless, China would amend the Implementing Rules of the Patent Law to ensure that this provision would be implemented in full compliance with Article 27.2 of the TRIPS Agreement, which stipulated that: "Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law". The Working Party took note of this commitment.

271. Regarding Article 28 of the TRIPS Agreement (rights conferred), the representative of China stated that China's patent law had fully complied with the requirements of the TRIPS Agreement for the following reasons. First, in the 1992 amendment to the Patent Law, Article 11 was modified as follows: "any entity or individual is, without prior licensing from the patentee, prohibited from making, using or selling patented products or patented processes, or using or selling products directly obtained by the patented processes for the purpose of production and operation". It was also prohibited for any entity or individual to import patented products or products directly obtained by patented processes for the purpose of production and operation. This modification expanded the scope of patentees' right, namely the new content of "the right to prohibit import" and "the effect of patented processes is extended to products directly obtained by patented processes". Second, in 2000, when the second amendment was made to the Patent Law, Article 11 was once again modified. A new stipulation was introduced granting patentees the right to prohibit others from offering for sale the patented products or products directly obtained by patented processes without the consent of patentees. Therefore, so far as "the right of patentees" is concerned, China's Patent Law had fully accommodated the requirements of the TRIPS Agreement.

272. Further to the 1992 amendment, the representative of China stated that China's Patent Law provided for compulsory licences based on reasonable terms, for public interest and for dependent patents. With regard to the conditions of compulsory licences for dependent patents, the Patent Law provided that the latter invention should be technically more advanced than the earlier one. The TRIPS Agreement provides that **"the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent" (Article 31(l)(i)). Since the provisions of the TRIPS Agreement were more transparent and easier to operate, the relevant expressions contained in the TRIPS Agreement were adopted in the new revision. In addition, the following restrictive conditions for granting compulsory licences contained in the Implementing Rules of the Patent Law of 1992 had been moved into the Patent Law in order to make it more authoritative: the decision of SIPO on the granting of a compulsory licence for exploitation would be limited in terms of its scope and duration; when the circumstances which led to such compulsory licence ceased to exist and were unlikely to recur, SIPO, upon the request of the patentee, could terminate the compulsory licence after examination; were incorporated into the Law (former Article 68 of the Implementing Rules of the Patent Law of 1992 had now been moved into Article 52 of the revised Patent Law).**

273. The representative of China stated that **following the 1992 amendment, the regulations on compulsory licensing in China's Patent Law and its implementing rules, as a whole, had fulfilled the requirements of the TRIPS Agreement. However, some wording and expressions in the Chinese regulations were still not identical to the TRIPS Agreement and these regulations still needed improvement in respect of the administrative legal proceedings concerning compulsory licensing. Therefore, in the second amendment to the Patent Law in 2000, the corresponding amendments and modifications to the stipulations on compulsory licensing were mainly made in the following two points: (1) Article 53 of the Patent Law was modified from "a patented invention or utility model is technically more advanced than the inventions or utility models which have obtained patent right earlier" into "a later invention or utility model is an important technical progress with striking economic significance as compared to the earlier invention or utility model"; and (2) having been subject to appropriate adjustments, the regulations on the time, scope and termination of compulsory licensing enforcement in Article 68 of the Implementing Rules of the Patent Law of 1992 were integrated into Article 52 of the amended Patent Law. Following the above-mentioned amendments, China's Patent Law had regulations on compulsory licensing with clearer structure and improved content. In the representative of China's view, these regulations were fully consistent with the TRIPS Agreement. He also added that up to now China had not issued any compulsory licences for patent enforcement.**

274. Some members of the Working Party noted the improvements in the provisions regarding compulsory licensing for patents that the representative of China cited. Some members however, requested clarification of the subject matter that would be subject to compulsory licensing under the Patent Law.

275. In response, the representative of China agreed that still not all the requirements of Article 31 of the TRIPS Agreement had been incorporated into Chinese law, and that the Implementing Rules of the Patent Law would therefore be modified so as to ensure that: (1) use without authorization of the right-holder would only be permitted if, prior to such use, the proposed user had made efforts to obtain authorization from the right-holder on reasonable commercial terms and conditions, on the understanding that this requirement could be waived in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use and subject to the other provisions of subparagraph (b) of Article 31; (2) the right-holder would be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization (Article 31(h)); (3) any such use would be authorized predominantly for the supply of the domestic market (Article 31(f)); and (4) in the case of semi-conductor technology, the scope and duration of such use would only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive (Article 31(c)). The Working Party took note of these commitments.

276. Regarding Article 32 of the TRIPS Agreement (revocation/forfeiture), the representative of China stated that in light of Articles 41 and 46 of the amended Patent Law, patent applicants or patentees of inventions, as well as applicable utility models and designs, could institute legal proceedings in the people's court if they were not satisfied with the review or nullity decisions made by the Patent Review Board. This modification enabled China's Patent Law to be fully consistent with TRIPS regarding administrative decisions which were subject to judicial review.

277. On the duration of patent right protection, the representative of China stated that as early as 1992 when China made an initial amendment to the Patent Law, Article 45 (later converted into Article 42 after the second amendment) was modified as: "the duration of inventions patent right is 20 years and the duration of patent right for applicable utility model and designs is 10 years, counted as of the date of application". Therefore, China's Patent Law had for a long time accorded with Articles 26 and 33 of the TRIPS Agreement concerning the duration of patent rights.

278. Regarding Article 34 of the TRIPS Agreement (process patents: burden of proof), the representative of China stated that China's Patent Law was modified in 1992 and 2000, and was now in full conformity with the TRIPS Agreement. The

amended paragraph 2 of Article 57 reads: "when any infringement dispute relates to a process patent for the manufacture of a new product, any entity or individual manufacturing the identical product shall furnish proof to the effect that a different process is used in the manufacture of its or his product".

6. *Plant variety protection*

279. The representative of China confirmed that China was a party to the 1978 text of the Universal Convention on the Protection of Plant Varieties ("UPOV"). In March 1997, the State Council formulated and promulgated the Regulation on the Protection of New Plant Varieties, thus offering protection for new plant varieties in a *sui generis* form consistent with the requirements of the TRIPS Agreement. A unit or an individual that had accomplished the breeding enjoyed an exclusive right in their right-granted variety. No unit or individual could, without permission from the owner of the variety rights (referred to as "the variety rights owner"), produce or market for commercial purposes the propagation material of the rights-granted variety, or repeatedly use for commercial purposes the propagation material of the rights-granted variety in the production of the propagation material of another variety. The conditions of non-voluntary licensing were set out in the regulation. The period of protection of variety rights, from the date of grant of the rights, would be 20 years for vines, forest trees, fruit trees and ornamental trees and 15 years for other plants.

7. *Layout designs of integrated circuits*

280. The representative of China stated that **China was one of the first countries to sign the Treaty on Intellectual Property in Respect of Integrated Circuits in 1989. The specific Regulation on the Protection of Layout Designs of Integrated Circuits, which would implement China's obligations under Section 6, Part II of the TRIPS Agreement, was issued in April 2001 and would be effective on 1 October 2001.**

281. The representative of China stated that **China was strengthening the protection of the layout designs to support the rapid development of the integrated circuit industry. The regulations provided protection to layout-designs, according to which the following acts if performed without authorization of the right-holder were unlawful: importing, selling or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design was incorporated, or an article incorporating such an integrated circuit only in so far as it continued to contain an unlawfully reproduced layout-design. The exception clause and non-voluntary licensing clause were in conformity with Article 37 of TRIPS. The term of protection was 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurred. In addition, the protection to the layout-design of integrated circuits was**

in accordance with Article 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits.

8. *Requirements on undisclosed information, including trade secrets and test data*

282. Some members of the Working Party expressed concern about China's protection against unfair commercial use and disclosure of undisclosed test and other data submitted to authorities in China to obtain marketing approval for pharmaceuticals and agricultural chemicals. They noted that China's laws appeared to prohibit the release of information by government officials but did not include provisions regarding the prevention of unfair commercial use, as required under Article 39.3 of the TRIPS Agreement. Some members requested that China specifically provide in its law and regulations that it would protect against unfair commercial use of undisclosed test or other data submitted in support of applications for marketing approval of pharmaceutical or of agricultural chemical products which utilize new chemical entities, by providing that no person other than the person that submitted such data may, without the permission of the person initially submitting the data, rely on such data in support of an application for product approval for a period of at least six years from the date on which marketing approval to the person that submitted the data had been granted.

283. The representative of China stated that Article 10 of the Anti-unfair Competition Law provided that a business operator must not infringe upon trade secrets. Under the same Article, obtaining, using or disclosing another's trade secrets by a third party who clearly knew or ought to have known that the case fell under the unlawful acts listed in the preceding paragraph was deemed infringement upon trade secrets. Trade secrets referred to any technology information or business operation information which was unknown to the public, could bring about economic benefits to the obligee, had practical utility and about which the obligee had adopted secret-keeping measures. He also stated that Article 219 of the Criminal Law had similar definitions on trade secrets.

284. The representative of China further confirmed that China would, in compliance with Article 39.3 of the TRIPS Agreement, provide effective protection against unfair commercial use of undisclosed test or other data submitted to authorities in China as required in support of applications for marketing approval of pharmaceutical or of agricultural chemical products which utilized new chemical entities, except where the disclosure of such data was necessary to protect the public, or where steps were taken to ensure that the data are protected against unfair commercial use. This protection would include introduction and enactment of laws and regulations to make sure that no person, other than the person who submitted

such data, could, without the permission of the person who submitted the data, rely on such data in support of an application for product approval for a period of at least six years from the date on which China granted marketing approval to the person submitting the data. **During this period, any second applicant for market authorization would only be granted market authorization if he submits his own data.** This protection of data would be available to all pharmaceutical and agricultural products which utilize new chemical entities, irrespective of whether they were patent-protected or not. **The Working Party took note of these commitments.**

C. MEASURES TO CONTROL ABUSE OF INTELLECTUAL PROPERTY RIGHTS

285. The representative of China stated that there were provisions relating to compulsory licences in the Patent Law to prevent abuse of patent right. He also stated that the Trademark Law provided that the trademark registrant may, by concluding a trademark licensing contract, authorize another person to use its registered trademark. The licensor would supervise the quality of the goods on which the licensee used the licensor's registered trademark and the licensee would guarantee the quality of the goods on which the registered trademark was to be used.

286. Some members of the Working Party expressed some concerns as to the compatibility of China's rules on control of anti-competitive licensing practices or conditions with the corresponding obligations under Article 40 of the TRIPS Agreement. **The representative of China stated in response that China's legislation would comply with these obligations, notably as to the request for consultations with other Members.** He stated that these rules would apply across the board to all intellectual property rights. The Working Party took note of this commitment.

D. ENFORCEMENT

1. *General*

287. Some members of the Working Party expressed concern that there was a continued need for additional enforcement efforts by the Government of China. They also said that China should strengthen the legislative framework for the enforcement of intellectual property rights for all right-holders. The representative of China stated that **where an infringement of intellectual property rights was found in China, the person concerned could bring a lawsuit to a court.** Since 1992, special IPR courts have been set up in major cities such as Beijing and Shanghai on the basis of their specialized collegial panels. According to China's legislation, individuals and enterprises would be held responsible for **all their IPR infringing activities and subject to civil and/or criminal liabilities.** **Where any person violated the IPR of**

another person and the circumstances were serious, the person directly responsible would be prosecuted for his criminal liability by applying relevant provisions of the Criminal Law. If found guilty, **the person directly responsible could be sentenced to a fixed-term imprisonment of no more than seven years or be subject to detention or a fine.**

288. Some members of the Working Party further urged China to ensure the vigorous application by Chinese authorities of the enforcement legislation in order to considerably reduce the existing high levels of **copyright piracy and trademark counterfeiting**. Action should include the closure of manufacturing facilities as well as markets and retail shops that had been the object of administrative convictions for infringing activities. **The representative of China stated that the measures for cracking down on intellectual property piracy were always severe in China.** In judicial aspects, courts at all levels were continuously paying attention to the trial of IPR cases. As for administration aspects, the administrative authorities at all levels were putting emphasis on strengthening anti-piracy work. In addition, the administrative authorities were also enhancing the legal publication and education of the general public in a bid to ensure that the legal environment of China would be able to meet the requirements for enforcing the TRIPS Agreement. **The Working Party took note of these commitments.**

## 2. *Civil judicial procedures and remedies*

289. Some members of the Working Party expressed concern about certain practices relating to the filing of civil judicial actions that made it difficult for intellectual property right-holders to pursue their rights in China's courts. China's system of basing filing fees on the amount of damages requested makes large-scale infringement actions unnecessarily costly. Those members also expressed concern regarding the calculation of damages based on the infringer's profits. This, combined with China's rules on establishing the level of profits which require evidence of actual sale and which disregard inventory and past activity, often resulted in damage amounts inadequate to compensate for the injury that the right-holder has suffered.

290. The representative of China stated that Article 118 of the **General Principles of the Civil Law provided that if the rights of authorship (copyrights), patent rights, rights of exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or juridical persons were infringed upon by such means as plagiarism, alteration or imitation, they had the right to demand that the infringement be stopped, its ill effects be eliminated and the damages be compensated for.** He further stated that **the Trademark Law, the Patent Law and the Copyright Law had similar provisions.**

291. The representative of China further confirmed that, Articles 42 and 43 of

the TRIPS Agreement would be effectively implemented under the judicial rules of civil procedure. **The Working Party took note of this commitment.**

292. The representative of China confirmed that **the relevant implementing rules** would be amended to ensure full compliance with Articles 45 and 46 of the TRIPS Agreement, to the effect that damages paid by the infringer to the right-holder would be adequate to compensate for the injury suffered because of **an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.** The Working Party took note of this commitment.

### 3. *Provisional measures*

293. **Members of the Working Party noted that the TRIPS Agreement required** that judicial authorities have the authority to order prompt and effective provisional measures to (1) prevent an infringement of intellectual property from occurring, in particular to prevent the distribution or sale of infringing goods, and (2) to preserve the evidence of **alleged infringement.**

294. The representative of China stated that in China's Civil Procedure Law there were provisions on property preservation, but as yet no explicit stipulations had been provided to **authorize the people's court to take measures for the prevention of infringements prior to formal institution of a lawsuit by a party involved. In order to enhance the deterrent power of law against infringements and to guarantee that the legitimate rights and interests of patentees would not suffer from irreparable harm as well as to comply with the TRIPS Agreement, China, when amending the Patent Law for the second time in 2000, introduced Article 61 to regulate provisional measures, which provided as follows: "where a patentee or any interested party who can provide any reasonable evidence that his right is being infringed or that such infringement is imminent, and any delay in stopping the acts is likely to cause irreparable harm to his or its legitimate rights and interests, he or it may, before instituting legal proceedings, request the people's court to order the suspension of related acts and to provide property preservation".**

295. **Some Members of the Working Party expressed concern that Article 61 of the Patent Law did not fully incorporate all requirements of Article 44 of the TRIPS Agreement, and that it was still unclear whether holders of intellectual property rights other than patents could rely on a similar procedure.**

296. The representative of China stated that Article 61 of the Patent Law would be **implemented in a way fully consistent with Article 50.1-4 of the TRIPS Agreement. He also stated that "reasonable evidence" in Article 61 of the Patent Law would be, through implementing rules, clarified to mean "any reasonably**

available evidence in order to satisfy with sufficient degree of certainty that the applicant is the right-holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse". The Working Party took note of this commitment.

#### 4. *Administrative procedures and remedies*

297. **Members of the Working Party noted that most IPR enforcement in China** was done through administrative actions. In this connection, some members expressed concern about the inadequate levels of administrative sanctions in China which, when coupled with the high threshold for initiating criminal prosecutions, made IPR enforcement in China difficult. Administrative sanctions generally amounted to small fines and the loss of infringing inventory. Members also stressed the need for administrative authorities to refer more cases, including those involving repeat offenders and willful piracy and counterfeiting, to the appropriate authorities for initiation of criminal actions.

298. The representative of China said that **the Trademark Law provided that** in the event of any infringement of the right to the exclusive use of a registered trademark, the infringed right-holder could request the administrative department for industry and commerce at or above the county level for disposition. The relevant administrative department for industry and commerce had the power to order the infringer to stop the infringing act immediately and to compensate the infringed right-holder for its or his losses. SAIC and its local agencies above the county level could also impose a fine upon the infringer. **The Patent Law provided that the** patentee and interested party could request the administrative authority for patent affairs to handle the infringing act. The administrative authority could order the infringer to stop the infringing act immediately and mediate on damages at the request of the parties concerned. **The Copyright Law provided that the copyright** administration department could subject anyone who committed acts of infringement to such administrative penalties as confiscation of unlawful income from the act or imposition of a fine.

299. The representative of China stated that most IPR enforcement actions in China resulted in administrative measures to address the infringement. He noted ongoing efforts to strengthen the sanctions that were available to administrative authorities and the increased attention given to enforcement of IPRs. The representative of China confirmed that **the government would continue to enhance its enforcement efforts, including through the application of more effective administrative sanctions. Relevant agencies, including the State Administration for Industry and Commerce, the State General Administration of the People's Republic of China for Quality Supervision and Inspection and Quarantine and the Copyright Office, now had the**

authority to confiscate equipment used for making counterfeit and pirated products and other evidence of infringement. **These relevant agencies would be encouraged** to exercise their authority to seize and preserve evidence of infringement such as inventory and documents. Administrative authorities would have the authority to impose sufficient sanctions to prevent or deter further infringement and would be encouraged to exercise that authority. Appropriate cases, including those involving repeat offenders and willful piracy and counterfeiting, would be referred to relevant authorities for prosecution under the criminal law provisions. The Working Party took note of these commitments.

5. *Special border measures*

300. The representative of China stated that on 5 July 1995 the State Council of the People's Republic of China had issued special legislation in respect of border measures for enforcement of intellectual property rights – the Regulations of the People's Republic of China Governing Customs Protection of Intellectual Property Rights – which came into effect on 1 October of the same year. According to this legislation, China's Customs offices must take measures to intercept importation or exportation of goods that were proved to be infringing the rights of trademarks, patents or copyrights legally protected in China. China's Customs offices were granted authority to investigate any suspected shipment and confiscate the goods in case infringement was proved.

301. Some members of the Working Party expressed concerns as to the compatibility of existing border measures with obligations under Articles 51 to 60 of the TRIPS Agreement; particularly the provisions on suspension of release into free circulation by customs authorities (Article 51), rules on evidence for initiating this procedure (Article 52), requirements on the security needed to protect the defendant (Article 53), rules on notice of the suspension (Article 54) and its duration (Article 55), rules on indemnification of the importer in case of wrongful detention (Article 56) and opportunity for the right-holder to have the goods detained inspected (Article 57). Moreover some expressed their concern as to compatibility of rules on actions ex-officio by competent authorities and the conditions attached (Article 58), as well as to the remedies provided against infringing goods (Article 59) and the quantities subject to the *de minimis* rules (Article 60).

302. In response, the representative of China stated that China would provide holders of intellectual property rights with procedures related to border measures that complied fully with the relevant provisions of the TRIPS Agreement (Articles 51 to 60). The Working Party took note of this commitment.

## 6. *Criminal procedures*

303. The representative of China stated that Articles 213 to 220 of the Criminal Law (**Crimes of Infringing on Intellectual Property Rights**) provided that whoever seriously **infringes the right-holders' rights of registered trademarks, patents, copyrights or trade secrets** would be sentenced to fixed-term imprisonment and would also be fined.

304. Some members of the Working Party expressed concerns that criminal procedures could not be used effectively to address piracy and counterfeiting. In particular, the **monetary thresholds for bringing a criminal action, as currently applied, were very high and seldom met. Those thresholds should be lowered** so as to permit effective action that would deter future piracy and counterfeiting. In response, the representative of China stated that China's **administrative authority** would recommend that the judicial authority make necessary adjustments to lower the thresholds so as to address these concerns. The Working Party took note of this commitment.

305. Noting the advanced state of protection for intellectual property rights in China, **the representative of China confirmed that upon accession China would fully apply the provisions of the TRIPS Agreement.** The Working Party took note of this commitment.

## VI. POLICIES AFFECTING TRADE IN SERVICES

### 1. *Licensing*

306. Some members of the Working Party welcomed the broad-ranging and comprehensive commitments that China was undertaking to increase transparency and to provide information to governments and service providers on any matter relating to the GATS including China's Schedule of Specific Commitments. These members nonetheless expressed concerns regarding the lack of transparency in China's current services regime, in particular with respect to obtaining, extending, renewing, denying and terminating licences and other approvals required to provide services in China's market and appeals of such actions (hereafter referred to as "China's licensing procedures and conditions"). To be consistent with the provisions of the WTO Agreement, including the Draft Protocol and China's Schedule of Specific Commitments, members of the Working Party noted that China's licensing procedures and conditions should not in themselves act as a barrier to market access and should not be more trade restrictive than necessary. Those members also expressed the view that upon its accession, China should publish (1) a list of authorities responsible for authorizing, approving or regulating those service sectors in which China made specific commitments and (2) China's licensing procedures and conditions.

307. The representative of China confirmed that paragraph 332 regarding publication of a list of all organizations that were responsible for authorizing, approving or regulating service activities for each service sector, including those organizations delegated such authority from the central government authorities, would apply. The representative of China also confirmed that China would publish in the official journal all of China's licensing procedures and conditions upon accession. The Working Party took note of these commitments.

308. The representative of China also confirmed that upon accession China would ensure that China's licensing procedures and conditions would not act as barriers to market access and would not be more trade restrictive than necessary. In accordance with China's commitments under the WTO Agreement, the Draft Protocol and its Schedule of Specific Commitments, the representative of China confirmed that for those services included in China's Schedule of Specific Commitments, China would ensure that:

- (a) China's licensing procedures and conditions were published prior to becoming effective;
- (b) In that publication, China would specify reasonable time frames for review and decision by all relevant authorities in China's licensing procedures and conditions;
- (c) Applicants would be able to request licensing without individual invitation;
- (d) Any fees charged, which were not deemed to include fees determined through auction or a tendering process, would be commensurate with the administrative cost of processing an application;
- (e) The competent authorities of China would, after receipt of an application, inform the applicant whether the application was considered complete under China's domestic laws and regulations and in the case of incomplete applications, identify the additional information that was required to complete the application and provide the opportunity to cure deficiencies;
- (f) Decisions would be taken promptly on all applications;
- (g) If an application was terminated or denied, the applicant would be informed in writing and without delay the reasons for such action. The applicant would have the possibility of resubmitting, at its discretion, a new application that addressed the reasons for termination or denial;

- (h) If an application was approved, the applicant would be informed in writing and without delay. The licence or approval would enable the applicant to start the commercial operations upon registration of the company with SAIC for fiscal and other similar administrative purposes. This registration would be completed within 2 months of the submission of a complete file, as required by public SAIC regulations, and in accordance with China's Schedule of Specific Commitments;
- (i) Where China required an examination to licence professionals, such examinations would be scheduled at reasonable intervals.

The Working Party took note of these commitments.

309. Some members of the Working Party also expressed concern about maintaining the independence of regulators from those they regulated. The representative of China confirmed that for the services included in China's Schedule of Specific Commitments, relevant regulatory authorities would be separate from, and not accountable to, any service suppliers they regulated, except for courier and railway transportation services. For these excepted sectors, China would comply with other relevant provisions of the WTO Agreement and the Draft Protocol. The Working Party took note of these commitments.

310. The representative of China stated that China would consult with WTO Members and develop regulations, consistent with China's Schedule of Specific Commitments and its obligations under GATS, on sales away from a fixed location. The Working Party took note of this commitment.

311. Some members of the Working Party noted that the World Code of Conduct provided a strong ethical basis for regulating sales away from a fixed location.

312. In response to questions from members of the Working Party regarding certain terms in China's Schedule of Specific Commitments, the representative of China confirmed the following:

- (a) A "master policy" was a policy that provided blanket coverage for the same legal person's property and liabilities located in different places. A master policy could only be issued by the business department of an insurer's head office or that of its authorized province-level branch offices. Other branches were not allowed to issue master policies.
  - (i) For master policy business with the state key construction projects as its subject-matter insured.

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

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

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

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

- (ii) A master policy covering different subject-matters insured of the same legal person.

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

1. For the sake of payment of the premium tax, insurance companies incorporated where the legal person or accounting unit of the insurance applicant was located, were allowed to issue a master policy.

2. If over 50 per cent of the insurance amount of the subject-matter insured was from a larger or medium sized city, then insurers in that city were allowed to issue a master policy, no matter whether the insurance applicant's legal person or accounting unit was located in the city.

- (b) Large scale commercial risk meant an insurance risk written on any large scale commercial enterprise if, upon accession, the aggregate annual premium exceeded 800 thousand RMB and the investment was more than 200 million RMB; one year after accession, if the aggregate annual premium exceeded 600 thousand RMB and the investment was

more than 180 million RMB; two years after accession, if the aggregate annual premium exceeded 400 thousand RMB and the investment was more than 150 million RMB.

- (c) Statutory insurance in China's Schedule of Specific Commitments were limited to the following specific categories, and no additional lines or products would be added: third party auto liability insurance, and driver and operator liability for buses and other commercial vehicles.
- (d) The representative of China confirmed that any changes to the definition of master policy and large scale commercial risk would be consistent with China's Specific Schedule of Commitments and obligations under GATS so as to progressively liberalize access to this services sector.

The Working Party took note of these commitments.

313. Members of the Working Party welcomed China's commitment to permit internal branching for insurance firms consistent with the phase-out of geographic restrictions. Some members noted that China had scheduled certain qualifications as limitations under GATS Articles XVI and XVII that foreign insurers had to meet to apply for a licence to provide services in China. These qualifications related to a minimum period of establishment in a WTO member, total assets and maintenance of a representative office in China. These qualifications should not apply to those foreign insurance companies established in China seeking authorisation to establish a branch or sub-branch. The representative of China confirmed that the qualifications for foreign insurers applying for a licence to enter China's market would not apply to foreign insurers already established in China that were seeking authorization to establish branches or sub-branches. He also confirmed that a branch and a sub-branch were an extension of the parent enterprise and not a separate legal entity and that China would permit internal branching accordingly on that basis, and in compliance with China's Schedule of Specific Commitments, including provisions on MFN treatment. The Working Party took note of these commitments.

## 2. *Choice of Partner*

314. Some members of the Working Party expressed concern regarding the existing practice of imposing conditions on the Chinese companies that were allowed to partner with foreign service suppliers. These members indicated that this could amount to *de facto* quotas, as the number of potential partners meeting those conditions might be limited. The representative of China confirmed that a foreign service supplier would be able to partner with any Chinese entity of its

choice, including outside the sector of operation of the joint venture, as long as the Chinese partner was legally established in China. The joint venture as such should meet the prudential and specific sectoral requirements, on the same basis as those for domestic enterprises and which must be publicly available. The Working Party took note of these commitments.

3. *Modification of the Equity Interest*

315. The representative of China confirmed that the Chinese and foreign partners in an established joint venture would be able to discuss the modification of their respective equity participation levels in the joint venture and implement such modification if agreement was reached by both sides and also approved by the authorities. The representative of China confirmed that such an agreement would be approved if consistent with the relevant equity commitments in China's Schedule of Specific Commitments. The Working Party took note of this commitment.

4. *Prior Experience Requirement for Establishment in Insurance Sector*

316. The representative of China confirmed that the merging, division, restructuring or other change of legal form of an insurance company would not impact the prior experience requirements included in China's Schedule of Specific Commitments if the new entity continued to supply insurance services. The Working Party took note of this commitment.

5. *Inspection Services*

317. In response to questions from members of the Working Party, the representative of China confirmed that China would not maintain requirements which had the effect of acting as barriers to the operation of foreign and joint-venture commodity inspection agencies, unless otherwise specified in China's Schedule of Specific Commitments. The Working Party took note of this commitment.

6. *Market Research*

318. Some members of the Working Party expressed concern regarding market research activities. In response to questions from members in this respect, the representative of China confirmed that, upon accession, China would remove the prior approval requirement for market research services, defined as investigation services designed to secure information on the prospects and performance of an organization's products in the market, including market analysis (of the size and other characteristics of a market) and analysis of consumer attitudes and preferences. Market research firms registered in China, which were engaged in such services, would only be required to file the survey plan and the questionnaire form on record in the statistical agencies of government at or above the provincial level. The

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Working Party took note of these commitments.

7. *Legal Services*

319. In response to questions from members of the Working Party, the representative of China clarified that “Chinese national registered lawyers”, as indicated in China’s Schedule of Specific Commitments, were those Chinese nationals who had obtained a lawyer’s certificate and were holding a Chinese practising permit and were registered to practice in a Chinese law firm.

8. *Minority Shareholder Rights*

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

9. *Schedule of Specific Commitments*

321. China’s Schedule of Specific Commitments, reproduced in Annex 9 to the Draft Protocol, contained the market access commitments of China in respect of Services.

VII. OTHER ISSUES

1. *Notifications*

322. Members of the Working Party requested that China submit the notifications required in the Draft Protocol and Report to the WTO body with a mandate covering the subject of the notification. The representative of China confirmed that China would submit its notifications to these bodies, consistent with Section 18.1 and Annex 1A of the Draft Protocol. The Working Party took note of this commitment.

2. *Special Trade Arrangements*

323. Some members of the Working Party raised specific concerns in relation to some of China’s special trade arrangements, including barter trade arrangements, with third countries and separate customs territories, which those members considered not to be in conformity with WTO requirements. In response, the representative of China recalled the commitment undertaken by China in Section 4 of the Draft Protocol.

3. *Transparency*

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

325. In response, the representative of China noted that the Government of China regularly issued publications providing information on China's foreign trade system, such as the: "Almanac of Foreign Economic Relations and Trade" and "The Bulletin of MOFTEC" published by MOFTEC; "Statistical Yearbook of China", published by the State Statistical Bureau; "China's Customs Statistics (Quarterly)", edited and published by the Customs. China's laws and regulations of the State Council relating to foreign trade were all published, as were rules issued by departments. Such laws, regulations and rules were available in the "Gazette of the State Council", the "Collection of the Laws and Regulations of the People's Republic of China" and the "MOFTEC Gazette". The administrative regulations and directives relating to foreign trade were also published on MOFTEC's official website (<http://www.moftec.gov.cn>) and in periodicals.

326. He further noted that there were no forex restrictions affecting import or export. Information on forex measures was published by the SAFE and was available on SAFE's website (<http://www.safe.gov.cn>) and via the news media.

327. The representative of China noted that information concerning the administration of imports and exports would be published in the "International Business" newspaper and the "MOFTEC Gazette".

328. He also noted that information on China's customs laws and regulations, import and export duty rates, and customs procedures was published in the "Gazette of the State Council" and in the press media, and was available upon request. The procedures concerning application of duty rates, customs value and duty determination, drawback and duty recovery, as well as the procedures concerning duty exemptions and reduction, were also published. Customs also published monthly customs statistics, calculated according to country of origin and final destination, on the basis of eight-digit HS levels.

329. The representative of China noted that any bilateral trade agreements concluded between China and its trading partners, and protocols on the exchange of goods negotiated under them were published in "The Treaty Series of the PRC". He also noted that the "Directory of China's Foreign Economic Relations and Trade Enterprises" and "China's Foreign Trade Corporations and Organizations" were two publications which identified foreign trade corporations and other enterprises in China engaged in foreign trade.

330. The representative of China stated that the full listing of official journals was as follows: Gazette of the Standing Committee of the National People's Congress of the People's Republic of China; Gazette of the State Council of the People's Republic of China; Collection of the Laws of the People's Republic of China; Collection of the Laws and Regulations of the People's Republic of China; Gazette of MOFTEC of the People's Republic of China; Proclamation of the People's Bank of the People's Republic of China; and Proclamation of the Ministry of Finance of the People's Republic of China.

331. The representative of China confirmed that publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex would include the effective date of these measures. It would also include the products and services affected by a particular measure, identified by appropriate tariff line and CPC classification. The Working Party took note of these commitments.

332. The representative of China confirmed that China would publish in the official journal, by appropriate classification and by service where relevant, a list of all organizations, including those organizations delegated such authority from the national authorities, that were responsible for authorizing, approving or regulating services activities whether through grant of licence or other approval. Procedures and the conditions for obtaining such licences or approval would also be published. The Working Party took note of these commitments.

333. The representative of China confirmed that none of the information

required by the WTO Agreement or the Draft Protocol to be disclosed would be withheld as confidential information except for those reasons identified in Section 2(C) of the Draft Protocol or unless it would demonstrably prejudice the legitimate commercial interests of particular enterprises, public or private. The Working Party took note of this commitment.

334. The representative of China confirmed that China would make available to WTO Members translations into one or more of the official languages of the WTO all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex, and to the maximum extent possible would make these laws, regulations and other measures available before they were implemented or enforced, but in no case later than 90 days after they were implemented or enforced. The Working Party took note of these commitments.

335. Members of the Working Party also requested that China set up an enquiry point where information relating to all laws, regulations, judicial decisions and administrative rulings of general application and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex could be obtained.

336. The representative of China confirmed that China would establish or designate one or more enquiry points where all information relating to the laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex, as well as the published texts, could be obtained and would notify the WTO of any enquiry point and its responsibility. The information would include the names of national or sub-national authorities (including contact points) responsible for implementing a particular measure. The Working Party took note of these commitments.

## 2. *Government Procurement*

337. The representative of China stated that in order to promote China's government procurement regime, the Ministry of Finance promulgated the Interim Regulations on Government Procurement in April 1998. The Interim Regulations were stipulated in line with the spirit of the WTO Agreement on Government Procurement ("GPA") and on the basis of the relevant provisions of the United Nations Model Law on Procurement of Goods, Construction and Services while making reference to the laws and regulations of some WTO Members on government procurement. The policy and procedures regarding government procurement provided for therein were consistent with international practice. China stuck to the fundamental principles of being open, fair, equitable, efficient and in the public interest when carrying out government procurement. At present, China was formulating its Government Procurement Law.

338. Some members of the Working Party stated that China should become a Party to the GPA and that prior to its accession to the GPA, China should conduct all government procurement in a transparent and non-discriminatory manner. Those members noted that China's public entities engaged exclusively in commercial activities would not be conducting government procurement and thus laws, regulations and other measures regulating these entities' procurement practices would be fully subject to WTO requirements.

339. The representative of China stated that China intended to become a Party to the GPA and that until such time, all government entities at the central and sub-national level, as well as any of its public entities other than those engaged in exclusively commercial activities, would conduct their procurement in a transparent manner, and provide all foreign suppliers with equal opportunity to participate in that procurement pursuant to the principle of MFN treatment, i.e., if a procurement was opened to foreign suppliers, all foreign suppliers would be provided with equal opportunity to participate in that procurement (e.g., through the bidding process). Such entities' procurements would be subject only to laws, regulations, judicial decisions, administrative rulings of general application, and procedures (including standard contract clauses) which had been published and made available to the public. The Working Party took note of these commitments.

340. Noting China's intention to become a Party to the GPA, some members of the Working Party stated that China should, upon accession, become an observer to the GPA, and should initiate negotiations for membership in the Agreement by tabling an Appendix 1 offer within two years of accession.

341. The representative of China responded that China would become an observer to the GPA upon accession to the WTO Agreement and initiate negotiations for membership in the GPA by tabling an Appendix 1 offer as soon as possible. The Working Party took note of these commitments.

## VIII. CONCLUSIONS

342. The Working Party took note of the explanations and statements of China concerning its foreign trade regime, as reflected in this Report. The Working Party took note of the commitments given by China in relation to certain specific matters which are reproduced in paragraphs 18-19, 22-23, 35-36, 40, 42, 46-47, 49, 60, 62, 64, 68, 70, 73, 75, 78-79, 83-84, 86, 91-93, 96, 100-103, 107, 111, 115-117, 119-120, 122-123, 126-132, 136, 138, 140, 143, 145, 146, 148, 152, 154, 157, 162, 165, 167-168, 170-174, 177-178, 180, 182, 184-185, 187, 190-197, 199-200, 203-207, 210, 212-213, 215, 217, 222-223, 225, 227-228, 231-235, 238, 240-242, 252, 256, 259, 263, 265, 270, 275, 284, 286, 288, 291, 292, 296, 299, 302, 304-305,

307-310, 312-318, 320, 322, 331-334, 336, 339 and 341 of this Report and noted that these commitments are incorporated in paragraph 1.2 of the Draft Protocol.

343. Having carried out the examination of the foreign trade regime of China and in the light of the explanations, commitments and concessions made by China, the Working Party reached the conclusion that China should be invited to accede to the Marrakesh Agreement Establishing the WTO under the provisions of Article XII. For this purpose, the Working Party prepared the Draft Decision and Draft Protocol reproduced in the Appendix<sup>1</sup> to this Report, and took note of China's Schedule of Concessions and Commitments on Goods (document WT/ACC/CHN49/Add.1) and China's Schedule of Specific Commitments on Services (document WT/ACC/CHN/49/Add.2) that were annexed to the Draft Protocol. It was proposed that these texts be adopted by the General Council when it adopted the Report. When the Draft Decision was adopted, the Draft Protocol would be open for acceptance by China which would become a WTO Member 30 days after it accepted the said Draft Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of China to the WTO Agreement.

*Decision of the Ministerial Conference on 10 November 2001  
(Extract from WT/L/432)*

The Ministerial Conference,

*Having regard to* paragraph 2 of Article XII and paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization, and the Decision-Making Procedures under Articles IX and XII of the Marrakesh Agreement Establishing the World Trade Organization agreed by the General Council (WT/L/93),

*Taking note of* the application of the People's Republic of China for accession to the Marrakesh Agreement Establishing the World Trade Organization dated 7 December 1995,

*Noting* the results of the negotiations directed toward the establishment of the terms of accession of the People's Republic of China to the Marrakesh Agreement Establishing the World Trade Organization and having prepared a Protocol on the Accession of the People's Republic of China,

*Decides* as follows:

The People's Republic of China may accede to the Marrakesh Agreement

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<sup>1</sup> Not reproduced.

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Establishing the World Trade Organization on the terms and conditions set out in the Protocol annexed<sup>1</sup> to this decision.

## ACCESSION OF THE REPUBLIC OF MOLDOVA

*Report of the Working Party Adopted by the General Council on 8 May 2001  
(WT/ACC/MCC/37 and Corr. 1-4)*

### I. INTRODUCTION

1. The Government of the Republic of Moldova (hereinafter Moldova) applied for accession to the General Agreement on Tariffs and Trade (GATT 1947) in November 1993. At its meeting on 17 December 1993, the GATT 1947 Council of Representatives established a Working Party to examine the application of the Government of Moldova to accede to the General Agreement under Article XXXIII and to submit to the Council recommendations which may include a draft Protocol of Accession. Membership of the Working Party was open to all contracting parties wishing to serve on it. Following the conclusion of the Uruguay Round, Moldova requested accession to the World Trade Organization (WTO) under Article XII of the Marrakesh Agreement Establishing the World Trade Organization. Having regard to the decision adopted by the General Council of the World Trade Organization on 31 January 1995, the existing GATT 1947 Working Party on the Accession of Moldova was transformed into a WTO Accession Working Party. The terms of reference and the membership of the Working Party were reproduced in document WT/ACC/MOL/7/Rev.6.

2. The Working Party met on 17 June 1997, 18 March 1998, 16 April, 19 July 1999, 20 December 2000 and 19 February 2001 under the chairmanship of Mr. M. Kumar (India).

### DOCUMENTATION

3. The Working Party had before it, to serve as a basis for its discussions, a Memorandum on the Foreign Trade Regime of Moldova (WT/ACC/MOL/2 and Addenda 1 and 2) and the questions submitted by Members of the foreign trade regime of Moldova, together with the replies thereto WT/ACC/MOL/3 and Corr.1, Add.1, Add.1/Corr.1 and Add.2; WT/ACC/MOL/4 and Add.1 and Corr.1; WT/ACC/MOL/8 and Add.1; WT/ACC/MOL/9 and Add.1 and Corr.1, WT/ACC/MOL/11, WT/ACC/MOL/25, WT/ACC/MOL/28 and WT/ACC/MOL/30 and other informa-

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<sup>1</sup> See under section "Legal Instruments".

tion provided by the Moldovan authorities (WT/ACC/MOL/5, WT/ACC/MOL/6, WT/ACC/MOL/10, WT/ACC/MOL12-24, WT/ACC/MOL26-27, WT/ACC/MOL/29, WT/ACC/MOL/31-35 and WT/ACC/MOL/36, Add.1 and Add.2). The Government of Moldova made available to the Working Party the documents listed in Annex I.

*Introductory statements*

4. In an introductory statement, the representative of Moldova said that since the declaration of independence Moldova had been vigorously pursuing free market reforms within a democratic framework, notwithstanding political and economic difficulties. Considerable progress in transforming a centrally planned economy to a market-based economy has been achieved. Fuller integration into the world economy and the continuing diversification of Moldova's economic relations with other countries were central objectives of the Government's reform efforts. The Government of Moldova believed that these objectives could only be attained through trade policies that emphasized specialization on the basis of international comparative advantage. It was for this reason that Moldova attached priority to its accession to WTO and wished to complete negotiations for membership at the earliest opportunity.

5. The Constitution of Moldova adopted by the Parliament in July 1994 stated: "The economy of the country is market and society oriented, based on private and public property and free competition". Article I states that Moldova is a democratic State regulated by Law. Article 9 ensures private property rights and Article 126 defines the general characteristics of the economy as socially oriented and based on private and public property rights and free market principles. The representative of Moldova noted that Moldova continued to be a country in transition whose economy was undergoing a process of structural adjustment in order to correct an excessive dependence on primary production. Initially inflation had been brought down to an average monthly rate of 1.1 per cent in April 1996 from 32 per cent in February 1993. The budget deficit in 1995 had amounted to 4.9 per cent of GDP. The exchange rate of the Moldovan Leu (MDL), introduced in 1993, was approximately MDL 4.5 to the US dollar in May 1995. Following a period of stabilization in the first quarter of the 1999, the currency had again come under pressure in May/June depreciating steadily to around MDL 12 per US dollar, before recovering somewhat to around MDL 11 per US dollar in early July 1999. This situation was linked with the financial crisis in the region and current developments in financial markets. By mid-1999 the value of the Moldovan Leu had dropped by more than 65 per cent against the US dollar, giving rise to an acceleration of inflation. Since end-1999 the exchange rate had been stable at around MDL 12 per US dollar. Nevertheless, the financial shock from the economic crisis in Russia and in the region had continued to weigh heavily on the Moldovan economy, as evidenced by the collapse of exports by 35 per cent in the first half of 1999. Despite these difficulties the authorities were convinced of the appropriateness

of a free, market-determined floating exchange rate regime, and remained committed to maintaining current international transactions free of any restrictions that could run counter to its obligations under Article VIII, section 2, 3, and 4 of the IMF Articles of Agreement.

6. Members of the Working Party welcomed Moldova's application for accession to the WTO, noting that Moldova had been pursuing economic reform and trade liberalization decisively. They expressed strong support for the early accession of Moldova on the basis of comprehensive market-access commitments and the early implementation of the WTO Agreements. The Working Party reviewed the economic policies and foreign trade regime of Moldova and the possible terms of a draft Protocol of Accession to the WTO. The views expressed by members of the Working Party on the various aspects of Moldova's foreign trade regime and on the terms and conditions of Moldova's accession to the WTO are summarized below in paragraphs 7 to 236.

## II. ECONOMIC POLICES

### - *Monetary and fiscal policies*

7. In response to requests for information, the representative of Moldova said that all the key sectors, namely agriculture, manufacturing industry and construction had registered a decline of output in 1999 compared to a similar period in 1998. Private agriculture was becoming increasingly important in Moldova, so was farming restructuring. The information for the first half of 1998 showed that the number of registered companies with foreign participation had been rising quite fast. Figures for 1998 showed that the employment level had dropped by 7.4 per cent compared to a year earlier. This was a further decline over the first half of 1998. Agriculture and manufacturing had shown a decline of 11 per cent over the same period, with wholesale and retail trade at 15.5 per cent and construction at 16.6 per cent lower than a year ago. The dependence on imported goods and services had been steadily decreasing, from 64 per cent of the GDP in 1997 to 51 per cent in 1999. In 1999, the trade deficit had reached the amount of US\$123,08 million compared to US\$388.09 millions in 1998. However, in 1999 the Republic of Moldova engaged in a buy-back of the bonds issued in favour of Gazprom in the amount of US\$140 million and in 2000 restructured the loans provided by Russia and the supplier credits provided by AKA, KfW etc., on favourable terms. This significantly improved Moldova's debt profile. Presently, the Republic of Moldova is up to date on its external obligations and has no arrears. \_

8. The representative of Moldova added that the Government was no longer granting commercial credits. However, the Government was providing loan guarantees, issued against a risk premium of at least 5 per cent of the principal amount

of the loan, which was paid into the Risk Fund. State guarantees could only be issued up to a total value not exceeding the amount in the Risk Fund set up by the Law on State Debt and State Guarantees (No. 943-XIII of 18 July 1996). Contributions to the Risk Fund were drawn from the Budget and from beneficiaries of State guarantees. In 1997 LEI 75 million had been issued as internal guarantees and US\$ 5 million as external ones. In 1998 the amount of LEI 100 million had been issued as internal guarantees and the amount of US\$39 million as external guarantees for the EBRD loans. It was expected that with the ongoing privatisation of the energy sector, the contributions of the Budget to the Risk Fund would be phased out. Since 1999, the Law on State Budget prohibits the issuance of state guarantees and no external guarantee has been issued since that time.

9. The representative of Moldova noted that 1998 had been a very difficult year for Moldova. Both endogenous factors such as, weak fiscal policies and poor energy sector management, and exogenous factors, such as the financial crisis in Russia had a negative impact on the Moldovan economy. Capital flight, a depreciating exchange rate, a significant decrease of international reserves, rising expenditure arrears and budget deficit financing through central bank credit, characterized the crisis. There was an economic decline in 1998, of 8.5 per cent, largely because of the severe impact on exports of the crisis in Russia. Both industrial and agricultural output dropped in 1998. At the same time, final consumption constituted more than 102 per cent of GDP, with the trade deficit decreasing from 26,4 % per cent of GDP in 1998 to 14,82 per cent in 1999. In 1999 export and import volumes registered a reduction, exports by 27,1 per cent and imports by 42,6 per cent as compared with 1998.

10. Years of easy financing, especially foreign, and slow and incomplete structural reforms had resulted in excessive budget deficits and increased indebtedness of the public sector. The figures for the 1998 budget had proved unrealistic and had called for considerable revisions. In the second half of 1998, the Government had to cut spending in order to ensure the resumption of drawings from IMF and to accommodate its limited financing options. The drastic reduction in spending was also necessitated by the sharper than expected reduction in real output and therefore of revenue inflows. A large item of payment was the public debt service, which in 1998 reached MDL 421.2 million including MDL 182.4 million for external debt servicing. The share of public debt service in the consolidated budget expenditure increased to 13.9 per cent in 1998. Capital investment, by contrast, had remained at a stagnant, low proportion of public expenditure. Both 1998 and 1999 were considered as years with exceptionally high debt-service payments. In December 1998 Moldova managed to repay the principal of a Merrill Lynch private placement. In 1999 Moldova managed to repay considerable amounts on its Eurobonds (US\$7.45 million) and to make a successful buy back of Gazprom bonds (US\$140 million).

11. In view of this difficult situation the Government and the National Bank of Moldova (NBM) sought to stabilise the economy and avoid an inflationary spiral and further depreciation of the currency, continue restructuring and therefore resume growth, avoid a default on treasury bill redemption, renegotiate as necessary external debt and any external debt arrears, and create a stable and credible policy environment to restore confidence and growth. The 1999 budget that was approved by Parliament in December 1998 called for spending cuts in all major areas. The target of the National Bank of Moldova's monetary and credit policy for 2000 is to reduce the inflation rate by 41 per cent to 15 per cent. The program envisages that by the end of 2000 the money supply should be increasing by 2% per cent and reach the level of MDL 2,54 billion, the monetary base to the level of MDL 1,34 billion, and the volume of lending that goes directly to the national economy by 17,3 per cent to the level of MDL 2 billion. In order to implement this it was planned to diminish the bank liquidity ratio from 0,82 to 0,80 and to gradually reduce the legal reserve ratio back to 8 per cent from 15 per cent. The last measure became necessary in order to ease the pressure on an already fragile banking system. As a result of resumed IMF lending, international reserves had risen, and were expected to rise again with disbursement of \$35 million from the World Bank. Despite the fact that the inflows arranged from multilateral financial institutions in 2000 did not occur, the National Bank of Moldova managed to consolidate its international reserves at a level sufficient to meet the country's external obligations and maintain them below US\$200 million the level reached at the end of 1999. The depreciation of Moldovan Leu in 1999 was less than in 1998. However, an absolute avoidance of national currency depreciation was not possible. In 1999 the nominal depreciation of the Leu exchange rate was 28,2 per cent as compared to 44 per cent in 1998. In real terms, due to the floating of the exchange rate regime, the purchasing power parity between US dollar and Moldovan Leu was maintained, the exchange rate neither depreciated nor appreciated. In 1999 the real exchange rate was 100,5 per cent, indicating 0,5 per cent real appreciation, as compared to 35 per cent of real depreciation in the previous year.

12. The representative of Moldova further noted that in 2000 external debts had reached US\$ 1 (one) billion or approximately 89,6 per cent of GDP. Despite the fact that debt-servicing difficulties were severe, the Republic of Moldova managed to pay its external obligations and restructure the external arrears. However, further external financing was essential, and Moldova was seeking alternative sources of financing. The EU had made EUR 15 million available. It was anticipated that the World Bank would provide up to US\$60 million, including US\$35 million from a structural adjustment program suspended in 1997, and a further US\$25 million through the International Development Association. The Government intended to use some of the privatization receipts from the sale of Moldtelecom etc. towards debt repayment. The Government of the Republic of Moldova, IMF, World Bank

and other partners will develop jointly a poverty reduction strategy program, documented in a joint poverty reduction strategy paper.

- *Foreign exchange and payments systems*

13. The representative of Moldova said that Moldova became a member of the IMF on 12 August 1992 after the payment of its initial quota presently 123,2 million Special Drawing Rights (SDR). The representative of Moldova noted that Moldova was a member of the IMF and had accepted the obligations of Article VIII of the IMF Articles of Agreement. Moldova met the Fund standards of current account convertibility and had received assistance from the IMF in the area of monetary policy. A Memorandum on a program of co-operation with the IMF was signed on 3 April 1996. He said that Moldova would not impose or intensify any exchange restrictions, introduce or modify any multiple currency practices, conclude any bilateral payments agreements inconsistent with Article VIII of the IMF's Articles of Agreement, or introduce or intensify any import restrictions for balance of payments purposes.

14. The representative of Moldova said that on 30 June 1995 Moldova accepted the obligations of Article VIII, Sections 2, 3 and 4 of the International Monetary Fund Articles of Agreement that allow the liberalisation of current foreign exchange operations. De facto, this means the convertibility of the national currency, the Leu that permits legal entities to buy and sell freely currency for all current international transactions and also for some capital operations. However, due to the growing demand for foreign exchange the National Bank of Moldova decided that the exchange rate would be calculated as a weighted average rate of all transactions in foreign currencies concluded by commercial banks. There were restrictions on foreign exchange and transactions in foreign currency were subject to the National Bank's foreign exchange regulations. According to the Law "On Regulations on repatriation of money means, goods and services gained from foreign economic transactions" adopted by the Parliament as on 29 January 1998 terms of repatriation are as follows: i) in contracts for the import of goods and services, payments shall be repatriated within 90 days as from the settlement date; ii) export contracts provide the following repatriation terms: 90 days for strategic goods; 180 days for other goods; 1 (one) year for goods exported in commission, as from the date of goods delivery. There are no restrictions regarding the number of bank accounts owned by economic agents in foreign currency as well as in MDL. If during 7 banking days, from the moment of foreign currency purchase by resident legal entities, they did not utilize the purchased currency for settlements with non-residents, such legal entities, except for authorized banks, shall be obligated to offer it for sale to one of the authorized banks. Foreign Legal entities may open accounts in Moldovan Leu without an authorization by the National Bank of Moldova. Non-resident legal entities from CIS countries only have the right to open accounts in Moldovan Leu with

the permission of the Central Bank of the corresponding state.

- *Investment Regime*

15. The representative of Moldova said that since 1994 a major objective of national economic policy had been to promote a transparent and fair business environment for both domestic and foreign investors. To attract foreign investment, Moldova had established a stable legal and institutional base, and introduced incentives and guarantees for foreign investors. He stated that the normative acts dealing with the activities of foreign investors are: a) Fundamental Law – the Constitution of the Republic of Moldova adopted by the Parliament on 29 July 1994 according to Article 126 of the Constitution, the State guarantees the inviolability of investments of natural and juridical persons, including foreigners; b) Law No. 998-XII of 1 April 1992 “On Foreign Investment”, which deals with the settlement and protection of foreign investments, provides the legal, structural and economic fundamentals for the activities of foreign investors and economic agents in Moldova and offers tax and customs incentives that are precisely defined.

16. The representative of Moldova said that besides the legislation concerning foreign investments, companies with foreign capital and foreign investors were subject to legislation concerning relations with local natural and juridical persons and to international conventions to which the Republic of Moldova is a party, and to the law of other countries related to Moldova by agreements on of the mutual protection investments. The material values envisioned in Article 3 of the Law “On Foreign Investment”, in the form of contributions to the formation and enlargement of the public capital of an enterprise were tax exempt. The right of enterprises with foreign capital to profit from customs facilities was confirmed by Articles 35-37 of the Law “On Foreign Investments”. Legal action to stimulate foreign investments included: a) assets in the form of goods that are part of and are used for an increase of the company’s equity were exempted from customs duties; b) a company was exempted from customs duties for those goods (raw materials, semi-finished goods) imported to be used in export production; c) companies with foreign investments exceeding US\$250 thousand and with over 50 per cent of the net income generated marketing their own products enjoyed a 50 per cent income tax reduction for the first five years of operation; d) companies with foreign investments exceeding US\$1 million were exempted from income tax for the first three years, provided that at least 80 per cent of the calculated tax was invested in operational development; e) foreign investors were guaranteed repatriation of their own profits and capital. These facilities covered investments made prior to 1 January 2000. However, the application of these measures was hampered by the present economic crisis.

17. Some members of the Working Party requested information on the basic provisions regulating investment and any restrictions or registration measures af-

fecting foreign investment. The representative of Moldova confirmed that the Former State monopoly in foreign trade had been abolished. The relevant legal provisions were Article 9 of the Constitution, which provided for free economic initiative, and fair competition. The criteria for registration of companies were set out in the Law "On Enterprises and Entrepreneurship" of 3 January 1992. There were additional requirements for certain type of business such as banking, insurance and joint stock companies set out in the respective Law "On Financial Institutions", Law "On Insurance" and Law "On Joint Stock Company". The state body authorized by the Government of the Republic of Moldova, or its commercial and economic representatives and associations, carried out the registration of economic agents with foreign investments (with the exception of banks, their branches and representations). The registration of banks with foreign investments, their branches and representatives was carried out by the National Bank of Moldova. The manner and terms of registration are set up in a similar way to that envisioned for the registration of national economic agents (Article 13 of the Law "On Foreign Investment").

18. In response to additional questions the representative of Moldova said that establishment of companies with a foreign equity participation exceeding US\$5 million had to be approved by the anti-monopoly authorities in accordance with Article 11 of the Law "On Foreign Investment". Possible restrictions of competition by domestic companies were examined according to Article 8 of the Law "On Monopoly Activities Limitations and the Development of Competition". There were no differences in approval for foreign and domestic investors by the State Environmental Protection Agency and the Medical and Epidemiological Agency.

19. Some members of the Working Party asked whether foreign investors were protected against expropriation or nationalization of their assets. The representative of Moldova said that Article 39 of the Law "On Foreign Investment" guaranteed foreign investments against expropriation (nationalization, requisition or any other equivalent measure), except in cases where such expropriation was carried out for an overriding public purpose, on a non-discriminatory basis. In the event of expropriation of a foreign investment, the Law on Foreign Investment requires that a foreign investor be paid prompt, adequate and effective compensation. Compensation had to be paid not later than three months after the measure had been taken, and included accrued interest calculated on the basis of an appropriate interest rate. Moreover, the Foreign Investment Law granted the foreign investor the right to challenge in court the lawfulness of the expropriation, nationalization or equivalent measure and the amount of the compensation. The representative of Moldova said that the Parliament and the Government of Moldova had taken actions to attract foreign investments aimed at creating a stable legal base and ensuring effective incentives, remissions and guarantees for foreign investors. The Constitution of the Republic of Moldova, the Foreign Investment Law and the bilateral agreements on promotion and protection of investment, that Moldova had signed with other countries, provided a protective

foreign investment regime. Since 9 June 1993 Moldova was a member of the Multi-lateral Investment Guarantee Agency (MIGA). A number of bilateral agreements on promotion and protection of investment had been signed with: Turkey, Poland, Germany, United States, China, Kuwait, Iran, Romania, Switzerland, Greece, Holland, Luxembourg, Finland, Hungary, Bulgaria, Great Britain, Czech Republic, Israel, France, Italy, Uzbekistan, Ukraine, Georgia, Russia and Belarus. These agreements sought to create and maintain favorable conditions for investors in the territory of the Republic of Moldova and to intensify economic cooperation to the mutual benefit, as well as encourage investment between parties, primarily by guaranteeing national treatment, non-expropriation, and the unrestricted transfers of investment funds from the investments.

- *State ownership and privatization*

20. The representative of Moldova said that Moldova initiated its program on privatization in 1993, executed through Law no.1333 –XII of 12 March 1994. In the first two years, 577 large, medium and small size enterprises were privatized, along with about half the state buildings. Around 800 thousand citizens of the Republic of Moldova participated in this endeavor. As the program was not completed in 1994, a further draft program for privatization was presented for 1995-1996. This second phase contemplated a deeper privatization, including the comprehensive privatization of state owned shares; an increase in private property owners and in the importance of the private sector, restructuring of the economy, development of capital markets and infrastructure; as well as a new system of organizing companies and other laws to protect owners rights. By 1996, this plan had achieved a number of objectives – distribution of wealth accruing to privatization, creation of a stock market and liberalization of real estate ownership. At the end of this period the private sector prevailed in the economy, accounting for 60 per cent of industrial production, 70 per cent of the services supplied in retail sales and social services and 44 per cent of the bulk works in building and transports. Over 74 per cent of the total number of enterprises have been privatized, including 93 per cent of the enterprises processing agricultural raw materials, 82 per cent of those in light industry and 95 per cent of firms in trade and social services. Almost one million citizens owned private land.

21. He further added that during the process of privatization, the citizens of the Republic of Moldova had been given free access to privatization directly or by intermediary of investment funds, 53 fiduciary companies were created specially for this purpose. Around 2/3 of state owned shares with a value of more than MDL 1.2 billion had been privatized through the activities of these institutions. Most recently, a system for Republican-wide bidding for share subscription was established. The system allowed citizens to have free access to shares purchase ensuring equilibrium between supply and demand, and securing a considerable saving of time and of financial resources for organizers and participants at bids. In this way around 1.1 thousand

enterprises, which constituted 90 per cent of all enterprises subject to privatization, had been privatized.

22. The representative of Moldova said that the Law “On Privatization Program for 1999-2000”, extended the Privatization Program of 1997-1998. The Privatization Program 1999-2000 covered, with limited exceptions, all sectors and branches of the economy. Enterprises scheduled for total privatization were from the following industries: textiles and garments, electronics, machine building, chemical and furniture manufacture, leather goods, foodstuff and package producing enterprises, as well as hotels, shops, restaurants, stores, gas stations and cafeterias. The representative of Moldova stated that there were no specific conditions for foreign investors concerning participation in the privatization program other than those applied to domestic investors. Foreign natural and legal persons were eligible to participate in the Privatization Program. In response to questions, the representative of Moldova noted that the Law did provide in Article 9 that certain types of firms could not be privatized, such as firms, which constituted essential national assets. Other sectors not currently subject to privatization included air and railway transportation, education and health systems. He noted, however, that the Government of Moldova might at a later date decide to subject these latter sectors to privatization.

23. In response to further questions concerning the distinction between “privatized firms” and “privatized objects”, the representative of Moldova stated that privatized objects were assets previously attached to state owned enterprises, but unrelated to the core activity of the enterprises. Such objects - for example laundries, schools, recreation halls, bakeries, were privatized separately from the core parts of the state owned enterprise to which they had been attached. The core activities were then privatized separately.

24. In response to questions from members of the Working Party, the representative of Moldova stated that a special regime existed for the privatization of agricultural enterprises. Only employees of the former State-owned agricultural enterprises were eligible to participate in the privatization of agricultural enterprises. By 1 January 2000, 96 per cent of applicants had been issued with certificates for land ownership. Foreigners could purchase land except that used for agriculture and forestry. The Law “On normative price and procedure on sale and purchase of land covered: (a) sale and purchase of land, including land associated with privatized objects or objects subject to privatization, as well as of land associated with unfinished constructions; (b) setting the state fee for sale and purchase of land; (c) exclusion of land in agricultural and forestry categories, and land forming part of an agricultural cycle and excluding the allocation of such land to other categories; (d) compulsory purchase of land; (e) lease relations, (f) establishing the prices for land mortgaging.

25. In response to further requests for information the representative of Moldova stated that another key structural measure involved the liquidation of the state farms and the distribution of land to individual farmers. From a pilot project in 1997, the project nationwide had been expanded to 989 former state farms and aimed at completing the process by end 2000. By end of July 2000, some 875 collective farms had entered into the privatization procedures and around 65 per cent of land had been allocated titles of ownership. By end 2000 Moldova would have handled 989 farms, with at least 825 liquidated and individual titles issued representing 80 per cent of agricultural land.

26. In response to further questions regarding the privatization of energy, the representative of Moldova said that the restructuring of the energy sector had started. The Law on the Concept of privatization of enterprises in the energy sector no. 63-XIV of 25 June 1998 envisaged that distribution companies would be privatized first, followed by generating companies. The representative of Moldova said that Moldova was also taking steps to complete the privatization of telecommunication enterprises and major wineries.

27. In response to further questions, the representative of Moldova stated that the status of privatization in the Republic of Moldova set out in Tables 1 and 2 below.

Table 1 – Sectoral Privatisation Data Profile for 1993-1999

Sector	Number of Objects approved for privatization	Number of Objects privatized as of 01.01.2000	Percentage of Objects privatized
Industry	1,521	1,461	96.05
Agriculture	3,085	2,806	91.00
Construction	441	408	92.51
Transport	419	409	97.61
Trade and Public Catering	180	170	94.44
Consumer Services	402	365	90.80
Other sectors	467	420	89.94
TOTAL	6,515	6,039	92.70

Table 2 – Sectoral Privatisation Data Profile by Privatisation Modes for 1993-1999

Sector	Privatisation Mode	Number of Privatized Objects
Industry	Sale through stated owned shares;	315
	Open outcry auctions with lowering or raising the initial price;	1,098
	Privatized through individual projects;	3
	Sale through investment tenders;	8
	Combination of many methods.	37

Sector	Privatisation Mode	Number of Privatized Objects
Agriculture	Sale through stated owned shares;	644
	Open outcry auctions with lowering or raising the initial price;	2,081
	Privatized through individual projects;	20
	Sale through investment tenders;	3
	Combination of many methods.	58
Construction	Sale through stated owned shares;	90
	Open outcry auctions with lowering or raising the initial price;	299
	Privatized through individual projects;	0
	Sale through investment tenders;	2
	Combination of many methods.	17
Transport	Sale through stated owned shares;	94
	Open outcry auctions with lowering or raising the initial price;	295
	Privatized through individual projects;	7
	Sale through investment tenders;	0
	Combination of many methods.	13
Trade and Public Catering	Sale through stated owned shares;	44
	open outcry auctions with lowering or raising the initial price;	122
	Privatized through individual projects;	0
	Sale through investment tenders;	0
	Combination of many methods.	4
Consumer Services	Sale through stated owned shares;	78
	Open outcry auctions with lowering or raising the initial price;	275
	Privatized through individual projects;	0
	Sale through investment tenders;	0
	Combination of many methods.	12
Other sectors	Sale through stated owned shares;	78
	Open outcry auctions with lowering or raising the initial price;	331
	Privatized through individual projects;	2
	Sale through investment tenders;	2
	Combination of many methods.	7
TOTAL		6039

Note: Subject to privatization: property of enterprises, institutions, entities, associations, their structural subdivisions complex production units, objects from the Fund of uninhabitable buildings, unfinished constructions, dwellings, state-owned shares in companies privatized and to be privatized, as well as adjacent land of privatized and to be privatized companies, land plots of the garden cooperatives.

28. Some members of the Working Party sought information on the position of Moldova's output and trade accounted for by unprivatized firms. The representative of Moldova said that the majority of non-privatized enterprises were reorganized and restructured in joint stock companies. Presently, 644 state enterprises and 762 joint stock companies are being privatized and the share of the State is presented in the following way:

No. of Enterprises	Share of State Ownership
186	0% - 10%
96	10% - 30%
76	30% - 50%
404	50% - 100%

<b>The share of whole and partially owned State enterprises in the national economy (in %)</b>			
<b>Economic Ratios</b>	<b>1998</b>	<b>1999</b>	<b>9 months of 2000</b>
In GDP	25.0	25.4	n.a.
In Industrial Output	29.8	30.2	25.0
In Agricultural Output	3.6	2.2	n.a.
In Retail Sales	7.4	7.1	5.3
In Total External Trade	23.7	19.2	16.3

29. He further added that the non-privatized enterprises were mostly in the energy sector and water supply. The enterprises for forestry service, protection of plants and land sector, public alimentary sector and university institutions, auto and bus stations were not subject to privatization.

30. The representative of Moldova stated that Moldova would ensure the transparency of its ongoing privatization program and would keep WTO Members informed of progress in the reform of its economic and trade regimes. He stated that his Government would provide annual reports to WTO Members on developments in its program of privatization as long as the privatization programmes would be in existence, along the lines of that provided to the Working Party. He also stated that his Government would provide annual reports on other issues related to its economic reform as relevant to its obligations under the WTO. The Working Party took note of these commitments.

- *Pricing policy*

31. In response to further questions the representative of Moldova stated that before January 1998 the Government of Moldova had established the prices and tariffs of energy. Starting with January 1998, tariff policy on energy was promoted by the National Energy Regulatory Agency (NERA), which had been created according to Governmental Decision No. 767 of 11 August 1997. NERA is a non-governmental, independent regulatory body, which operated in accordance with legislation of the Republic of Moldova. The prerogatives, obligations and rights of the NERA were stipulated in the laws and governmental decisions on electric power and gas. According to paragraph 6 of Governmental Decision No.767 of 11 August 1997, NERA had the following functions; issue of licenses for activities related to production, transportation, dispatching services, distribution, supplying, import and export of electricity, thermal energy and natural gas; regulation of tariffs for energy products and services; ensuring protection of the rights of energy consumers; promotion of competition in the energy market. NERA had the right to establish a methodology for the calculation of costs and tariffs of energy by electroenergetic enterprises. The methodology was fixed for a three-year period. The methodology was based on the establishment of the basic tariffs as “ceiling prices” with further

adjustment of these tariffs, taking into account the imported prices of fuel, energy and natural gas, inflation, depreciation of the national currency, modification of the supplied energy, as well as other factors, which directly influence the tariffs. The most recent adjustment of the energy tariff was on 21 March 2000 (NERA Decision No.20 of 21 March 2000). This new tariff completely cover the real cost of energy, which as approved by NERA had entered into force on 1 April 2000. **The tariffs** for production, transportation, distribution and marketing of energy had to cover the cost of production, as well as the necessary profit, which is limited by NERA. In addition to Governmental Decision No. 767 of 11 August 1997, Governmental Decision No.547 of 4 August 1998 “On State coordination and regulation of prices and tariffs” established the legal authority to apply state control over the prices for a number of items listed in table 3, below.

Table 3 – Nomenclature of goods and services for which fixed prices are settled by the Government and/or local authorities

<b>Description of goods and services</b>	<b>Regulating public body</b>
Services supplied by cadastral territorial authorities	Ministry of Economy and Reforms
Imported goods purchased for hard currency on the basis of interstate agreements	Ministry of Economy and Reform
Land and subterranean resources	Government of the Republic of Moldova
Rent of public network by “Radio-Moldova” Company	Parliament of the Republic of Moldova
Paid medical services	Ministry of Health
Products and services of monopolies	Ministry of Economy and Reforms
Coal commercialized by State Company “Moldova-Combustibil”	Ministry of Economy and Reforms
Passenger transport services	Governmental bodies and local authorities
Telecommunication, wire broadcasting, telegraph, postal services supplied for population within the Moldova’s territory	Ministry of Economy and Reforms
Technical means for prophylaxis and rehabilitation of invalids	Ministry of Economy and Reforms
Precious metals	Ministry of Finance
Interurban and international road transportation of passenger and freight (except air transport)	Ministry of Transport and Communication
Freight transportation of rail transport services	Ministry of Transport and Communication
Air transportation of passengers	State Agency of Civil Aircraft
Natural gas, electric and thermal energy	National Energy Regulatory Agency
Notary services	Ministry of Justice
Natural comprised gas in bottles, used by the cars	Ministry of Economy and Reforms
Drugs and medical products, domestically produced	Ministry of Health
Elevator (lift) services	Ministry of Environment and Territory Development
Aqueduct and sewerage services	Local authorities
Sanitation services	Local authorities
Funeral services	Local authorities
Heating and water supply services	Local authorities
Rent services	Local authorities

Table 4 – Nomenclature of goods for which a limited profitability was established  
(According to Governmental Decision no.335 of 24 May 1994)

Description of product	Up to [-%]	HS code
Milk and dairy products	15	0401-0405
Cheese with fat up to 2 per cent	15	0406
Flour of I and II quality to make bread	10	1101-1102
Bread and bakery products	10	1905

At the same time, according to Governmental Decision No. 547 of 4 August 1995 there were a number of goods (table 5), which for social reasons shall be sold with a margin of profit that may not exceed 20 per cent of the wholesale price.

Table 5 – Nomenclature of goods, which for social reasons shall be sold with a margin of profit that may not exceed 20 per cent of the wholesale price

Description of product	HS code
Canned meat, fruits and vegetables for children	0702, 0704-0709, 1602
Vegetables oil	1507-1515
Butter and dairy products	0405
Cheese	0406
Sugar	1701
Flour	1101-1102
Bread and bakery products	1905
Footwear for children	Part of 64
Notebooks for children	482020
Household soap	340219
Detergents	3402
Toys	9501
Pharmaceutical products (approved by the Ministry of Health)*	30

\* Profit margin may not exceed 40 per cent of the wholesale price.

32. The representative of Moldova confirmed that the price for goods and services in Moldova other than for the items listed in Tables 3-5 were not subject to State control.

33. The representative of Moldova stated that a new Law on Prices had been drafted and was currently before the Parliament of the Republic of Moldova. The draft law (WT/ACC/MOL/34) reaffirmed the right of private entities freely to establish prices for traded goods. In comparison with the exception of a list of goods and services the prices for which are controlled by the State. In comparison with the Government Decision on prices and tariffs (reflected in Tables 3-5), the draft law would decrease the number of goods and services for which the prices are controlled by the State, reducing in this way their incidence and granting more freedom to legal and natural persons who market goods and services.

34. The representative of Moldova confirmed that Moldova would apply its current state prices and any other state prices or price controls applied from the date of accession in a WTO-consistent fashion, and would take account of the interests of exporting WTO Members as provided for in Article III.9 of the GATT 1994. Moldova would publish any list of goods and services subject to State pricing or price controls in the “Monitorul Oficial” of the Republic of Moldova, including any changes in existing measures. He also stated that his Government would review the current legislation and would reduce the incidence of price controls in its economy. The Working Party took note of these commitments.

- *Competition Policy*

35. The representative of Moldova stated that the legal framework for anti-monopoly regulation was Law No.906-XII of 29 February 1992 “On the Limitation of Monopoly Activities and the Development of Competition”. This Law established the fundamental principles for regulating the activity of enterprises having a *de facto* monopoly and for supporting the development of competition.

36. The representative of Moldova added that as part of the implementation of the Law the Governmental Decision No.619 of 5 October 1993 included several regulations dealing with monopolies. Annex 2 of this document regulates the State Register of monopolies on the market of the Republic of Moldova. This regulation defines a “dominant position on the market” whereas a company on the market can exercise unilateral influence and prevent the access of other companies or limit the freedom of activity of other companies. A company is not considered to have a dominant position if its market share does not exceed 35 per cent. The State Register controls the existence of monopolies and the activity of such companies and sets state control on price setting, volume of production, the variety of goods, and the quality of goods and services. The State Register includes companies whose market share exceeds 35 per cent and those whose actions or inactions infringe the current anti-monopolist legislation. The State Register is compiled according to the decision of the Ministry of Economy and Reforms on market share based on statistical indices provided by the State Department on Statistics. Market share is determined on the basis of: (i) the volume of production for the main goods on the market, (ii) the marketing of the goods and services, the export of goods and services and (iv) the import of similar goods onto the domestic market.

37. Some members of the Working Party asked for information on the manner in which Moldova’s Law “On the Limitation of Monopoly Activities and the Development of Competition” dealt with vertical and horizontal restraint arrangements, and the recourse foreign firms had if opportunities were impaired by such arrangements. In response, the representative of Moldova stated that vertical and horizontal restraint arrangements were forbidden by the Moldovan Law “On the Limitation of

Monopoly Activities and the Development of Competition” if one of the parties had a dominant market position, i.e. a market share of 35 per cent or more; and if the arrangement led or could lead to restricting competition. Article 4(1) banned horizontal arrangements; Article 4 (2) banned vertical arrangements. The decision whether or not specific arrangements violated the Law was taken by the Ministry of Economy and Reforms, Department of Antimonopoly and Competition. Businesses, regulatory authorities, consumers associations, trade unions or the Department of Antimonopoly and Competition could initiate proceedings on their own initiative. Foreign firms, like domestic firms, had the right to file complaints at the Public Prosecutor’s Office. He further added that a unit in the Ministry of Economy to which foreign firms had access checked competition. This unit in the Ministry of Economy and Reforms is called the Department of Antimonopoly and Competition. A new Law on Protection of Competition was elaborated and approved in the second reading by the Parliament in June 2000. This Law will replace the existing Law on antimonopoly. According to the new Law an independent body, a new National Agency for Protection of Competition, will be created. Moldovan Law allowed exclusive dealerships if they did not contravene the provisions of Article 4(2). Existing exclusive dealerships did not need to be registered and the Government did not keep a register of such arrangements.

### III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

- *Powers of executive, legislative and judiciary, administration of policies on WTO-related issues*

38. The representative of Moldova stated that, in pursuance of the Constitution, the powers of the State were divided among the executive, legislative and judicial branches, with the President being the Head of State. The President of the Republic of Moldova was the guarantor of national sovereignty, independence, and of the unity and territorial integrity of the nation. The President of the Republic was elected by freely expressed, universal, equal, direct and secret ballot, with universal suffrage. His term of office was four years. Following consultation with the parliamentary majority, the President designates a candidate for the office of Prime Minister and makes use of the vote of confidence given him by Parliament to nominate the Government. The President had the right to dissolve Parliament in the case of an inability to form a Government or when the passing of new legislation had been deadlocked for three consecutive months. The Government consists of a Prime Minister, a First vice-prime-minister, of ministers and other members, as determined by organic law. A specific program of activities approved by Parliament sets guidelines, which the Government uses in the exercise of its powers. The role of the Government was to carry out the domestic and foreign policy of the State and to exercise general control over the public administration. Parliament was the supreme representative body of the people and the sole legislative authority of the State in the Republic of Moldova. Parliament consisted of 101 members. The

members of parliament were elected by freely-expressed, universal, equal, direct and secret ballot, with universal suffrage. The Parliament enacted laws, ratified international treaties and checked the Executive, which was accountable to Parliament. The Judiciary was independent of the Executive and the Legislature. The Supreme Court of Justice, the Court of Appeal, Tribunals (High Courts) and Courts of Law (Magistrates and County Courts) administered Justice. The President on the basis of a proposition from a special Commission appointed judges, except for the Supreme Court. The members of the Supreme Court were appointed by Parliament.

39. The representative of Moldova said that there were several governmental entities responsible for making and implementing policies affecting foreign trade. The Department of Foreign Economic Relations (DFER) in the Ministry of Economy was responsible for Moldova's international economic relations. The DFER prepared implemented and coordinated foreign economic policy and international co-operation. Responsibility for economic policy as a whole rested with the Ministry of Economy and Reforms and included the implementation of the economic reforms undertaken in the framework of the transition to a market economy. The Department of Customs Control implemented the Government's customs policy and ensured that customs legislation was observed. Parliament was the only competent body to set tariffs and taxes on imports and did so in the annual Budget Law up to the year 2000. Thereafter, tariffs and taxes on imports would be established as Annexes to the Law on Customs Tariff.

40. The representative of Moldova said that the National Bank defined state national monetary policy and was responsible for the stability of the currency, regulated the money supply, set the exchange rate policy and supervised the activities of commercial banks and other credit institutions. The National Bank issued licenses for the establishment of commercial banks, and organized and monitored prudential requirements. The National Bank was independent of the Government and reported directly to Parliament. The Ministry of Finance formulated financial and fiscal policy including aspects relating to trade and supervised the implementation of the fiscal regime in commercial activities. The Department of Standards, Metrology and Technical Supervision ensured that the requirements of standardization and certification were met. The Department provided information to importers on products subject to certification and on conformity procedures. There was also a State Agency for the Protection of Industrial Property (AGEPI), and a State Agency on Copyrights.

41. The representative of Moldova said that Law No.853-XIII of 29 May 1996 "On Reorganization of the Judicial System", provided for a Supreme Court of Justice, Economic Courts, Military Courts, Courts of Appeal, five tribunals (High

Courts) each covering one of five regions, to be set up. Law No.970-XIII of 24 July 1996 "On Economic Courts" stipulated the authority over disputes connected to economic relations among natural and legal persons. The Economic Courts had been established by Parliament and the President of the Republic of Moldova appointed judges and the Supreme Council of Magistrates on the basis of recommendations made to him. The Law "On Economic Courts" had established the following system for economic disputes: District Economic Courts, the Economic Court of the Republic of Moldova, and the Supreme Court. All disputes relating to the subject matter of WTO Agreements involving legal persons were required to be heard by the economic courts, whereas all disputes involving natural persons were required to be heard by the ordinary courts. Within the structure of the Economic Court of the Republic of Moldova there were two Appellate Bodies.

42. In response to further questions the representative of Moldova stated that any administrative decisions on issues covered by the WTO could be appealed. An appeal in the first instance could be taken within the responsible governmental institution according to Law No. 190-XIII of 19 July 1994 "On Petitioning" with amendments introduced by Law No. 18-XIII of 14 May 1998. Article 2 of the Law "On Petitioning" permitted foreigners to address complaints to the respective governmental institutions or tribunals when their legitimate rights were affected. Articles 8 and 9 stipulated that the timeframe for examination of petitions was between one week and one month. In special cases the examination could take a maximum of two months.

43. The representative of Moldova also noted that appeals could be made to an independent tribunal. When both parties at the trial were legal persons the economic courts examined the issue. There were two economic courts in Moldova. One had jurisdiction over the Chisinau municipality and the other over the rest of Moldova. If one of the parties to the trial was a natural person, the issue was brought before the ordinary court and other superior judicial institutions. Courts of first instance were based in each administrative unit (former rayons), in total 40. Despite the creation of new administrative units - judets, that consist of several rayons, courts of first instance remained in each former administrative unit, as well as major cities: Chisinau, Balti, Bender and Tiraspol had several such courts based on their internal administrative division. Higher-ranking tribunals were based in Chisinau, Balti, Bender, Tiraspol and Cahul. There was one Court of Appeal in Chisinau and the Supreme Court of Justice is also based in Chisinau.

44. In response to requests for information on the status of draft and implementing legislation concerning the various WTO Agreements, the representative of Moldova presented in document WT/ACC/MOL/22 and WT/ACC/MOL/32 a detailed table entitled Analytic Note Listing Moldovan Legislation, Decrees, Deci-

sions and Regulations Relevant to the WTO Legal Texts: Status of Draft Legislation and Draft Amendments. He confirmed that after ratification of the Protocol of Accession of Moldova to the WTO by the Moldovan Parliament and Moldova's accession to the WTO, the provisions of the WTO and Moldova's Protocol would supersede any domestic laws and regulations found to contradict them. According to the Article 8 of the Constitution, the Republic of Moldova pledged to respect the Charter of the United Nations and the treaties to which it is a party, and to observe in her relations with other states the unanimously recognized principles and norms of international law. The coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter. Whenever international agreements to which the Republic of Moldova is a party contain provisions in conflict with those contained in Moldova's laws and normative acts the provisions of the international agreements are to be applied.

- *Authority of sub-central governments*

45. The representative of Moldova stated that the exclusive responsibility for making and implementing policies affecting foreign trade was vested with the central Government. However, according to Law "On Special Judicial Statute of the Gagauz-Yeri", the Gagauz-Yeri region was an autonomous territory with authority to safeguard the political, economic and cultural interests of its population. The Popular Assembly had competence to adopt local legislation in the following fields: science, culture, education; household and town-planning; health care and sports; local budget; financial and fiscal activity; economy and environment; labour and social assistance. The Gagauz-Yeri region had no autonomous authority with respect to foreign trade, did not issue or implement technical standards, sanitary or phytosanitary measures and did not subsidize.

46. In response to further questions, the representative of Moldova stated that Law No. 344 of 23 December 1994 "On Special Judicial Statute of the Gagauz-Yeri" had established the autonomy of the "Gagauz-Yeri" region in economic matters mostly concerning its autonomy in administrating its own budget and running economic activity. This region had no authority regarding excise, stamp, or sales taxes or any other taxes related to trade, or on establishing requirements for investment, e.g., trade related investment measures covered by the WTO Agreement on TRIMS. These were under the exclusive authority of the Moldovan Parliament. No legal act adopted by the People's Assembly of Gagauz-Yeri region would contradict Moldovan legislation or international commitments taken by Moldova. All WTO Agreements and Moldova's commitments in the WTO would be applied uniformly on its customs territory.

47. In response to requests for information regarding the Agreement on the Transnistria region, the representative of Moldova referred to the Memorandum

on the Basis for Normalization of Relations between the Republic of Moldova and Transnistria signed in Moscow on 8 May 1997. The Memorandum, and the Agreement on the Organizational Basis of Social-Economic Collaboration, signed on 10 November 1997, were the legal bases for settling the conflict. Based on this Moldova was making every effort together with other interested countries to overcome the consequences of the conflict. The activity undertaken so far had succeeded in ensuring economic stability and compliance with Moldova's external obligations. As regards issues related to foreign trade commitments, Moldova succeeded in finding common ground with the Transnistrian authorities. The representative of Moldova stated that Moldova had signed a special protocol on customs cooperation with the Transnistria region that foresaw mutual elaboration of customs policy, exchange of statistics and facilitation of border measures.

48. The representative of Moldova confirmed that all fiscal, financial and budgetary activities performed by local governments would be in compliance with Article III of the GATT 1994. The representative of Moldova confirmed that sub-central entities had no autonomous authority over issues of subsidies, taxation, trade policy or any other measures covered by WTO provisions. He confirmed that the provisions of the WTO Agreement, including Moldova's Protocol, would be applied uniformly throughout its customs territory and other territories under its control, including in regions engaging in border trade or frontier traffic, special economic zones, and other areas where special regimes for tariffs, taxes and regulations are established. He added that when apprised of a situation where WTO provisions were not being applied or were applied in a non-uniform manner, central authorities would act to enforce WTO provisions without requiring affected parties to petition through the courts. The Working Party took note of these commitments.

#### IV. POLICIES AFFECTING TRADE IN GOODS

##### - *Registration and right to trade*

49. The representative of Moldova stated that the Law "On State Regulation of External Trade Activity" No. 1031-XIV of 8 June 2000 establishes the legal basis for state regulation of external trade. Nevertheless, pursuant to the Governmental Decision No. 777 of 13 August 1998 "On Improving the Mechanism of Regulating External Trade (Import Licensing)", there were no specific registration requirements for engaging in importing. The only requirement was that the import activities should be mentioned in the statute of the enterprise.

50. Some members of the Working Party requested further information on the meaning of the "statute of the enterprise". In response, the representative of Moldova stated that the statute of the enterprise was comparable to the articles of incorporation for corporations and to partnership agreements for partnerships. A detailed list of the

information to be provided in the statute was contained in Article 23 of the Law “On Enterprises and Entrepreneurship”. For certain types of organizations, e.g., banks, insurance and joint stock companies and cooperatives, special provisions existed in the relevant laws. All types of enterprises, including those without legal personality, had to be registered and required a statute. Statutes were not registered. Statutes were submitted together with the application for registration of the enterprises and a document confirming the payment of a registration fee. The representative of Moldova added that all forms of business enterprise, including corporations, partnerships and individual firms could engage in the business of importing and exporting. Individuals could also engage in import and export activities of a commercial nature. The only requirement was that individuals had to register their activities as a business. If the importation and exportation activities were for the individual personal consumption, there were no requirements. However, natural persons were not allowed to import or export goods, subject to licensing. The same rules applied to foreigners and citizens of Moldova.

51. Some members of the Working Party asked whether Moldova could confirm that Governmental Decision No. 859 had established “activity licensing” requirements for firms performing certain activities, such as importing or wholesaling alcohol beverages or tobacco products; importing or selling petrol and diesel; and importing or trading in chemical and biological products and fertilizers for plants. Licensing appeared to also be required for trade or storage of chemical reagents, inflammable liquefied gas and toxic chemical substances; ozone depleting substances; and ionic radiation sources and radioactive materials. In response, the representative of Moldova stated that only Law No.332 of 26 March 1999 “On the issuing of licenses of certain types of activities” established licensing requirements for some types of activities. Article 19 “Final Provisions” provided that within two months’ of the enactment of that law, the Government was required to adjust its normative acts in accordance with the present law. Annex 2 of that Law listed the types of activities for which a licence was required and the responsible institutions for issuing such licensing. The list was presented to members of the Working Party in document WT/ACC/MOL/13, and is reproduced in Annex II of this Report. The representative of Moldova further noted that Articles 6, 7, and 12 of the Law “On the issuing of licenses for certain types of activities governed the procedures for issuing and granting licenses. Article 13 of the Law “On the issuing of licenses for certain types of activities” provides for detailed procedures when an application for licence was refused. The applicant is informed within 3 days about the refusal to issue a licence following the date of adoption of such decision, indicating the reasons of rejection. The reasons to refuse the issue of a licence under the Article 13(2) are: (a) inauthentic or changed data, contained in the submitted documents; (b) irrelevant conditions or lack of conditions (technical, technological, sanitary-hygienic and ecological security of technological processes) necessary for performing

the concerned type of activity listed in the application; (c) previous withdrawal of a licence for the same type of activity in cases of violations listed in the art.16 (c), (d) and (e); and (d) other conditions according to the legislation. The applicant may submit a new request when he has eliminated the causes, for the original refusal of the application for the licence. Any licensing decision is open to legal challenges.

52. The representative of Moldova confirmed that the former state foreign trade monopoly had been abolished and that no restrictions existed on the right of foreign and domestic individuals and enterprises to import and export goods within Moldova's customs territory, with the exception that the importation and exportation of goods under licence could be undertaken only by registered firms, and with the exception of licensing requirements for those activities listed in Annex I of this Report, as required by Annex 2 of Law "On the issuing of licenses for certain types of activities". The importation or exportation of products covered by activity licenses was subject only to requirements consistent with the WTO. The activity licenses enumerated in Annex 2 of Law "On the issuing of licenses for certain types of activities" did not restrict foreign participation and applied equally to foreign and domestic businesses. Activity licenses were administered for the purpose of ensuring national security, product safety and the protection of human, animal or plant life or health. The criteria for granting activity licenses are published in the "Monitorul Oficial" of the Republic of Moldova. The criteria for engaging in import and export trade in the restricted sectors were consistent with generally applicable restrictions placed on trade in similar domestically produced goods. The availability of activity licenses was not restricted nor was the licensing applied to restrict imports, production, or wholesale or retail trade in any product. The list provided in Annex 2 to the Law "On the issuing of licenses for certain types of activities" was exhaustive and its expansion to other activities would require additional legislation as stipulated in Article 2 (2) of that Law.

53. Some members of the Working Party noted that Annex 17 of the 1999 Budget Law provided for the collection of discriminatory fees in relation to the licensing of storage or wholesaling of imported alcoholic beverages. The fee was five times the level of the fee for the storage of domestically produced alcohol. Those members requested that this be brought into conformity with the requirements of Article III:4 of the GATT 1994. In response, the representative of Moldova acknowledged that the previous fees in relation to the licensing of storage or wholesaling of imported alcoholic beverages were inconsistent with the requirements of Article III:4 of the GATT 1994. The representative of Moldova confirmed that licensing fees did not depend on the value of the product and said that the Budget Law 2001 would include the following fee structure for the manufacturing, storage, wholesale and importation of alcoholic, tobacco, gasoline and diesel products. The 2000 and 2001 Budget Laws of the Republic of Moldova had brought all internal taxes and other

internal charges, in particular those applied in relation to the licensing of storage or wholesaling of imported alcoholic beverages, into conformity with the requirements of the WTO.

Table 6 – Licensing fees structure for gambling, manufacturing storage, wholesale and importation of alcoholic, tobacco and gasoline and diesel products

1. Type of activity	Licence fees (in minimum wages)	Equivalent in MLD
1. Gambling		
a) Operation of gambling machines with cash winning	200 per machine	3,600
b) Organisation of betting during sport and other contents	7% of total value of bets received	-
c) Organisation and holding of lotteries	7% of total cost of the tickets for digital and instant lotteries	-
d) Operation of casino gambling tables with cash winnings	5,000 per table	90,000
2. Manufacturing and wholesale of alcohol products	1,000	18,000
3. Storage and wholesale of alcohol products	1,000	18,000
4. Import and wholesale of alcohol products	1,000	18,000
5. Processing of tobacco manufacturing and wholesale of tobacco products	1,000	18,000
6. Wholesale of tobacco products manufactured in the country	1,000	18,000
7. Import and wholesale of tobacco products	1,000	18,000
8. Import of gasoline and diesel fuel	10,000	180,000
9. Wholesale of gasoline and diesel fuel	10,000	180,000
10. Retail sale of gasoline and diesel fuel at the petrol stations	1,000	18,000

54. The representative of Moldova stated that the 2000 and 2001 Budget Laws of the Republic of Moldova had brought all internal taxes and other internal charges, in particular those applied in relation to the licensing of the activity of storage or wholesale of imported alcoholic beverages, into conformity with the requirements of the WTO Agreement. He confirmed that from the date of accession Moldova would ensure that its laws and regulations relating to the right to trade in goods and all fees, charges or taxes levied on such rights would be in full conformity with its WTO obligations, including Articles VIII: I (a), XI: I and III:2 and 4 of the GATT 1994 and that it would also implement such laws and regulations in full conformity with these obligations. He confirmed in particular that activity licensing requirements would not abridge the right to import and export. The Working Party took note of these commitments.

- Customs Tariff
- Ordinary customs duties

55. The representative of Moldova said that the present import customs tariff of

Moldova was approved every year as part of the Budget Law. The representative of Moldova confirmed that after ratification of the Accession Protocol by the Moldovan Parliament, the Moldovan Government would set the custom tariffs within the agreed ceiling levels.

56. In response to questions concerning the applied rates of the specific duties the representative of Moldova provided the Working Party with the following tabulation:

Table 7 – Specific Duties

Code	Description	Bound Rate of Duty
2203	Malt beer	1.0 EURO/l
2204	Natural wine, including strong wines; must of grapes other than in item 2009	1.32 EURO/l
220510	Vermouths and other wines flavored with herb or other aromatic substances in containers holding 2litters or less	1.32 EURO/l
2206	Other fermented drinks (e.g. apple or pear cider, hydromel); mixtures of other fermented drinks and nonalcoholic drinks not mentioned in other items	0.24 EURO/l
2207	Essential alcohol of 80 per cent or more; ethyl alcohol and other alcoholic drinks, of any concentrations	1.0 EURO/l
2208	Ethyl alcohol of up to 80 per cent:	1.0 EURO/l
2402	Leaf cigarettes, cigars made of tobacco or its substitutes	2EURO/1000 pcs

The representative of Moldova noted that specific duties were administered according to the normal rules of customs procedures.

57. The representative of Moldova provided the following tabulation of the average customs tariff rates:

Table 8

Description	Year	Percentage
Simple average	1995	9.5
Simple average	1996	n.a.*
Trade weighted average	1995	5.9
Trade weighted average	1996	4.8 (using 1995 trade weights) *
Trade weighted average	1997	11.6 (using 1996 trade weights)
Trade weighted average	1998	5.0 (using 1997 trade weights)
Trade weighted average	1999	4.8 (using 1998 trade weights)

\* A simple average for 1996 was not calculated as the 1996 tariff included a number of relatively high fixed duty rates. When calculating the weighted average these could be ignored, as there had not been important import volumes in these tariff lines.

58. Some members of the Working Party said that there was uncertainty concerning the previous applied customs tariff schedule in Moldova. In response, the representative of Moldova submitted the customs tariff for 1998, 1999 and 2000 in

electronic format, which were parts of the Budget Law. The Government had proposed to the Parliament to modify this system through the adoption of a customs tariff with base duty rates and applied rates as an annex to the Law on Customs Tariff.

- *Tariff quotas, tariff exemptions*

59. The representative of Moldova stated that in Moldova, at present, there were no tariff quotas. In response to questions concerning tariff exemptions, the representative of Moldova stated that tariff exemptions did not depend on the type of product but on its use. He provided a list of imports, which benefited from tariff exemptions. They included charitable donations from organizations and individuals to recognized charity institutions, goods imported under “cooperation contracts”, the GSP system, agreements of technical cooperation etc. Import duty exemptions applied to raw material imports from all countries if the final product was subsequently exported. Tariff exemptions other than those provided for in the context of a customs union or a free trade agreement were applied on a M.F.N. basis. Moldova was prepared to undertake that exemptions would only be granted to third countries in accordance with the provisions of the WTO.

- *Other duties and charges*

60. The representative of the Republic of Moldova confirmed that the Republic of Moldova levied no duties and charges on imports other than ordinary customs duties and charges for services rendered. He further confirmed that Moldova had bound other duties and charges within the meaning of Article II:1(b) of the GATT 1994 at zero in its Schedule of Concessions on Goods which is reproduced in Part I of the Annex to the Protocol of Accession.

61. The representative of Moldova confirmed that the “consular charges” applied by the foreign representatives and embassies of Moldova for performing consular actions and certifying or issuing documents with judicial importance were only applied to legal and natural persons of the Republic of Moldova. These consular charges were not required for the authentication of documents necessary to import goods into Moldova.

- *Fees and charges for services rendered*

62. Some members of the Working Party asked whether Moldova levied other duties and charges, in particular any *ad valorem* customs fees. In response, the representative of Moldova said that Moldova had previously applied an *ad valorem* customs user fee. However, the Budget Law 2000 removed the 0.25 per cent customs user fee and introduced a flat fee reflecting the approximate cost of the services rendered. In addition to basic administrative expenses related to the processing of imported or exported goods, other related costs such as statistical services would

be taken into consideration, as well as the apportionment of the general costs of improving basic customs infrastructure in order to facilitate movements of merchandise. The revenues from the fee would be used to finance the Department of Customs Control activities on the basis of a expenditure-sheet approved by the Government.

Table 9 – Payment Rate for Customs Procedures

Types of custom services	Rate in Euro
For the customs authorisation of goods with a customs value	
– Less than 50	3
– Between 50 and 1000	5
– More than 1000	0.25% of customs value but not more than 600 Euro
For the customs authorisation of imported or exported goods that must be returned to the country of origin	
– For each customs declaration	30
– For each additional customs declaration sheet	15
For the authorisation of goods in the case of transit	
– For each customs declaration	10
– for each additional customs declaration sheet	5
For the authorisation of goods to be transferred to/or from the bounded customs warehouse	
– For each customs declaration	30
– for each additional customs declaration sheet	15
For the authorisation of goods, that are outside of zones of customs control (companies premises), or outside of established working hours (per hour of one customs officers time)	
– outside of customs control zones	20
– outside of office hours, Saturday, Sunday	20
– public holidays	20
For the cancellation of ordered services, stipulated in point 5, which was not motivated in due time and written form	20
To submit the certificate of transport registration of chassis and engine toc, introduced on the territory of the Republic, as well as temporary, that must be registered in the Ministry of Internal Affairs	5
For storage goods at customs warehouse, for one kilo per each day	
– For the first 10 days	0.1
– For each of the following days	0.5
For the obligatory retention of goods to be left at custom, as mortgaged goods for each day of storage	
– For the first 10 days	0.5% of the total price of goods
– for each of the following days	0.1% of the total price of goods
To extend the valid period of the customs declarant certificate	100
Additional payment for issue of duplicate certificates by the declarant during the year	10
To change the terms in custom declaration	0.1% of the customs value, but not more than 200 Euro
For the re-evaluation of the customs value, indicated in the Custom declaration at the request of the company in the cases stipulated in the legislation	1% of the customs value but not more than 500 Euro
For the escort of goods transported under the customs control	0.5 Euro for 1 km within stipulated time and 1 Euro for exceeding the stipulated time

Types of custom services	Rate in Euro
For applying of customs sealing devices and customs stamps	3 per piece
For presenting evidence that confirm export and import operation did by companies	10
For the customs authorisation of international mail sent by public at designated offices	0.4

63. The representative of Moldova confirmed that, from the date of accession, Moldova would not apply or reintroduce an *ad valorem* customs fee. Moldova confirmed that for import processing, fees would be applied in conformity with WTO obligations, especially Articles VIII and X of the GATT 1994. The level of the applied fee would not exceed the approximate cost of the customs processing of imports, revenues from the fee would be used solely for customs processing of imports and total annual revenue from collection of the fee would not exceed the approximate cost of customs processing operations for the items subject to the fees. He confirmed that revenues from the fee would not be used for customs processing of exports or imports exempted from the fee, should there be any, or for any other objective. Information regarding the application and level of the fee, revenues collected and their use, would be provided to WTO Members upon request. The Working Party took note of these commitments.

- *Import surcharge*

64. In response to questions from members of the Working Party the representative of Moldova stated that due to particular balance of payment difficulties, through Article 17.2 of the 1999 Budget Law Moldova had introduced a special import surcharge at a rate of 5 per cent *ad valorem* which was applied to 700 tariff lines at the four digit level. The surcharge was applied only to those items to which Moldova applied a “zero” rate of customs duty. When the MFN duty rate was zero, the surcharge was applied on an MFN basis. When the duty rate was not zero, but a zero tariff was applied to imports from some countries under free trade agreements, the surcharge was applied only to imports originating in the countries participating in the free trade agreements. He confirmed that Moldova had eliminated the import surcharge on 1 May 2000.

65. The representative of Moldova confirmed that after accession all duties and charges applied on imports other than ordinary customs duties and charges for services rendered would be in accordance with the WTO provisions. The representative of Moldova confirmed that from the date of accession Moldova would ensure that all charges applied to imports were applied in a manner consistent with the requirements of the Understanding on Balance-of-Payments Provisions of the GATT 1994, as well as Article XII of the GATT 1994. The Working Party took note of these commitments.

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- *Application of internal taxes on imports*

- *Value Added Tax*

66. Some members of the Working Party requested Moldova to bring its VAT system in line with Article I of the GATT 1994, so that it was applied equally to imports from all third countries, including CIS countries. In response the representative of Moldova stated that 20 per cent VAT was imposed on the majority of imported and domestically purchased goods. As the Title III of the Fiscal Code foresaw no such exceptions, the 1999 Budget Law 1998 No. 216-XIV enacted on 12 December 1998 had brought the application of VAT fully into conformity with the relevant WTO provisions, without any exceptions. The Budget Law 2000 had brought the application of VAT into conformity with the relevant WTO provisions through its Article 9(1), which states that VAT is levied on imported goods and services according to the provisions of Title III of the Tax Code. In addition, the general application of the principle of destination for VAT purposes is also stipulated in Article 101(5) of Title III of the Tax Code, which came into effect on 17 December 1997. VAT for domestically produced goods was paid together with the price of the goods. Firms and enterprises submitted a monthly statement to the Ministry of Finance, not later than the 20th of the following month, and paid the VAT due together with the submission of the statement. VAT on imported goods had to be paid before the goods entered the customs territory of the Republic of Moldova.

67. The representative of Moldova said that according to Budget Law 2000 (Article 25.1), VAT exemptions are the following:

- a) power energy both imported and supplied by distribution networks or imported by distribution networks. Value added tax on power energy transportation is computed and paid to the budget in the generally prescribed manner;
- b) heat energy and hot water supplied to the population. Value added tax on raw materials, fuel, other materials and services relating to production and supply of heat energy and hot water to the population is not included in the cost value;
- c) electrical power networks of 35 kw sold by the State Enterprise "Moldtranselectro";
- d) precious metals and precious stones in any form and condition, including scrap and waste containing precious metals and precious stones, purchased by the State Depository of Valuables;
- e) goods manufactured in the medical production (labour) shops under the psychiatric hospitals of the Ministry of Health in which disabled labour is used.

- f) Equipment, machinery and their components, (presented in Annex 17) lorries, tractors and combines both domestically produced or imported, as well as their subsequent sale on the domestic market;
- g) importation and sale: of technologically superior seeds and standardised hybrids imported and used for propagation purposes and implementation of new technologies; fruit-growing and viticultural material for planting, as well as breed stock and poultry, premixes of proteins, vitamins and provitamines, antibiotics, veterinary vaccines, liquid nitrogen, nutritive additives.
- h) Raw materials, materials and spare parts and components imported by Society of Blind People to be processed;
- i) The activities linked to authentication of the rights of landholders.
- j) The activities of drafting the texts, publishing and polygraph execution of books connected with areas of culture, education, and science (except for those with advertising, erotic or pornographic character), as well as importation and sales of book products in the areas mentioned above and concerned periodical issues;
- k) Reconstruction works in the tuberculosis sanatorium for children in Ciadir Lunga to be funded with money granted by governments of Turkey and US as humanitarian aid.

68. The exemption from VAT of products from crop farming and animal husbandry in unprocessed form and on a live-weight basis during year 1999 did not extend to imports of similar products. The representative of Moldova stated that this practice would be discontinued and subsequently the Budget Law 2000 eliminated this exemption.

- *Excise Tax*

69. The representative of Moldova stated that the current system of excise taxation treated some imported and domestic products differently. Some members of the Working Party stated that although they welcomed Moldova's recognition that the current excise tax system treated some domestic and imported products differently, which was inconsistent with Article III of the GATT 1994, they asked that the system be brought into conformity with that provision. In response, the representative of Moldova stated that the following excise tax rates included in the Budget Law 2000 and reproduced in Table 10, are in compliance with the WTO requirements. He confirmed that the producers of the goods paid the excise tax on domestically produced goods on a monthly basis. Producers submitted a monthly statement to the Ministry of Finance, not later than the 20th of the following month, and paid the excise due. Excise taxes on imported goods had to be paid before the goods entered the customs territory of

the Republic of Moldova. For this purpose importers purchased excise stamps and marked the goods with the stamps. The representative of Moldova stated that the timing of the payments of the excise tax on domestically produced goods and imports would be aligned more closely in the Budget Law for the year 2001.

Table 10 – List of Excisable Products included in the Budget Law 2000

Code	Description of goods	Unit measure	Amount
0901	Coffee, whether or not roasted or decaffeinated; coffee husks and skins; coffee substitutes containing coffee in any proportion.	value in MDL	10%
1604 20 101	other prepared or preserved fish of salmon (red caviar)	value in MDL	20%
1604 30	Caviar and caviar substitutes	value in MDL	25%
2203 00	Beer made from malt	litre	0.8 MDL
2204 10 110	Champagne	litre	2.0 MDL
2204 10 191	Classic sparkling wine	litre	2.0 MDL
2204 10 192	Natural sparkling wine	litre	2.0 MDL
Ex 220410991	Carbonated sparkling wine	litre	2.00 MDL
2204 21	Other wine; grape must with fermentation prevented or arrested by the addition of alcohol in containers holding 2 l or less, other than position 2009:		
	-of an actual alcoholic strength by volume not exceeding 13%vol:	litre	1.00 MDL
	-of an actual alcoholic strength by volume exceeding 13%vol:	litre	1.20 MDL
2204 29	wine other than that referred to an subheading 2204 10, grape must with fermentation prevented or arrested by the addition of alcohol in containers exceeding 2 l other than position 2009:		
	-of an actual alcoholic strength by volume not exceeding 13%vol:	litre	1.00 MDL
	Of an actual alcoholic strength by volume exceeding 13%vol:	litre	1.20 MDL
2204 30	Musts other than positions 2204 21 and 2204 29	litre	1.00 MDL
2205	Vermouth and other wine of fresh grapes flavored with plants or aromatic substances.	litre	1.2 MDL
2206	Other fermented beverages (for example, cider, perry, mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included.	litre	0.1 MDL
2207 10 000	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 % vol. or higher; except those used in pharmaceutical industry and medicine	alcohol litre absolute	0.09 MDL/% vol/litre
2207 20 000	Ethyl alcohol and other spirits, denatured, of any strength	alcohol litre absolute	0.09 MDL/% vol/litre
2208 20	Spirits obtained by distilling grape wine or grape marc		
	- current consumption (not older than 6 years)	litre	8 MDL

Code	Description of goods	Unit measure	Amount
	- matured (from 6 to 10 years old)	litre	20 MDL
	- old (more than 10 years)	litre	60 MDL
Ex.220820294	Brandy, in containers each holding not over 2 litre	litre	0.09 MDL/% vol/litre
Ex. 220820894	Brandy, in containers each holding more 2 litre	litre	0.09 MDL %vol/ litre
2208 30	Whisky	alcohol litre absolute	0.09 MDL/% vol/litre
2208 40	Rum and tafia	alcohol litre absolute	0.09 MDL %vol/ litre
2208 50	Gin and Geneva	alcohol litre absolute	0.09 MDL %vol/ litre
2208 60	Vodka	alcohol litre absolute	0.09 MDL %vol/ litre
2208 70	Liqueurs	alcohol litre absolute	0.09 MDL %vol/ litre
2208 90	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol.; spirits, liqueurs and other spirituous beverages, except those from 220820-220870)	alcohol litre absolute	0.09 MDL %vol/ litre
2401	Un-manufactured tobacco; tobacco refuse.	Tonne	2000 MDL
2402 10 000	Cigars, cheroots and cigarillos, containing tobacco	1,000 pieces	1000 MDL
2402 20	Cigarettes containing tobacco		
	- containing cloves	1,000 pieces	7 MDL
	- others	1,000 pieces	3 MDL
2402 90 000	Other, containing substitutes of tobacco	1,000 pieces	5 MDL
Ex.2710 00 270 Ex.2710 00 290 Ex.2710 00 320 Ex.2710 00 340 Ex.2710 00 360 Ex.2710 00 390	Petrol for cars	Tonne	1200 MDL
	Gas oils		
27 100 061	For undergoing a specific process	Tonne	500 MDL
2710 00 65	For undergoing chemical transformation by a process other than those specific in respect of subheading 2710 00 61	Tonne	500 MDL
2710 00 66	With a sulphur content not exceeding 0,05% by weigh	Tonne	500 MDL
2710 00 67	With a sulphur content exceeding 0,05% by weigh but not exceeding 0,2% by weight	Tonne	500 MDL
2710 00 68	With a sulphur content exceeding 0,2% by weight	Tonne	500 MDL
3303 00 10	Perfumes	value in MDL	10%
Ex.4303	Articles of apparel, clothing accessories and other articles of fur skin	value in MDL	25%
Ex. 7113	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal.	Value in MDL	10%
Ex. 8520	Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device.	MDL	15%

Code	Description of goods	Unit measure	Amount
Ex. 8521	Video recording or reproducing apparatus, whether or not incorporating a video tuner.	Piece	10 EURO
Ex. 8525	Transmission apparatus for radio-telephony, radio-telegraphy, radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras and other video cam	Piece	30 EURO
8528	Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors.		
852812520	Not over 42 cm	Piece	20 EURO
852812540	More 42 cm, but not over 52 cm	Piece	30 EURO
852812560	More 52 cm, but not over 72 cm	Piece	40 EURO
852812580	More 72 cm	Piece	50 EURO
8703	Motor cars and other motor vehicles principally designed for the transport of persons, including station wagons and racing cars.		
8703 21	- of a cylinder capacity not exceeding 1,000 cc	cm <sup>3</sup>	0.15 EURO
8703 22	- of a cylinder capacity exceeding 1,000 cc but not exceeding 1,500 cc	cm <sup>3</sup>	0.20 EURO
8703 23	- of a cylinder capacity exceeding 1,500 cc but not exceeding 3,000 cc	cm <sup>3</sup>	0.30 EURO
8703 24	- of a cylinder capacity exceeding 3,000 cc	cm <sup>3</sup>	0.80 EURO
	Other vehicles, with compression-ignition internal combustible piston engine (diesel or semi-diesel)		
8703 31	- of a cylinder capacity not exceeding 1,500 cc	cm <sup>3</sup>	0.20 EURO
8703 32	- of a cylinder capacity exceeding 1,500 cc but not exceeding 2,500 cc	cm <sup>3</sup>	0.50 EURO
8703 33	- of a cylinder capacity exceeding 2,500 cm <sup>3</sup>	cm <sup>3</sup>	0.80 EURO

## Notes:

1. Indicated excise tax rates were applicable to importation and production of goods subject of excises, regardless of the country of origin, set out for sale in the home market and in the CIS countries with the which the Republic of Moldova did not enter into or ratified agreement on principles of indirect taxation of imports and exports of the goods (works, services). Spirits, wine in bulk and non fermented bulk and non-fermented tobacco sold to business which have fiscal relations with national budgetary system and have licensed operation aimed at production of excise taxable merchandise, are not liable to excise tax.
2. If merchandise (production) liable to excise tax are sold in shapes which do not comply with measure units set forth for excise rates, taxation (application of excise stamps) shall be done based on approved rates after recalculation of the amounts into approved measure units. Recalculation of excise tax for alcohol related to contents of absolute alcohol shall be done in a similar way.
3. In cases when merchandise liable to excise taxation, which have to be marked with excise stamps are sold (imported) in a shape which does not comply with measure units approved for excise rates, only one excise stamp is applied, however, its value subjected to taxation shall be determined at the moment of delivery, based on approved rates recalculated in the necessary measure units;
4. Costume jewelry articles made of the customer's raw material are not liable to excise taxation, except cases of buy and sell transactions with the above mentioned articles.
5. Amounts of excise taxes paid in the budget for the alcohol bought and used in medicine, pharmacology and veterinary are used for settlement of budget accounts;
6. Rates approved for groups of merchandise (products) apply to all products included in the relevant

group, according to the Moldovan Commodity Classification.

7. The rate approved for imported cigarettes with filter shall be applied from the date of 1 October 2000. Before this date the rate of excise tax for imported cigarettes with filter shall be 2 US\$ for 1000 pieces.
8. The fuel that subsequent to any specific processes is transformed and used as petrol or gas is subject to the normal rate of excise tax.

70. Referring to the table above, some members of the Working Party asked Moldova to ensure that the exemption from excise tax for spirits used in pharmacology and veterinary products did not create an incentive for abuse of the exemption. In response the representative of Moldova stated that manufacturers of pharmaceuticals or veterinary products were granted exemptions from excise taxes for imported spirits on a *bona fide* basis if they declared that the imported spirits would be used for the production of pharmaceuticals or veterinary products. However, exemptions from excise taxes were being monitored and unusual supplies, which could not be explained, would give rise to an investigation.

71. Some members of the Working Party requested information on how the Government of Moldova intended to amend the Budget Law to bring the VAT and excise tax regimes into conformity with WTO requirements. The representative of Moldova said that fiscal policy reflected in the Budget Law 2000 is based on the following: (i) the general application of the principle of destination for VAT purposes; (ii) no discriminatory VAT exemptions for domestic products; (iii) general application of the principle of destination for excise tax purposes; (iv) no discriminatory excise tax rates. The general application of the principle of destination for VAT purposes is also stipulated in the new Law on VAT.

72. Some members of the Working Party referred to Note 1 of Table 10 and to the excise tax on “divin” and stated that they were of the view that the excise taxation regime on alcoholic beverages was inconsistent with the requirements of Article III of the GATT 1994 in light of recent WTO Dispute Settlement proceedings. They asked how Moldova planned to ensure conformity of its excise taxation of alcoholic beverages with the GATT 1994. In response, the representative of Moldova stated that the Budget Law for 2001 and the relevant legal acts on excise tax (Draft Law on the Modification of the Annex to Chapter IV (Excises) of the Fiscal Code No. 1053-XIV of 16 June 2000) had removed all inconsistencies as regards the excise taxation regime on alcoholic beverages including Note 1 of Table 10 and harmonised the excise tax applied to products covered by tariff line 2208 by the date of accession of Moldova to the WTO.

73. Concerning the application of the excise taxes, the representative of Moldova said that Moldova had signed bilateral agreements with Belarus, Kazakstan, Uzbekistan and Armenia that provided for the implementation of destination of excise taxes as well. Starting with the Law on Budget 2000 the application of excise taxes was brought fully into conformity with WTO provisions with all countries:

through specific bilateral agreements and as provided for in Article 10(1) of the Budget Law 2000 which states that the goods (products) produced on the territory of the Republic of Moldova and the imported ones are subject to excise tax according to Annex 5 and its Note, and Title IV (On Excise) of the Fiscal Code which will be in force as of 1 January 2001. The provisions of Note 1 to Table 10 did not appear in the draft Budget Law 2001. There would be no reference to specific bilateral agreements in this law.

74. The representative of Moldova confirmed that, from the date of accession, Moldova would apply its domestic taxes, including those on products listed in Table 10 and paragraphs 66-73 in strict compliance with Article III of the GATT 1994 and in a non-discriminatory manner to imports regardless of country of origin. The Working Party took note of this commitment.

- *Quantitative import restrictions*

75. Some members of the Working Party requested information concerning those provisions in Moldovan Law that authorized the Executive to apply quantitative restrictions. In response, the representative of Moldova explained that under Article 11 of the Law "On State Regulation of External Trade", adopted on 8 June 2000 the Government could restrict the export and import of goods and services or suspend foreign economic transactions for balance-of-payments reasons or under other economic and political conditions. However, such temporary measures had to respect the provisions of international treaties and agreements to which Moldova was a party (Article 11 of this Law). There were no specific rules on the duration of such temporary measures. Moldova did not maintain import prohibitions although import prohibitions could be imposed under this Law. He added that Moldova would only apply import restrictions, quotas and restrictive import licensing in conformity with the relevant WTO provisions.

76. Some members of the Working Party noted that Article 12 of the Law "On Foreign Trade Activity" appeared to authorize, as a rule, the setting of quantitative restrictions, awarding of quotas and issuing of licenses "through holding a tender or an auction" and that "distribution of quotas and issue of licenses are conducted by an authorized body of public administration, with preference given to manufacturing organizations". In response, the representative of Moldova stated that the Law "On Foreign Trade Activity" has been replaced by the Law "On State Regulation of External Trade" No. 1031-XIV of 8 June 2000. Article 10 of the new Law "On the State Regulation of External Trade" provides that the export from and import into the Republic of Moldova is not normally subject to quantitative restrictions. The Government of the Republic of Moldova may, however, in exceptional cases establish quantitative restrictions on exports or imports in accordance with the present law and international treaties to which the Republic of Moldova is a party. Governmental decisions concerning the introduction of quantitative restrictions on imports and exports are required to be published at least 30 days before the entry into force

of these restrictions. These exceptional cases were stipulated in Article 11 of the new Law and were in compliance with Articles XX and XXI of GATT 1994. In the case of establishment of any quantitative restrictions, the authorized public body responsible for administration and distribution of quotas and the issue of licenses will follow Article 3 of the Law which provides that “where international agreements to which the Republic of Moldova is a party contain provisions different from those listed in the present Law and related normative acts, the provisions of the international agreements take precedence.

77. Some members of the Working Party asked how preferential treatment in the distribution of licenses was compatible with the provisions of Article III and XI. In response, the representative of Moldova stated that the Law on State Regulation of External Trade does not allow any preferential treatment. Article 12 of the Law had been amended to delete all references to preferences. Article 8 (1) of this Law provides that whenever State Policy regarding external trade is implemented through non tariff regulation (especially by quota and licenses) of external trade this must be done in accordance with this Law, other laws and international agreements to which Moldova is a party.

78. The representative of Moldova said that at the present time Moldova had no quantitative import restrictions in place. He confirmed that from the date of accession, the Republic of Moldova would not introduce, reintroduce or apply quantitative restrictions on imports or other non-tariff measures such as licensing, quotas, bans, permits, prior authorization requirements, licensing requirements and other restrictions having equivalent effect that could not be justified under the provisions of the WTO Agreements. The Working Party took note of these commitments.

- *Import licensing procedures*

79. Some members of the Working Party requested information on the products subject to import licensing, the justifications thereof, the authorities involved, the cost and procedures, and the documentation requirements. In response, the representative of Moldova confirmed that only a limited number of products were subject to licensing. The product groups subject to licensing are listed in the following paragraph. Lottery-type inventions, equipment for different types of lottery, slot machines, fortune games, and industrial waste subject to international control were also subject to import licensing. The import licensing system applied to imports irrespective of their origin, including imports from CIS countries and other countries with which Moldova had a preferential trade agreement. The representative of Moldova presented the Working Party with further information on import licensing in document WT/ACC/MOL/8/Add.1; which was revised and supplemented in document WT/ACC/MOL/15/Rev.1.

80. Some members of the Working Party asked to whom an application for import licence should be made. The representative of Moldova said that the relevant

institutions and all products subject to import licensing in Moldova, as well as the reason for each licensing requirement and WTO justification are listed in Tables 11-14, below:

Table 11 – Special Governmental Committee

Product Group	HS-Code	Reason for licensing	GATT Reference
Weapons, ammunitions, military equipment, kits to produce such equipment, works and services in the field of technical-military cooperation	93.00	National security	Art. XXI (b) (ii)
Explosive substances	36.01-36.04	National security	Art. XXI (b) (ii)
Nuclear materials, technologies, equipment and installations to produce such materials	2844, 8401	National security	Art. XXI (b) (ii)

Table 12 – Ministry of Health

Product Group	HS-Code	Reason for licensing	GATT reference
Pharmaceutical products	1204, 1207, 1211, 2924, 2935-2938, 2941, 3001-3006, 370110, 4014, 4015, 481840, 481890, 7017	Protection of human, animal or plant life or health	Art. XX (b)
Medical and optical equipment, parts and accessories, bio-media for the development of microorganisms	9001-9004, 9018-9022, 3821	Protection of human, animal or plant life or health	Art. XX (b)
Diagnostic tests and chemical reactive	3822, 38084	Protection of human, animal or plant life or health	Art. XX (b)
Drugs, substances with psychotropic effects; materials to produce such substances	1302, 2921, 2922, 2926, 2929, 2932, 2939, 280610, 2807, 28416, 290231, 290911, 291411, 291412, 29143, 291524, 291633, 29242950, 29329073-29329071, 293332, 29394, 29396.	Protection of human, animal or plant life or health	ART. XX (B)

Table 13 – Ministry of Agriculture and Processing Industry

Product Group	HS-Code	Reason for licensing	GATT reference
Poisons	280480, 280540, 2837, 2838, 284160, 2904, 2907, 2908, 291521,	Protection of human, animal or plant life or health	Art. XX (b)

Chemical and biological products for plant protection and stimulation of plant growing.	31, 3808	Protection of human, animal or plant life or health	Art. XX (b)
Tools and devices for vet services	9018-9022	Protection of human, animal or plant life or health	Art. XX (b)

Table 14 – Ministry of Finance

Product Group	HS-Code	Reason for licensing	GATT reference
Precious metals (silver and gold), objects made thereof, alloys, semifabricates, wastes containing precious metals (except electronic articles containing precious metals),	7106, 7108, 7113, 7114, 7115, 7118, 711210	Special role of gold and silver	Art. XX (c)
Petrol and diesel	Ex.2710	Protection of human, animal or plant life or health	Art. XX (b)

81. The representative of Moldova added that although imports of medications, drugs and medical equipment had previously been subject to prior authorization by the Ministry of Health, that requirement had now been eliminated following the Decision of the Constitutional Court No.14 of 19 May 1998.

82. The representative of Moldova noted that there were no fees related to the issuing of import licenses. Licenses were automatic. A licence was required to be issued within five days after the complete set of documents had been submitted. Import licenses were valid for the period requested by the importer. Import licenses could be extended upon the request of the importer.

83. The representative of Moldova confirmed that from the date of accession, Moldova would not introduce, re-introduce or apply other non-tariff measures such as licensing, quotas, prohibitions, bans and other restrictions having equivalent effect that could not be justified under the provisions of the WTO Agreements. If balance-of-payment measures were ever necessary in the future, Moldova would impose them in a manner consistent with the relevant WTO provisions, including Article XII of the GATT 1994 and the Understanding on Balance-of-Payments Provisions of the GATT 1994. Any further amendments to the import licensing regime after accession would be fully in accordance with all relevant provisions of the WTO, including the Agreement on Import Licensing Procedures. He further confirmed that any discretionary authority permitting the Government of Moldova to suspend imports or licensing requirements that could suspend, ban, or otherwise restrict the quantity of trade would be applied from the date of accession in conformity with the requirements of the WTO, in particular Articles XI, XIII, XIX, XX and XXI of the GATT 1994, and the Agreements on Agriculture, Application of Sanitary and Phytosanitary Measures, Import Licensing Procedures, Safeguards

and Technical Barriers to Trade. The Working Party took note of these commitments.

- *Customs valuation*

84. Some members of the Working Party noted that Governmental Decision No. 99 of 27 February 1996 "On Customs Valuation" did not implement the WTO Customs Valuation Agreement and, in many cases, was in conflict with the Agreement. The regulations set forth in Decision No. 99 concerning the methods of valuation would need to be modified to conform to the Agreement, or revoked. Specific questions were raised with regard to Articles 1, 5, 6, 7, 8, 9, 11, 12, 15 and 16, the Interpretative Notes, the Decision on the Treatment of Interest Charges and the Valuation of Carrier Media Bearing Software etc. The representative of Moldova stated that the Law on Customs Tariff of 20 November 1997 superseded Government Decision No. 99. However, changes in that Law were required to ensure full conformity with the WTO Customs Valuation Agreement.

85. Some members of the Working Party posed many questions related to the apparent lack of conformity of the Draft amendments to the Law on the Customs Tariff with the requirements of the WTO Agreement on Customs Valuation. The representative of Moldova noted that all the inconsistencies identified by members of the Working Party had been remedied in the final draft of the legislation. The draft amendments to the Law on Customs Tariff are presently before Parliament and have been approved in a second reading and will be enacted by the end of December 2000.

86. Some members of the Working Party asked whether the Customs Law satisfied the requirements of Article 11 of the WTO Valuation Agreement. In response, the representative of Moldova stated that final version of the Article 7 (Rights and responsibilities of declarant) of the enacted Law provided importers with the right of appeal according to the procedures established by the Code of Civil Procedure, which stipulated in Chapter II the procedure to be followed while lodging a complaint in the economic courts and ordinary appeal procedure in its Chapter III. In addition, the Customs Code in its Chapter 16, Article 96 gave to the importer the initial right of appeal to an authority within the customs administration or to an independent body. The amended Law on Customs Tariff introduced language for the right of appeal without penalty. The new Customs Code also provides for the right of appeal according to the WTO Valuation Agreement. .

87. In response to questions from members of the Working Party, the representative of Moldova noted that Article 10 of the Law on Customs Tariffs (Methods of determination of the customs value of the goods) provided for the sequential application of valuation methods and stipulated that the deductive and computed value methods could be applied in reverse order at the request of the importer.

88. Some members inquired whether Moldova applied minimum pricing or reference pricing. In response, the representative of Moldova stated that Governmental Decision No. 1092 of 29 October 1998 had introduced reference prices. The representative of Moldova confirmed that Decision No. 1092 expired on 1 January 2000 and that there were presently no legal requirements related to reference prices. Moldova had eliminated the use of reference prices for determining the customs value of imports, and from the date of accession Moldova would not use minimum values, reference prices, or a fixed valuation schedule for the valuation of imports or to apply duties and taxes. After accession Moldova assumed the obligation to respect all WTO provisions in this respect.

89. At a later stage and in response to the above questions, in document WT/ACC/MOL/14/Rev.1 the representative of Moldova provided detailed information cross-referencing the provisions of the Customs Valuation Agreement with the Articles of the Customs Tariff Law.

90. The representative of Moldova confirmed that, from the date of accession, Moldova would apply fully the WTO provisions concerning customs valuation, including in addition to the Agreement on the Implementation of Article VII of the GATT 1994, the provisions on the Treatment of Interest Charges in Customs Value of Imported Goods and for the Valuation of Carrier Media Bearing Software for Data Processing Equipment. In accordance with these latter provisions, only the cost of the carrier medium itself would be accounted for in the customs value. He also confirmed that Moldova had eliminated the use of reference prices for determining the customs value of imports, and that from the date of accession Moldova would not use minimum values, reference prices, or a fixed valuation schedule for the valuation of imports or to apply duties and taxes. He added that, as an international agreement, the provisions of the WTO Agreement on the Implementation of Article VII of the GATT 1994 would supersede domestic law after accession. The Working Party took note of these commitments.

- *Rules of origin*

91. Some members of the Working Party asked for confirmation that Moldova would adopt legal provisions for rules of origin that conform fully to the requirements of the WTO Agreement on Rules of Origin. The representative of Moldova stated that the Customs Tariff Law established Moldova's rules of origin.

92. In response to questions the representative of Moldova said that rules of origin were required only for goods imported from countries covered by a preferential trade agreement and from least-developed countries. The rules of origin under the Free Trade Agreements signed with CIS countries and Romania, as well as under preferences in the framework of the GSP, were included in respective agreements. A valid, official certificate of origin constituted the proof of origin. He further added that the country of origin was ascertained by verifying whether the certificate of ori-

gin which was submitted coincided with the merchandise to be imported.

93. The representative of Moldova confirmed that Moldova would adopt legal provisions for rules of origin that comply fully with the requirements of the WTO Agreement on Rules of Origin. Moldova's regulations in this area were found in Chapter V of the Customs Tariff Law. Article 25 of the Law has been completed with a paragraph (3) that contains the following: "upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin and preferential origin they would accord to a good are issued as soon as possible but no later than 150 days after a request for such an assessment provided that all necessary elements have been submitted. Requests for such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin and preferential rules of origin, under which they have been made, remain comparable.

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

- *Pre-shipment inspection*

95. In response to questions from some members of the Working Party, the representative of Moldova said that the legal framework for introduction of pre-shipment inspection is covered by Article 12 of the Law "On State Regulation of the External Trade") which provides that: pre-shipment inspection includes the control of goods' quantity and quality, prices, as well as the verification of customs classification; pre-shipment inspection is carried out by an international organization on the territory of country delivering the goods for export and/or import; the Government sets the pre-shipment inspection procedures and the nomenclature of the inspected goods. The Republic of Moldova would ensure that pre-shipment inspection activities were carried out in a non-discriminatory manner, and that the procedures and criteria employed in the conduct of these activities were objective and applied on an equal basis to all importers affected by such activities.-

96. The representative of Moldova confirmed that in utilising pre-shipment inspection service providers, Moldova would ensure that the requirements of the Agreement on Preshipment Inspection were implemented in full. Moldova would take full responsibility to ensure that the operations of any preshipment inspection companies retained by Moldova meet the requirements of the WTO Agreements, including the establishment of charges and fees consistent with Article VIII of the

GATT 1994, and will comply with the due process and transparency requirements of the WTO Agreements, in particular Article X of the GATT 1994, and the Agreement on the Implementation of Article VII of the GATT 1994. In respect to fees for remuneration of the pre-shipment entity the parties agree to maintain at all times a fee structure compliant with WTO obligations. Moldova confirmed that its pre-shipment inspection regime would be temporary and would only operate until such time as the Moldovan Customs authorities were able to carry out the functions presently performed by pre-shipment inspection service providers. The Working Party took note of these commitments.

- *Anti-Dumping, countervailing and safeguards*

97. Some members of the Working Party requested that the Government of Moldova undertake a commitment that any anti-dumping, countervailing or safeguards measures would only be taken in conformity with the WTO Agreements on Anti-Dumping, Subsidies and Countervailing Measures and Safeguards. In response, the representative of Moldova stated that the Government of Moldova had prepared a law on anti-dumping, countervailing and safeguard measures, which would come into force on 1 January 2001 and would comply with the respective WTO regulations.

98. The representative of Moldova confirmed that Moldova would not apply any anti-dumping, countervailing or safeguard measure until it had notified and implemented appropriate laws in conformity with the provisions of the WTO Agreements on the Implementation of Article VI, on Subsidies and Countervailing Measures, and on Safeguards. In the elaboration of any legislation concerning such anti-dumping, countervailing and safeguard measures Moldova would ensure their full conformity with the relevant WTO provisions, including Articles VI and XIX of the GATT 1994 and the Agreements on the Implementation of Article VI, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards. After such legislation was implemented, Moldova would also only apply any anti-dumping duties, countervailing duties and safeguard measures in full conformity with the relevant WTO provisions. The Working Party took note of these commitments.

- *Export Regulation*

- *Customs tariffs, fees and charges and internal taxes applied to exports*

99. Some members of the Working Party asked Moldova to explain the justifications of export licensing requirements and the registration of export contracts. They expressed concern that the current customs user fee of a 0.25 per cent was inconsistent with Article VIII of GATT 1994 and asked Moldova to bring its system into line with WTO rules.

100. The representative of Moldova said that there were no export licensing re-

quirements and that the registration of export contracts had been abolished by Government Decision No. 777 of 13 August 1997 "On Improving the Mechanisms of Regulating Foreign Trade". He confirmed that Government Decision No. 716 of 30 June 1998 had modified Government Decision No. 777 and abolished the export licence fee of 0.1 per cent.

- *Export restrictions*

101. In response to questions, the representative of Moldova said that Moldova no longer maintained the temporary export restriction on unbottled wine intended to promote the quality image of Moldovan wine. Because the restriction had proved ineffective to achieve this objective it had been removed. The representative of Moldova said that if any of these policy instruments were introduced in the future, they would be fully consistent with the relevant WTO provisions. The Working Party took note of this commitment.

- *Export licensing*

102. The representative of Moldova informed members of the Working Party that export licenses were required for "goods with a special character" and that, in accordance with Government Decision No. 777 of 13 August 1997, the list of products was the same as the list of products subject to import licensing reproduced in paragraph 80 above. It included weapons, ammunition, military equipment, kits to produce such equipment; explosives; nuclear materials, technologies, equipment and installations to produce such materials; ionic radiation sources; drugs, psychotropic effect substances and preparations, materials to produce such substances and preparations, poisons; lottery-type inventions, means and equipment for different types of lottery; slot machines, fortune games; chemical substances (including fertilizers and plant-protection substances) and industrial waste subject to international control; medicines, medical appliances and equipment. The list also included precious metals: gold and silver.

103. In response to questions from some members of the Working Party, the representative of Moldova confirmed that the registration requirement for export contracts had been abolished by Government Decision No. 777 of 13 August 1997 "On Improving the Mechanisms of Regulating Foreign Trade". The export licence fee had also been abolished too.

- *Export subsidies*

104. In response to requests for information, the representative of Moldova said that Moldova did not maintain export subsidies, special promotion or financing policies. If Moldova decided to introduce such measures in the future, they would be fully consistent with the relevant WTO provisions.

105. The representative of Moldova stated that from the date of accession

Moldova would not maintain any subsidies, including export subsidies, which met a definition of a prohibited subsidy within the meaning of Article 3 of the Agreement on Subsidies and Countervailing Measures, and would not introduce such prohibited subsidies from the day of accession. The Working Party took note of this commitment.

- *Internal Policies Affecting Trade in Goods*

- *Industrial policy, including subsidies*

106. In response to requests for information, the representative of Moldova stated that the Government had a general policy to create a broad-based market economy and to privatize all government-owned commercial enterprises and assets. The Government also had a general policy to attract foreign investment into the country and to involve, as far as possible, foreign investors and technology in all sectors of the economy for the purpose of furthering the creation of a market economy and the privatization of government-owned commercial enterprises and assets. Industry continued to be an important element in the development of the national economy and, as part of its economic policy Moldova had identified priority development sectors. Tax incentives and relief were granted to sectors such as energy, transport, road building and telecommunications in the form of priority loans and technical assistance provided by international organizations or bilateral co-operation programmes. No subsidies were granted to domestic industrial production. In the year 2000, Moldova would grant the tax exemptions listed in Annex III.

107. In response to questions from members of the Working Party concerning the mechanisms and policies used to enable the development programmes for the agricultural sector, the representative of Moldova stated that the development of the agricultural sector was supported by the Government with the following measures:

- privatization of land and of State-owned agricultural enterprises, e.g., state farms;
- restructuring of privatized farms supported by international aid agencies and establishment of an Agency for Assistance to Farms in Restructuring (ARA);
- support to agricultural research in the framework of a major loan of an international aid agency;
- improving the availability of credit at market rates to small farmers and preparation of a credit line for the agriculture sector as a whole which would be financed by an international aid agency;
- financial support programmes;
- improving the legislative framework.

108. Some members of the Working Party asked for information on Government aid to investment projects. In response, the representative of Moldova stated that Government aid to investment projects in the private sector was granted in the framework of: (i) concessions, in accordance with Article 46, Law "On Foreign Investment"; (ii) free enterprise zones, in accordance with Article 46 of that Law and the provisions governing such zones; (iii) agreements with the BERD, including technical assistance and exemptions from VAT. The following investment projects launched by the private sector had received Government aid: REDECO according to the terms of the concessional agreement on prospecting and exploitation of oil and gas (Article 26, 1999 Budget Law); modernization of Thermocomenergo carried out by ROCARO. He stated that the Government support measures for concessions were negotiated on an individual basis. They were not part of a Government investment support program. There were no administrative procedures for applying for and receiving this governmental assistance.

109. The representative of Moldova confirmed that any subsidy programmes provided by his Government after accession would be administered in conformity with the Agreement on Subsidies and Countervailing Measures and that all necessary information on notifiable programmes would be notified to the Committee on Subsidies and Countervailing Measures according to Article 25 of the Agreement upon entry into force of Moldova's Protocol of Accession. The Working Party took note of these commitments.

- *Technical Barriers to Trade*

110. Some members of the Working Party asked Moldova to submit information on the measures being taken to meet the requirements of the TBT Agreement. Steps undertaken to ensure fulfillment of the TBT Agreement requirements included the analysis of nonconformity and the adoption of measures for its removal, pursuing a technical policy directed to applying international standards (or their drafts) while national standards were being elaborated. The elaboration of national standards was carried out by technical committees on standardization that consisted of specialists from interested parties. Moreover, newly developed standards were being harmonized with relevant international or European standards. All standards were revised every five years.

111. The representative of Moldova added that at present there were in force normative documents on standardization for the following products or product groups in Moldova:

Table 15 – The normative acts of standardization relating to Different Products/  
Product Areas

Normative documents on standardization	Products/Product Groups
Medico-biological requirements to ensure that food products are safe and meet minimum nutritional value requirements, issued by the Ministry of Health	Food products
Safety requirements as part of product standards	Broad range of non-food products
Norms and rules in construction	Construction and building activity
Norms and rules on labour safety	Services provided at the work place
Environmental protection norms, including radiation safety	General

Of 20,000 regional GOST standards, available within the territory of the Republic of Moldova, Moldova actually applied approximately 8,000 standards, of which approximately 2,000 are mandatory. The amendments to the Law on Standardization and the Law on TBT No. 866-XIV of 10 March 2000 stipulates that the application of national standards would become voluntary. The application of a national standard will remain mandatory only if a reference in a Technical Regulation is provided. An authorized public authority may adopt a technical regulation only in accordance with legitimate objectives listed in the TBT Agreement. By 1 January 2002 the authorities of the Republic of Moldova will develop and make known the technical regulations, derived from the present mandatory standards.

112. The representative of Moldova confirmed that Moldova would introduce voluntary standards to prepare for its accession to the WTO. Against a background of a difficult economic situation, the absence of other obligatory technical requirements, Moldova considered mandatory standards the only practical way to keep out poor quality or dangerous products. The newly developed standards were being harmonized with ISO standards and the existing standards would be harmonized over time through a process of periodic revisions. The following publications contained information on technical regulations, standards and procedures:

- “Buletinul Standartistarii” (published in Moldova every two months in the Romanian and Russian languages);
- “Monitorul Oficial” (published in Moldova monthly);
- “Buletinul Standardizarii” (published monthly in Romania in the Romanian language);
- “Informationnii Ucazатели Standartov” (published monthly in Russian Federation in the Russian language).

113. Some members of the Working Party requested information concerning certification procedures. In response, the representative of Moldova stated that product and service certification in the Republic of Moldova was carried out in

the framework of the National Certification System, on the basis of the Law on Certification No. 652 of 28 October 1999, Law on Consumer Protection Rights of the Republic of Moldova, Law on Standardization, and in concordance with ISO, ISO/CEI Guides, normative documents of National Standardization and Certification Systems, harmonized with the above. In the Republic of Moldova the mandatory and voluntary certification was carried out in conformity with General Procedure PG-01-05-92 issued by the Moldova Standard Department. Certification had a mandatory character only for products or services that can affect life, health, consumer's property and environment. These products or services were introduced into the Nomenclature of products and services subject to mandatory certification, approved by the Department of Standards, Metrology and Technical Supervision. The certification procedures for specific classes of products were spelled out by each accredited body and approved by the Department of Standards, Metrology and Technical Supervision in conformity with the Moldovan Standard SM 45-2 "National Certification System of the Republic of Moldova Product certification".

114. The representative of Moldova said these certification procedures, testing methods and certification activities are for domestic and imported products, independent of the product's origin and type of business organization of the applicant. Free access to all normative documents on standardization and certification procedures was guaranteed for all applicants for certification from the Republic of Moldova and other countries. Single form certificates, protected with special signs were issued by the National Certification System of the Republic of Moldova. Moldova recognized certificates of conformity, issued by certification bodies with which bilateral or multilateral agreements of recognition had been signed.

115. The representative of Moldova said that currently, the certification regime in the Republic of Moldova was carried out by 22 certification bodies and 71 testing laboratories, accredited within the National Certification System of the Republic of Moldova in conformity with provisions of EN 45000 Standard. The Nomenclature of products subject to mandatory certification include: foodstuffs; electronics; products and technologies with a high level of danger; goods for children; cosmetics products; construction materials; machines and equipment; and furniture. The services subject to mandatory certification included hotels, dry cleaning, motor-repair, audio and video repair and household electrical appliances repair services.

116. He further added that through their participation in the technical committees, domestic producers were being made aware of the contents of drafts on standards. Besides the national standards Moldova applied international standards (ISO, IEC), regional standards (GOST, EN) and Romanian standards (STAS, SR). Moldova respects International Conventions regulating the safety of chemical, toxic, inflammable, explosive and other substances. In Moldova, there were no specific regulations or requirements covering electrical safety, telecommunications equipment, medical devices and other classes of equipment. Product certification in the Republic

of Moldova is carried out according to the provisions of the TBT Agreement regarding the assessment of conformity. Moldova did not apply specific certificate classes, except hygienic certificates issued by the Ministry of Health, as component part of certificates of conformity. The requirements related to hygienic certificates are specified in the technical regulations of the Ministry of Health. The State Inspections for Consumers' Rights Protection and products quality control performs quality control during the production process, storage and sale. Imported goods were subject to the same standards as domestic goods.

117. In response to additional questions concerning certification procedures, the representative of Moldova said that recognition by certification bodies of Moldova of the certificates issued in CIS countries and Romania was based on the bilateral agreements. The Moldovan National Standardization Body would enter into consultations with other countries with the aim of accepting the results of conformity assessment procedures of other member countries. The representative of Moldova said that Article 4.4 of the Law on Standardization expressly provided that Moldovan standards had to be based on modern scientific research, techniques and technology, on international and regional standards and on advanced standards of other countries. Also Article 18 of the Law stipulated as the main objective of international co-operation between Moldova and other countries the achievement of the harmonization of national standards with international and regional standards and with advanced national standards of other countries.

118. One member of the Working Party stated that Article 5 of the TBT Agreement provides that where assurance of conformity with technical regulations or standards is required, the conformity assessment procedures established must be non-discriminatory, i.e., that they must "grant access for suppliers of like products originating in the territories of other Members under conditions no less favorable than those accorded to suppliers of like products of national origin or originating in any other country." "Access" in this case would include receiving the mark of the system. In addition, Article 6.1 of the TBT Agreement contains the unilateral obligation for WTO Members to ensure their procedures allow for the acceptance of conformity assessment results from bodies located outside their territory. While Article 6.3 foresees the possibility of mutual recognition agreements as one option for achieving confidence in the competence of foreign-based bodies, Article 6.4 contains another option, i.e., the non-discriminatory acceptance of applications by conformity assessment bodies for recognition under national procedures. This member stated that Moldova's current practice as described to the Working Party appeared overly restrictive in its reliance on government-to-government agreements, and asked Moldova to identify the provisions in its current law or draft law that address Moldova's obligations (a) to establish non-discriminatory treatment of imports from countries with which it does not have bilateral recognition agreements and (b) to develop procedures for acceptance of conformity assessment results from bodies located outside of Moldova as part of its implementation of the TBT Agreement.

119. In response to requests for information concerning the compatibility of the national legislation with the requirements of the WTO Agreement on Technical Barriers to Trade, the representative of Moldova provided the requested information in the document WT/ACC/MOL/16 and WT/ACC/MOL/19/Rev.1.

120. The representative of Moldova said that Moldova has adopted a number of new laws to bring its national legislation fully into conformity with the WTO provisions on standards. Law no 652-XIV of 28 October 1999 "On Certification" provides for the development and application of conformity assessment procedures; and the acceptance of the results of conformity assessment procedures conducted by appropriate bodies in an exporting member country with whom Moldova had signed a bilateral agreement on mutual recognition, or where Moldova had acceded to a specialised regional or international organisation. It further provided for non-discrimination in respect of the treatment of products and a cost-based fee structure. According to Article 20 (1) of the Law on Certification "when the international (interstate) agreements, to which the Republic of Moldova is a party, establish other provisions than those provided by the legislation of the Republic of Moldova, the provisions of the international (interstate) agreement are applied". As a consequence, the representative of Moldova stated that Moldova was drafting modifications to the Law on Certification No. 652-XIV from 28th of October 1999 to bring Article 4 paragraph 5 of that Law into line with the requirements of Articles 5 and 6 of the TBT Agreement in the area of application of conformity assessment procedures. The representative of Moldova added that Articles 8 and 12 of the TBT Law and Article 13 of the Law on Certification would also be amended to ensure that the procedures of conformity assessment applied to imported goods were identical to the procedures applied to local production, and would conform to the provisions of Articles 5 and 6 of the WTO TBT Agreement. These amendments would be in force prior to the date of Moldova's accession. Law 919-XIV of 12 April 2000 which had amended existing Moldovan legislation on standardisation provides comprehensive rules for the publication of the programme for developing standards. It set the appropriate international standards, guidelines and recommendations as the basis of Moldovan technical regulations and conformity assessment procedures.

121. The representative of Moldova said that Article 16 of the Law 866-XIV of 10 March 2000 on TBT provided for compliance with the provisions of the Code of Good Practice for the development and application of technical regulations, standards and conformity assessment procedures. It stipulated that unnecessary obstacles to international trade must be avoided and less trade restrictive alternatives found. It provided for the implementation and administration of the TBT Agreement, and the identification of the authority responsible for making notifications to WTO, giving a reasonable period of time between the final publication of technical regulations and their entry into force so that suppliers could adapt. According to this law the National Body of Standardisation has the responsibility to fulfil the provisions of the Code of Practice for the preparation, adoption and application of new stand-

ards in the light of the TBT Agreement. The Code of Good Practice and all terms and definitions necessary for the implementation of the TBT Agreement would be in operation prior to the date of Moldova's accession to the WTO.

122. He confirmed Article 8 of the Law on TBT provides regulation concerning the recognition of equivalency of technical regulations of other countries and states the following: "1) Technical regulations of other countries are considered equivalent with national technical regulations where they: a) are not in contradiction with the provisions of the legislation of the Republic of Moldova; b) contribute, in an effective way and to the same degree, to the implementation of the objectives provided by the natal technical regulations; 2) The recognition of the equivalency of technical regulations of other countries with those of the Republic of Moldova lies within the competence of public authorities which, in accordance with the legislation of the Republic of Moldova, have the power to establish mandatory requirements for products". Legal instruments would be issued during 2001 to provide for the complete transformation of Moldovan practice from pre-existing mandatory standards into a system based on technical regulations and appropriate voluntary standards.

123. In response to questions from members of the Working Party, the representative of Moldova noted that an inquiry point had been created within the National Center for Standardization and Certification and would be operating within the Moldovan Department of Standards to answer inquiries from WTO members and interested parties, and to provide relevant documents on technical regulations, Moldovan standards and conformity assessment procedures. This inquiry point was responsible legally and administratively for all relevant notification procedures required by the WTO TBT Agreement. The address is:

28, Coca street, Chisinau  
Republic of Moldova  
Tel: (373-2) 75-09-81  
Fax: (373-2) 75-05-81  
E-mail: [Moldovastandard@standart.mldnet.com](mailto:Moldovastandard@standart.mldnet.com)  
Mr. Lupascu Vasile

124. The representative of Moldova confirmed that from 1 January 2003, the application of all national standards would become voluntary. At the end of this period, national standards would remain mandatory only by reference to a technical regulation, adopted by a public authority in accordance with legitimate objectives, such as national security, preventing of misuse practices, protection of the health and life of physical persons, of the health and life of animals, plants protection, environment protection. He added that prior to the date of accession, Moldova would amend its laws and regulations as described in paragraph 120 of this report

to ensure that its conformity assessment procedures reflected options for achieving confidence in the technical competence of bodies located in the territory of other WTO members to perform conformity assessment and have their results accepted by Moldovan authorities. Such options would include: the conclusion of agreements with conformity assessment bodies in other countries (e.g., accreditation bodies; certification bodies); the acceptance and non-discriminatory consideration of applications for accreditation from conformity assessment bodies located in other WTO members and the acceptance of conformity assessment results from qualifying bodies; and other means of recognition of equivalent procedures. He also confirmed that Moldova would implement the WTO Agreement on Technical Barriers to Trade from the date of accession, without recourse to any other transition. The Working Party took note of these commitments.

- *Sanitary and phytosanitary measures*

125. Some members of the Working Party requested detailed information concerning agricultural products, in particular how Moldovan standards and regulations compared with those of the Codex Alimentarius (Codex), Organization of International Epizootics, and the European Plant Protection Organization. In response, the representative of Moldova said that Moldovan standards and regulations fully complied with the regulations of the Codex Alimentarius. Moldova was a member of the Organization of International Epizootics and was using its regulations. Moldova was not a member of the European Plant Protection Organization.

126. In response to requests for information, the representative of Moldova said that the following products required a hygienic certificate from the State Sanitary-Epidemiological Service: raw materials, machines and equipment the use of which may constitute a source of danger for human health; goods for children; materials and equipment used in drinking water systems; cosmetics and perfume; soap and detergents; textiles. The certificate for domestic goods was issued on the basis of relevant documentation, including the results of hygienic tests. For foreign products, the certificate was issued based on a safety certificate of the exporting country and additional tests in Moldova.

127. Concerning the veterinary inspection and quarantine requirements that applied to livestock, animal products, fish, veterinary drugs and animal feed, the representative of Moldova said that the Moldovan Law on Veterinary Activity obliged holders of livestock to: (i) respect the veterinary, sanitary and zoo-hygienic rules regarding the maintenance, feeding reproduction and exploitation of animals; (ii) take necessary action to prevent infectious diseases and, to eradicate sources of infections and prevent their spreading; (iii) ensure systematic medical examination of personnel and prohibit the employment of sick persons; (iv) notify without delay the veterinary authorities about the existence or suspicion of existence of a disease which could require the imposition of quarantine measures, isolate the sick or dead animals, and

prevent the use or sale of their meat; (v) notify within 24 hours the local veterinary authorities of the acquisition of animals from other areas of the country and keep these animals separate from the existing stock; (vi) provide to the veterinary authorities access to the animals for inspection purposes; (vii) sell animals, products and meat only with the authorization of the local veterinary service; (viii) keep the facilities (stables, pastures, water supply) in clean condition, in accordance with veterinary regulations. The importation into Moldova of livestock for breeding was only permitted if: (i) no infectious diseases had occurred, in conformity with the requirements of the Republic of Moldova; (ii) an inspection had been carried out in the country of exportation by a recognized agency, at least 30 days prior to importation; (iii) the livestock to be imported into Moldova did not have any disease; (iv) and the radioactivity of the livestock did not exceed 360 bk/kg. He further added that the importation into Moldova of livestock for slaughtering was only permitted if: (i) no dangerous infectious diseases had occurred during the last 30 days prior to importation in the country of exportation; (ii) it was in good condition; (iii) and the radioactivity of the livestock did not exceed 360 bk/kg. Additional information in this respect including the conditions for the importation of fish and seafood products have been circulated in documents WT/ACC/MOL/35 and WT/ACC/MOL/20/Rev.1. The same principles applied to the importation of veterinary drugs and animal feed.

128. The representative of Moldova presented the following table, containing an overview of the regulations, the goods concerned and the competent authority:

Table 16 – Overview of Sanitary and Phytosanitary regulations, goods concerned and the competent authorities

Rules	Goods/Objects	Competent Authority	Certificate Issued
Medico-Biological Requirements No.5061-89 Food safety requirements (harmonized with the Codex Alimentarius)	food products	State Sanitary-Epidemiological Service (Ministry of Health)	Hygiene Certificate
Sanitary requirements as part of product standards	raw-materials, machines and equipment the use of which may constitute a source of danger for human health; goods for children; materials and equipment used in drinking water systems; cosmetics and perfume; soap and detergents; - textiles	State Sanitary-Epidemiological Service (Ministry of Health)	Hygiene Certificate
Phytosanitary requirements (harmonized with the European Plant Protection Organization)	products, materials or objects which could contribute directly or indirectly to the spreading of pest, diseases or objects under phytosanitary quarantine	Chief State Inspectorate for the Phytosanitary Quarantine (Ministry of Agriculture)	Import Permit, Phytosanitary Certificate (for export)

Rules	Goods/Objects	Competent Authority	Certificate Issued
Veterinary requirements (harmonized with International Epizootics Organization)	live animals of all kinds; meat and meat products; milk and milk products; poultry, eggs and egg products; fish and sea-food-products and raw materials of animal origin; products of animal origin for animal feeding; - goods for veterinary use.	State Veterinary Inspectorate (Ministry of Agriculture)	Sanitary Avis, Authorization, Veterinary Health Certificate

Notes:

The competent authority prepared the relevant technical requirements jointly with Moldovastandard. Testing and certification for SPS purposes is the competence of the body indicated in Column 3. For testing, these bodies may engage the services of accredited State laboratories.

For product standards that are composed of SPS and other non-SPS components, Moldovastandard on the basis of the hygiene certificate (for the SPS components) and additional testing (for the non-SPS components) does certification for conformity with the relevant product standard (conformity certificate).

Hygiene Certificate of the State Sanitary-Epidemiological Service: Domestic producers are issued a hygiene certificate with a validity of up to three years on condition that their production method does not change. Importers receive a certificate valid only for the shipment concerned. Imported goods are inspected at the customs office of the district where the importer is registered. Importers of perishable goods may conclude an agreement by which the foreign production site is issued with a hygiene certificate of up to three years' validity and the goods are stamped with a special stamp indicating that the goods have been produced according to Moldovan SPS requirements. In all cases the issuance of the hygiene certificate is subject to examination, either of the shipment or of the production facilities (including the products) and subject to the same sanitary requirements.

Import Permit of the Chief State Inspectorate for the Phytosanitary Quarantine: This document is only required for imported goods. Importers must present the following documents: phytosanitary certificate from country of origin; laboratory analysis (in some cases); certificate about disinfection or disinfection treatment.

Phytosanitary Certificate of the Chief State Inspectorate for the Phytosanitary Quarantine: This document is only required for goods to be exported. Exporters must submit the following information: description of the consignment; laboratory analysis (in some cases); indication of possible disinfection or disinfection treatment.

Veterinary Certificates: Domestic producers are issued an authorization with a validity of up to three years on condition that their production method does not change. The facilities are inspected in random intervals during this period. For imported products, every lot imported was inspected. Upon importation the importer must present the sanitary avis, stamped by the veterinary authorities of all transit countries, the veterinary certificate of the exporting country and a quality certificate issued by the producer. The State Veterinary Inspectorate inspects the lot and, if cleared, a veterinary health certificate was issued.

129. In response to additional questions, the representative of Moldova said that Moldova recognized hygiene certificates issued by competent institutions and by companies if the company had concluded an agreement with the relevant Moldovan authority. There were no additional tests conducted on imported goods by the Government of Moldova if hygiene certificates issued by recognized foreign bodies accompanied them.

130. Some members of the Working Party requested more information concerning the structure of the relationship between Moldovastandard and the Ministry of Agriculture with respect to the development of standards for agricultural products. The representative of Moldova said that the relevant departments of the Ministry of Agriculture and Moldovastandard created joint committees, which determined product standards for agricultural goods. The standards were the same for imported and for domestically produced goods.

131. Some members of the Working Party requested information on the inspection procedures that took place at the border for imported products and during the production process for domestic products. The representative of Moldova said that sanitary and phytosanitary requirements were enforced through inspections and testing.

Sanitary Requirements: Domestic producers and foreign producers which had concluded a special agreement were inspected by a team of experts from the State Sanitary-Epidemiological Service and Moldovastandard once before the hygiene certificate was issued and then at regular intervals, by taking samples and carrying out tests on these samples of inspected imported goods.

Phytosanitary Requirements: Prior to shipment, the foreign exporter had to send a request to the Chief State Inspectorate for the Phytosanitary Quarantine indicating the goods to be shipped. The Inspectorate would issue a preliminary import permit which stipulated specific phytosanitary requirements which the goods to be shipped had to satisfy. Upon arrival the goods would be inspected. If they satisfied the requirements the preliminary import permit would be stamped, becoming definitive.

Veterinary Requirements: Prior to shipment, the foreign exporter had to send a request to the State Veterinary Inspectorate indicating the goods to be shipped. The Inspectorate would issue a preliminary import permit, the sanitary avis, which had to be stamped by the veterinary authorities of all transit countries. Upon arrival, every lot was inspected, samples taken, and tests carried out on these samples. When goods subject to veterinary requirements were unloaded (importation) or loaded (exportation) a representative of the State Veterinary Inspectorate had to be present.

132. In response to additional questions, the representative of Moldova said that an importer wishing to appeal a decision of Moldovastandard would have, in the first instance, to write to the Director-General of Moldovastandard. Appeals against decisions of the Chief State Inspectorate for the Phytosanitary Quarantine, State Veterinary Inspectorate and State Sanitary-epidemiological Service should be addressed, in the first instance, to the head of the organization. In the second instance, the importer could file a lawsuit in the economic courts.

133. Some members of the Working Party said that there were areas where Moldova's SPS regime was not fully compatible with the SPS Agreement, and asked Moldova to provide information on measures and the timeframe for bringing

them into conformity. The representative of Moldova presented the Working Party with further information on the SPS regime in the documents WT/ACC/MOL/17, WT/ACC/MOL/20/Rev.1 and WT/ACC/MOL/35.

134. The representative of Moldova said that the Republic of Moldova has amended its measures regulating internal activities regarding plant, animal and human life protection in order to bring them into full compliance with the provisions of the SPS Agreement. The Governmental Decision no. 378 establishing the Statute of the State Veterinary Service, Governmental Decision no. 697 establishing the Statute of the State Phytosanitary Service and Governmental Decision No. 423 of 3 May 2000 "On the approval of the Rules on Sanitary-Epidemiological State Supervision in the Republic of Moldova" were subject to amendments. The nature of the amendments cover the following: establishment of the inquiry points, within the Ministry of Health and Ministry of Agriculture and Processing Industry, responsible for answering questions of WTO members, and to supply appropriate documents and phytosanitary regulations adopted or proposed in Moldova; determining risk and the corresponding level of the phytosanitary protection; introduction of new standards, animal health regulations and food safety regulations in conformity with SPS Agreement principles; identification of the authority responsible for making notifications to the WTO and ensuring transparency obligations are met on an ongoing basis; drafting legal acts requiring publication of proposed measures at an early stage for comment; allowing a reasonable period of time for comment from members and the public and establishment of a process to take comments into account without discrimination; regulations governing animal and plant health and food safety based on scientific evidence; following up international standards, guidelines, and recommendations in establishing SPS measures; recognition of different measures that achieve the same level of protection; developing scientific evidence and conducting risk assessments to ensure that measures are based on science and applied only to the extent necessary to protect health; measures taking into account the regional characteristics both of the areas from which products originate and the areas for which they are destined; ensuring that measures do not arbitrarily or unjustifiably discriminate between different members or between domestic and foreign suppliers. He added that Moldova would accede to the Convention on Plant Protection and implement the new revised text of the Convention, as approved by resolution 12/97 of the twenty-ninth session of the FAO Conference in November 1997 by the end of the year 2000.

135. The representative of Moldova confirmed that Moldova would ensure the implementation of the SPS Agreement prior to accession and would apply internal legislation in conformity with the provisions of the WTO Agreement on SPS. In the elaboration of any legislation concerning such measures Moldova would ensure their full conformity with the relevant WTO provisions. The Working Party took note of this commitment.

- *Trade Related Investment Measures (TRIMs)*

136. The representative of Moldova confirmed that Moldova had no trade-related investment measures of the kind covered by the TRIMS Agreement. Moldovan legislation did not contain an authority to apply TRIMs, either at the central or sub-central level. He stated that the Government of Moldova would ensure that any trade related investment measures introduced in the future would be fully in conformity with the requirements of the WTO Agreement on TRIMs. The Working Party took note of this commitment.

- *State trading practices*

137. Some members of the Working Party asked for a list of the enterprises included in the State Register of companies which were major producers in the domestic market and information on what each of these companies produced. In response, the representative of Moldova said that at the beginning of the transition process large Former State companies were automatically considered monopolies because they were the only Moldovan suppliers in their domains. In reality, they had a small share of the market as more and more foreign products were imported. Against this background the Government no longer compiled this list.

138. Some members of the Working Party asked for confirmation that Moldova had no fully or partially State-owned enterprises which received any exclusive or special rights or privileges, and that the enterprises in the energy sector listed in document WT/ACC/MOL/2/Add.2 did not correspond to the definition in the Understanding on the Interpretation of Article XVII of the GATT 1994. In response, the representative of Moldova confirmed that there were no State-trading enterprises covered by the provisions of Article XVII of the GATT 1994.

139. In response to further questions concerning the large enterprises that had at least 25 per cent State equity ownership and engaged in international trade, the representative of Moldova said that in Moldova every enterprise irrespective of ownership had the right to engage in foreign trade. He submitted a list of enterprises that had at least 25 per cent State equity ownership that engage in international trade.

140. Some members of the Working Party noted that Article 14 of the Law "On Foreign Economic Activity" No. 849-XII of 3 January 1992 appeared to grant a State monopoly on the import and exportation of certain types of goods. Those members asked whether Moldova intended to preserve a state monopoly in the trade of any product. In response, the representative of Moldova said that on 21 September 2000 a new Law "On State regulation of External Trade", came into force which replaced the Law "On Foreign Economic Activity". According to the new Law the State monopoly on export and/or import of some types of goods is reflected in Article 13 that provides: 1) The lists of certain types of goods for which import and/or export subject to State monopoly are established by the Government; 2) The State monopoly on export and/or import of some categories of goods is accomplished

on the basis of export and/or import licenses. The appropriate authorized public authority issues licenses; 3) Export and/or import transactions, which infringe State monopoly, are null and void. An authorized public authority is empowered to demand through the legal procedure the recognition of such transactions as null and void in accordance with the Civil Code of the Republic of Moldova. Some members of the Working Party asked whether Moldova intended to notify its state trading enterprises under Article XVII of the GATT 1994. In keeping with replies to previous questions, the representative of Moldova confirmed that although the legal framework on regulation of State monopoly of export and import of some goods allowed the possibility of State trading, in fact, at present the Republic of Moldova has not specified any type of goods for which the import and/or export is under the State monopoly. The legal provisions envisage the regulation of products relating to public health and national security as called for by Articles XX and XXI. The Moldovan system of licences for goods envisaged on Articles XX, XXI covers all enterprises (state and private), and currently in Moldova no enterprise is granted exclusive or special privileges in accordance with Article XVII of the GATT. The representative of Moldova confirmed that it does not have any plan to create state trade monopolies. He also confirmed that currently in Moldova there are no State trading enterprises within the meaning of Article XVII of the GATT 1994 and the Understanding on the interpretation of article XVII of the GATT 1994.

141. The representative of Moldova stated that if Moldova were to introduce State trading it would ensure that all relevant laws and regulations were in conformity with the requirements of Article XVII of the GATT 1994 and the Understanding on Interpretation of Article XVII of the GATT 1994, including those provisions requiring the application of “commercial considerations” in the sale and purchase of State traded commodities. He confirmed that Moldova would observe the provisions of Article XVII of the GATT 1994, the WTO Understanding on that Article, and Article VIII of the GATS regarding State trading and notification requirements. The Working Party took note of these commitments.

- *Free Zones, Free Economic Zones*

142. The representative of Moldova said that the Moldovan legislation relating to free zones was Law No. 1415-XII of 25 May 1993 “On Free Enterprise Zones”. They would be fully subject to future WTO commitments of Moldova. He provided the following table:

Table 17

Location	Type	STATUS
Chisinau	free zone	Operational
Tvarditsa	free economic zone	Operational
Taraklia	free zone	Operational
Vulcanesti	free zone	Operational

Location	Type	STATUS
Otaci	free zone	Operational
Giurgiulesti/Danube	free zone	Planned
Ungheni	free zone	Planned

143. He said that so far, five zones were operational - Expo-Business-Chisinau, "Tvardita, Taraklia, Vulcanesti and Otaci". The Parliament and the Government of the Republic of Moldova established the "Expo-Business-Chisinau" Free Enterprise Zone (FEZ) (Law No.625-XIII of 3 November 1995). The legislation provides incentives, guarantees, and privileges for businesses established in the FEZ. The residents of FEZ may be foreign natural and legal persons as well as Moldovan legal entities established with foreign investment. The Administration of the FEZ registers the residents of FEZ on a competitive basis, taking into account the size and the kind of investment, type of activity and its compliance with the FEZ development directives. The competitions were announced at the Administration's initiative and on the basis of applicants projects. Current activities in Expo-Business-Chisinau zone were split approximately in the following way (data are for the first half of 1997 and 1998 respectively): 57,5 per cent and 42.2 per cent trade, 14.6 per cent and 6.9 per cent industrial production and 27.5 per cent and 45.9 per cent services. Imports generated by the free trade zone accounts for 4 per cent of the total imports of Moldova. The portion of re-export from this zone in total exports 1.2 per cent. He said that normal customs formalities, taxes and tariffs applied to goods entering the rest of Moldova from the free economic zone and from the free zone. He added that there were no special eligibility criteria. All enterprises - domestic, joint ventures, foreign and foreign-owned - were allowed to operate in the free economic zones and to take full advantage of the available incentives.

144. In response to questions concerning the advantages offered by the zones, the representative of Moldova said that Moldovan legislation offered guarantees and privileges to the residents. The Free Enterprise Zone was open for the following licensed types of activities: organization of fairs and exhibitions, information and advertising, leasing, banking and insurance, tourism and hotel business, trading and storage business, public catering services, and environment-friendly production. Residents enjoyed exclusive customs and tax regimes. In particular, they were exempt from customs duties for goods and items imported in to the FEZ for final consumption; goods originated from FEZ and exported to the customs territory of Moldova; goods produced in the FEZ and exported outside the territory of the Moldova. The income tax had been set at 20 per cent (elsewhere in the republic it was 32 per cent). Goods and services manufactured and rented in the FEZ were exempt from VAT. Residents who invested US\$250,000 and more in the zone's development were relieved from paying income tax for five years. Residents retained the rights accorded by legislation for ten years. There were no requirements that

the output produced in the zones be exported, and there were no domestic content requirements. Benefits were not conditioned on export performance or import substitution requirements.

145. The representative of Moldova confirmed that the free zones established within its territory would be fully subject to the coverage of Moldova's commitments taken in its Protocol of Accession to the WTO Agreement, and that Moldova would ensure enforcement of its WTO obligations in those free zones. In addition, goods produced in the free zones under tax and tariff provisions that exempted imports and imported inputs from tariffs and certain taxes would be subject to normal customs formalities when entering the rest of Moldova, including the application of tariffs and taxes. The Working Party took note of these commitments.

- *Government procurement*

146. The representative of Moldova said that the Law on Government Procurement No. 1166-XII had been adopted on 30 April 1997. The Moldovan Government did not collect statistics on government procurement. There were three domains of public procurement: procurement in connection with loans from international aid agencies such as the World Bank, the European Bank for Reconstruction and Development; procurement for security and defense purposes; and other government procurement. There was no breakdown of the public sector procurement market by product type available. The estimated overall value of central government purchasing in 1999 had been approximately MDL 477 million.

147. The representative of Moldova stated that in accordance with the Moldovan procurement law (Article 5 of the Law on Government Procurement) the following institutions were involved in the procurement process: the National Agency for Government Procurement (NAPP) and procuring entities, engaged in the acquisition of goods, construction and services. The NAPP was supervising and monitoring procuring entities in the conduct of procurement and oversaw their compliance with the provisions of the procurement law and other legislative requirements such as regulations, rulings, and orders of general application in this area. Concerning advertising, the representative of Moldova said that a procuring entity had to solicit tenders by publishing an invitation to tender or an invitation for preliminary qualification in the Romanian and/or Russian languages in the Public Procurement Bulletin (PPB) issued by the NAPP. In particular situations, the invitation to tender also had to be published in the English language in mass media of wide international circulation (Article 18 and Article 26 of the Law on Government Procurement). The invitation to tender contained, *inter alia*, specifications of the goods, construction and services to be supplied in terms of nature, quantity, place and time, the criteria and procedures to be used for evaluating the qualifications of suppliers, place and deadline for the submission of tenders, means and place of obtaining the solicitation documents. The procuring entity could engage in pre-qualification proceedings with a view towards identifying

qualified suppliers prior to the submission of tenders. Only suppliers that had been pre-qualified were entitled to participate further in the procurement proceedings. Further details were included in Article 7 of the Law on Government Procurement. A procuring entity should engage in procurement of goods or construction by means of open competitive tendering proceedings as the preferred method of procurement. Under special conditions, a procuring entity could use the following methods of procurement (Article 19 of the Law on Government Procurement): two-stage tendering (Article 20 of the Law on Government Procurement); restricted tendering (Article 21 of the Law on Government Procurement); specialized restricted tendering (Article 22 of the Law on Government Procurement); request for quotations (Article 23 of the Law on Government Procurement); and single-source procurement (Article 24 of the Law on Government Procurement).

148. In response to questions, the representative of Moldova said that once a procuring entity had been approved by the NAPP, it acquired the right to grant a margin of preference for the benefit of tenders for construction by domestic contractors or for the benefit of tenders for domestically produced goods. The margin of preference could not exceed 10 per cent (Article 38 paragraph 6 of the Law on Government Procurement). A system of electronic tendering for public procurement had not been set up in Moldova yet, but the establishment of a database system for availability of data/information on tendering was foreseen. The procuring entity had no right to establish any criterion, requirement or procedure with respect to the qualifications of suppliers that discriminated against or among suppliers or against categories thereof on the basis of nationality (Article 6 the Law on Government Procurement).

149. Some members of the Working Party asked whether Moldova would accept the WTO Agreement on Government Procurement at the time of accession.

150. The representative of Moldova confirmed that Moldova became an observer to the Agreement on Government Procurement on 29 September 2000 and will initiate negotiations for membership in the Agreement by tabling an entity offer immediately after accession. If the results of the negotiations were satisfactory to the interests of Moldova and the other members of the Agreement, Moldova would complete negotiations for membership in the Agreement in one year after date of accession. The Working Party took note of these commitments.

- *Government-mandated counter-trade and barter*

151. The representative of Moldova stated that in order to obtain essential products such as energy, metals, machinery and spare parts, from its trading partners, with economies in transition, the Moldovan Government occasionally entered into negotiations with these partners to pay for such supplies with agricultural products purchased by the Moldovan Government on the domestic market.

- *Trade in civil aircraft*

152. Some members of the Working Party asked whether Moldova would accept the WTO Agreement on Trade in Civil Aircraft at the time of accession.

153. In response, the representative of Moldova stated that his Government would initiate negotiations for membership in the Agreement on Trade in Civil Aircraft immediately after accession to the WTO. He further confirmed that the Schedule of Concessions on Goods that is reproduced in Part I of the Annex to the Protocol of Accession establishes duty free treatment for products used in civil aircraft. The Working Party took note of this commitment.

- *Transit*

154. The representative of Moldova stated that, at present, transit of commodities through the territory of Moldova was free from the levy of fees and customs duties. In relation to VAT and excise tax, Moldova granted freedom of transit through its territory to the trade of WTO members as prescribed by Article V of the GATT. The only charges levied were those for transportation and those commensurate with administrative expenses or with the cost of services rendered. He added that Moldova was party to a multilateral agreement on transit trade within the framework of the CIS. Moldova had also signed transit agreements with Romania, Ukraine, Belarus and Russia.

- *Policies Affecting trade in Agricultural Products*

155. The agriculture country schedule of Moldova, circulated in document WT/ACC/SPEC/MOL/1/Rev.8, has been incorporated in the corresponding section of the Goods Schedule of Moldova. (WT/ACC/SPEC/MOL/4/Rev. 5/Add.1).

- *Imports – description of the types of border protection maintained*

156. The representative of Moldova said that agricultural products could be imported freely into Moldova without quantitative restrictions. Duties applicable to individual products were listed in Moldova's customs tariff.

157. Some members of the Working Party asked whether the customs clearance procedures followed by the Republic of Moldova reduced to a minimum delays in clearing import shipments of dairy or other perishable agricultural products. In response, the representative of Moldova stated that the waiting time for imports from all countries at the border with Romania and Ukraine, on average, did not exceed 30 minutes. The actual customs clearance took place at the regional customs office of the place where the importing firm was located. The decentralized nature of this system had kept the time required for customs clearance to a minimum.

- *Exports*

158. The representative of Moldova said that Moldova granted no export cred-

its, export credit guarantees, export credit insurance or other financial support or assistance to agricultural exports. Moldova did not grant any export subsidies to agricultural products.

159. The representative of Moldova confirmed that Moldova would bind agricultural export subsidies at zero in its Goods Schedule. The Working Party took note of this commitment.

- *Textiles regime*

160. The representative of Moldova said that there was no special regime for textiles and clothing. Moldova permits duty-free import of raw materials for textile and clothing products, provided the finished products are subsequently exported to the country of origin (inward processing).

## V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

### 1. *General*

#### a) *Intellectual property policy*

161. The representative of Moldova said that since the declaration of its independence, Moldova had been following a policy of developing mutually advantageous relations with all countries of the world. The national legislation had been transformed to adjust to international standards. The policy of transition to a market economy had largely determined the approach to intellectual property and the extension of owners' rights. Intellectual property rights have become rights of legal persons and individuals. The main directions of the policy are: (i) enactment of special national legislation on intellectual property rights; (ii) establishment of public authorities responsible for intellectual property rights; (iii) membership of international conventions and treaties on trade-related intellectual property rights. In 1993 the Government implemented the protection of industrial property, the rights of owners of titles of protection and inventors on the basis of the Provisional Regulations No. 456 "On the Protection of Industrial Property in the Republic of Moldova" adopted by the government in 1993. The following titles of protection exist in the Republic of Moldova: patents for inventions; patents for plant varieties; certificates of registration of industrial designs, trademarks and service marks, appellations of origin of goods/utility models, and of topographies of integrated circuits. As required by Article 39.2 of TRIPS, undisclosed data protection is provided for in Article II of the Law No. 1079 – XIV of 23 June 2000 "On amending various laws". The Official Bulletin of Industrial Property (BOPI) provides information on inventions, designs and trademarks claimed and registered in Moldova, as well as on legal acts and regulations related to intellectual property.

162. Some members of the Working Group said that the TRIPS Agreement is a fundamental component of the obligations undertaken by all WTO Members. These members expected Moldova to implement the WTO TRIPS Agreement fully as of the date of accession, without recourse to any transitional arrangements. The representative of Moldova said that Moldova was prepared to implement the TRIPS Agreement fully from the date of accession without recourse to any transition period. As a result of the judicial system reforms, all the conditions for implementation of the TRIPS provisions had been created. The representative of Moldova presented to the Working Party further information on the TRIPS regime in document WT/ACC/MOL/18. Document WT/ACC/MOL/21/Rev.2 presents in tabular form a Checklist of TRIPS Requirements and of Compliance by the Republic of Moldova.

*b) Responsible agencies for policy formulation and implementation*

163. The representative of Moldova stated that the policy and strategy in the field of intellectual property protection was elaborated by the State Agency on Industrial Property Protection (AGEPI), established on May 25, 1992 by Decree of the President of Moldova No. 120, and by the State Agency on Copyright and Neighbouring Rights established on 25 November 1991 by Presidential Decree No. 238.

*c) Membership of international intellectual property conventions*

164. The Republic of Moldova is party to the following conventions and treaties:

- Paris Convention for the Protection of Industrial Property;
- Convention Establishing the World Intellectual Property Organization (WIPO);
- Patent Cooperation Treaty (PCT);
- Madrid Agreement concerning International Registration of Marks;
- Hague Agreement concerning the International Deposit of Industrial Designs;
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
- Nairobi Treaty on the Protection of the Olympic Symbol;
- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- Berne Convention for the Protection of Literary and Artistic Works;
- Protocol relating to the Madrid Agreement Concerning the International Registration of Marks (1989);
- Strasbourg Agreement Concerning the International Patent Classification;
- Vienna Agreement Establishing an International Classification for Industrial Designs;

- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks;
- Locarno Agreement Establishing an International Classification for Industrial Designs;
- Trademark Law Treaty (TLT);
- Eurasian Patent Convention;
- International Convention for the Protection of New Varieties of Plants (UPOV);
- WIPO Performances and Phonograms Treaty;
- WIPO Copyright Treaty;
- Convention on the protection of the interests of producers of phonograms against unauthorised reproduction of their phonograms.

165. The representative of Moldova stated that in 1993 the Republic of Moldova became a member of the Standing Committee on Information Technologies (SCIT) and Standing Committee on Intellectual Property Cooperation for Development (PCIPD). The representatives of the State Agency on Industrial Property Protection actively participate in the works of the WIPO Standing Committee on the Law of Patents and Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications. The Republic of Moldova is a member of the WIPO Coordination Committee. In addition, AGEPI has concluded cooperation agreements with 35 Patent Offices throughout the world.

166. The representative further added that in the future the Republic of Moldova intended to become party to the following international Agreements:

- Madrid Agreement for the Repression of False or Deceptive Indications of Sources on Goods;
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958),
- New Act of the Hague Agreement concerning international registration of designs (Geneva, 1999);
- Patent Law Treaty (PLT).

d) Application of National and MFN treatment for foreign nationals

167. The representative of Moldova stated that Moldova applied the principle of national treatment with regard to intellectual property.

e) *Fees and taxes*

168. Fees for patents for inventions, patents for plant varieties, certificates for registration of utility models, industrial designs, trademarks, appellations of origin of goods and topographies of integrated circuits are payable at the State Agency on Industrial Property Protection of the Republic of Moldova. General terms and amounts are regulated by Governmental Decision No. 774 of 13 August 1997. Supplementary provisions are laid down in the Order No. 80 of 28 August 1997 of the

Director General of the AGEPI. The fees for the management of intellectual property rights are listed in Annex I of document WT/ACC/MOL/4. Moldovan laws on intellectual protection grant national treatment, i.e., non-discriminatory treatment, in the application of fees.

2. *Substantive standards of protection, including procedures for the acquisition and maintenance of intellectual property rights*
- *Copyright and related rights, including rights of performers, producers of phonograms and broadcasting organisations*

169. The representative of Moldova stated that Law on Copyright and Neighbouring Rights No. 293-XII of 23 November 1994 governing copyright and neighbouring rights had entered into force on 1 March 1995. This Law provides protection for intellectual property rights related to literary, artistic and scientific works, expressed in a form that allows them to be reproduced, irrespective of the form, destination and value of each work, as well as the procedure of their reproduction. The creator enjoys economic and moral rights to his works. The most important is the exclusive right to his works. According to Article 9 of Law No. 293, the author shall enjoy the following moral rights: (i) the right of authorship; (ii) the right to be named; (iii) the right to respect for the integrity of his work; (iv) the right to respect for his reputation; (v) the right to disclose his work or to authorise or prohibit disclosure in any form whatsoever, including the right to reconsider or the right of withdrawal. As regards economic rights, the holder of the copyright enjoys the exclusive right to exploit his work in any form and by any procedure. The exclusive right to exploit the work is defined as the right to perform, authorise or prohibit the following acts: reproduction of the work; public performance of the work; communication of the work to the public; translation of the work; presentation of the work in public; transformation, adaptation, arrangement or any like modification of the work. The holders of copyright have the right to prevent the rent of the copy of the specific work, even after a particular copy has been sold and the phonogram producers have similar rights to prevent the rental of phonogram copies even after they have been sold.

170. He further added that audio-visual works, computer programs, databases, works fixed on phonograms or musical works and compilations of data are protected by the same Law (Articles 6 and 10). The Law entitles the holder of a copyright to the exclusive right to exploit his work in any form and by any means. The copyright on audio-visual work is granted to: the author of the scenario (scriptwriter); the film director; the composer of any musical work; the cameraman; the artistic director. The author of a pre-existing work that has been incorporated, after transformation or unchanged, in an audio-visual work shall also be deemed a joint author of such audio-visual work.

171. He noted that Moldova's Copyright Law (Article 17(12)) incorporates the provisions of TRIPS Article 14. A phonogram producer shall enjoy the exclusive right to exploit his phonogram in any form, including the right to remuneration for its exploitation, the right to its reproduction, distribution of copies, modification or change, and the importation of copies of the phonogram with the purpose of broadcasting. The exclusive right to exploit the phonogram means the right to authorise or prohibit the reproduction of the phonogram; the distribution of copies of the phonogram (by sale, rental, etc.); the adaptation or any other transformation of the phonogram; and the importation for the purposes of distribution of copies of the phonogram, including copies made with the authorisation of the phonogram producer. A phonogram producer may transfer the exclusive rights to other persons by contract (Article 28). Copyright may be transferred by means of a contract (Article 28). The performer of a phonogram enjoys the exclusive right to authorise or prohibit the following acts: recording of a performance not previously recorded, reproduction of the recording of a performance, broadcasting of the performance over the air or by cable or making any other communication, renting of a published phonogram, as well as the right to defend the performance against any disfigurement or contortion or undermining of the reputation of the performer, and to transfer the right by means of a contract to another person (Article 27). Broadcasting organisations have the exclusive right to exploit phonograms in any form (Article 29). Foreign nationals enjoy national treatment under the said Law.

172. He further added that the Law of the Republic of Moldova on Copyright and Neighbouring Rights is in compliance with the Provisions of Articles 1 to 21 of the Berne Convention (1971) and the Appendix thereto as required by Article 9 of the TRIPS Agreement.

173. As to restrictions on the exclusive rights of owners of copyright and neighbouring rights, the representative of Moldova stated that the legislation of the Republic of Moldova contained detailed amendments on restrictions on the exclusive rights of copyright owners or owners of neighbouring rights related to: reproduction of works for personal use; reproduction by libraries; free use of works; reproduction of computer programs and computer databases (Chapter III, Articles 20-23). The Law on Copyright and Neighbouring Rights provides protection of copyright and neighbouring rights throughout the lifetime of the authors and for 50 years computed as from 1 January of the year following that of his death with a few exceptions. Under Articles 17(9) and 33 of this Law the author's moral rights are protected without time limits.

174. In response to questions, the representative of Moldova stated that under Law on Copyright and Neighbouring Rights, the registration of copyright is not mandatory. Thus, according to Article 4 (2) of the same Law, the author enjoys exclusive rights in his work by the sole fact of having created the work. Copyright subsists and is assertable without requiring registration of the work or the carrying

out of any other action or formality. According to Article 8(2), the holder of rights may have his rights acknowledged by means of a copyright notice. According to paragraph 4 of the same Article, the certificate of registration does not imply a presumption of authorship. However, in the event of a dispute, it may constitute a presumption of authorship for the court in the absence of proof to the contrary.

175. The representative of Moldova noted that under the legislation of the Republic of Moldova, copyright protection can not be restored for works that were in the public domain in Moldova prior to 31 December 1994. Works for which the terms of protection have been expired are included in public domain. Works for which protection has not expired are protected by the Copyright Law under the provisions, which stipulate that if Moldova is part of any international treaties their provisions apply. For works the period of protection of which was due to expire on 31 December 1994, the following adjustments were made: if the term of protection of the work of a foreign author used in the Republic of Moldova, is longer, under the laws of the country of the author, than the term under the present Article, the term of protection stipulated by this Law shall apply; if it is shorter, the term of protection stipulated by the laws of the country of the author shall apply (Article 17 (12), Copyright Law). Moldova's Copyright Law (Article 7) incorporates the provisions of Article 18 of the Berne Convention, as incorporated by TRIPS Article 9, which requires the restoration of copyright for works that are still under protection in their country of origin and have not had a full term of protection in Moldova. According to Article 26 (7), the neighbouring rights of foreign natural and legal persons are protected in the Republic of Moldova in accordance with the international agreements in the field of intellectual property protection to which the Republic of Moldova is a party, and namely by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, Articles 4 and 5 thereto and by WIPO Performances and Phonograms Treaty (Geneva, 1996). At the same time, according to Article 33 (2) of the Law on Copyright and Neighbouring Rights, the rights of phonogram producers have effect for 50 years as from the first publication of the phonogram or for 50 years as from its first recording if the phonogram is not published during that period. Thus, the Law on Copyright and Neighbouring Rights of the Republic of Moldova fully complies with the provisions of Article 14 of the TRIPS Agreement.

176. He further noted that on 28 January 1998, the Republic of Moldova ratified the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty adopted on December 20, 1996 by the Diplomatic Conference. By the Decision of the Government of the Republic of Moldova No. 524 of 24 July 1995, a four-year period was established for the transition from the administrative system to the system of collective management of copyrights and neighbouring rights. According to this Decision, an Authors and Neighbouring Rights Owners Council on the protection of the rights of owners of copyrights and neighbouring rights was established under the State Agency on Copyrights and Neighbouring Rights of the Republic

of Moldova which establishes the level of author remuneration, approves samples for contracts and licenses for the conversion of works, interpretations, phonograms etc., establishes the level of remuneration of the Board for collection, distribution and paying off the author remuneration services and controls the activity of the payment Agency. A non-governmental organisation is to be set up for the collective management of copyrights and neighbouring rights.

- *Trademarks, including service marks*

177. The representative of Moldova stated that under the Law on Trademarks and Appellations of Origin of Goods no. 588-XIII of 22 September 1995, a trademark is defined as a sign serving to distinguish the products or services of an enterprise, of legal or natural persons, from the similar products or services of other enterprises, legal or natural persons. There are two kinds of trademarks according to this law: collective marks and individual marks. A trademark can be: a) verbal, i.e. consisting of words, including forenames and surnames, of letters or of figures; b) figurative mark in a plane or three dimensions; c) mixed marks, consisting of verbal and figurative elements. A trademark may be registered in black and white or in colour. The certificate of registration confirms the priority of the trademark, as well as the exclusive right of the holder on the trademark for the goods and services indicated in the certificate. The registration procedure complies with the provisions of international conventions to which the Republic of Moldova is party. An application for the registration of a trademark and the enclosures must be filed with the State Agency on Industrial Property Protection of the Republic of Moldova personally or through a trademark representative attorney. The actual use of a trademark is not a condition for rejecting an application for registration of a trademark in the name of the user. Under Article 2(1) of the Law no. 588/1995, the definition of trademark includes product marks as well as service marks. According to the Article 2(1) of the Law, the enclosures of the application may be filed in the national language, provided that a translation into the national language shall be filed within two months from the filing date. The registration of a trademark subsists for 10 years as from the date of the regular national filing. The date of the regular national filing shall be the date on which the application and the proof of payment have been filed with the AGEPI, pursuant to the above-mentioned law. Any person may oppose the registration within 3 months following the date of publication of the notice concerning the application. Foreign legal and natural persons enjoy the same treatment as legal and natural persons resident in the Republic of Moldova, under the provisions of international conventions and treaties to which the Republic of Moldova is party.

178. He further noted that according to the legislation of the Republic of Moldova (Article 2.2. of the Law on Trademarks and Appellations of Origin, amended by the Law, No. 1079 of 23 June 2000), the signs, in particular words (including personal names), letters, numerals, figurative elements and combination of colours as well a combination of such signs visually perceptible shall be eligible for registration as

trademarks. Figurative elements of mark may consist of graphic representations, plane or three-dimensional forms (in relief), which have a distinct configuration. A colour as part of a trademark is deemed identical to a colour as part of another trademark if through a series of tests it is found similar to the point of confusion.

179. The representative of Moldova stated that according to Article 17 (1) of the Law on Trademarks and Appellations of Origin, any person may oppose the registration of a trademark or appellation of origin before the Appeals Board of the State Agency on Industrial Property Protection (AGEPI), and where not satisfied by the decision of this Appeals Board, before a higher judicial authority. Cancellation of registration of a trademark may be required under Article 26 of this Law. Any person may submit to the Appeals Board of the Agency a request for cancellation of a registration, for which this Law does not prescribe any time limits. The registration of a trademark may be cancelled wholly or in part at any time during its term of validity, if it is determined to have infringed the Law on Trademarks and Appellation of Origin (Articles 17 and 26).

- *Geographical Indications, including Appellations of Origin*

180. In response to questions, the representative of Moldova stated that under the Law on Trademarks and Appellation of Origin of Goods of the Republic of Moldova, appellations of origin were the designations - current or historical - of a country, a region or a locality used to designate a product whose natural properties derive essentially or exclusively from the natural or human factors specific to that geographical area. This definition incorporates the provisions of, and is consistent with, TRIPS Article 22(1). The certificate of registration grants the holder the right to exploit the registered appellation. The right to receive titles of protection for the appellations of origin belongs to natural or legal persons conducting business activities in the corresponding geographical area. The application for the registration of an appellation of origin must be filed in the national language. All parties conducting business activities in connection with the product associated with the appellation of origin shall apply separately for the certificate. The registration of an appellation of origin is valid for an unlimited term. An application for registration of an appellation of origin must be filed with the State Agency on Industrial Property Protection of the Republic of Moldova.

181. He noted that the use of a registered geographical indication is prohibited for any person who was not the holder of the registration certificate. The use of products of the same type, of similar designation liable to mislead consumers as to the place of origin and special properties of the products was also prohibited (Article 22 (2)) of the Law on Trademarks and Appellations of Origin). Article 7 (2)(a) of this Law stipulates the grounds for refusal to register a trademark or an appellation of origin in case if they are deceitful or liable to mislead the consumer. The legislation of the Republic of Moldova provides additional protection for wines and

spirits. Under the Law on Wines and Wine, No. 131-XIII of 2 June 1994, an appellation of origin is attributed to natural wines or other winery products originating from a geographic area, whose specific qualitative characteristics derive essentially or exclusively from the natural or human factors specific to that geographical area, according to the Regulation on preparation of wines with appellations of origin, adopted by the Governmental Decision No. 760 of 10 November 1994.

182. He also noted that under the legislation of the Republic of Moldova, protection of a trademark shall be refused or registration shall be cancelled, *ex officio* or at the request of an interested party, if it contains a geographical indication which is not literally true as to the territory, region or locality in which the goods originate, and is liable to mislead the consumer as to the true origin of the goods. The Article 7(9) of the Law on Trademarks and Appellations of Origin of the Republic of Moldova, amended by Law No. 1079 of 23 June 2000 provides that the registration of a trademark or the right to possess a trademark shall not be denied or invalidated on the basis that such a trademark is identical with, or similar to a geographical indication where the trademark has been applied for or registered in good faith, or where rights to the trademark have been acquired through use in good faith prior to the protection of the geographical indication in its country of origin.

183. With reference to the introduction of specific provisions for the protection of geographical indications for wines and spirits provided by Article 23 of the TRIPS Agreement, the representative of Moldova stated that the Law on Trademarks and Appellations of Origin and the Governmental Decision No. 760 of 10 November 1995, are consistent with Article 23 of the TRIPS Agreement. He noted that use in the designation or presentation of a product of any element, which suggests or indicates that the product originates in a geographical area other than the true place of origin in a manner which is liable to mislead the consumer as to the true geographical origin of the goods, and any such use shall constitute an act of unfair competition in the sense of Article 10bis of the Paris Convention.

184. He said that the use of a geographical indication which although, literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory is prohibited by Law. In the case of homonymous geographical indications, protection shall be afforded if the homonymous geographical indications in question will be differentiated from each other, for instance, those accompanied by figurative elements, and if the true geographical origin is indicated, taking into account the need to ensure equitable treatment of the procedures concerned and that consumers are not misled.

- *Industrial designs*

185. In response to questions from Members of the Working Party, the representative of Moldova stated that under the Law on Protection of Industrial Designs No. 991 of 1996, the novel outward appearance of an article with a utilitarian func-

tion may be registered as an industrial design. For the purpose of registration of an industrial design an application shall be filed with the State Agency on Industrial property protection of the Republic of Moldova. Foreign residents, both legal and natural persons, shall act with the State Agency on Industrial Property Protection through an industrial property representative in matters related to the protection of their industrial design, except where otherwise provided by the international agreements to which the Republic of Moldova is a party. The attorney's rights shall be confirmed by a power of attorney issued by the applicant. After filing, the application is subject to formal examination, publication and substantive examination. If no opposition has been filed against the decision to register the industrial design, or if any opposition filed has been rejected, the industrial design shall be subject to registration and grant of the certificate of registration.

186. The representative of Moldova further added that under the legislation of the Republic of Moldova, protection is provided for independently created industrial designs with a utilitarian function that are new or original. Textile designs enjoy the same protection. The subject of protection can be plane, three dimensional or a combination of these. An industrial design is considered novel if its characteristics, including colours, significantly differ from known designs or combinations of known design features which became available to the public in the Republic of Moldova and abroad before the priority date.

187. He added that under the Law on the Protection of Industrial Designs, the title of protection of the industrial design in the Republic of Moldova is the certificate of registration. The certificate of registration entitles the owner to the exclusive right to exploit the industrial design on the territory of Moldova as well as the right to allow or to prohibit third parties to carry out without authorisation the following activities: manufacture, use, importation, exportation, offering for sale and any other form of marketing or holding for that purpose of an article produced using the registered industrial design. Protection is valid for five years from the date of the filing of application with the Agency and may be renewed four times for consecutive periods of five years, against payment of the prescribed fee in the fifth year of the current period of validity.

- *Patents*

188. The representative of Moldova informed members of the Working Party that according to the Law on Patents for Inventions no. 461-XII of 18 May 1995, an invention in any field of technology may be patented if it is new, if it involves an inventive step and if it is susceptible of industrial application. An invention may concern a product or a process, including micro-organisms, or the use of a known product or process for new purposes. Patents are available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

189. The representative of Moldova noted that the following shall be deemed patentable inventions:

- scientific theories and mathematical methods;
- conventional signs, timetables and rules;
- schemes for performing mental acts;
- schemes, rules and methods for doing business;
- algorithms and computer programs;
- projects and plans for buildings and constructions and for territorial planning;
- projects of an aesthetic nature (designs);
- topographies of integrated circuits;
- plant varieties and animal breeds, other than microorganisms.

Patents are not issued for inventions, the prevention of commercial exploitation of which is necessary to protect public order or morality, including the protection of human, animal or plant life health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by national law.

190. The priority date of a patent application is determined by the filing date of the application. An application shall contain the following documents:

- a request for the grant of a patent, including identification of the inventor or inventors, of the applicant or applicants or of the person or persons on whose behalf the patent is sought;
- a description of the invention disclosing it in a manner sufficiently clear and complete for it to be carried out;
- one or more claims defining the subject matter of the invention and entirely supported by the description;
- drawings and other elements, where necessary to understand the subject matter of the invention.

A patent application must be accompanied by:

- an abstract;
- proof of payment of the prescribed fee or of circumstances justifying exemption from the fee or a reduction in the fee;
- an authorisation, if the application is filed by a professional representative;
- any document necessary to prove the priority of the invention.

At the same time, the applicant must indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.

191. He further noted that the application documents must be filed in the national

language. With the exception of the request, the application documents may be filed in one of the following international languages of communication: English, French, German and Russian. In such cases, a translation into the national language shall be filed with the Agency within two months following the filing date of the application. If, on expiry of this time-limit, the applicant has not submitted those documents or has not filed a request for extension of the prescribed time-limit, the prosecution of the application shall be terminated. AGEPI is authorised to grant patents under applicant's responsibility. Applicants have the possibility to request the substantive examination, provided that the prescribed fees are paid during the validity of the period of the patent. In Moldova the patent for invention is valid for 20 years. The owner shall pay an annual fee for maintenance in force of his patent during all at the period of validity of the patent. The extent of the legal protection conferred by the patent shall be determined by the terms of the claims. The description and drawings shall serve solely to interpret the claims.

192. The representative of Moldova stated that the patent owner enjoyed an exclusive right in the invention protected by the patent, including the exploitation of the invention, insofar as such exploitation did not prejudice the rights of other patent owners, the right to dispose of the patent and the right to prohibit others from exploiting the invention protected by the patent without his authorisation (Article 22 (1), Law on Patents for Invention). In civil infringement proceedings involving process patents, judicial authorities have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process.

193. He added that in the event of failure to work an invention or to work it sufficiently by the patent owner during the three years that follow the date of grant of the patent, any person wishing to exploit the invention and prepared to do so may, if the patent owner has refused to conclude with him a licensing contract, submit to a court or arbitration tribunal a request for the grant of a non-exclusive compulsory licence. In the interest of national security, the Government may authorise exploitation of an invention by another person without the consent of the patent owner against payment to the latter of an appropriate monetary compensation. In the event of disagreement as to the amount of the monetary compensation, the patent owner may institute legal proceedings (Article 33 (1), (4)). Under the legislation of the Republic of Moldova, processes enjoy the same protection as products. Necessary amendments to the laws in the field of industrial property protection have been introduced, in compliance with the provisions of Article 31 of the TRIPS Agreement, to permit issuing of a compulsory licence in certain circumstances. If such a licence is issued, the Agency is required to take steps to inform the patent holder of the decision concerning the grant of a non-exclusive compulsory licence; the Agency is also required to enter the decision in the National Patent Register, notify the issuance of the licence in the Official Bulletin within 3 months following the date on which it has been entered in the National Patent Register. If the holder of

a non-exclusive compulsory licence fails to use the licence within the year following the grant of the licence, the non-exclusive compulsory licence may be cancelled. Importation shall be qualified as use for the purposes of determining whether the invention had been used with regard to provisions on compulsory licensing and government use.

194. The representative of Moldova stated that the legislation of the Republic of Moldova contains provisions compliant with Article 34 of TRIPS. Article 23 paragraph 1(c) of the Law on Patents for Inventions as laid down in the Law for amending various Laws are compliant with the provisions of Article 34 of the TRIPS, and namely: “When assessing cases of infringement of the rights of the owner, if the subject matter of a patent is a process for obtaining a product, the judicial authority shall require the defendant to prove that the process to obtain an identical product is different from the patented process; any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process; if the product obtained by the patented process is new or if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.”

- *Plant Variety Protection*

195. In response to questions from Members of the Working Party, the representative of Moldova stated that the protection of plant varieties was covered by the Law on Plant Varieties. The Law provides special protection for plant varieties. Protection is granted on the basis of certificates issued by the State Commission for Variety Testing of the Republic of Moldova and the patent granted by the State Agency on Industrial Property Protection. The term of protection is 25 years for trees, fruit trees and grapevines and 20 years for plant varieties and other species, with the possible extension for another ten years. The Law provides the exclusive rights of exploitation to the patentee, which are listed in Article 13 (Law on Plant Variety Protection). Moldova has also become a member of UPOV. The Law provides for the exclusive rights of the patentee in the exploitation of the plant variety.

- *Topographies of Integrated Circuits*

196. The representative of Moldova noted that pursuant to the Law on the Protection of Integrated Circuits No. 655/1999, protection is granted to topographies that are original in that they are the result of their creators’ own intellectual effort and are not commonplace to the creators of topographies and manufacturers of integrated circuits at the time of their creation. Registration is effected without substantive examination. The registration is valid for a period of ten years. The above-mentioned Law came into force on 6 January 2000.

- *Requirements on undisclosed information, including trade secrets and test data*

197. The representative of Moldova stated that trade secrets are protected under the Law on the Protection of the trade secrets, No. 171 enacted on 6 June 1994. Any information is considered a commercial secret if: (i) it has real or potential value to the economic agent; (ii) access to it is restricted; (iii) it is marked, by stamp or otherwise as confidential. Special provisions are applied for state secrets and matters of national interest. Trade secrets are protected as long as they meet the above mentioned criteria. This Law contains no limitations on the protection and no compulsory licensing provisions. In addition to this the Article 12 (1) of the Law on trade secrets, amended by Law No. 1079 of 23 June 2000 brings national legislation in compliance with Article 39.2 of TRIPS.

198. He further added that although the Law on Trade Secrets also protected unrecorded undisclosed information, Moldovan authorities responsible for licensing intellectual property shall generally require that confidential information submitted in connection with the application for licenses, registration certificates, etc., is recorded and marked for purposes of clarity.

199. He noted that the marketing of pharmaceutical, agricultural and chemical products, which utilise new chemical entities without registration of intellectual property rights, are only subject to approval by the Ministry of Health or the Ministry of Agriculture, respectively. Moldovan legislation does not require the submission of undisclosed test or other data as a condition of approving the marketing of products in question, but if the importer requires protection of undisclosed information, the Ministry of Health or the Ministry of Agriculture shall provide such protection according to the legislation in force. In order to import and sell agricultural chemicals in Moldova, an importer has to obtain an import licence and a certificate of hygienic conformity. For the importation of pharmaceuticals, Moldovan legislation requires an import licence. The National Pharmaceutical Institute of the Ministry of Health has issued an information leaflet for foreign producers describing in detail the registration procedures.

- *Other categories of Intellectual Property*

200. The representative of Moldova stated that Moldovan law recognises utility models if they concern the constructive execution of means of production and of consumer goods or their component parts and if they are novel and are susceptible of industrial application. The certificate of registration is the title of protection of a utility model. The utility model application shall be filed with the AGEPI and it shall contain the following documents: a request with information concerning the applicant (inventor), or his successor in title; description; claims; drawing and graphics, if necessary. These documents ensure the priority rights of the application from the date of filing of the application with the AGEPI.

201. He added that in case of refusal a patent application can be converted, on applicant's request, into an utility model application until the decision to grant a patent or within 3 months from the decision of rejection of application. The applicant must file an utility model application for the same object with AGEPI with the priority request of the initial filing date. The transformation of an utility model application into a patent application is possible up to the decision to grant an utility model registration. In this case, the priority date shall be the date of the initial deposit. The certificate is valid for five years from the regular national filing date and may be extended at the request of the applicant for a period of 5 to 10 years.

### 3. *Measures to Control Abuse of Intellectual Property Rights*

202. In response to questions, the representative of Moldova stated that national legislation provides for measures on the enforcement of intellectual property rights which allow effective action against infringement of intellectual property rights. The initiative for action against infringement is up to the holder of the property right. The Customs Control Service is empowered to hold back copies of works and phonograms introduced or taken out without licence. Provisions for special measures by customs concerning the infringement of intellectual property rights are included as a separate chapter in the new Customs Code, which has been adopted by the Parliament and will come into force on 1 January 2001.

### 4. *Enforcement*

#### - *Civil judicial procedures and remedies*

203. The representative of Moldova informed members of the Working Party that legislation already in force provides for the pursuit of infringements on intellectual property rights and regulates adduction of proof. The principles of competition and guilt are applied. The Republic of Moldova has a Court system in which the competence of tribunals depends on the type of dispute to be considered. Contesting parties also enjoy the option of solving disputes by recourse to the services of the Arbitration and Mediation Center under the auspices of AGEPI.

204. He noted that whilst the civil legislation of the Republic of Moldova contains general provisions on intellectual property rights, specific provisions relating to the protection of intellectual property rights are contained in the laws covering the field of intellectual property rights.

205. He further noted that Intellectual property rights litigation and disputes are solved in the Republic of Moldova, depending on particular cases, by the following judicial authorities: (i) ordinary courts, whose decisions may be appealed against before the Court of Appeals and ultimately to the Supreme Court of the Republic of Moldova; (ii) Economic Court, where appeals may be submitted to the Economic Appeals Court and ultimately to the Supreme Court of Justice of the Republic of Moldova; (iv) Court of Appeals, whose decision can be contested in the Supreme

Court of the Republic of Moldova.

206. The representative of Moldova stated that when a right holder considers that his intellectual property rights have been injured he may initiate a civil, penal or administrative suit in the court. At the same time, in cases provided by the Civil Procedure Code, the general attorney may initiate a lawsuit for the protection of intellectual property rights. The same rules on evidence governing civil litigation in Moldova apply to intellectual property right cases. The infringer may be ordered to pay a fine, damages or compensation. Eventually, the right holder may also request that the goods or the equipment used to produce the goods concerned be destroyed or rendered incapable of the use which infringed his rights (see Article 25, Trade-mark Law).

207. He said that in piracy cases, legal measures may include seizure of counterfeit works, phonograms and of the equipment and material unlawfully in their manufacture and reproduction (Article 38(8) of the Law on Copyright and Neighbouring Rights of the Republic of Moldova).

- *Provisional Measures*

208. The representative of Moldova informed members of the Working Party that according to present legislation, respectively Chapter 13, Articles 135-142 of the Civil Procedure Code, the judicial authority may undertake measures to issue an injunction, if the participants in the dispute so request. The issue of an injunction is permitted at any stage of the process. The infringement of rights is sanctioned with a penalty of ten to twenty five national minimum salaries. The plaintiff has the right to request the compensation of damages caused by the issuing of the injunction. Appeals may be launched regarding all the resolutions related to the issuing of the injunction. In conformity with Article 142, the redress of damages caused by the issuing of the injunction is permitted.

209. He also noted that provisional measures are obtained by written application from the injured party or the public prosecutor to the court or the specialised arbitration requesting such measures. Provisional measures include: (i) order to the infringing party to stop the manufacture, reproduction, sale, rental, import, etc. of infringing objects until the court or the arbitration body has decided the case; (ii) seizure of infringing objects; (iii) seizure of materials and equipment used to produce the infringing objects; (iv) seizure of accounts and other documentation that may be used as evidence in the inquiry.

- *Any Administrative Procedures and Remedies*

210. In response to questions from members of the Working Party, the representative of Moldova stated that Article 51(3) of the Code on Administrative Contravention provides for fines of 10-75 minimum salaries and confiscation of goods in cases of violation of an exclusive industrial right. Article 152(2) of the same Code

provides for a fine of 15 to 25 national minimum salaries and confiscation of goods in cases of false utilisation of trademarks.

- *Special Border Measures*

211. The representative of Moldova stated that Moldova is currently adopting the procedures allowing the right holder to request the competent customs authorities to withhold the release into circulation of materials, which infringe intellectual property rights.

212. In response to requests for more information, the representative of Moldova stated that these special measures are included in the new Customs Code (Chapter XII) which reflect fully Part III Section 4 of TRIPS Agreement.-

- *Criminal Procedures*

213. The representative of Moldova added that Articles 34 and 35 of the Law on Patents for Invention define the acts that are subject to Penal and Civil Code in the form of imprisonment of up to two years (Article 34) with an alternative punishment in the form of a penalty, or the penalty only (Article 35). They also prescribe compensation for damages caused to the right holder for lost profit and for the liquidation of the goods or transfer of them to the patent owner. Other measures are provided by the Law on the Protection of Consumer Right no. 1453 of May 25, 1993 as well as by the following Articles of the Penal Code:

- 141 - infringement of inventor's rights;
- 141 - copyright infringement;
- 141 - infringement of the rights of the owner related to industrial property objects;
- 158 - counterfeiting.

214. Some members of the Working Party asked for information on the criminal procedures and penalties applicable to the unlawful utilisation of trademarks. In cases of criminal procedures and penalties applicable to the unlawful utilisation of trademarks, as provided by Article 158 of the Criminal Code, the procedures in these cases are the same as for ordinary criminal offences.

215. Pursuant to Article 38(12) of the Copyright Law, a person committing a deliberate infringement of a copyright or neighbouring rights for gain and having caused considerable prejudice to the holder of the right is liable to a term of imprisonment of one to three years or/and to a fine of 100 - 1000 times the national minimum salary (1,800-18,000 MDL).

216. The representative of Moldova confirmed that Moldova would comply with all the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights from the date of accession to the WTO without recourse to any transitional period. **The Working Party took note of this commitment.**

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## VI. TRADE-RELATED SERVICES REGIME

### *Policies Affecting Trade in Services*

217. The Government of the Republic of Moldova provided a description of the service regime in the Memorandum on the Foreign Trade Regime circulated in document WT/ACC/MOL/2. Moldova entered into bilateral negotiations on market access in services, on the basis of the offer circulated to Working Party in document WT/ACC/SPEC/MOL/5/Rev.2. The result of these negotiations is reproduced in the Schedule of Specific Commitments on Services contained in Part II of the Annex to the Protocol of Accession of the Republic of Moldova. As a market-oriented economy in transition, Moldova was adjusting its legislation according to the rules and principles of the GATS. Moldova would seek MFN exemptions in the road transport and audio-visual services.

218. In response to requests for information, the representative of Moldova said that limited data were available on Moldova's services sector and on its trade in services. Many services had remained largely unregulated, particularly in relation to any distinction between domestic and foreign supply. Regulation of services was within the competence of various institutions, including the Ministries of Finance, Justice, Economy and Reforms, Transport and Communications; Health; Education and Science; Labour and other relevant institutions. He said that the Law No. 332 of 26 March 1999 "On issuing of licenses for Certain Types of Activities" authorized the following bodies specified in Annex II to this Report to issue licenses for engaging in certain types of activities. These licenses were issued only for engaging in the activities listed and did not establish any limitations on the quantities of products.

219. The representative of Moldova said that the Law on Enterprises and Entrepreneurial Activity, the basic act for commencing business activity in Moldova, stipulated the conditions for establishing a commercial presence in Moldova. According to this Law a commercial presence could take the form of an entirely new company, or subsidiary, or branch of an existing company, and/or any kind of joint venture, and that the degree of foreign ownership was not limited. Branches and representative offices are not regarded as juridical persons. Their property belongs to the parent enterprise and their activity should be based on the policy of that enterprise. Before opening a branch or representative office foreign persons were required to register it in the Trade State Register, kept by the State Registration Chamber within the Ministry of Justice.

220. He said that more generally Moldovan laws and regulations did not, for the most part, distinguish between trade in goods and services. The banking sector was open to foreign banks, which were allowed to set up subsidiaries, branches or representative offices. Banking activities could be carried out by a branch office or subsidiary for which a licence has been issued by the National Bank of Moldova. One

condition for issuing the licence is the payment of an initial amount that shall not be less than the minimum capital required on a non-discriminatory manner. Every bank, domestic or foreign-owned, which was licensed in Moldova was allowed to engage in financial leasing.

221. The representative of Moldova stated that the Law “On Financial Institutions” had defined the banking system of Moldova as including the National Bank of Moldova, commercial banks and other financial institutions. In 1991 a two-tier banking system was established with the National Bank of Moldova serving as the central bank. The activity of the National Bank had been regulated by the Law “On the National Bank” No. 548-XIII of 21 July 1995 and had been controlled by Parliament. Commercial banks duly licensed by the National Bank could open branches and regional offices throughout Moldova. The banking sector was open to foreign banks, which were allowed to set up subsidiaries, branches or representative offices.

222. In response to requests for information, the representative of Moldova explained that although initially, the open competition for the supply of insurance services was permitted, an amendment to the Law “On Insurance” of 20 June 1996, stipulated that foreign insurance companies were allowed to operate in Moldova only as a joint venture with Moldovan partners. The foreign share in such a joint venture is not limited. Every company supplying insurance services had to obtain a licence issued by the Ministry of Finance. The detailed rules governing the licensing requirements for insurance companies were contained in the Regulation “On Issuing of Licenses for Insurance Services” from 17 November 1995.

223. He said that the Ministry of Transport and Communications currently regulated the telecommunications sector. Competition was allowed in all telecommunication services sectors except basic services in fixed networks (public telephone, satellite communication, telegraph and telex) and leased lines. Foreign companies could only provide basic telecommunication services through, and in agreement with, “Moldtelecom” Company. Other services, such as mobile telecommunication networks, electronic mail, on-line information, electronic data interchange and value-added services could be provided without restrictions. Moldova would participate actively in ongoing and future rounds of WTO services negotiations with a view towards improving its commitments on communications services as defined under W/120.

224. He added that the State-owned Moldovan Railways held a monopoly on transportation of passengers and goods by rail, but was exposed to heavy competition from other modes of carriage, in particular road transport. Foreign enterprises could provide public transportation through a registered Moldovan subsidiary licensed by the authorities concerned. Moldova was requesting an MFN exemption on road passenger and freight transportation because of the commercial characteristics of road transport services in the region.

225. The Moldovan Schedule of Specific Commitments on Services of Moldova is annexed to its draft Protocol of Accession reproduced in the Appendix to this Report. This Schedule of Specific Commitments on Services contains the legally binding market access commitments of Moldova in respect of services.

#### VII. INSTITUTIONAL BASE FOR TRADE AND ECONOMIC RELATIONS WITH THIRD COUNTRIES

226. The representative of the Republic of Moldova stated that Moldova had concluded a number of bilateral and multilateral agreements, which provided the legal framework for the development of trade and economic relations between Moldova and its partners. These agreements aimed at promoting, facilitating and developing commercial exchanges and economic cooperation, were based on the principles of equality and reciprocal advantage and related to foreign trade in goods and/or services. The Free Trade Agreement between the republics of Azerbaijan, Armenia, Republic of Belarus, Georgia, Kyrgyz Republic, Republic of Kazakhstan, the Russian Federation, Ukraine, Republic of Uzbekistan, Republic of Tajikistan and the Republic of Moldova was signed on 15 April 1994. From the date of signature, all Parties to the Agreement applied the Agreement on a provisional basis until the ratification procedures had been concluded. The Agreement entered into force with respect to: Moldova, Kazakhstan and Uzbekistan on 30 December 1994; the Kyrgyz Republic on 28 December 1995; the Republic of Azerbaijan on 18 December 1996; and Tajikistan on 7 May 1997. On 2 April 1999, the Parties to the Agreement signed the Protocol on Amendments and Supplements to the Agreement on the Creation of a Free-Trade Area of 15 April 1994. This Protocol was subject to ratification by the Parties and would come into force on the date on which the third notification of ratification was submitted to the Depositary. For a party that completes its ratification procedures later, the Protocol would enter into force on the day when its notification is submitted. The free trade agreement contained provisions relating to trade in goods that are of relevance to the Members of the WTO. A Free Trade Agreement has also been signed with Romania. All agreements are in accordance with Article XXIV of the GATT 1994 and the Understanding on the Interpretation of Article XXIV. Duties and other restrictive regulations of commerce had been eliminated on substantially all trade between the signatories.

227. He said that Moldova's bilateral Free Trade Agreement with CIS countries provides for duty free tariff treatment for the importation of the goods (including agricultural products) originating from these countries into the customs territory of the Republic of Moldova. The Agreement covers all trade in agricultural products and industrial products (HS Chapter 1-97). There were no exceptions to this treatment. Tariff preferences are granted to any exporter who is a resident of a CIS country and who presents a certificate of origin conforming to rules of origin established in national legislation. For trade in services, the objective is the gradual removal of restric-

tions with a view to create conditions for free market services within the territory of the parties to the agreement. At this time, there are no provisions for special treatment in the agreement on investment or movement of persons, except concerning trade in services. In the period 1996-1998, trade with CIS accounted for between 44 and 65 percent of Moldova's imports.

228. He added that Moldova's Free Trade Agreement with Romania entered into force on 1 January 1995. The Agreement covers all trade in agricultural and industrial products (HS Chapter 1-97). The products covered are products originating in the Republic of Moldova or Romania according to the rules of origin established in the Agreement. The Agreement also contains provisions to facilitate customs formalities, concerning the mutual notification of technical barriers to trade and sanitary and phytosanitary measures, and calling for the parties to further liberalize their public procurement markets. A Moldova-Romania Joint Commission meets once a year to monitor implementation of the agreement. Moldova and Romania apply an import charge on trade of 0,25 and 0,5 percent respectively, to provide revenue for the improvement of Customs Authorities' infrastructures. Between 1996 and 1998, Romania's exports to Moldova accounted for between 7 and 11 percent of total exports and Moldova's exports to Romania accounted for between 9 and 10% of its total exports. The Agreement does not contain specific disciplines in the area of trade in services, investment, or movement of persons. However, Article 15 of the Agreement provides for freedom of the transfer of payments.

229. In response to requests for information, the representative of Moldova said that the basic framework agreement, the Partnership and Co-operation Agreement (PCA), between the European Union and Moldova was signed on 28 November 1994 and came into force on 1 July 1998. It sets out both the general principles and detailed provisions that will govern future relationships between the European Communities, the Member States (EU) and the Republic of Moldova. The main objectives of the PCA are: to provide an appropriate framework for political dialogue; to promote trade and investment and harmonious economic relations; to provide a basis for legislative, economic, social, financial and cultural cooperation between the Parties; to support efforts of the Republic of Moldova to consolidate its democracy and to develop its economy and to complete the transition into a market economy. The PCA has created three new 'institutions': the Co-operation Council, the Co-operation Committee and the Parliamentary Co-operation Committee. Economic links will be strengthened through improving conditions for trade and investment, and by assisting Moldova in all aspects of the economic reform process. Moldova and the EU have granted each other Most Favoured Nation status with regard to trade in goods. They also undertook to liberalise progressively cross border supply of services, with the aim developing a market-oriented service sector. As far as investment is concerned, the PCA contains important provisions that aim to improve the environment for the establishment and operation of Moldovan companies, subsidiaries and branches operating in the EU and vice versa. The Agreement

basically provides GATT principles and its interpretations in economic areas. This Agreement represents an evolutionary legal framework. With regard to trade, further developments include the possible setting up of a free trade zone, as foreseen in the PCA. As a majority of Moldavian political parties have achieved an internal consensus on the strategic objective of European integration with respect to internal and external policies, and have signed a common declaration, a national strategy on association/accession should shortly be adopted. The Republic of Moldova aims to associate itself more closely with EU. To this end, full implementation of the PCA, and incorporation into Moldovan basic procedures of the EU's "acquis communautaire" are of major importance, with particular attention to harmonisation with EU standards (harmonisation of laws, normative and administrative acts and methods of work).

230. Some members of the Working Party recalled that Article XXIV of the GATT 1994 permitted exceptions to Article I in the case of economic integration agreements provided that the conditions of Article XXIV and the respective Understanding were met. The members of the Working Party asked Moldova to ensure that a framework agreement towards the creation of a custom union with several CIS countries would be consistent with the WTO Agreement. In response, the representative of Moldova said that the Government of Moldova supported economic integration within the CIS. It was Moldova's intention to ensure that the customs union and the steps leading to it would be in conformity with the provisions of Article XXIV of the GATT 1994. Moldova would provide information concerning all its agreements in the format used by the WTO Committee on RTAs.

231. Some members of the Working Party requested information on the scope of the duty free treatment accorded in each agreement; exceptions to the elimination of tariffs; and any special provisions concerning trade in services, investment, or movement of persons. In response the representative of Moldova stated that information on the free trade agreements signed with CIS countries and Romania was circulated to the members of the Working Group in document WT/ACC/MOL/28. Some members of the Working Party also requested a schedule describing the state of all preferential agreements presently held by Moldova, and a description of their compatibility with the relevant provisions of the WTO Agreement.

232. The representative of Moldova confirmed that Moldova would observe all WTO provisions, including those of Article XXIV of the GATT 1994 and Article V of the GATS in the trade agreements, and would ensure that the provisions of these WTO Agreements for notification, consultation and other requirements concerning free trade areas and customs unions of which Moldova was a member were met from the date of accession. He confirmed that Moldova would, within 6 months after accession, submit notifications and copies of its Free Trade Area and Customs Union Agreements to the Committee on Regional Trade Agreements (CRTAs). He further confirmed that these Agreements would be consistent with the provisions of

the WTO and would, in any case, be notified to the CRTA during its examination of the same. The Working Party took note of this commitment.

- *Transparency*

- *Publication of Information on Trade in goods and services*

233. Some members of the Working Party requested information concerning the special information facility outlined in Article 21 of the Law “On Foreign Trade Activity”. In response the representative of Moldova stated that the special trade information facility outlined in Article 21 of the Law “On Foreign Trade Activity” had been activated within the Ministry of Economy and Reforms.

234. The representative of Moldova said that Moldova would implement the transparency requirements of Article X of the GATT 1994. All the relevant laws and regulations as described in Article X of the GATT 1994 would be published promptly in “Monitorul Oficial al Republicii Moldova” which was the main publication for this purpose. Other decisions or regulations in specific areas were published in specialized newspapers or magazines. According to Article 76 of Moldova’s Constitution “laws shall be published in the “Monitorul Oficial” of the Republic of Moldova and shall come into force either on its publication date or on the date mentioned in its original text. Unless published, the law is nonexistent.”

235. Some members of the Working Party requested information on how Moldova would be able to fully apply the transparency requirements of the GATS, including GATS Article III. In response, the representative of Moldova stated that Governmental Decision No. 1104 of 28 November 1997 provided that all laws, governmental decisions and other legal documents would enter into force only after their publication thus ensuring compliance with Article III (1) of GATS. The information center that would be established at the Ministry of Economy and Reforms could serve as a central GATS inquiry point. Other similar inquiry points would be established in other governmental institutions, such as the Ministry of Finance, National Bank, Ministry of Transport and Communications, thus ensuring compliance with paragraphs 3 and 4 of Article III of GATS. In addition the representative of Moldova confirmed that it would undertake all necessary measures to ensure full application of other transparency requirements of the GATS, including GATS Article III. The Working Party took note of these commitments.

- *Notifications*

236. The representative of Moldova confirmed that a schedule of notifications required by Agreements constituting part of the WTO Agreement had been submitted in document WT/ACC/SPEC/MOL/6/Rev.1 with information about deadlines for all notifications required upon accession and immediately after accession. Any regulations subsequently enacted by Moldova which gave effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also

conform to the requirements of that Agreement. The Working Party took note of this commitment.

- *Conclusions*

237. The Working Party took note of the explanations and statements of Moldova concerning its foreign trade regime, as reflected in this report. The Working Party took note of the commitments given by Moldova in relation to certain specific matters, which are reproduced in paragraphs 30, 34, 48, 54, 63, 65, 74, 78, 83, 90, 94, 96, 98, 101, 105, 109, 124, 135, 136, 141, 145, 150, 153, 159, 216, 232, 235 and 236 of this Report. The Working Party took note that these commitments had been incorporated in paragraph 2 of the Protocol of Accession of Moldova to the WTO.

238. Having carried out the examination of the foreign trade regime of Moldova and in the light of the explanations, commitments and concessions made by the representative of Moldova, the Working Party reached the conclusion that Moldova be invited to accede to the Marrakesh Agreement Establishing the WTO under the provisions of Article XII. For this purpose, the Working Party has prepared the draft Decision and Protocol of Accession reproduced in the Appendix<sup>1</sup> to this report, and takes note of Moldova's Schedule of Specific Commitments on Services (document WT/ACC/MOL/37/Add.1) and its Schedule of Concessions and Commitments on Goods (document WT/ACC/MOL/37/Add.2) that are annexed to the Protocol. It is proposed that the General Council adopt these texts when it adopts the Report. When the Decision is adopted, the Protocol of Accession would be open for acceptance by Moldova, which would become a Member thirty days after it accepts the said Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of Moldova to the Marrakesh Agreement Establishing the WTO.

## ANNEX I

### Laws, Regulations and Agreements

- *Laws and Resolutions*

- Law "On the Customs Code" - No. 1321-XII of 9 March 1993;
- Law "On Amendments to the Customs Code" - No. 44-XIII of 12 April 1994;
- Law "On Sanitary and Epidemiological Protection of the Population" - No.1513-XII of 16 June 1993;
- Law "On Foreign Investments" - No. 998-XII of 1 April 1992;
- Laws "On Amendments to the Law on Foreign Investments" - No. 197-XIII of 27 July 1994, No. 92-XIII of 11 May 1994, No. 321-XII of 13 December 1994;

<sup>1</sup> Not reproduced

- Law "On the Government " - No. 64-XII of 31 May 1990;
- Law "On Export and Import Regulation of Goods and Services" - No. 188-XII of 26 July 1990; which was abrogated through the Law "On State Regulation of foreign Trade Activity";
- Law "On Banks and Banking Activity" - No. 601-XII of 12 June 1991, which was abrogated through the Law "On Financial Institution";
- Law "On Financial Institution" – No. 550-XIII of 21 July 1995;
- Law "On the National Bank of Moldova" - No. 599-XII of 11 June 1991 (with amendments);
- Law "On Foreign Economic Activity" – No. 849-XII of 3 January 1992, which was abrogated through the Law "State Regulation of External Trade";
- Law "On State Regulation of External Trade" No. 1031-XIV of 8 June 2000;
- Law "On State Budget 1999;
- Law "On Licensing Certain Types of Activities" – No. 332-XII of 26 March 1999;
- Law "On Cooperation" - No. 864-XII of 16 January 1992;
- Law "On Enterprises and Entrepreneurial Activity" - No. 845-XII of 3 January 1992 (with amendments);
- Law "On Insurance" - No. 1508-XII of 15 June 1993 (with amendments);
- Law "On Consumers Rights Security"- No. 1453-XII of 25 May 1993;
- Law "On Limitation of the Monopoly Activities and Development of Competition" - No. 906-XII of 29 February 1992;
- Law "On Amendments to the Legislative Acts" - No. 51-XIII of 14 April 1994;
- Law "On Legal Status of Foreigners and Persons without Citizenship in the Republic, of Moldova" - No. 276-XIII of 10 November 1994;
- Law "On Entry and Stay in the Republic of Moldova of Foreigners and Persons without Citizenship" – No. 269-XII of 9 November 1994;
- Law "On Excise tax" - No. 347-XII of 27 December 1994;
- Law "On VAT " - No. 264-XII of 9 December 1995;
- Law "On Audit" - No. 729-XIII of 15 February 1996;
- Law "On Rent"- No. 861-XII of 14 January 1992;
- Law "On Employment"- No. 878–XII of 16 January 1992;
- Law "On Accounting" - No. 426 of 4 April 1995;
- Law "On Standardization" – No. 590-XIII of 22 September 1995, amended by the Law 919-XIV of 12 April 2000;
- Law "On Certification" – 652-XIV of 28 October 1999;

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- Law "On Technical Barriers to Trade" – no. 866-XIV of 10 March 2000;
  - Amendments to the Law on the Protection of Industrial Designs No. 991-XIII of 15 October 1996;
  - Law "On Trademarks and Appellations of Origin" - No. 588-XIII of 22 September 1995;
  - Law "On Copyright and Neighboring Rights" - No. 293-XIII of 23 November 1994, amended by the Law no. 29-XIV of 28 May 1998;
  - Law "On Patents for Inventions" – No. 461-XIII of 18 May 1995;
  - Law "On Audiovisual Services" – No.603-XIII of 3 October 1995;
  - Law "On Plant Variety Protection" – No. 915 of 11 July 1996;
  - Law "On the Protection of Industrial Designs" – No. 991-XIII of 15 October 1996;
  - Law "On Amending Various laws on Industrial Protection Rights", July 2000;
  - Law "On Securities" – No.1427-XIII of 18 May 1993;
  - Law "On Commercial Secrets" – No. 171-XIII of 6 July 1994;
  - Law "On Bases of Tax System" – No.1198-XII of 17 November 1992;
  - Law "On Profit Tax of the Enterprises" – No.1214-XII of 2 December 1992;
  - Law "On the Road Fund" - No. 720-XIII of 2 February 1996;
  - Law "On Customs Tariff" – No.1380-XIII of 20 November 1997;
  - Law "On Budget 1998" – No. 1446-XII of 27 December 1997;
  - Law "On Vineyard and Vine" - No. 131-XIII of 2 July 1994;
  - Law "On Veterinary Activity" - No. 1538-XII of 23 June 1993;
  - Law "On Privatization Program for 1997-1998" - No. 1217-XIII of 25 June 1997, (amended by Laws No.1566-XIII of 26 February 1998; No.187-XIII of 6 November 1998; No.237-XIV of 23 December 1998; No. 239-XIV of 23December 1998 and No. 253-XIV of 24 December 1998;
  - Law "On Phytosanitary Quarantine" - No. 506-XIII of 22 June 1995;
  - Law "On Government Procurement" - No. 1166-XII of 30 May 1997;
  - Law "On Free Enterprise Zone "Expo-Business-Chisinau" - No. 625-XIII of 3 November 1995, amended by 1517-XIII of 18 February 1998; and
  - Law "On Budget 2000" of 1 October 2000.
  - Law on State Regulation of External Trade of 21 September 2000.
  - Law and Agreements on local authorities
    - Law On the Legal Status of Gagauzia (Gagauz-Yeri) - No. 344-XIII

- of 23 December 1994;
- Memorandum on the Basis for Normalization of Relations between the Republic of Moldova and Transnistria signed in Moscow on 8 May 1997;
- Agreement on the organizational basis of social-economical collaboration between the Republic of Moldova and Transnistria signed on 10 November 1997.
- Decrees
  - Decree "On the Promulgation of the 1995 Finance Act";
  - Decree "On the Promulgation of the 1996 Finance Act";
  - Decree of the Parliament No. 1430-KP of 18 May 1993 Concerning the Introduction of the Securities Operations Tax Law;.
- Decisions and Instructions and other legislative acts
  - Governmental Decision No.740 of 2 November 1995 "On preventing the illicit sales of chemical and biological products intended to be used in agriculture and forestry on the territory of the Republic of Moldova";
  - Governmental Decision No. 371 of 6 June 1995 "On Improving the Mechanism of Regulating External Economic Relations";
  - Governmental Decision No. 340 of 2 June 1993 "On the Approval of Basic Rules regarding to Structure of production and Realization expenditures of Goods (Works, Services), included in its price Cost and mode of Forming of Financial Outcomes of Enterprises";
  - Summary "On the Order of Calculation of the Tax on Banks and the Order of Payment of It to the Budget (16 January 1994)";
  - Government Decision No. 859 of 13 August 1998 "On Licensing Certain Types of Activities", which was abrogated thorough the Law No.332 of 26 March 1999 "On Licensing Certain Types of Activities";
  - Governmental Decision No. 1154 of 15 December 1997 "On Optimization of Control Services Activity at State Customs", amended by Governmental Decisions No.168 of 16 February 1998; No. 112 2 February 1999;
  - Government Decision No. 760 of 10 November 1995 "On Production of Wine and Other Wine Products with Appellation of Origin";
  - Government Decision No. 378 of 22 June 1998 "On the Veterinary Statute of the Republic of Moldova";
  - Government Decision No. 777 of 13 August 1998 "On Improving the Mechanism of Regulating Foreign Trade (Import Licensing)" amended by the Government Decision No. 76 of 22 January 1998 and Government Decision No. 716 of 30 June 1998;
  - Government Decision No. 697 of 10 October 1995 "On the Establishment of State Services of Phytosanitary Quarantine", amended by

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- Governmental Decision no. 408 of 27 April 2000;
  - Penal Code Art. 141 "Violation of copyright", Art. 512 "Violation of property right on intellectual property";
  - Governmental Decision No. 659 of 15 September 1994 "On the Issue and Turnover of Bills";
  - Governmental Decision No.719 of 23 September 1994 "On the Ministry of Telecommunications and Informatics";
  - Governmental Decision No. 363 of 25 June 1996 "On the Organization of Standardization and Metrology Activities";
  - Governmental Decision No. 713 of 23 October 1995 "On the copyright owner's remuneration for the use of copyright and neighboring rights";
  - Governmental Decision No. 494 of 17 July 1995 "On the establishment of a provisional National Register of Computer Software";
  - Governmental Decision No. 524 of 24 July 1995 "On the administration on a collective basis of patrimonial rights of holders of neighboring rights";
  - Governmental Decision "On the accession to the World Convention on Copyright" (6 Sep. 1952);
  - Governmental Decision "On the accession to the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Companies" (Rome 1961);
  - Governmental Decision "On the accession to the Bern Convention for the Protection of Literary and Artistic Works" (Paris Act 1971);
  - Governmental Decision No. 743 of 31 December 1996 "On the Statute of the State Agency on Industrial Property Protection of Moldova";
  - Governmental Decision no.423 of 3 May 2000 "On the approval of the Rules on sanitary-epidemiological State supervision in the Republic of Moldova", which replaces Governmental Decision no.816 of December 1995;
  - Governmental Decision "On the implementation and fulfillment of commitments taken by the Republic of Moldova in the process of accession to the WTO";
  - Provisional Statute on Industrial Property Protection of Moldova;
  - Provisional Statute on Patent Attorneys of Moldova;
  - Instructions on Compiling and Filing of Applications for Granting Patents on Invention;
  - Instructions on Compiling and Filing of Applications for the Registration of Utility Models;
  - Instructions on Compiling and Filing of Applications for the Registration of Trademarks and Service Marks;
  - Instructions on Compiling and Filing of Applications for the Registration of Applications of Origin of Goods;

- Instructions for the Application of the Provisional Statute for Industrial Property Protection in Moldova Concerning Inventions on which the Patent on the Responsibility of the Applicator is Requested and Instruction for the Application of the Provisional Statute for Industrial Property Protection in Moldova Concerning Industrial Designs;
- Instructive-methodical indications of the Ministry of Finance regarding to the State sanitary control of imported food products and raw materials, No.3177-84;
- Medico-biological requirements and sanitary rules with regard to imported food products and raw materials, Decision No. 5061-89 of the Ministry of Health;
- Concepts of Tax Reform;
- Governmental Decision No.99 of 27 February 1996 “On Customs Valuation”;
- Governmental Decision No.658 of 20 September 1995 “On the Mechanism of Public Procurement”, abrogated by Law no.1217-XIV of 31 December 1997 on National Agency for Government Procurement;
- Rules of the Ministry of Finance “On the Issue of Licenses for Insurance Services”;
- List of Companies Registered in the State Register as Major Domestic Producers;
- List of Products for which certification is permitted on the basis of manufacturers declarations;
- Annex No. 3 of Government Decision No. 414 dated 13 July 1994 “List of products, subject to mandatory certification”;
- Rules on the Protections of the Republic of Moldova Territory Against the Entry or Introduction from other Countries of Quarantined Pests, Pathogenic Agents of Plants Diseases and Weeds:
- List of Internal and External State Guarantees;
- List of enterprises in which the State still owns over 25 per cent;
- Executive Decree introducing Pre-shipment Inspection;
- Regulation of Pre-shipment Inspection of Imported Goods - Annex 1 to the Executive Decree of the Government of the Republic of Moldova No. 2 dated 26 September 2000;
- Regulation on the Committee for Implementation and Monitoring of the Pre-shipment Inspection of Imported Goods – Appendix No. 3 to the Order of the Government of the Republic of Moldova;
- Personal Composition of the Committee for Implementation and Monitoring of Pre-shipment Inspection of Imported Goods.
- Governmental Order No. 2 of 26 September 2000 “On Preshipment Inspection of Imported Goods”.
- Government Decision No. 1035 on the Implementation of the Com-

mitments of Moldova to the World Trade Organization of 16 October 2000.

- Draft laws and regulations
  - Draft Law on Anti-dumping, Countervailing Duties and Safeguard Measures;
  - Draft Customs Code (Chapters II-XII);
  - Draft Law on Utility Models;
  - Law on Customs Tariff, included draft amendments approved by the Parliament in first reading, July 2000;
  - Draft Amendments to the Law on Consumer Rights Protection No. 153-XII of 25 May 1993;
  - Draft Law on the Modification of the Annex to Chapter IV (Excises) of the Fiscal Code No. 1053-XIV of 16 June 2000.
- Free Trade Agreements and other Agreements:
  - Armenia;
  - Azerbaijan;
  - Belarus;
  - Kazakstan;
  - Kyrgyz Republic;
  - Romania;
  - Russian Federation;
  - Turkmenistan;
  - Ukraine;
  - Uzbekistan;
  - Trade Agreement Between the Government of the Republic of Moldova and the Government of the Islamic Republic of Iran;
  - Moldova-European Community Interim Agreement On Commerce and Commercial Affairs and Agreements for coal, steel and atomic energy;
  - Agreement between the European Economic Community and the Republic of Moldova on Trade in Textile Products, initialed at Brussels on 14 May 1993.

## ANNEX II

### Type of activities needing licence authorization

#### Ministry of Economy and Reforms:

- organization of external tourism;
- collection of technical remnants, containing non-ferrous materials;
- organization of stock exchange trade;
- the exercise of functions of administrator of contesting procedure and administrator of re-organizing procedure.

The Treasury:

- audit activity;
- activity in the field of insurance;
- Lombard functioning;
- organization and undertaking lotteries;
- maintaining casinos, exploitation of game machines with money gains, staking in sports and other types of contests;
- activity, linked to state marking of articles, made of precious metals and precious jewels and activity with precious metals and precious jewels;
- import and wholesale commercialization of spirits;
- import and wholesale commercialization of tobacco items;
- import and wholesale commercialization of fuel and petrol;
- activity of economy and citizens' loaning associations;
- activity of customs free deposits.

The Ministry of Industry and Trade:

- fabrication of chemical products, chemical articles and products of house usage.
- the wholesale trade with goods of large usage;
- The Ministry of Agriculture and Processing Industry:
- production and commercialization with reproduction, planting, backiferous and vineyard materials;
- production and commercialization with vegetable seeds, pumpkin crops, potatoes and plain crops;
- projecting the fruit-growing, backiferous plantations and vineyard;
- production for the commercialization of biologic material of bovine, pork, sheep, chicken, horses and fish;
- up-bringing of reproduction bovine, destined to commercialization;
- importation and commercialization of chemical and biological substances, as well as of stimulators of plants growth;
- fabrication of biological substances, as well as of stimulators of plants growth;
- production, stocking and wholesale commercialization or just only stocking and wholesale commercialization with spirits, including ethyl drinks and beer;
- processing of tobacco, production of tobacco items, wholesale commercialization, including tobacco export.

The Ministry of Transports and Communications:

- exploitation of auto transport for passenger traffics (with the exception of routes within the city radius);
- exploitation of specialized auto transport, destined to the transporta-

- tion of toxic, explosive, and flammable substances (after a coordination with the Department of Standards, Metrology and Technical Assistance and the Department of Civil Protection and Emergency Cases, and in some cases, with the institutions on sanitary control);
- elaboration, assembly, installation, technical maintenance of television networks by a cable or posts (stations) of radio diffusion and television by a radio-electric way;
  - functioning of television networks by a cable or posts (stations) of radio diffusion and television by a radio-electric way (technical licenses);
  - offering express postal services regarding registered parcels;
  - commercialization and exploitation of telecommunication, postal and informatics equipment (type-authorizations).

The Ministry of Labour, Social and Family Protection:

- organization of provisional abroad employment of citizens of the Republic of Moldova, as well as the placement in the sphere of labour of citizens within the territory of the Republic of Moldova.

The Ministry of Health:

- the development of pharmaceuticals activity;
- supplying technical assistance (with the exception of some activities, practiced exclusively by state enterprises, organizations and institutions);
- researches, applied in the field of genetics and microbiology;
- fabrication, commercialization, purchase and custody of radioactive substances, applied in medicine;
- fabrication, commercialization, technical assistance, repairs and verification of technical and optic medicine articles;
- usage of potentially toxic substances, of chemical and biological ones, applied in medicine.

The Ministry of Education and Science:

- the establishment of educational institutions, of re-qualification and improvement institutions and courses.

The Ministry of Culture:

- organization of archeological projecting research works;
- elaboration of projects and the execution of conserving, restoring and valuation works concerning historical monuments;
- commercialization with goods with artistic value and with antiquarian things.

The Ministry of Justice:

- supplying juridical assistance;
- undertaking judiciary expertise;
- Notary activity.

The Ministry of Home Affairs:

- the use of explosive substances, explosive and pyrotechnic means;
- repairs of sports and hunting weapons;
- private detective activity;
- instruction on different types and sorts of body-to-body wrestling, including on martial arts;
- commercialization of different types of weapons and equipment (exclusive licensing of state enterprises);
- instruction and re-cycling of drivers of auto transport means;
- security insurance and protection activity;
- seals fabrication;
- import, export and re-export of weapons and respective equipment.

The Ministry of National Security:

- elaboration, production and commercialization of ciphering technology, technical and prophylactic assistance of ciphering means and of other special means for the custody, processing, transmission, interception and registration of the information, for the insurance of its authenticity, and offering ciphering services;
- the cryptographic and technical-engineering protection of information, cryptoalgorithms and cryptographic analysis;
- special revisions of technical means and equipment aiming at the protection against the drain of information by technical channels;
- elaboration of ciphers;
- preparation of specialists in the field of cryptography.

The Ministry of Environment:

- the usage and processing of remnants (except the technical remnants, containing non-ferrous metals, the collection of which is licensed by the Ministry of Economy and Reforms);
- the usage of natural resources (the collection and commercialization of spontaneous plants, including medical plants, animal chase, except hunting fauna, acquisition of animals, not constituting hunting and fishing objects (snails, snakes, frogs etc., the industrial fishing in natural water pools);
- undertaking evaluative study of the impact upon the environment and the ecological audit undertaking;
- the practice of technologies of separating the components of the at-

- atmospheric air;
- hydro-meteorological observations.

The Ministry of Territory, Buildings and Communal Farms Development:

- works on projecting all categories of constructions, including reconstruction, general repairs, consolidating, modernization and restoration;
- execution of works of constructing-assembling, rebuilding, general repairs, modernization and restoration for all categories of constructions, including technical networks and those of public utility;
- activity concerning the production of materials and building items.

The Department of Standards, Metrology and Technical Assistance:

- construction, assembly (including regulation), exploitation and repairs of objects from mining industries, from the sectors with flammable and deflagration dangers, of objects to be deposited and the manipulation within them with substances, able to create deflagrant messes of dust and air or of steam, of gas alimentation systems, of lifting installations, of boilers, recipients, functioning under pressure as well as of steam and hot water conducts (in case of necessity, there will be a coordination with the Department of Civil Protection and Emergency Cases);
- fabrication, assembly (including regulation) and repairs of the chemical, mineral, anti-deflagrant and electric/thermal/energetic equipment;
- custody and usage of explosive industrial materials (in common agreement with the Minister of Home Affaires);
- exploitation of useful mineral resources (with the exception of those of large extension);
- the expertise of industrial products' (objects') security, including the underground and electric/thermal/energetic works;
- fabrication, repairs, verification, calibration, experimentation, exploitation and commercialization of measuring means;
- the usage of underground with other purposes than the extraction of useful mineral resources;
- execution of drilling works (except the technical building prospects);
- exploitation of sources and the bottling of mineral and potable waters;
- import, usage, deposit, commercialization of chemical reagents, liquid gases and of chemically toxic substances (materials) and those, dangerous of being deflagrant;
- deposit of fuel and lubricant materials (after a coordination with the Department of Civil Protection and Emergency Cases);
- exploitation of petrol and gas alimentation stations (after a coordination with the Department of Civil Protection and Emergency Cases);
- import, export, production and internal consume of substances, de-

- stroying the ozone stratum, regulated by the Montreal Protocol, as well as of products, containing the regulated substances;
- import, custody, exploitation and usage of ionized radiation sources of reagent materials.

The Department of Civil Protection and Emergency Cases:

- functioning of buildings, constructions, production establishments, the characteristics of which can generate fires or explosions and of other congested objectives;
- drafting, assembly, regulation and the technical assistance of automatic systems of fire prevention within the economical unites;
- certification and research of flammable and fire stimulation properties of substances, materials, articles of equipment and buildings in accordance with the rules of the national certification system;
- creation of a department service of fire brigades within enterprises of civil protection services formations (military, militarized, specialized, territorial, etc.);
- fabrication of techniques of emergency intervention in case of fire, of technical equipment for fire putting out, of fire protection means, of means and equipment for undertaking of operative works of salvation – de-blocking;
- transportation of reagent materials;
- implementation of techniques of prevention and intervention in emergency situations;
- drafting and serving the systems of prevention and intervention of emergency situations, of establishments of civil protection and of systems of vital insurance;
- instruction and briefness in the field of civil protection.

The State Commission for the Securities Market:

- professional activity with securities;
- activity of the Securities Market;
- activity of investments funds.

The District Executive Committees and the Municipal Mayoralties:

- activity in the field of trade by detail and public alimentation;
- commercialization by detail with alcoholic production;
- commercialization by detail with tobacco items;
- passengers transportation in urban traffic, including taximeters;
- exploitation of useful mineral resources of large extension.

The National Agency for Survey, Land Resources and Geodesy:

- topogeodesic and cartographic works upon the technical prospects of different types of activities and technical complex prospects in con-

- structions;
- activities linked to the field of the general land survey, the elaboration of organizational projects of the territory and the ground evaluation;
- undertaking of equipment and estimation works of the immobile goods.

The Coordinating Council of the Audiovisual:

- radio emissions;
- TV programmes.

The National Agency for the Regulation of Energy:

- production transportation, dispatch, distribution and furnishing of electric energy in regulated and non-regulated tariffs;
- production, distribution and furnishing of the thermal energy;
- production, stocking, transportation, distribution and furnishing of natural gases of regulated and non-regulated tariffs.

## ANNEX III

### Tax Exemptions in 2000

- (i) Exemptions from payment of the income tax to the budget applied to:
  - a) medical labour shops administrated by the psychiatric hospitals of the Ministry of Health in which disabled labour is used;
  - b) Republican Experimental Center for Prosthetic Appliances, Orthopaedics, and Rehabilitation of the Ministry of Labour, Social Protection, and Family;
  - c) enterprises of the Society of Blind People, Society of Deaf People, Society of Invalids;
  - d) enterprises of penitentiary institutions;
  - e) territorial cadastre authorities – with respect to the part of income calculated and aimed at establishment and operation of the Guarantee Fund instituted by the National Cadastre Agency, Financial Resources and Geodesy, as well as with respect to the part calculated and aimed at accumulation of funds to cover expenditures for the service and repayment of foreign loans granted to implement the First Cadastre Project;
  - f) income resulting from interest on state securities issued in 2000 irrespective of the term of their redemption;
- (ii) income tax exemptions are also applied to:
  - a) military men, members of the command body, of the penitentiary sys-

- tem, troops of the internal affairs bodies and of the Fire and Rescue Service of the Department for Civil Protection and Emergencies - on incomes received from these jobs. Personal exemption cannot be transferred to spouses;
- b) individuals, on material assistance received from the reserves of the Government and local public administration authorities, and labour unions funds in conformity with provisions on such assistance;
  - c) sportsmen and coaches, on financial aid provided by the International Olympic Committee as well as on bonuses received in international sport competitions ;
  - d) National Olympic Committee and national sports federations – on financial assistance granted by the International Olympic Committee, European Sports federations and other international sports organizations;
  - e) “Apa-Canal-Chisinau” - on income intended for and transferred to the special fund for interest payment and repayment of the loan obtained from the European Bank for Reconstruction and Development.
- (iii) from land tax:
- a) institutions funded from budgets of all levels, except for land plots used for business activity or leased;
  - b) enterprises of the Society of Blind People, Society of Deaf People, and the Society of Invalids.
  - c) enterprises of penitentiary institutions;
  - d) the Republican Stadium and the Athletic Manege from Chisinau
  - e) for land plots under dwellings, for land plots adjacent to dwellings, within the established limits when those land plots are owned by:
    - Individuals aged 61 for males and 56 for females, invalids of the I and II categories, infant invalids, other individuals unfit for work, invalids of III category (participants in military actions for the defense of territorial integrity and independence of the Republic of Moldova, participants in military actions in Afghanistan, participants in liquidation of Chernobyl’s catastrophe aftermath). The above-mentioned categories of individuals (except invalids of the I and II categories and infant invalids) are tax exempt on the condition that they do not reside with family members able for work. For the purpose of granting this tax privilege, the category “other individuals unfit for work” includes children up to 16 years of age inclusive, individuals on compulsory military service, pupils and students of educational institution (full time) with the duration of studies over one year;
    - Families and dependants of participants deceased in the military actions for the defense of territorial integrity and independence of the Republic of Moldova;

- Families and dependants of participants deceased in the military actions in Afghanistan;
- Families and dependants of individuals who died as a consequence of diseases caused by their participation in the liquidation of Chernobyl's catastrophe aftermath;
- Families with invalid children under 18 years;
- Individuals that suffered from earth slides. The respective decision is adopted by the local council.

This year other legislative also remains in force acts granting allowances and privileges on land tax to individuals. In cases where the individual is subject to a number of fiscal privileges, he/she is granted only one of them, the most beneficial.

(iv) from real estate tax:

- a) institutions financed from public budgets of any level;
- b) organizations and enterprises of the Society of Blind People, Society of Deaf People and Society of Invalids;
- c) the Experimental Republican Center for Prosthesis, Orthopedics and Rehabilitation of the Ministry of Labor, Social Protection and Family
- d) enterprises of the penitentiary institutions;
- e) civil protection entities;
- f) diplomatic missions for real estate put at their disposal on a reciprocal basis, with no rental payment;
- g) religious organizations for real estate designated for religious services;
- h) within the limit of real estate value of up to lei 30 thousand for permanent dwellings inhabited by:
  - Individuals aged 61 for males and 56 for females, invalids of the I and II categories, infant invalids, other individuals unfit for work, invalids of III category (participants in military actions for the defense of territorial integrity and independence of the Republic of Moldova, participants in military actions in Afghanistan, participants in liquidation of Chernobyl's catastrophe aftermath). The above-mentioned categories of individuals (except invalids of the I and II categories and infant invalids) are tax exempt on the condition that they do not reside with family members able for work. For the purpose of granting this tax privilege, the category "other individuals unfit for work" includes children up to 16 years of age inclusive, individuals on compulsory military service, pupils and students of educational institution (full time) with the duration of studies over one year;
  - Families and dependants of participants deceased in the military actions for the defense of territorial integrity and independence of the Republic of Moldova;

- Families and dependants of participants deceased in the military actions in Afghanistan;
- Families and dependants of individuals who died as a consequence of diseases caused by their participation in the liquidation of Chernobyl's catastrophe aftermath;
- Families with invalid children under 18 years;
- Individuals that suffered from earth slides. The respective decision is adopted by the local council.

In case the above-mentioned categories have at their disposal real estate, the value of which exceeds Lei 30 thousand, the real estate tax should be imposed on the difference between the real estate value and Lei 30 thousand.

- (v) from water fees:
  - a) underground water extracted concomitantly with ore or extracted for preventing its damaging effects;
  - b) water used for anti-fire purposes;
  - c) water used by the enterprises of the Society of Blind People, Society of Deaf People and Society of Invalids;
  - d) water collected by the population from surface and underground sources (springs) for drinking water and household needs;
- (vi) from value added tax, customs duty and fee for customs procedures – goods and services imported or purchased on the territory of the Republic of Moldova on account of loans and grants offered to the Government of the Republic of Moldova or offered under state guarantee, on account of loans granted by international financial organizations (including on account of the share of the Government of the Republic of Moldova) designated for fulfilment of respective projects, according to the list approved by the Government;
- (vii) from value added tax and customs duty – import and sale on the domestic market of vehicles (cars);
- (viii) from value added tax and customs duty – import and sale on the domestic market of filter cigarettes. After six months after publication of this law, the value added tax on the above-mentioned products should be imposed according to general principles;
- (ix) from value added tax and customs duty – import and sale on the domestic market of potato seeds of first reproduction;
- (x) till 1 of July 2000, from value added tax and customs duties for equipment and other goods imported for production purposes by the “Redeco” Ltd, USA Company for exploration of natural resources according to the terms of the concession Agreement on prospecting and exploration of oil and gas resources;
- (xi) from value added tax and customs duties for import of equipment and supplies received as donation from the International Olympic Committee for training

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- of the national team for participation at the Olympic Games in Sydney – the National Olympic Committee;
- (xii) from customs duties for import of goods included in the statutory capital, received as donation from the Council of Europe – the Information and Documentation Center of the Council of Europe in the Republic of Moldova;
  - (xiii) from value added tax on produced goods and provided services, as well as from fee for use of mineral resources – enterprises of penitentiary institutions;
  - (xiv) from transfer to the budget of the income tax, value added tax and fee for extraction of inert construction materials – the joint stock company “Chisinau Mine”, on condition that it utilizes these amounts for prevention measures against flooding of mining excavations;
  - (xv) from transfer to the budget of value added tax, calculated on delivered goods and provided services – organizations and enterprises of the Society of Blind People, Society of Deaf People and Society of Invalids;
  - (xvi) from transfer to the budget of up to 50% of the calculated value added tax amount – economic agents carrying out the restructuring process through the Council of Creditors, on condition of further utilization of the respective amount for covering additional expenditures related to restructuring and fulfilment of measures envisaged in the memorandum-agreement;
  - (xvii) from transfer to the budget of value added tax – proceeds from sale of capital assets and other material goods of economic agents, on which the economic court has initiated a bankruptcy case (liquidation procedure) according to the Law N 786-XIII as of March 26, 1996, “On bankruptcy”, on condition that respective funds be used for covering debt to creditors;
  - (xviii) from transfer to budget of taxes and fees (except for income tax, customs duties, fee for customs procedures, value added tax and excises on import) – enterprises of the State Forestry Service, on condition that respective funds be used for regeneration and protection of forests. The results of these transactions should be reflected in the report on cash execution of the state budget, based on the monthly reports submitted by the State Forestry Service;
  - (xix) from payment of the fee for registration of state securities to the National Committee for Movable Assets – the Ministry of Finance.

*Decision of the General Council on 8 May 2001*

*(WT/ACC/MOL/39)*

The General Council,

*Having regard to* paragraph 2 of Article XII and paragraph 1 of Article IX

of the Marrakesh Agreement Establishing the World Trade Organization (the “WTO Agreement”), and the Decision-Making Procedures under Articles IX and XII of the WTO Agreement agreed by the General Council (WT/L/93);

*Conducting* the functions of the Ministerial Conference in the interval between meetings pursuant to paragraph 2 of Article IV of the WTO Agreement;

*Noting* the results of the negotiations directed toward the establishment of the terms of accession of Moldova to the WTO Agreement and having prepared a Protocol for the Accession of Moldova (WT/ACC/MOL/40).

*Decides* as follows:

1. Moldova may accede to the WTO Agreement on the terms and conditions set out in the Protocol.<sup>1</sup>

## ACCESSION OF THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

*Report of the Working Party adopted by the Ministerial Conference  
on 11 November 2001  
(WT/MIN(01)/4)*

### I. INTRODUCTION

1. At its meeting on 29 September-1 October 1992, the GATT 1947 Council of Representatives established a Working Party, as reflected in the respective Minutes (document C/M/259), to examine the application of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (hereinafter referred to as “Chinese Taipei”) to accede to the General Agreement 1947 under Article XXXIII, and to submit to the Council recommendations which may include a Draft Protocol of Accession. Membership of the Working Party was open to all contracting parties wishing to serve on it. Following the request of Chinese Taipei, circulated in document WT/ACC/TPKM/1, and pursuant to the decision of the General Council of 31 January 1995, the Working Party was transformed into a World Trade Organization (WTO) Working Party to negotiate the terms of accession of Chinese Taipei to the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the “WTO Agreement”) under Article XII of that Agreement.

2. The Working Party met on 6 November 1992, 15 April 1993, 28 June 1993, 12 October 1993, 17 May 1994, 26 July 1994, 21 December 1994, 28 February 1997,

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<sup>1</sup> See under section “Legal Instruments”.

8 May 1998, 12 May 1999, and 18 September 2001 under the Chairmanship of H.E. Mr. M. Morland (United Kingdom). The terms of reference and the membership of the Working Party are set out in document WT/ACC/TPKM/6/Rev.6.

## II. INFORMATION PROVIDED

3 The Working Party had before it, to serve as a basis for its discussion, the memorandum on Chinese Taipei's foreign trade regime (L/7097 and Addenda 1 - 11) and the questions submitted by Members on the foreign trade regime of Chinese Taipei together with the replies of the Chinese Taipei authorities thereto (L/7089/Rev.1, L/7429 and Add.1), and documents Spec(94)28 (Newly Promulgated or Revised Laws and Regulations), Spec(94)30 (Description of Service Sectors), Spec(94)31 and Add.1 (Special Exchange Agreement), Spec(94)41 (Status Report of the Bilateral Negotiations), Spec(95)1 and Corr.1 (Checklist of Accession Issues - Preliminary Responses Provided by Chinese Taipei), Spec(95)8 (Laws and regulations regarding agricultural products), WT/ACC/TPKM/2 (Tariff reductions for 758 tariff lines effected as from 14 July 1995), WT/ACC/TPKM/3 (Newly Promulgated or Revised Laws and Regulations), and WT/ACC/TPKM/4 (The Customs Import Tariff and Classification of Import and Export Commodities: revised edition of August 1995); WT/ACC/TPKM/8/Rev.2 and WT/ACC/TPKM/9/Rev.2 (Information on Industrial Subsidies); WT/ACC/TPKM/10 (Adoption of Codex Standards); WT/ACC/TPKM/12 (Standards for Agricultural and Processed Agricultural Products); WT/ACC/TPKM/13 (List of Commodities Subject to Export Restriction and List of Commodities); WT/ACC/TPKM/14 and Corr.1 and Add.1 (Additional Questions and Replies Concerning Domestic Support and Export Subsidies). In addition, the representative of Chinese Taipei made available to the Working Party the following material:

### Customs Regime:

- Customs Law;
- Rules Governing the Implementation of the Customs Law;
- Implementing Regulation on the Imposition of Countervailing Duty and Anti-Dumping Duty;
- Rules for the Collection of Customs Fees.

### Trade Regime:

#### General:

- Foreign Trade Act;
- Enforcement Rules of the Foreign Trade Act;
- Regulations Governing the Process of Objections Against Punishment on Violation of Foreign Trade Act;
- Customs Import Tariff and Classification of Import & Export Commodities (June 1998 Revised Edition);
- Consolidated List of Commodities Subject to Import Restriction and

Commodities Entrusted to Customs for Import Examination (January 2000 Edition);

- Regulations Governing Import of Commodities by Business Firms;
- Regulations Governing Registration and Administration of Exporters and Importers;
- Regulations Governing Revenue, Expenditure, Custody, and Use of Trade Promotion Fund;
- Rules for Handling Import Relief Cases;
- Import Regulations Codes.

Industrial Goods:

- Regulations Governing Export and Import of High-Tech Commodities;
- Operating Rules for Screening Applications to Import Fishing Vessels Using New Fishing Methods;
- Requirements for Imported Drug Registration;
- Veterinary Drugs Control Act;
- Agro-Pesticide Act;
- Guidelines Governing the Application for and Issuance of Fertilizer Registration Certificate;
- Operating Regulations Governing the Control of Restricted Methyl Bromide;
- Regulations of the Industrial Development Bureau of the Ministry of Economic Affairs for Controlled Substances Pursuant to the Montreal Protocol.

Agricultural Goods:

- Statute for Agricultural Development;
- Regulations Governing Relief and Aid for Major Agricultural Products Damages by Importation;
- Guidelines for Screening Applications for Letter of Approval for the Importation of Livestock and Poultry;
- Guidelines for the Issuance of Written Approval Regarding the Importation of Aquatic Animals;
- Guidelines Governing Food Companies Applying to Import Raw Glutinous Rice/Powder for Processing for Export;
- Operating Procedures Governing Applications to Import Wheat and Operation of the Stabilization Fund;
- Operating Procedures Governing Applications to Import Wheat Flour and Operation of the Stabilization Fund;
- Feeds Control Act;
- Guidelines Governing Applications to Import Aduki Beans;
- Screening Procedures and Criteria Governing the Issuance of Written Approval for the Importation of Dried Betel Nuts (Ta-Fu-Tzu).

## Investment Regime:

- Statute for Investment by Foreign Nationals;
- Negative List for Investment by Overseas Chinese and Foreign Nationals;
- Statute for Upgrading Industries;
- Enforcement Rules of the Statute for Upgrading Industries;
- Statute for Development of Medium and Small Businesses;
- Statute for Establishment and Management of Export Processing Zones;
- Aeronautics and Space Industries Development Programme;
- Automotive Industry Development Policy.

## Other Texts Affecting Trade:

## General:

- Income Tax Law;
- Business Tax Law;
- Statute for Commodity Tax;
- Statute for Foreign Exchange Regulation;
- Fair Trade Law.

## Intellectual Property Rights:

## Copyright:

- Copyright Law;
- Implementation Rules of the Copyright Law;
- Copyright Intermediary Organization Act;
- Illustrated Contents of 'Each Kinds of Works' in Paragraph One, Article 5 of Copyright Law;
- Certain amounts of Items 2 and 3 of Paragraph One of Article 87*bis* of the Copyright Law;
- Standard for Compensation for Fair Use of Works in Paragraph 4, Article 47 of the Copyright Law;
- Regulations Governing Application for Approval of Compulsory License of Musical Works;
- Regulations Governing Registration of Plate Rights;
- Implementation Regulation for Suspension of Release of Goods Infringing on Copyright or Plate Right by Customs Authority;
- Regulation of Copyright Dispute Mediation;
- Organic Charter of the Copyright Examination and Mediation Committee of IPO, Ministry of Economic Affairs;
- Agreement for the Protection of Copyright between the Coordination Council for North American Affairs and the American Institute in Taiwan;

- Agreement Concerning the Protection and Enforcement of Rights in Audiovisual Works between the Coordination Council for North American Affairs and the American Institute in Taiwan.  
Trademark:
- Trademark Law.
- Patent:
- Patent Law.

Standards, Quarantine, Inspection:

Standards:

- Provisional Standard for Hi-Fi and Stereo Equipment.

Quarantine:

- Quarantine Requirements for the Importation of Animal and Animal Products;
- Quarantine Regulations on Imported Fishery Products;
- Quarantine Restrictions on the Importation of Plants and Plant Products;
- Statute for Prevention and Control of Infectious Animals Diseases;
- Implementation Rules of the Statute for Prevention and Control of Infectious Animals Diseases;
- Regulations Governing the Quarantine at International Ports.

Inspection:

- Commodity Inspection Law;
- Enforcement Rules for the Commodity Inspection Law (Implementation Rules of the Commodity Inspection Act).

Others:

- Commodity Labelling Law;
- Law Governing Food Sanitation;
- Enforcement Rules of the Law Governing Food Sanitation;
- Law for the Control of Cosmetic Hygiene.

Government Procurement:

- Law of Audit;
- Rules Governing Procuring Goods of Foreign Origin;
- Ordinance Concerning Inspection Procedure Governing Construction Work, Procurement and Disposal of Properties by Government Agencies.

Others:

- Guidelines for Screening Applications for Written Import/Export Approval Regarding Wild Fauna and Flora Deserving Conservation;
- Wildlife Conservation Law;
- Implementing Regulations of the Wildlife Conservation Law;

- Rules of Royalty Rate for Public Interest Activities.

Trade in services:

Schedule of Commitments:

- Schedule of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu Concerning Initial Commitments on Trade in Services (WT/ACC/TPKM/18/Add.2).

Banking:

- Banking Law;
- Guidelines for the Screening and Approval of the Establishment of Branches and Representative Offices by Foreign Banks.

Insurance:

- Insurance Law;
- Insurance Company Establishment Criteria;
- Criteria for Approving Foreign Insurance Enterprises and the Governing Regulation;
- Central Reinsurance Corporation Act.

Securities:

- Securities and Exchange Law;
- Foreign Futures Trading Law;
- Regulations Governing the Standard for Incorporation of Securities Companies;
- Rules for the Administration of Securities Investment Trust Enterprises.

Others:

- Broadcasting and Television Law;
- Motion Picture Law;
- By-laws Governing the Execution of the Motion Picture Law;
- Employment Service Act;
- Rules Governing the Approval and Administration of Foreign Specialist and Technical Personnel Employed by Public or Private Enterprises and Ranking Executives Employed by Overseas Chinese or Foreign National Invested Enterprises.

### III. INTRODUCTORY STATEMENTS

4. In his statements the representative of Chinese Taipei *inter alia* recalled that this Separate Customs Territory, which encompasses the islands of Taiwan, Penghu, Kinmen and Matsu, was short of natural resources. Its only substantial resource - labour - was the source of its strong rate of growth. The main economic indicators were as follows:

## Chinese Taipei's Main Economic Indicators

Year	GNP (Billion US\$)	GNP per Capita (US\$)	*Annual Final Budget (Billion US\$)	Annual Changes in Prices		Unemployment Rate (%)	Foreign Exchange (Billion US\$)	Export Statistics (Billion US\$)	Import Statistics (Billion US\$)
				Consumer price (%)	Wholesale price (%)				
1993	228.6	10,964	42.7	2.9	2.5	1.5	83.6	85.1	77.1
1994	248.3	11,806	39.6	4.1	2.2	1.6	92.5	93.0	85.3
1995	269.1	12,686	42.4	3.7	7.4	1.8	90.3	111.7	103.6
1996	283.6	13,260	40.9	3.1	-1.0	2.6	88.0	115.9	102.4
1997	293.3	13,592	44.8	0.9	-0.5	2.7	83.5	122.1	114.4
1998	269.2	12,360	34.6	1.7	0.6	2.7	90.3	110.6	104.7
1999	290.5	13,235	40.7	0.2	-4.6	2.9	106.2	121.6	110.7
2000	314.4	14,216	76.2	1.3	1.8	3.0	106.7	148.3	140.0

- Since 1960, the "Fiscal Year" refers to the 12-month period beginning from 1 July 1 of the preceding year to 30 June of the designated year. The item excludes repayment of government debt.
- In 2000, the "Fiscal Year" refers to the 18-month period beginning from 1 July of 1999 to 31 December 2000. The item excludes repayment of government debt.

## Chinese Taipei's Expenditure on Gross National Product

Unit: Billion US\$

Year	Gross National Product	Gross Domestic Product	Private Consumption	Government Expenditure	Gross Fixed Capital Formation	Increase in Inventory	Export of Goods & Services	Imports of Goods & Services
1993	228.6	224.3	126.9	35.0	56.4	2.3	98.9	95.2
1994	248.3	244.3	142.6	35.6	60.0	2.0	106.6	102.5
1995	269.1	264.9	155.7	37.7	66.1	1.0	127.1	122.7
1996	283.6	279.6	165.3	40.0	62.9	2.0	132.6	123.1
1997	293.3	290.2	172.0	41.7	66.0	4.2	140.1	133.8
1998	269.2	267.2	159.4	38.2	62.9	3.7	127.7	124.8
1999	290.5	287.9	174.8	37.9	65.8	1.4	139.0	131.1
2000	314.4	310.1	192.8	40.4	72.3	-1.6	168.1	161.8

## Chinese Taipei's Employment Population by Sectors

Unit: 1000 Persons

Year	Agriculture Sector	Industrial Sector	Services Sector
1993	1,005	3,418	4,323
1994	976	3,506	4,456
1995	954	3,504	4,587
1996	918	3,399	4,751
1997	878	3,502	4,795
1998	822	3,523	4,944
1999	776	3,492	5,116
2000	740	3,534	5,218

## Chinese Taipei's Balance of Payments

Unit: Million US\$

Year	Current Account	Capital Account	Financial Account	Reserves
1993	7,042	-328	-4,629	-1,541
1994	6,498	-344	-1,397	-4,622
1995	5,474	-650	-8,190	3,931
1996	10,923	-653	-8,633	-1,102
1997	7,051	-314	-7,291	728
1998	3,437	-181	2,495	-4,827
1999	8,384	-173	9,220	-18,593
2000	8,903	-287	-8,019	-2,477

5. He added that government policies had restructured the economy from agriculture towards basic and heavy industries. As part of an import substitution and integration process, intermediate goods industries were established. Transportation was streamlined and large investments were made in new ports, airports and highways. The Chinese Taipei authorities had also intensified rural development and supported the moves to improve farm income. More recently, industrial restructuring was further promoted. Educational institutions placed greater emphasis on science and technology in order to provide a highly trained workforce. In the 1990's, economic liberalization and the internationalization of the economy had continued. Infrastructure investments, the regulation of pollution and the privatization of the economy had accelerated. Employment had shifted from the agricultural sector to the industrial and service sectors. The representative of Chinese Taipei also stated that when Chinese Taipei initiated its import-substitution strategy, exports were mostly composed of sugar, rice, bananas, tea and processed agricultural products. Few industrial products were sufficiently competitive for export. Gradually the import substitution industries became capable of producing competitive export products. As a result, the share of exports of traditional products declined whilst industrial products took an increasing share of exports. At first, major export items were labour intensive products such as textiles and plywood. Recently, electronic goods had become major export items. Recent total exports value in US\$000 was as follows:

Year	Total
1993	85,091,458
1994	93,048,783
1995	111,658,800
1996	115,942,064
1997	122,080,673
1998	110,582,300
1999	121,591,000
2000	148,320,500

Recent total imports value in US\$000 was as follows:

Year	Total
1993	77,061,203
1994	85,349,194
1995	103,550,044
1996	102,370,021
1997	114,424,665
1998	104,665,300
1999	110,689,900
2000	140,010,600

6. Referring to the direction of the future economic policies, the representative of Chinese Taipei said that overall global economy expanded steadily in 1997, in contrast, Chinese Taipei's economy reached its slowest growth rate that year at 6.8 per cent, the highest in six years. Economic growth for 1995 and 1996 had been 6.0 per cent and 5.7 per cent respectively. The upturn in Chinese Taipei's economy could be attributed to strong private investment and consumption. In 1997 inflation was low at the rate of 0.9 per cent, compared with 3.7 and 3.1 in 1995 and 1996. Trade surplus in 1997 was US\$7.7 billion. For 1998, the economy of Chinese Taipei was expected to grow 5.3 per cent, with per capita GNP expected to reach almost US\$12,030 and consumer prices to rise 1.9 per cent. Nevertheless, these expectations would depend on whether public investment projects proceed according to schedule. An additional source of major impetus to growth would be the private sector as a result of strength in private consumption, steady improvement in the investment climate and greater private investment in public projects. In his statements he also outlined the sectors where Chinese Taipei would need transition periods to bring specific measures into full conformity with WTO obligations and said that Chinese Taipei was ready to assume obligations comparable to those undertaken by WTO Members with a comparable level of economic development. The representative of Chinese Taipei stated that his government would not claim any right granted under WTO Agreements to developing country Members or to a Member in the process of transforming its economy from a centrally-planned into a market, free-enterprise economy.

7. Members of the Working Party warmly welcomed the application of Chinese Taipei for accession to the WTO. Notwithstanding limitations on its natural resources and the relative size of the economy, Chinese Taipei had transformed itself into one of the world's most dynamic trade centres. Chinese Taipei's membership of the WTO would strengthen the multilateral trading system. Members also congratulated Chinese Taipei on its willingness to make the required adjustments promptly and to only seek a minimum of transition periods in which to bring its economy fully into conformity with the requirements of the WTO. Members noted, however, that membership of the WTO required full observance of the MFN and national treatment principles, in particular, GATT 1994 required the

grant of any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other WTO Member or other country or separate customs territory, whether or not a contracting party, to products originating in or destined for the territories of all other contracting parties. Similar MFN requirements applied in respect of the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). It also required the taking of comprehensive market access commitments on goods, including agricultural products, and services, which would be reflected in the respective Schedules of Concessions and Commitments annexed to the Draft Protocol of Accession. Several members of the Working Party were of the view that Chinese Taipei should assume a level of obligations commensurate to that of the developed economy original Members of the WTO, and that Chinese Taipei should apply the WTO Agreement fully from the date of accession, without recourse to any transition periods.

8. The representative of Chinese Taipei acknowledged the importance of observing the principles of MFN and national treatment in the WTO and the broad scope of that obligation. He stated that upon accession Chinese Taipei would fully observe its MFN and national treatment obligations in respect of any advantage, favour, privilege or immunity granted to WTO Members or other countries or separate customs territories, unless specifically exempted from its GATS commitments.

#### IV. ECONOMIC POLICIES

##### *Foreign Exchange Policies*

9. In response to requests from members of the Working Party for information on the foreign exchange system prevailing in Chinese Taipei, the representative of Chinese Taipei stated that all current account transactions were free from foreign exchange controls. As for residents, any company or individual could freely settle foreign exchange with authorized banks up to an amount of US\$50 million and US\$5 million respectively per year. As for non-residents, any non-resident could open a NT dollar account with local commercial banks. However, foreign financial institutions outside the territory of Chinese Taipei could only deposit locally earned revenue of NT dollars into their accounts. There was no restriction when the remittance was related to an outward/inward investment project approved by the competent authority. The foreign exchange rate was determined by the market, and there were no discriminatory currency practices. In response to further questions, he said that enterprises established under the Company Law of Chinese Taipei could freely purchase the foreign exchange required for imports or for invisible trade settlements through the authorised foreign exchange banks without any restriction. There was no restriction on the use of foreign exchange for overseas investment provided that the investment had been approved by the authorities. Authorized foreign exchange

banks and foreign banks were free to take part in the Chinese Taipei foreign currency call loan market. Since 1991, forward foreign exchange transactions had been permitted. The representative of Chinese Taipei said that these requirements would be gradually phased out as market conditions permitted. He expressed the view that Chinese Taipei's foreign exchange practices were fully consistent with Article XV of the GATT 1994.

10. Some members of the Working Party noted that Chinese Taipei was not a member of the International Monetary Fund (IMF) and thus would have to enter into a Special Exchange Agreement as provided for in Article XV:6 of the GATT 1994 incorporating obligations consistent with Fund Article VIII. Some members also expressed concern that elements of Chinese Taipei's foreign exchange system provided scope for practices that distorted trade flows. The representative of Chinese Taipei said that in the context of accession to the WTO, Chinese Taipei was prepared to comply with the provisions of Article XV of the GATT 1994 regarding its foreign exchange restrictions. He added that in order to comply with GATT 1994 Article XV, Chinese Taipei had negotiated a Special Exchange Agreement with the WTO.

#### *Pricing Policies*

11. Some members of the Working Party noted that Chinese Taipei had price controls for the domestic prices of certain commodities and that there were no price controls applied exclusively to imports, they requested a full list of the products subject to price controls, and the plans to eliminate such price controls. In response the representative of Chinese Taipei stated that price controls applied primarily in the area of public utilities under control of the Public Utility Rate Commission. The products specified in the list reproduced in Attachment A to this Report were the only ones subject to price controls. In relation to the sale of tobacco and alcoholic beverages, the representative of Chinese Taipei stated that minimum profit or pricing of tobacco and alcohol products had been abolished. The regulation on the maximum retail margin would cease to be effective when the monopoly system was formally abolished. He further added that petroleum, natural gas and liquefied petroleum gas were subject to price controls in order to maintain stability in energy prices. Salt, sugar and fertilizer were subject to price controls to stabilize farmers' income and production costs. Chinese Taipei intended to phase out price controls as soon as possible, keeping in view the objectives noted above. Future liberalization of price controls would take into account the timetable for privatizing state enterprises which had been involved in exercising price controls, such as the Taiwan Fertilizer Company, and the Taiwan Salt Industrial Corporation. The Chinese Petroleum Corporation's monopoly on activities had been phased out since 1996 and price controls on petroleum and liquified petroleum gas were removed in 2000. Fertilizer had also been removed from price controls in 1999 due to the privatization

of the Taiwan Fertilizer Company. Some members of the Working Party noted that they could see no justification for price controls on sugar and salt. In response, the representative of Chinese Taipei stated that the price controls on salt were expected to be abolished by the end of June 2002. Domestic sugar prices were set by Taiwan Sugar Corporation, which was the sole supplier of sugar. The sugar price set by Taiwan Sugar Corporation took into account the price at which Taiwan Sugar purchased sugar cane from local growers (which was set 10 years ago according to the farmers' production cost at that time), and its own cost of production. The domestic sugar price had been decreasing, as the increase in import of sugar (the cost of which was lower), helped to bring down Taiwan Sugar's cost. Industrial users of sugar were consulted, in order to ensure that the price control would not seriously affect their competitiveness. There was no discrimination between cane and beet sugar. The price control system would be replaced by the implementation of a tariff rate quota system upon Chinese Taipei's accession. The private sector would be free to import sugar at out-quota rates. Upon accession, the private sector would have access to an annual sugar tariff quota. Therefore, importation of sugar would not be subject to monopoly. With the private sector free to import sugar, market prices would be determined by market forces. It was expected that the oil product market would be fully liberalized by the end of 2001. It was not Chinese Taipei's policy to add to the list of products subject to price control set out in Attachment A to this Report, unless the economy or a specific sector thereof was in serious difficulty or in a state of emergency.

12. The representative of Chinese Taipei stated that, from the date of accession, Chinese Taipei would ensure that price controls applied to the products covered in the list reproduced in Attachment A to this Report, and to any other product, would be applied in a WTO-consistent fashion, taking account of the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994. The price levels of the goods subject to price controls would be published in accordance with Article X of GATT 1994. The Working Party took note of these commitments.

## V. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

### *Powers of Executive, Legislative and Judiciary, Administration of Policies on WTO-related Issues*

13. In response to requests for information, the representative of Chinese Taipei stated that the subject matter of international trade, including all matters covered by the WTO Agreements fell within the power of the government of the Separate Customs Territory. In the event that measures taken by local levels of government had an impact upon international trade, those measures became subject to regulation by the government of the Separate Customs Territory which could overrule or invalidate measures of local levels of government. By way of example, he

noted that the procurement decisions of local levels of government were subject to the disciplines of the Government Procurement Law made by the government of the Separate Customs Territory. He further noted that a natural or juridical person whose rights and interests in a matter relating to issues covered by the WTO Agreements were impaired by an administrative action in Chinese Taipei was permitted to appeal such action. In cases of administrative action allegedly contrary to law, such appeal would be to the Administrative Court. In cases of an administrative action that was allegedly improper, but not illegal, an appeal committee, organised by a higher administrative level, drawn from government officials not involved in the enforcement of the matter at issue, experts from academia and other experts, would review the matter and recommend a correction to the administrative action.

14. Some members of the Working Party enquired whether international treaties were self-executing under the law of Chinese Taipei and sought a commitment that Chinese Taipei would bring its foreign trade laws and regulations into conformity with WTO provisions at the time of accession. In response, the representative of Chinese Taipei said that international treaties enter into force after being duly ratified and promulgated and would have the same force and effect as domestic laws.

15. The representative of Chinese Taipei confirmed that Chinese Taipei would fully implement its obligations under the WTO Agreement and its Draft Protocol of Accession upon accession to the WTO, unless specifically provided in this Report and Draft Protocol. Further, the government of the Separate Customs Territory would eliminate or nullify measures taken by local levels of government in Chinese Taipei that were inconsistent with WTO provisions from the date of accession. An illustrative list of the laws that would be amended as part of Chinese Taipei's implementation of its obligations is reproduced in Attachment D to this Report. The Working Party took note of this commitment.

## VI. POLICIES AFFECTING TRADE IN GOODS

16. Chinese Taipei undertook negotiations on market access in goods. The Schedule of Concessions reflecting the results of those negotiations is reproduced in Part I of Annex I of the Draft Protocol of Accession reproduced in the Appendix to this Report.

### *Import Regulations*

#### *Registration of Importers and Exporters*

17. Some members of the Working Party noted that Chinese Taipei required a registered importer/exporter to clear all imports and exports through its customs.

Further, Chinese Taipei conditioned registration as an importer or exporter on being an enterprise in Chinese Taipei and meeting a NT\$5 million minimum capital requirement. These members of the Working Party stated that they considered that the minimum capital requirement was excessive and could act as a restraint on trade. They requested that the minimum capital requirement be eliminated and that registration should be automatic, open to all individuals and enterprises interested in engaging in import/export without regard to investment or establishment in Chinese Taipei and conform to WTO rules.

18. In response, the representative of Chinese Taipei stated that the purpose of the registration requirement was not to restrain trade, but to ensure that importers/exporters had sufficient financial resources to support their import/export operations. The precondition of NT\$5 million minimum capital requirement had been abolished in September 1997. With the elimination of that capital requirement, the only condition for importer/exporter registration was that the enterprise list import and/or export activities in its profit-seeking enterprise registration certificate. No fee was charged for the registration. Chinese Taipei however would like to retain the registration system, which operated as an automatic licensing procedure pursuant to the Agreement on Import Licensing

19. The representative of Chinese Taipei stated that any enterprise including sole proprietorships, interested in importing and/or exporting and having included in its profit-seeking enterprise registration certificate export/import or buying/selling as a business item, would be permitted to register as an importer/exporter. Registration as a profit-seeking enterprise required maintenance of an address in Chinese Taipei, but did not impose minimum investment or similar requirements. The registration system to become an importer/exporter would conform to WTO rules, including the automatic licensing provisions of the Agreement on Import Licensing Procedures, and would not restrain trade. The Working Party took note of these commitments.

#### *Advertising and Trade in Alcohol and Tobacco Products*

20. Some members of the Working Party considered that the rules applying to the advertising of tobacco and alcohol products, which had a stronger effect on imports, should not be used to discriminate either *de facto* or *de jure* against imported products. The representative of Chinese Taipei stated that under current law, alcohol products could be advertised on television and radio during specified times. While beer and wine could be advertised in magazines and newspapers, spirits could not be advertised in these publications. New spirits products could be advertised in magazines for a period of one year following their release onto the market. The representative of Chinese Taipei also said that advertising of tobacco products was governed by the Tobacco Hazard Prevention Act, which came into force on 19

September 1997. The rules on the advertising of tobacco products were provided in Article 9 and 10 of the Tobacco Hazard Prevention Act. The rules set out in these two articles prohibit the use of certain methods for the promotion or advertising of tobacco products, restrict the use of periodicals as a medium for the promotion or advertising of tobacco products to 120 items per year in periodicals, the types of activities or sponsorship permitted under the name of a tobacco company, and the display of tobacco products.

21. The representative of Chinese Taipei confirmed that from the date of accession Chinese Taipei would not use advertising rules to discriminate against imported tobacco and alcohol products. The one-year limitation on advertising of alcoholic beverages would be eliminated upon accession. He also stated that, upon accession, Chinese Taipei would permit advertising for alcoholic beverages in all media, subject to regulation in relation to the content and timing of advertising. He further confirmed that the advertising rules for tobacco and alcohol products and implementation of those rules would be consistent with WTO requirements from the date of accession. The Working Party took note of these commitments.

22. Concerning the right to sell and trade in tobacco and alcoholic beverages, the representative of Chinese Taipei stated that, upon accession, enterprises engaged in the distribution and/or trade of imported alcohol and tobacco products would not be required to provide information beyond that requested of firms engaged in the distribution and/or trade of like domestic products in Chinese Taipei concerning their business plans or corporate structures and that such information would be requested on the same timetable as applied to the latter firms. He also stated that taxes and other charges of whatever character, including licensing and other administrative fees, related to trade and distribution of imported alcohol and tobacco products would not be applied in excess of those applied to firms dealing with like domestic products. The Working Party took note of these commitments.

#### *Customs Tariff*

23. Several members of the Working Party requested information on the tariff structure of Chinese Taipei, the existence of bilateral rates of duty, in particular the products covered by bilateral trade concessions, the existence of mixed duties, whether trade measures were being adopted on a MFN basis, the level of average effective rates of duty and the actual levels of protection in force. Some members noted that in 1992 some 413 agricultural and 21 non-agricultural products accounting for 5.4 per cent of total tariff lines were subject to duty rates ranging from 30 per cent to 50 per cent. In response, the representative of Chinese Taipei said that since 1 September 1980, Chinese Taipei's tariff had two columns of duty rates. The differential duty rates in Column II were applied to imports from countries or areas that

granted reciprocal tariff treatment to Chinese Taipei's exports. At present, Column II duty rates applied to products from 154 countries or areas which amounted for almost 98 per cent of the total value of imports. Products from the following WTO Members did not fall within Column II: Angola, Cuba, Djibouti, Republic of the Congo, Estonia, Georgia, Lithuania, Mongolia, Gambia, Mauritania, Mozambique, Myanmar, Romania, Rwanda, Uganda, Zimbabwe and The Kyrgyz Republic. The representative of Chinese Taipei undertook that upon accession to the WTO, MFN treatment would be extended to all WTO Members applying the WTO rules to Chinese Taipei. He added that between 1984 and 1992, the tariff had been revised across-the-board and duty rates have been lowered by some 50 per cent. During that same period, 668 items had become duty free, and 13165 items had their duty rates reduced. An additional tariff reduction in 1995 had further reduced duty rates on 758 items, with an average duty reduction of 2.8 per cent. Besides, the duty rates of 1,358 items had been further reduced in 1998 including 289 items in accordance with the WTO Ministerial Declaration on Trade in Information Technology products on December 1996. Further reductions for 750 tariff lines were pending in the Legislature. At present, the highest nominal duty rate was 50 per cent, but this was levied only in a few agricultural product areas. The simple average of nominal duty rates had declined from 30.81 per cent in 1984 to 8.20 per cent in 2000.

24. In response to further questions, the representative of Chinese Taipei indicated that in 1998 out of a total of 8,399 dutiable items, 42 items were subject to specific duties and 114 items were subject to mixed duties. The remaining 8,243 dutiable items were subject to *ad valorem* duties. Some members of the Working Party stated that, in their view, Chinese Taipei should preferably adopt an *ad valorem* approach throughout the tariff in order to increase the predictability and transparency of the tariff régime. The representative of Chinese Taipei said that more than 98 per cent of the tariff lines were already subject to *ad valorem* duties. In future reviews of its tariff system, Chinese Taipei would take into account the views of members in this respect.

#### *Tariff Rate Quotas*

25. Members of the Working Party requested information on Chinese Taipei's proposed new tariff rate quota system. In response, the representative of Chinese Taipei stated that following revision of its system of import restrictions on certain imported products, Chinese Taipei had decided to introduce a system of tariff rate quotas as described in paragraphs 27-35 below. The representative of Chinese Taipei provided further information on that scheme in document WT/ACC/SPEC/TPKM/5/Rev.1. and WT/ACC/SPEC/TPKM/7 and Corr.1. He further noted that each tariff rate quota would be recorded in Part I of Annex I to the Draft Protocol of Accession).

26. The representative of Chinese Taipei stated that for the agricultural and fish products that were subject to a tariff rate quota regime after Chinese Taipei accedes to the WTO, the quota would be allocated according to the following methods described in paragraphs 27-35 below, which would be implemented consistently with relevant WTO rules.

27. The representative of Chinese Taipei stated that Tariff Rate Quota (TRQ) allocation certificates, as import licences, would be in compliance with the Agreement on Import Licensing Procedures. All commercial terms of trade, including product specifications, origin, pricing, packaging, etc. would be at the sole determination of the parties engaged in the transaction. Partial shipments against a single allocation would be permitted. Traders would be allowed to import any product or mixture of products subject to the same TRQ as noted in the tariff schedule. All products imported under the TRQ could be distributed freely within Chinese Taipei without further trade-based restrictions. Allocation certificates would be freely transferable and tradable, and certificate holders could have certificates reissued to combine or divide allocations.

28. The representative of Chinese Taipei stated that all applications for allocation of TRQ quantities would be submitted to the Ministry of Finance (MOF). Any enterprise registered as an importer/exporter in Chinese Taipei would be eligible to apply for certificates under each of the quota allocations systems. Any domestic or foreign enterprise, including a sole-proprietorship, meeting the requirements set out in paragraph 19 above would be permitted to register as an importer/exporter in Chinese Taipei. Specific conditions for applying for a TRQ allocation would be published in the official journal sixty days in advance of the start of the application period. The application period for initial allocations should be closed by 30 November of the previous year, unless the timing of accession necessitated a change in schedule for the first year. The application period for reallocations of unused quotas would be closed by 1 September. The MOF would grant allocations and publish and notify the names of recipients and allocations within two weeks of the close of the application period for the purpose of transfer.

#### *System 1*

29. The representative of Chinese Taipei stated that the allocation of tariff quotas would be made as follows. Under System 1 (for quotas of chicken meat, pork offal, poultry offal, deer velvet, fresh pears (excluding European pears), bananas, and pork belly), the initial distribution of allocations for the first two years, certificates would be issued on a first-come, first-served basis. Allocations would be established for commercially viable shipping quantities, but a ceiling of no more than 20 per cent of the total in-quota quantity would be established in advance and published as part of the allocation notification procedures. Allocation certificates

would be valid for product arriving between 1 January and 1 September. The date of arrival would be defined in accordance with Article 5 of the implementing regulations of the Customs Law of Chinese Taipei as currently in place. Upon request and proof of signed contract before 1 September, MOF would automatically extend the validity date of the certificate to cover products arriving on or before 31 December.

30. With respect to the reallocation of unused allocations under System 1, the representative of Chinese Taipei stated that in any year, if the holder of a quota allocation certificate had not contracted for import of the holder's total allocation by 1 September, the unused portion of the allocation would be reallocated on a first-come, first-served basis. The date of re-issue would be no later than 15 September. The re-issued allocation certificates would be valid for products arriving on or before 31 December.

31. The representative of Chinese Taipei stated that after the first two years, and in each year in which allocations were made under System 1, applicants for an allocation of the quota would receive an allocation at least as large as the average of the amount actually imported by the applicant in the prior two years. Any remaining quota amounts or increases in the quota amount would be allocated on a first-come, first-served basis. Any and all fees, charges, deposits, duties, etc. associated with the allocation process would be made explicit in the advance public notification process, and with the exception of ordinary customs duties, would be commensurate with the cost of the services rendered. A performance bond would be required to ensure complete utilisation of the allocations. The bond would be returned to the applicant after the applicant imports its allocation before its allocation certificate expires. The bond would not be set at a level which could deter full utilisation of the TRQ or otherwise restrict trade.

#### *System 2*

32. In relation to quotas of red bean, liquid milk and peanuts, under System 2, the representative of Chinese Taipei stated that the initial distribution of allocations would be distributed once a year. Allocations would be established for commercially viable shipping quantities, but a ceiling of no more than 20 per cent of the total in-quota quantity would be established in advance and published as part of the allocation notification procedures. Allocations would be made through a competitive process. An applicant would need to bid by mail in order to obtain its allocation. Bids submitted would be arranged in a priority order according to the premium of the bid, which was the amount a bidder was willing to pay for each unit of the allocation it bids for. Quota would be allocated in this order until filled. In situations where some bids offer the same amount of premium and the quota available were not sufficient to fill each of such bids, the quota would be allocated on a

*pro rata* basis. Successful bidders for allocations would be required to obtain their allocation certificates by paying a non-refundable premium within thirty days. The MOF would re-allocate the allocations of those failing to pay the premium accordingly. Such reallocation process would commence immediately after a period of twenty-one days for notification. Allocation certificates would be valid for product arriving between 1 January and 1 September. The date of arrival would be defined in accordance with Article 5 of the implementing regulations of the Customs Law of Chinese Taipei as currently in place. Upon request and proof of signed contract before 1 September, MOF would automatically extend the validity date of the certificate to cover products arriving on or before 31 December.

33. Concerning the reallocation of unused allocations under System 2, the representative of Chinese Taipei stated that except otherwise provided for in the preceding paragraph, by 1 September, the unused portion of the allocation, would be reallocated through a competitive process. The date of re-issue would be no later than 15 September. The re-issued allocations would be valid for products arriving on or before 31 December.

### *System 3*

34. Concerning quotas of garlic bulbs, dried shiitake, dried day lily, young coconut, betel nuts, pineapples, mangoes, shaddocks, persimmons, dried longans and longan pulp, sugar (private sector), mackerel, carangid, and sardine (herrings), under System 3, the representative of Chinese Taipei stated that the annual distribution of allocation would be divided into one to four segments for distribution. Allocations would be established for commercially viable shipping quantities, but a ceiling of no more than 20 per cent of each segment would be established in advance and published as part of the allocation notification procedures. In addition to the announcement made in the previous year on the number of segments and the quantity of each quota segment announcements would be made twenty-one days in advance of the start of the application period for each segment amount. Allocations would be made through a competitive process. An applicant would be required to bid by mail in order to obtain its allocation. Bids submitted would be arranged in a priority order according to the premium of the bid, which was the amount a bidder would be willing to pay for each unit of the allocation it bids for. Each segment of the quota would be allocated in this order until filled. In situations where some bids offer the same amount of premium and the segment of quota available were not sufficient to fill each of such bids, the segment of quota would be allocated on a *pro rata* basis. Successful bidders for allocations were required to obtain their allocation certificates by paying the non-refundable premium within thirty days. The MOF would re-allocate the allocations of those failing to pay the premium accordingly. Such re-allocation process would commence immediately after a period of twenty-one days for notification.

35. The representative of Chinese Taipei noted that except as otherwise provided for in the preceding paragraph, by 1 September, the unused portion of the allocation would be reallocated through a competitive process. The date of re-issue would be no later than 15 September. The re-issued allocations would be valid for products arriving on or before 31 December.

36. The representative of Chinese Taipei stated that the new Tariff Rate Quota system described in paragraphs 27-35 above would be implemented by the date of Chinese Taipei's accession to the WTO. The Working Party took note of this commitment.

37. The representative of Chinese Taipei stated that with a view to maintaining a transparent and open TRQ administration system, upon request from any WTO Member, Chinese Taipei would consult with the Member on the administration of TRQ to ensure that the quota would be allocated in a transparent, equitable, and non-discriminatory manner and the quota would be fully utilised. The Working Party took note of this commitment.

38. Some Members of the Working Party expressed concern that Chinese Taipei's intention to allocate tariff quota access by competitive processes may not be consistent with Chinese Taipei's tariff commitments. While acknowledging that there was discussion taking place within the WTO on the legality of auctioning or tendering of market access entitlements, these Members were of the view that premiums associated with this method of allocation represented charges imposed on or in connection with imports that were inconsistent with commitments undertaken by Members under Article II:1(b) of GATT 1994. These Members sought assurances that Chinese Taipei would modify its tariff quota allocation system should it be demonstrated in the WTO that charges associated with allocation by competitive processes were WTO inconsistent.

39. The representative of Chinese Taipei stated that should it be demonstrated in the WTO that charges associated with allocation by competitive processes were WTO inconsistent Chinese Taipei would promptly modify its tariff quota allocation system to bring it into conformity with WTO requirements. The Working Party took note of these commitments.

*Other Duties and Charges (Article II:1(b))*

40. The representative of Chinese Taipei stated that except as provided in the Schedule of Concessions on Goods (Part I of Annex I to the Draft Protocol of Accession of Chinese Taipei) all other duties and charges covered by Article II:1(b) of the GATT 1994 would be bound at the level of zero. The Working Party took note of this commitment.

*Fees and Charges for Services Rendered*

41. The representative of Chinese Taipei said that there were no taxes, charges or fees levied on imports only. The trade promotion fee authorized by the Foreign Trade Act had a ceiling of 0.0425 per cent, and was collected on all imports and exports exclusively to promote import and export trade. He stated that the Trade Promotion Fee was a very small charge, no more than 0.0425 per cent of customs value (currently only 0.0415 per cent), applied to both imports and exports to fund trade promotion activities. He added that in addition to import tariffs and taxes applied equally to imported and domestic products (e.g., the Commodity Tax, the VAT, and the Alcohol and Tobacco Tax), the Harbour Construction Dues and the Trade Promotion Fee were the only charges applied to imports. In response, some members of the Working Party stated that the Trade Promotion Fee did not appear to be consistent with Article VIII of the GATT 1994. In response to questions concerning the Harbour Construction Due, the representative of Chinese Taipei explained that the customs authorities collected a Harbour Construction Due for goods entering Chinese Taipei through ports. The levy, introduced in 1948 to fund harbour expansion and maintenance, was imposed at the fixed rate of 0.4 per cent and did not apply to inter-island trade.

42. Some members of the Working Party stated that they considered that this levy and fee were inconsistent with Article VIII(1)(a) of the GATT 1994. These members of the Working Party considered that the levy and fee discriminated against imports because they were only applied to imported goods and not to like domestic products and they were not in conformity with Article III of the GATT 1994. Some members of the Working Party pointed out that the *ad valorem* nature of the Harbour Construction Dues and the Trade Promotion Fee made it impossible for them to reflect the approximate cost of the services rendered. The representative of Chinese Taipei said that both the Harbour Construction Dues and the trade promotion fee applied to imports as well as exports. In his view, the Harbour Construction Dues could be treated as an internal tax or a service fee to improve port facilities and services. Chinese Taipei considered both the Harbour Construction Dues and the trade promotion fee to be service fees as contemplated under Article VIII of the GATT 1994. He acknowledged that 25 per cent of the Harbour Construction Dues proceeds were used to provide financial assistance to the cities where the harbours were located. Upon accession to the WTO, the revised Commercial Port Law would require that any revenue generated through the Harbour Construction dues be used exclusively for the development of commercial harbours.

43. Some members of the Working Party stated that the levy of 0.4 per cent was a revenue charge to fund harbour up-keep and expansion based on import taxation, and was not a charge for specific services rendered. This levy and the trade promotion fee should be brought into conformity with GATT 1994 in advance of

Chinese Taipei's accession. The representative of Chinese Taipei stated that after reviewing the comments made by Working Party members, Chinese Taipei had decided to bring the Harbour Construction Dues into conformity with Article VIII of the GATT 1994. He added that the Trade Promotion Fee would not be revised because it was considered in conformity with GATT 1994 Articles III, and VIII. In addition, neither charge would be increased in its level of application, or included in the taxable base of imports for the purposes of applying domestic taxes such as the Commodity Tax. If requested, Chinese Taipei would consult with the Members concerning the effect of these measures on their trade. Some members reserved their position in relation to the Trade Promotion Fee which they considered incompatible with Chinese Taipei's WTO obligations. These members expressly reserved the right to pursue this issue pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

44. The representative of Chinese Taipei confirmed that the Trade Promotion Fee would be applied in conformity with WTO obligations and would not exceed 0.0425 per cent of the customs value of the good. The Working Party took note of these commitments.

45. The representative of Chinese Taipei stated that Chinese Taipei would bring the Harbour Construction Dues into conformity with Articles III and VIII of the GATT 1994 upon accession. The Harbour Construction Dues would be based on the cost of the services provided and not applied on an *ad valorem* basis. The Harbour Construction Dues would also be applied to all trade, including inter-island trade. Within the same time-frame Chinese Taipei would exclude these charges from the valuation base for the application to imports of domestic taxes, such as the Commodity Tax and the Tobacco and Alcohol Tax. The current Harbour Construction Dues were 0.3 per cent of the taxable base. The Working Party took note of these commitments.

#### *Internal Taxes Applied to Imports*

46. In response to questions, the representative of Chinese Taipei stated that VAT, Commodity Tax, tobacco and alcohol monopoly tax were applied equally to imported and domestic products.

#### *Commodity tax*

47. Some Working Party members sought information from Chinese Taipei on the application of the special commodity tax. In response, the representative of Chinese Taipei said that the tax was imposed on imported goods at the time of importation, and on like domestic goods upon their release from the factory. For imported goods, the amount of the commodity tax was the taxable value established

in accordance with the Customs Import Tariff, plus customs duties, plus harbour construction dues multiplied by the tax rate. For domestic goods, the amount of the tax was calculated on the basis of one of two methods. The first method applied when the manufacturer sold products through wholesalers or if the manufacturer was paid to manufacture the products for others. The second method considered a 12 per cent promotional expense. The goods subject to the commodity tax were: rubber tires, cement, machine-made cool drinks, flat glass, oil and gas, certain electric appliances and motor vehicles. Chinese Taipei believed that many Working Party members had similar practices. He noted that the 12 per cent promotional expense represented a manufacturer's typical promotion expense. The tax allowed a deduction of 12 per cent for promotional expenses when goods were circulated not through an exclusive wholesaler or distributor. Chinese Taipei considered that it treated imported goods the same as the goods sold through distributors, and did not discriminate against imports. The commodity tax was a special excise tax. The determination of the tax base had taken into account common practices. The 12 per cent deduction only applied if the domestic sales were not through a sole distributor. In response, some Working Party members noted that a critical consideration in the application of this internal tax was consistency with national treatment and other WTO obligations and the avoidance of subsidization.

48. Some members of the Working Party were of the view that the basis for the application of the commodity tax to imports was artificially inflated because the tax base of domestic and imported goods were different. Domestic goods were assessed on an ex factory basis, excluding the cost of delivery and transfer of the goods to the wholesale level whereas the base for imported goods was the import value plus transportation, insurance and other customs charges and customs duty. They also noted that domestic goods profited by having an additional 12 per cent deduction for promotional expenses prior to the calculation of the tax. These members of the Working Party considered that Chinese Taipei should address the central issue of equal application of the tax. The bases for calculation of the tax were inequitable, and the incorporation of a 12 per cent differential in the valuation of imports and domestic products based on the concept of promotional expenses could not be justified, and should be eliminated prior to accession. Those members considered that due to the different tax bases, the tax was applied in a manner that were not in conformity with Article III of the GATT 1994. They stated that Chinese Taipei should eliminate by the date of its accession any domestic tax measures or methods of applying domestic taxes whose applications vary according to whether the items were locally manufactured or imported.

49. The representative of Chinese Taipei stated that from the time of Chinese Taipei's accession, changes to the Commodity Tax would modify the base for the tax. From that date, the tax would be calculated on the basis of the sale price. The sale price was the manufacturer's wholesale price for the current month; if the

manufacturer sold directly to retailers, wholesale profit could be deducted from the selling price. Deductible wholesale profit rate was determined on an industry-by-industry basis. Imported goods were taxed on the basis of their CIF value and therefore were not eligible for the tax adjustment. He further added that in order to equalise the treatment of domestic and imported products, prices of domestic manufactured goods sold directly to retailers contained elements of wholesale profits which were not included in the tax base. He further stated that the current practice of assessing the commodity tax based upon engine displacement of automobiles and the licence plate tax was fully consistent with Article III of the GATT 1994. Some members of the Working Party were of the view, however, that application of a tax based on characteristics such as engine displacement could *de facto* discriminate against imports.

50. The representative of Chinese Taipei stated that Chinese Taipei would amend its laws to remove the 12 per cent allowance provided when goods were circulated not through an exclusive distributor, and would use selling prices as the base for levying the commodity tax. He further stated that Chinese Taipei would eliminate by the date of its accession any domestic taxes, tax assessment methods or application of them which was inconsistent with Article III of the GATT 1994. The Working Party took note of these commitments.

*Business Tax: Gross Business Receipt Tax and VAT*

51. Some members of the Working Party asked Chinese Taipei to describe the application of the business tax, its scope and level of application, the portion of the tax revenue accounted for by imports, etc. In response, the representative of Chinese Taipei said that Business Tax applied to the sale of goods and the rendering of services. The tax was levied in two forms. The first form was a general sales tax which applied to the business of insurance, banking, investment trusts, securities, agricultural wholesale, pawn shops and small business operators. The second form, a VAT business tax, applied to all other businesses. The VAT was applied at the rate of 5 per cent, to both domestic and imported products. All goods, both domestically manufactured and imported, were generally taxed at the point of sale. Revenue from both kinds of tax imposed on imported goods had represented 1.24 per cent of total tax revenue in 1999 (1 July 1998 to 30 June 1999). Chinese Taipei considered that the imposition of the tax at the point of sale simplified the procedure by levying the tax on the taxable goods' imported value and the importers' added value jointly, rather than separately. However, in some cases, to minimise tax avoidance imported goods were subjected to business VAT at the time of importation. The reason for this was that if business VAT was levied at the time of sale, it was possible that certain imported goods with particular end uses could avoid payment of the tax, i.e. motor vehicles imported for personal use, or goods imported by a financial institution. He further noted that because the tax paid on inputs could be

deducted from the tax paid on outputs collected from purchases, goods imported for use and goods imported for resale were not differentiated at the time of importation. In relation to the tax base for calculation of the amount of business VAT payable, the representative of Chinese Taipei noted that imported goods were taxed on the basis of the customs duty paid value plus the commodity tax, if applicable. The harbour construction dues would be removed from the tax base. If the commodity tax was payable, the commodity tax formed part of the value added, and was counted as the tax base for the business, whether the goods were imported or manufactured domestically. In addition, the business importer could deduct the input tax from the output tax and was only taxed for the value added to the goods. Therefore, there was no double counting or “tax-on-tax”. He added that Chinese Taipei, after examining whether all goods could be taxed at the time of importation, had found that it was common practice in those economies which imposed VAT to levy the tax at the time of importation.

*Monopoly tax on tobacco and wine*

52. Some members of the Working Party sought information on the monopoly tax for tobacco, wine, spirits and beer. In their view, there was a serious transparency problem in this sector. In response, the representative of Chinese Taipei confirmed that imported tobacco and wine were subject to a Monopoly Tax, in lieu of customs duty, harbour construction fees, commodity tax and value-added business tax. The Monopoly Tax imposed on domestic tobacco and wine products was assessed on an *ad valorem* basis, equivalent to the operating revenue minus all relevant cost and expenses of the Taiwan Tobacco and Wine Monopoly Bureau (TTWMB) and was considered a sales tax. On average, imported tobacco and wines were subject to the Monopoly Tax at the rate of approximately 120 per cent of the import price. Some members of the Working Party requested that Chinese Taipei provide information on cost of production, and indicate how the TTWMB’s methodology to determine the tax rate complied with the GATT 1994, in particular Articles I, III, X, XI, XVI, and XVII, a list of the taxes applied to imports, their negative rates, the value basis as well as the methodology used to determine that domestic tobacco, spirits and wine were subject to a tax rate of approximately 185 per cent of cost.

53. Some members of the Working Party reiterated their concerns in relation to the operation of the Monopoly Tax scheme, particularly in relation to the lack of sufficient transparency in its operation. Without the availability of data to calculate domestic costs, it was not possible to accurately determine whether the Monopoly Tax was equally applied to domestic and imported products. In their view the Monopoly Tax appeared to have a greater impact upon imported products. They did not consider Chinese Taipei’s explanations of the methodology used to determine the Monopoly Tax adequate, substantiated and verifiable. It was not possible to conclude that domestic and imported products were taxed in an equivalent manner.

As there were large discrepancies between the rates quoted by Chinese Taipei and the information available to national authorities, it also appeared that the tax system was discriminatory. Those members stated that no transition period would be appropriate. Chinese Taipei should either eliminate the Monopoly Tax on imports of wine and distilled spirits immediately upon accession or replace the Monopoly Taxes with reasonable *ad valorem* import duties, and ensure that internal taxes applied equally to domestic and imported wine and spirits. These members of the Working Party disagreed with the view that a system for the *ad valorem* taxation of domestic goods based on net profits of the TTWMB could be considered as equivalent to a specific tax on imported goods. It appeared to these members that due to the lack of transparency mentioned above, there were problems in assessing the consistency of the Monopoly Tax system with the GATT 1994. Nevertheless the Monopoly Tax for imported wine, cigarettes and distilled spirits was significantly higher than the effective tax rate for similar domestic products in breach of Article III of the GATT 1994. These members requested, therefore, that the operation of the TTWMB be altered prior to Chinese Taipei's accession, to enhance transparency and to operate in a manner consistent with the provisions of the GATT 1994. The official monopoly plan ought to be liberalised and the trade impact of the plan fully reviewed prior to accession. The representative of Chinese Taipei said that due to the alteration of the scheme over recent years, the Monopoly Tax on imported products tended to be lower than the tax applied to domestic products. In any event, the Legislature was determined to repeal the tobacco and wine monopoly system. Alcohol and tobacco products were classified according to production methods and other features, with different tariff rates and taxes applying to different products. Classification and tariff and tax rates were carefully monitored in order to ensure that no discrimination occurred between domestic and imported goods.

54. Some members of the Working Party asked that details be provided of the scheme which would replace the Monopoly Tax and reiterated that no transitional period was appropriate for a situation which was in clear breach of Article III of the GATT 1994. The representative of Chinese Taipei responded that public hearings had been completed, and a plan had been developed. He provided the Working Party with a summary of the reform plan and said that he considered that the future regime would improve trade in alcohol and tobacco products. The new scheme would be implemented upon Chinese Taipei's accession.

55. The representative of Chinese Taipei stated that, upon accession, the Monopoly Tax would be abolished and that tobacco and alcohol products would be subject to (i) import duties as reflected in Chinese Taipei's Schedule of Concessions (Part I of Annex I to the Draft Protocol of Accession) in the same manner as other imported products, (ii) the tobacco and alcohol tax, and (iii) business tax. The representative of Chinese Taipei also stated that from the date of accession internal taxes and charges of whatever character related to trade and distribution of alcohol

and tobacco products would be applied equally to domestic and imported products, including with respect to domestic distribution and sales of these products without regard to the ownership of the enterprise. The Working Party took note of these commitments.

### *Quantitative Restrictions*

#### *Area restrictions*

56. In the early stages of the Working Party, some members noted that discriminatory area restrictions were imposed on many products: (i) peaches: limited to imports from Europe and the United States; (ii) lemons and limes, grapes, plums, whole ducks, turkey cuts: issuance of import licenses was suspended except for imports from the United States; (iii) oranges and other mandarins, including tangerines and satsumas, and grapefruits: imports from the United States were free, imports from South Africa were limited in quantity; (iv) apples: imports from the United States and Canada were free; imports from other areas were subject to quantitative restrictions. In response to requests from Members for updated information on area restrictions, the representative of Chinese Taipei stated that as of May 1999, (i) peaches: limited to imports from Europe and the United States, imports from Australia and New Zealand were limited in quantity; (ii) lemons and limes: limited to imports from the United States; imports from Argentina, Australia and European Union were limited in quantity; (iii) grapes: limited to imports from the United States; imports from Chile were limited in quantity; (iv) plums: limited to imports from the United States; imports from Australia, Chile and New Zealand were limited in quantity; (v) whole ducks, turkey cuts: issuance of import licenses was suspended except for imports from the United States; (vi) oranges: imports from the United States were free, imports from Australia, European Union and South Africa were limited in quantity; (vii) other mandarins, including tangerines and satsumas: imports from the United States were free, imports from European Union and Japan were limited in quantity; (viii) grapefruits: imports from the United States were free, imports from Argentina, Australia and South Africa were limited in quantity; (ix) apples: imports from the United States and Canada were free; imports from Argentina, Australia, Chile, European Union, France, Japan, New Zealand and South Africa were limited in quantity; (x) young coconuts: imported from the Philippines, Malaysia and Thailand were limited in quantity. There were also restrictions on cigarettes and bilateral agreements on the importation of beer, wine and cigarettes. In the view of some members, the area restrictions and similar exclusive access accorded for additional agricultural products were discriminatory trade measures inconsistent with the GATT 1994 and, in particular, the MFN principle. Those members emphasized that there was no justification to permit the continuation of such discrimination. Chinese Taipei should eliminate those measures from the date of its accession to the WTO.

57. In response the representative of Chinese Taipei said that the area restrictions and similar measures operated to maintain the diversity in the origin of imports and to maintain trade balances with certain areas, or to facilitate agriculture restructuring. Only a small percentage of industrial and agricultural products were subject to these discriminatory restrictions. Area restrictions for alcoholic beverages and cigarettes had been eliminated on 1 September 1994. The tariff rate quota offered as a liberalization measure to be implemented after accession for young coconuts would be distributed as described in paragraphs 27-35 through procedures consistent with the relevant provisions of GATT 1994 and the Agreements on Agriculture and Import Licensing Procedures.

58. With regard to automobiles, some members noted that Chinese Taipei's Import Regulation 209, provided that only motor vehicles from "Europe and the American Continent" may be imported into Chinese Taipei. The representative of Chinese Taipei agreed that this restriction was discriminatory. It was imposed pursuant to the Automobile Industry Strategic Development Plan. Chinese Taipei's car industry was currently not a competitive one, as the size of the market was not substantial enough to allow for economies of scale. The total production value in 1992 was US\$8.2 billion, representing 5 per cent of the total production value of the whole manufacturing sector. Workers directly employed in the car industry were in the number of 120,000. A sudden opening of the market would result in serious economic and social problems.

59. Some members of the Working Party stated that a transitional period was not appropriate, and that the area restrictions on automobiles should be eliminated prior to accession. In response, the representative of Chinese Taipei undertook to eliminate the area restrictions on automobiles. Up to now the liberalisation of car imports had proceeded as follows: (i) heavy trucks could be imported freely from February 1994; (ii) passenger cars could be imported without quantitative restrictions from North America and Europe (excepting Eastern Europe). Passenger cars from other areas were currently under either quantitative or area restrictions; (iii) light trucks and station wagons could be imported freely from North America and Europe. Imports of light trucks and station wagons from other areas were currently under either quantitative or area restrictions. He assured the Working Party that it was not the intention of Chinese Taipei to employ measures not permitted by the WTO Agreement, such as voluntary export restraints or other grey area measures to liberalise automobile imports.

60. At the request of some members of the Working Party, the representative of Chinese Taipei provided a comprehensive listing, covering both tariff and non-tariff measures, of all trade preferences in force. He added that once area restrictions were eliminated, there would remain no trade preferences extended on

a bilateral basis. The representative of Chinese Taipei assured the Working Party that area restrictions would be brought into conformity with the requirements of the WTO Agreement. He confirmed that area restrictions for alcoholic beverages and cigarettes had been eliminated from 1 September 1994.

61. The representative of Chinese Taipei stated that area restrictions applying to imports of certain passenger cars and certain small commercial vehicles, certain automobile chassis and motorcycles would be eliminated upon Chinese Taipei's accession to the WTO. Passenger cars, light commercial vehicles and certain fish products were the only industrial products that would be subject to tariff-rate quotas after WTO accession. For passenger cars and light commercial vehicles, the tariff rate quotas would be increased at the annual rate of 20 percent. The transition period of the tariff rate quota system would be eight years after the accession year. Chinese Taipei also undertook that upon its accession, area restrictions on agricultural products, except young coconut which would be subject to tariff rate quotas, would be eliminated. These tariff rate quotas would be administered in a manner consistent with the requirements of the WTO Agreement, in particular the Agreement on Agriculture, the Agreement on Import Licensing Procedures and GATT 1994. The Working Party took note of these commitments.

#### *Import Licensing*

62. Several members of the Working Party noted that historically Chinese Taipei had maintained a complex network of non-tariff measures consisting of quantitative restrictions affecting some 27 items, non-automatic import licensing affecting some 246 items, including 27 items which were subject to quantitative restrictions and standards inspections, quarantine, labelling requirements, etc. These members requested detailed information on the schemes. Some members added that the bans on liquid milk, rice, passenger cars equipped with diesel engines and motorcycles of 150cc or more, applied by Chinese Taipei were inconsistent with WTO obligations and would have to be eliminated. These members requested that Chinese Taipei eliminate, prior to accession to the WTO, all import restrictions inconsistent with the GATT 1994 and the WTO Agreements, in particular the Agreements on Agriculture, Sanitary and Phytosanitary Measures and Technical Barriers to Trade.

63. In response, the representative of Chinese Taipei said that a system of licensing had been operating in relation to the importation of certain products that consisted of area restrictions, discretionary licensing and import controls. Automatic licensing operated to grant an import license without requiring the Customs to screen the goods. Discretionary licensing required that the Board of Foreign Trade issued import licenses for certain products, following approval by consent letter of the relevant agencies. In the case of such products, the Council of Agriculture, Industrial Development Bureau, Department of Health, Environmental Protection

Administration and other agencies were required to consent to the issue of licenses for both import controls and discretionary licensing in respect of products falling within their respective jurisdictions. Once the importation was approved, the Board of Foreign Trade issued an import license.

64. The representative of Chinese Taipei stated that as a result of the concerns expressed by members of the Working Party, Chinese Taipei had decided to establish a “Negative List” system. The Negative List system would streamline the importation process and replace all pre-existing licensing requirements, except in cases where the product had essential security, public order, public health, or environmental protection implications. The Negative List would result in the issuing of licenses by the relevant agencies according to an objective standard, and in a transparent manner. He noted, however, that some items on the automatic license list would become subject to quantitative restriction or import ban under the Negative List system, due to the re-categorisation of those items. For products subject to import monopolies, consent letters would only be granted to importers enjoying an import monopoly. The procurement practices of the government agencies enjoying the import monopoly would be made consistent with Article XVII of the GATT 1994.

65. The representative of Chinese Taipei outlined the operation of its Negative List system under the June 1997 version as follows. Items were listed in either Table I (Table of Commodities Subject to Import Control) or in Table II (Table of Commodities Subject to Conditional Import). Items listed in Table I could not be imported unless specially approved by the Board of Foreign Trade or other relevant authorities, which were listed in Import Regulations 111/112. Items listed in Table II required that an import license be issued prior to importation, by the Board of Foreign Trade or its designated licensing banks i.e. Import Regulations 121/122. Tables I and II constituted the Negative List. In respect of items that had previously required a license issued by the Board of Foreign Trade but were not retained in the Negative List, if they were subject to administration requirement, which had no trade restriction effect, the Customs were required to carry out an inspection to determine that all requirements for importation were fulfilled. The items subject to that requirement were listed in the “List of Commodities Entrusted to Customs for Import Examination” (“the Entrusted List”). The Entrusted List was published together with the Negative List in a consolidated volume arranged by HS Code number. The Negative List and the Entrusted List each accounted for 8 per cent of tariff lines, the remaining tariff items were free of this requirement. Items contained in Table I were subject to general import bans, which in respect of most products were justified under Articles XX and XXI of the GATT 1994, whilst others were required to protect domestic sectors. In the case of bans necessary to protect domestic sectors, an entitlement to import the necessary quantity could be auctioned when

domestic production fell short of demand. He stated that upon accession, the items listed in Table I could be moved to Table II if quotas or tariff quotas were used as transitional measures.

66. In response to further questions from members of the Working Party, the representative of Chinese Taipei explained that the decision whether a product should be included in the Negative List was taken by government agencies. The legal basis for including items in the negative list was Article 11 of the Foreign Trade Act, which permitted the imposition of a restriction if the restriction was necessary to fulfil obligations under international treaties or trade agreements, or for defence purposes, social security, culture, human health, environmental protection reasons or to implement specific policies. After accession the inclusion of new items would be subject to a review procedure to ensure WTO consistency. Although the legislation did not specifically provide for interested parties to make representations concerning the inclusion of an item in the negative list, existing practice permitted such representations to be made to decision makers. The practice of inviting interested parties to express their view when considering changes to the Negative List would be continued. Following accession to the WTO, the number of items included in the negative list would be substantially reduced; inclusion of new items would be subject to a review procedure to ensure WTO consistency. He also noted that the effect of the recent Foreign Trade Act was to limit the types of considerations required to be taken into account by administrators when deciding whether items were to be included in the Negative List as subject to new import licensing requirements. The Working Party took note of this commitment.

67. Several members of the Working Party indicated that all bans and restrictions set out in the Negative List, and the requirements for import licensing being issued by more than one regulatory agency should, be brought into full conformity with the WTO Agreement, especially the Agreement on Import Licensing Procedures. In particular, a member of the Working Party noted that some of Chinese Taipei's stated reasons for restrictions did not appear consistent with WTO requirements, e.g., restrictions required to protect domestic sectors. This member requested specific justifications for any import restrictions maintained or imposed in the future. A general statement that import bans, which in respect of most products were justified under Articles XX and XXI was insufficient to evaluate any commitment. In response, the representative of Chinese Taipei noted that although the Agreement on Import Licensing Procedures allowed Members to have more than one import licensing entity, Chinese Taipei would work towards a system that required import licenses to be obtained from one regulatory entity only. Some members of the Working Party said that all import bans, quantitative restrictions import licensing restrictions, and other non-tariff measures inconsistent with the requirements of the WTO Agreement would have to be eliminated prior to Chinese Taipei's accession. Some

members of the Working Party said that if Chinese Taipei believed that certain of its import bans, quantitative restrictions and administrative requirements were not inconsistent with the provisions of the WTO, the onus was on Chinese Taipei to demonstrate this. They requested Chinese Taipei to modify this list to show: the precise description of the product affected by HS number, the measure or measures applied to each, the specific WTO provisions which justified the maintenance of the measure or measures and the responsible agency. If border measures were to be justified to enforce Technical Regulations or Sanitary and Phytosanitary Measures, the table should also show the relevant national standard(s) and any international standard(s). The Working Party would then be in a position to examine the matter further. The representative of Chinese Taipei stated that a table containing the justifications for placing items on the Negative List would be submitted to the Working Party.

68. The Consolidated List of Commodities Subject to Import Regulations and Commodities Entrusted to Customs Import Examination was referred to in Attachment C to this Report. The representative of Chinese Taipei undertook to notify any changes introduced to the Consolidated List in accordance with the Agreement on Import Licensing Procedures. The Working Party took note of these commitments.

69. In response to a request that Chinese Taipei produce a plan for the elimination of quantitative or other non-tariff measures on fish, the representative of Chinese Taipei stated that Chinese Taipei would eliminate all quantitative restrictions on these products from the date of accession, with the sole exception of import bans on mackerel, carangid and sardines. The existing import controls for mackerel, carangid and sardines would be replaced by tariff rate quotas which would be distributed, as indicated in paragraphs 27-35, through procedures consistent with GATT 1994 and the Agreement on Import Licensing Procedures. The Working Party took note of these commitments.

70. Some members of the Working Party noted the continued application of non-tariff measures to imports of certain yachts and recreational fishing vessels and a ban on the importation of motorcycles, including those with reciprocating internal combustion piston engines of a cylinder capacity exceeding 150cc. These members of the Working Party stated that the restrictions were not justified under the WTO Agreement. In addition, some members noted that Chinese Taipei had not developed appropriate emission standards for motorcycles over 150cc which in itself could preclude effective market access even if the formal ban was eliminated. Finally, those members noted that Chinese Taipei restricted motorcycle access on certain major highways in Chinese Taipei. These issues would need to be addressed at the time the ban was eliminated to ensure effective market access for these products.

71. The representative of Chinese Taipei stated that upon accession, Chinese Taipei would implement a licensing system for recreational fishing vessels that conformed to the automatic licensing provisions of the WTO Agreement on Import Licensing Procedures and would require importers to have an approved abandonment/replacement right as applicable to domestically built fishing boats. He also stated that Chinese Taipei would eliminate the import ban on motorcycles over 150cc six months after accession to the WTO and would permit their import. At that time, Chinese Taipei would implement emission standards for motorcycles over 700cc comparable to international standards. The representative of Chinese Taipei also stated that the restrictions on motorcycle access to roads would generally apply only to the two major cross-island motorways in Chinese Taipei. He stated that restrictions on motorcycle access to roads would not be barriers to market access and that Chinese Taipei would consult, upon request of a WTO member, regarding road access restrictions and their effects. The representative of Chinese Taipei further stated that Chinese Taipei would eliminate the import ban on passenger cars equipped with diesel engines two years after accession to the WTO. The Working Party took note of these commitments.

72. The representative of Chinese Taipei said that from the date of accession, Chinese Taipei would apply its import licensing and quantitative restrictions regime in strict conformity with WTO Agreements, in particular with the Agreements on Agriculture and Import Licensing Procedures. Chinese Taipei would also ensure that the distribution of import licenses, quotas, tariff-rate quotas, permits or any other means of approval for importation or the right of importation by all levels of government would not be conditioned on whether competing domestic suppliers of such products exist or on performance requirements of any kind, including but not limited to local content or mixing requirements, the transfer of technology, the conduct of research and development, minimum export requirements, or on the origin or nature of the enterprise. Chinese Taipei would ensure that price increases, if any, in respect of imports by state trading enterprises would be imposed in a manner consistent with the requirements of Article II:4 of GATT 1994 and Article 4.2 of the Agreement on Agriculture. The Working Party took note of these commitments.

73. The representative of Chinese Taipei said that Chinese Taipei also undertook to eliminate and not reintroduce or apply import bans, quantitative restrictions, licensing restrictions, or other non-tariff measures having similar effect which were not justified under specific provisions of the WTO Agreement. He also noted that Chinese Taipei would not use measures related to customs procedures and technical product or safety standards and sanitary and phytosanitary measures as disguised barriers to trade and that any measures applied would be no more restrictive than necessary to accomplish their legitimate goals. The Working Party took note of these commitments.

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*Customs Valuation*

74. Some members of the Working Party requested information on the system of customs valuation in Chinese Taipei. In response, the representative of Chinese Taipei stated that paragraph 1 of Article 12-1 of the Customs Law reflected the situations in which the transaction price would not be used as the basis of customs value. The transaction value would not be used when the invoice price did not include the cost adjustments provided under Article 12 of the Customs Law and the importer failed to provide objective and quantifiable information to support the price calculation. In addition, if the Customs had any doubts concerning the adequacy or accuracy of an invoice, it normally requested the importer to provide an explanation or other evidence to substantiate the validity of the invoice. If the importer refused to give explanations or the evidence provided contradicted the facts, and further investigation proved that the invoice price was not the price actually paid or payable, the Customs could determine that the invoice price would not be accepted as the customs value. In such a circumstance, Article 12-2 to 12-6 of the Customs Law provided that the value was assessed in the following sequence: firstly, the transaction value of identical goods; secondly, the transaction value of similar goods; thirdly, the deductive value; fourthly, the computed value; and, fifthly, any other reasonable value.

75. Some members of the Working Party asked whether any minimum import values were used in Chinese Taipei. The representative of Chinese Taipei replied that although Article 12 of its Customs Law provided for use of a duty paying value list which provided a pre-determined value for imported products, the government, by administrative order, had eliminated the pre-determined values. The discretionary power had been eliminated as the result of the April 1997 amendment to the Customs Law.

76. Some members of the Working Party said that some aspects of the customs valuation regime of Chinese Taipei appeared to be inconsistent with the requirements of the Agreement on the Implementation of Article VII (Customs Valuation Agreement) in the following respects: the authority to use the duty paying value list or any reference price mechanisms or other arbitrary lists of prices used for customs valuation purposes on agricultural and other imports should be eliminated; and the selection of valuation methods outside the hierarchy provided in the Customs Valuation Agreement, particularly in the case of valuation of leased and rented goods, should be addressed. They also noted that precise WTO consistent rules on the determination of whether parties were related when dealing with the customs valuation of transactions between related parties were required; and provisions giving effect to the WTO Ministerial Decision on Customs Valuation should be enacted.

77. Some members of the Working Party also expressed concern regarding

the practice of requiring importers to post bonds for prompt clearance of goods, in particular horticultural goods, based on pre-determined reference prices. These reference prices were not established in a transparent manner, were often changed without prior notice and no opportunity was provided for comment on the rate established. In the view of these members, this practice had the same effect as use of reference prices to calculate duties. In response, the representative of Chinese Taipei stated that its use of reference prices in determining the amount of the bond to be posted to facilitate prompt clearance of goods was not inconsistent with the WTO obligations, in particular, the obligation under the Agreement on Customs Valuation.

78. The representative of Chinese Taipei stated that Chinese Taipei would continue to improve its current practice of requiring importers to post bonds for prompt clearance of goods in order to make the bond amount a closer reflection of the actual value of the goods. Any bond paid would be refunded, if a post-clearance assessment of the customs value of the goods was less than the bond amount. Chinese Taipei would, by the date of accession, adopt an equitable, transparent Customs bonding system for any perishable fruits and vegetables subject to such requirements that allows for potentially frequent adjustment to the bond value to take account of prevailing market forces. The representative of Chinese Taipei stated that the Customs bonding system would have the following characteristics:

- (i) specific bond values would be fixed for each supplier country. Upon request, Chinese Taipei Customs authorities would make available to any domestic or foreign interested party the data, the data source, and the methodology used in formulating the reference price upon which the value of the bond was based.
- (ii) Adjustments would be made to the specific bond values, as frequently as necessary, to take account of prevailing international market prices, and seasonal quality consideration.
- (iii) Alternative data sources would be considered, should representatives of an exporting country believe that more appropriate and accurate data exist beyond that being employed by Chinese Taipei in setting the bond values.
- (iv) A mechanism would be established to provide, at the request of either an exporting country or Chinese Taipei authorities, for prompt consultations should a question or concern arise relative to an established bond value.

The Working Party took note of these commitments.

79. Responding to comments from some members of the Working Party detailing other areas where the customs valuation regime of Chinese Taipei did not concord with the provisions of the Agreement, the representative of Chinese Taipei indicated that these issues were addressed in the implementing legislation for WTO accession.

80. The representative of Chinese Taipei confirmed that amendments to bring the Customs Law into conformity with the Customs Valuation Agreement would be made prior to accession, either by eliminating the inconsistent practices or amending current laws and regulations to bring procedures into line with the Customs Valuation Agreement. He confirmed that Chinese Taipei would implement the Customs Valuation Agreement fully upon accession, without recourse to any transition period. He further committed that Chinese Taipei would, with a view to resolving specific problems, upon request, provide information to WTO Members on the methods for determination of customs valuation of specific products and consult concerning the effect of Chinese Taipei's customs valuation procedures on their trade. The Working Party took note of these commitments.

#### *Rules of Origin*

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

82. The representative of Chinese Taipei said that the Customs Law had been amended in April 1997 to provide a legal basis for the establishment of rules of origin fully consistent with the WTO Agreement. The Rules of Origin on Imported Goods set out the criteria for determining origin. The representative of Chinese Taipei stated that Chinese Taipei would ensure that its laws and regulations relating to rules of origin were consistent with the relevant WTO Agreements upon accession. The Working Party took note of this commitment.

#### *Preshipment Inspection*

83. Some members of the Working Party requested information on whether the services of a preshipment inspection firm were employed by Chinese Taipei. The representative of Chinese Taipei said that Chinese Taipei did not use pre-shipment inspection. The representative of Chinese Taipei noted however that Chinese Taipei had amended the Foreign Trade Act in April 1997 to provide the legal basis for the

authority to regulate preshipment inspection activities of firms mandated by foreign governments.

84. The representative of Chinese Taipei stated that Chinese Taipei would ensure that its laws and regulations relating to preshipment inspection would be consistent with the relevant WTO Agreements, in particular, the Agreements on Preshipment Inspection and Customs Valuation. The Working Party took note of this commitment.

#### *Anti-Dumping and Countervailing Duties*

85. In response to questions from members of the Working Party the representative of Chinese Taipei said that in 1984 Chinese Taipei had enacted “The Implementing Regulation on the Imposition of Countervailing Duties and Anti-Dumping Duties”. That Regulation provided that countervailing or anti-dumping duties could be levied on goods found to have received subsidies or to have been dumped and which threatened domestic industries. In the view of Chinese Taipei the implementing regulations had been in compliance with the requirements of the Tokyo Round Codes on Anti-Dumping and Subsidies and Countervailing Measures. In pursuance to the 1997 amendment to the Customs Law, Chinese Taipei undertook to revise the Regulations to make them consistent with the Uruguay Round Agreements prior to accession to the WTO and to submit them to the WTO.

86. The representative of Chinese Taipei stated that, Chinese Taipei would ensure that its legislation on anti-dumping and countervailing duties was in full conformity with the requirements of the WTO Agreement, in particular Article VI of GATT 1994 and the Agreements On the Implementation of Article VI and Subsidies and Countervailing Measures from the date of accession. Chinese Taipei would also ensure that any anti-dumping or countervailing duties imposed on any product after its accession were in accordance with the requirements of Article VI of GATT 1994 and the Agreements On the Implementation of Article VI and Subsidies and Countervailing Measures. The Working Party took note of these commitments.

#### *Safeguards Regime*

87. Some members of the Working Party noted that a provision in the Foreign Trade Act, referred to as the “trade imbalance clause” permitted Chinese Taipei to suspend trade from specific countries because of persistent trade deficits and did not specifically authorise the type of actions foreseen in the Understanding on Balance of Payments Provisions of GATT 1994. In response to requests for justification of this provision and measures taken pursuant to it, the representative of Chinese Taipei said that, in his view, Articles XI, XII, and XIX of the GATT 1994 authorized the maintenance of this particular provision of the Foreign Trade Act. Some members of the Working Party disagreed with this opinion and stated that the provision

in question was not in conformity with the requirements of WTO Agreement, in particular GATT 1994 Articles I, II, XI, XII, XIII, XIV and XIX. Following further discussions in the Working Party, the representative of Chinese Taipei agreed that certain provisions of the Foreign Trade Act were inconsistent with the provisions of the WTO.

88. The representative of Chinese Taipei stated that in April 1997, the Foreign Trade Act had been revised to address members' concerns about the trade imbalance clause. This clause had been replaced with one that was consistent with Article XII of the GATT 1994. The representative of Chinese Taipei further confirmed that the provisions of the Foreign Trade Act would be implemented from the time of accession in a manner conforming to the provisions of the WTO Agreement. Moreover, the representative of Chinese Taipei stated that should a critical balance of payment situation develop, Chinese Taipei would give preference to those measures referred to in the Understanding on the Balance of Payments Provisions of GATT 1994 as price-based measures to address the situation and would maintain any measures only so long as necessary. In the circumstance that Chinese Taipei must resort to measures that were not price-based, Chinese Taipei would transform these measures into price-based measures within 6 months after implementing the initial measures. Moreover, any measures taken for balance-of-payment reasons would not be used to provide import protection for specific sectors, industries or products.

89. The representative of Chinese Taipei stated that, from the time of accession, the safeguards regime would be fully consistent with the WTO Agreement on Safeguards. The Working Party took note of these commitments.

#### *Export Regulations*

90. In response to requests for information on any restrictions maintained on exports, the representative of Chinese Taipei stated that no products were prohibited from export from Chinese Taipei. Ammunition, narcotics, protected wildlife, and strategic high-tech products were subject to strict export controls, and could only be exported under special export permits. As a result of measures adopted by importing countries, certain other items such as textiles were subject to an export licensing system. In document WT/ACC/TPKM/13 the representative of Chinese Taipei provided the Working Party with a list of all products subject to export licensing maintained to ensure:

- (i) the implementation of quantitative restriction arrangements and voluntary restraint arrangements;
- (ii) essential security, the security of supply of certain daily necessities and important industrial materials, including rice and salt;

- (iii) social policies, including narcotics control;
- (iv) protection of endangered species of wild fauna and flora, including Formosan land-locked salmon;
- (v) hygiene and health, including eels;
- (vi) agricultural development, including bananas, white skin sugar cane, and onions.

91. In order to streamline the granting of an export licence, an automatic electronic export licence had been adopted.

*Export Processing Zones / Economic Processing Zones / Export subsidies*

92. Some members of the Working Party requested information on the Export Processing Zones (“zones”), in particular, information on the total value of trade as well as the percentage of zone production. In response, the representative of Chinese Taipei said that the zones were established pursuant to the Statute for the Establishment and Management of Export Processing Zones. The Statute was amended in 1999 and thereafter renamed the Statute for the Establishment and Management of Economic Processing Zones. As a result, Export Processing Zones were also renamed Economic Processing Zones. Investors in the zones were entitled to the following incentives:

(a) exemption from the following duties and taxes:

- (i) customs duties on imported machinery and equipment, raw materials, fuels, commodities, components, and samples;
  - (ii) commodity tax on the exported or imported products, machinery and equipment, raw materials, components, and samples; and
  - (iii) deed tax on newly built standard buildings acquired from the zone’s Administration or the buildings legally acquired from the zone’s Administration;
- (b) no business tax on exported goods and their related labour services, as well as on the goods purchased by the export enterprises;
- (c) due to the exemption from taxes or duties, there was an exemption from the requirement to keep certain documents and to pay tax deposits etc.. In

addition, transfers of property to different enterprises within a zone were not subject to the business tax.

93. The representative of Chinese Taipei further added that the zones were managed by the Economic Processing Zones Administration, Ministry of Economic Affairs. Various products and services were produced in the zones. The representative of Chinese Taipei noted that there were four zones in Chinese Taipei. In 1994, 96 per cent of production in the zones was exported. Under Article 5 of the Statute for the Establishment and Management of Export Processing Zones, most of the production of the zones was required to be exported. A certain percentage of the production could be sold on the local market, provided that it was accorded the same treatment as imported products, and was subject to customs duties, commodity tax and business tax. The product of the zones sold in the domestic market was subject to customs duty on the final product, not on inputs into the product. If goods produced in the zones for local sale were less than 50 per cent of the annual production, the zone's Administration would automatically approve the domestic sale of the goods. If the goods produced for local sale were in excess of 50 per cent of annual production, the approval by the zone's Administration was discretionary. However, no such application for approval had ever been refused. The representative of Chinese Taipei added that there was no local content requirement for enterprises wishing to operate in the zones. In the past subsidiaries or branches of enterprises could not be located in the zones. In January 1990 Chinese Taipei had amended the Implementing Regulation in order to permit subsidiaries or branches of enterprises to be located in the zones. The product of zones which entered the domestic market accounted for only 3-4 per cent of the value of total zones production in 1994, 6-7 per cent in 1997, 8.19 per cent in 1998 and 11.34 per cent in 2000. In May 1997 Chinese Taipei had lifted the 50 per cent limit on local sales through amendments to the Statute. Domestic sales had exceeded 50 per cent of the production of crystal oscillators, electronics testers, voice synthesizers, capacitor parts, sensors, etc.. Around 41.6 per cent of zones' production had benefited from the tax exemption granted by the Statute for Upgrading Industries.

94. Some members of the Working Party noted that some of the arrangements providing for fiscal incentives for businesses located or operating in the zones appeared to be in conflict with the provisions of the SCM Agreement and the Agreement on TRIMS. They requested further information on the fiscal incentives offered. In response, the representative of Chinese Taipei indicated that investments in the zones were exempted from customs duties and the commodity tax on imported machinery, raw materials, fuels, commodities, components and samples, and the deed tax on the new buildings purchased from or otherwise acquired from the zones' Administration. No business tax was charged on the exported goods and their related services, nor was the business tax levied on purchases by those enterprises. These enterprises were also exempted from applying for tax exemp-

tion, guarantee, relevant bookkeeping, and paying provisional tax. He further stated that in Chinese Taipei's view those practices complied with the requirements of the WTO Agreement and did not constitute export subsidies. Their trade effect, if any, was minimal: 0.185 per cent of total exports.

95. Some members of the Working Party noted that import duty and tax exemptions on goods imported into the zones were provided for goods not directly incorporated into the exported product. Direct taxes on the profits from the exports of those enterprises were also exempted. In their view these practices appeared to be in conflict with the SCM Agreement. Those subsidies could also be countervailable. The representative of Chinese Taipei replied that the purpose of the zones was to create duty-free zones for the production of exports, in order to create an environment where exports manufactured from imported inputs need not obtain a refund of duties. This was consistent with the obligations contained in the WTO Agreement. The limitation on duty refunds/exemptions on inputs directly incorporated into exported products was applied by many developed economies, for the purpose of administrative expediency, rather than being based on the theory that refunds/exemptions of duties on imported inputs not directly incorporated into the exported products would unduly increase the exporters' competitiveness and should not be allowed. Because the products were primarily for export, it was therefore not necessary to limit exemptions or refunds to the extent of products directly incorporated into the products exported from the zones. In fact, in Annex II of the SCM Agreement, inputs consumed in the production process, for which drawback of import charges was allowed, were defined to cover energy, fuel and oil in the production process and catalysts which were consumed in the course of their use to obtain the exported product as well as the inputs physically incorporated. Because the exports from the zones did not receive "undue" amounts of refund or exemption the relevant practices did not constitute a subsidy. The representative of Chinese Taipei added that the SCM Agreement Annex I "Illustrative List of Export Subsidies" did not contain the requirement that the input be physically incorporated into the exported product. He stated that the exemption from corporate income tax for zones enterprises had been abolished together with the Statute for Encouragement of Investment at the end of 1990. The current tax exemption granted to zone's enterprises also applied to enterprises located outside the zones, whether or not they exported their products, provided that they met the requirements set forth in the Statute for Upgrading Industries. Consequently, the practice was neither a specific subsidy nor conditional upon export performance.

96. Some members of the Working Party reiterated that the incentives provided in the zones appeared to be incompatible with the SCM Agreement. They expected that Chinese Taipei would ensure that sales into the market of Chinese Taipei from the zones would be subject to normal taxes, tariffs, and other border measures. In

addition, these members considered that Chinese Taipei should satisfy the Working Party that the regime of the zones was consistent with all the requirements of the WTO concerning the treatment of goods, services and intellectual property. The representative of Chinese Taipei replied that Chinese Taipei had decided to levy duties on zone products entering the domestic market on the basis of ex-factory prices minus value added resulting from manufacturing or processing activities in the zones, and would undertake to do so in the future. The formula to be used in calculating the value added by the zones would take into account the relevant practices of other economies. He added that Chinese Taipei hoped that the changes to the system would alleviate concerns that the current system operated as a disincentive for zone products entering the domestic market. In May 1997 the Statute was amended and after the amendment, it was renamed the Statute for the Establishment and Management of Economic Processing Zones. In the interim, elimination of the limits on sale of products into the domestic economy had removed the requirement to export products from a zone and the proportion of goods exported from the zones had declined over the first six months of 1998. While the fiscal incentives previously provided under the Economic Processing Zones statute could be considered by some members to constitute subsidies, elimination of the export requirement, in Chinese Taipei's view, resolved this issue.

97. The representative of Chinese Taipei confirmed that, from the date of its accession, all taxes, charges, and measures affecting imports, including import restrictions and customs and tariff charges, applied to imports from abroad into other parts of Chinese Taipei would be applied to zone products entering the domestic market. While customs duties would be applied on the basis of ex-factory prices minus value added resulting from manufacturing or processing activities in the zones, other taxes, charges and measures would be based on the ex-factory price. He further added that preferential arrangements provided to enterprises located within the zones would be extended to all enterprises whether domestic or foreign and maintained in a WTO consistent manner, in particular with regard to the principles of non-discrimination and national treatment. Furthermore, export requirements or incentives would not be reintroduced. The Working Party took note of these commitments.

#### *Internal Policies Affecting Trade in Goods*

##### *Industrial Policies Including Subsidies*

98. Some members of the Working Party stated that in Chinese Taipei there were currently in place a number of official industrial assistance programs that could be considered prohibited industrial subsidies under the WTO Agreement on Subsidies and Countervailing Measures (the SCM Agreement). These practices included all export subsidies that were of the type contained in the illustrative list

set out in Annex I to the SCM Agreement (including preferential tax rates and other subsidies contingent upon export performance) and other subsidies contingent upon the use of domestic over imported goods, as provided for in Article 3 of the SCM Agreement.

99. Some members of the Working Party said that they considered that many of the industrial promotion plans currently being implemented by Chinese Taipei acted as disguised subsidies. These members requested that Chinese Taipei review these measures in light of the WTO Agreement on Subsidies and Countervailing Measures. The representative of Chinese Taipei recalled that Chinese Taipei had, as an observer, participated in the meetings of the GATT 1947 Committee on Subsidies and Countervailing Measures. He said that Chinese Taipei undertook to notify all relevant laws and regulations in order to facilitate the Committee's discussion of the industrial promotion plans. Moreover, Chinese Taipei undertook to notify its subsidy practices according to Articles 25 and 28 of the WTO Agreement on Subsidies and Countervailing Measures. In document WT/ACC/TPKM/8/Rev.2, the representative of Chinese Taipei submitted to members of the Working Party a draft Notification Pursuant to Article XVI.1 of the GATT 1994 and Article 28.1 of the Agreement on Subsidies and Countervailing Measures. In document WT/ACC/TPKM/9/Rev.2, the representative of Chinese Taipei submitted to the Working Party a draft Notification Pursuant to Article XVI.1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures.

100. In response to questions about industrial subsidies maintained by Chinese Taipei, the representative of Chinese Taipei explained that the Statute for Upgrading Industries ("SUI") provided financial assistance to industry, such as tax exemptions or accelerated depreciation to enterprises in "newly emerging, important and strategic industries" that were very beneficial to economic development, and were of high risk and in great need of support. The representative of Chinese Taipei explained that to qualify for this assistance, as a "newly emerging, important and strategic industry", the enterprise was required to meet the following criteria: (1) the paid-in or increased paid-in capital for the investment plan should be over NT\$200 million; and (2) the amount of the fund available for the purchase of brand-new machinery/equipment in the investment plan should be over NT\$100 million. The above criteria for paid-in or increased paid-in capital and the amount of funds for purchasing brand-new equipment/machinery were different from industry to industry. He further explained that the benefits specified in Article 5 of the SUI (conferring accelerated depreciation of assets) applied to all enterprises, organized in the form of a company pursuant to the Company Law of Chinese Taipei, including companies incorporated by foreign investors or entities. He added that all industrial sectors could be entitled to receive accelerated depreciation for investment in instruments and equipment for exclusive use for energy saving, R&D purposes, experiments or

inspection of quality deemed eligible pursuant to Article 5 of the SUI. The representative of Chinese Taipei said that in the fiscal year 1999 the total value of the tax exemptions or tax reductions granted, pursuant to the SUI, was approximately US\$1.45 billion.

101. Some members of the Working Party expressed concern that Article 18 of the Statute for the Establishment and Administration of a Science-Based Industrial Park (“SSP”) constituted a prohibited subsidy because the business tax was exempted from sales of domestically produced machinery and equipment sold to enterprises inside such an industrial park, but was imposed on imported machinery and equipment sold to enterprises inside a park. In their view, this constituted an import substitution subsidy. Some members of the Working Party pointed out that a similar provision could be found in Article 17 of the Statute for the Establishment and Management of Economic Processing Zones (Amended Edition) (“Amended law”). The representative of Chinese Taipei explained that the business tax was not included in the scope of either Article 18 of the SSP or Article 17 of the Amended law. The business tax was, in fact, exempted on machinery and equipment that was imported for non-resale. Such imports were covered by the very broad exemption from business tax under Article 41 of the Business Tax law for goods imported by businesses for “business operations purposes.” Some members asked the Chinese Taipei representative why, if this was the case, was there a need for the preceding article of the SSP, Article 17, which refers specifically to the business tax and exempts from such tax imports of machinery and equipment into a park. The representative of Chinese Taipei explained that the provisions of Article 18 of the SSP and Article 17 of the Amended Law were redundant to Article 41 paragraph 2 of the Business Tax Law in respect of the business tax. In light of these concerns, however, the representative of Chinese Taipei stated that the relevant provisions (proviso) of Article 18 of the Statute for Establishment and Administration of a Science-Based Industrial Park and Article 17 of the Amended law had been eliminated respectively in January and May 2001.

102. Some members of the Working Party noted that Article 7 of the Statute for Upgrading Industries (SUI) gave tax credits to industries investing in particular regions filling criteria to be determined by the government, and requested more information on those criteria. The representative of Chinese Taipei noted that the criteria were whether a particular region was poor or the economic development was stagnated relative to population, levels of employment, transportation capacity, tax revenues, the average regular income per family, and the availability of public facilities. For this purpose, each year the counties were ranked in a published list which determined levels of regional assistance. Chinese Taipei submitted a draft notification of the investment tax credit provided under Article 7 of the SUI in Annex III of document WT/ACC/SPEC/TPKM/8.

103. Some members of the Working Party expressed concern about the transparency of the criteria used to determine which enterprises would receive assistance under the Statute for Upgrading Industries and requested information on the scope of application for tax benefits, whether they applied to domestic and foreign investors, to all industrial sectors and to specific areas, as well as a breakdown of expenditures. In response, the representative of Chinese Taipei said that under the tax incentive programme, any company for establishing a renowned brand and image exceeding NT\$3 million expenditure in a tax year was entitled to a tax credit of 10 per cent of the tax payable in 1993; if the expenditure exceeded NT\$5 million and the company was authorized by the Ministry of Economic Affairs to use the symbol of “excellence”, the tax credit was 15 per cent of the tax payable. Other tax benefits were allocated to all industrial sectors or to particular industrial sectors. In a recent period the incentives under the Statute for Upgrading Industries related to the Business Income Tax had included accelerated depreciation, corporate investment tax credit, institutional shareholders tax credit and foreign investment loss reserves. Benefits had also concerned the Deferral of Land Value Increment Tax, Stamp Tax, Deeds Tax, etc.

104. Some members of the Working Party enquired whether all of the criteria listed in Article 21 of the Statute for Upgrading Industries were required to be established before a business could be eligible for assistance from the Development Fund. Those members also requested examples of how the government determined when assistance should be paid for other purposes as prescribed by sub-paragraph 7 of that Article. The representative of Chinese Taipei said that only one criteria needed to be satisfied, and that sub-paragraph 6 only applied when none of the other criteria applied. He also explained that the value of the revolving Fund was approximately NT\$111.1 billion at the end of July 2001.

105. Noting that the Statute for the Development of Medium and Small Businesses and the Statute for Upgrading Industries provided for industrial incentives, some members of the Working Party requested an estimate of their set-up amount in a recent period. In response to another question, the representative of Chinese Taipei noted that Chinese Taipei had established the Fund for Development of Small and Medium Businesses in 1992, with a total value of NT\$12 billion. Until March 1998, the allocated amount of the Fund was NT\$9.1 billion. Furthermore, almost all enterprises could qualify as small or medium sized enterprises.

106. Some members expressed concerns that the tax credit provided in connection with the creation of internationally recognized brands constitutes an export subsidy and thus prohibited under the SCM Agreement. Article 4 of the implementing regulations for the relevant law lists covered expenses, which include, in part, “expenses for international market investigation for the development of new products.” The representative of Chinese Taipei stated that the Regulation on Crea-

tion of International Brands had been eliminated in December 2000. Any future programme in this area would be consistent with WTO requirements and would not reintroduce prohibited subsidies. The Working Party took note of this commitment.

107. Some members of the Working Party also noted that among the measures to support new and promising industries were tax concessions and that industrial co-operation programmes could be applied in certain areas. Reference was also made to the existence of two separate steel prices and the need to ensure that the lower domestic price was not used to indirectly subsidize the export of steel. With regard to steel, the representative of Chinese Taipei said that besides direct export price at the world market level, China Steel Corporation (CSC) maintained a two-tier pricing in the domestic market. The higher domestic price offered to customers whose products were sold and consumed in the domestic market was based on the landed, duty-paid price of imported steel products. The lower one (i.e. indirect export price), applied to customers who manufactured steel into final products for exports, was based on the landed, duty-free price of imported steel products. The indirect export price was aimed to ensure that CSC's pricing remained competitive with that of imported steel. The two-tier pricing system had been abolished in 1994 and China Steel Corporation had been privatized in April of the same year. Prices of China Steel Corporation's products since then had been determined according to the market condition. There had been no State intervention in the determination of prices whatsoever. Since then the domestic steel market had been free and competitive.

108. Some members of the Working Party asked how Chinese Taipei proposed to stimulate development of desirable industries, particularly high-technology and high value-added industries. The representative of Chinese Taipei said that in addition to the Statute for Upgrading Industries, Chinese Taipei had eased the requirements relating to the acquisition of land used for factory construction and had taken steps to satisfy long term demand for industrial sites. Chinese Taipei had also provided medium and long-term training programmes to highly qualified personnel in order to upgrade skill levels, and had developed the necessary infrastructure pursuant to the Development Plan.

109. In response to additional questions concerning the specific measures taken by Chinese Taipei to support new and promising industries, the representative of Chinese Taipei indicated that Chinese Taipei supported research and technological development in the areas and technologies identified as promising and major focuses of attention. The Ministry of Economic Affairs (MOEA) gave priority to funding scientific research and development. Such investment had increased yearly. The MOEA also contracted with non-profit seeking research institutes to develop "Ge-

neric Technology” required by promising industries. Promising industries could also enjoy tax incentives, pursuant to Article 8 of the Statute for Upgrading Industries. In order to support industries deemed to be “Important Technology-Based Enterprises”, the following steps were taken. The government determined the generic technologies to be developed for the relevant industries, reviewed and approved the required budget and entered into contracts with non-profit research institutions to execute the required research. Fourth, private companies might be invited to participate in the joint development of the required technologies, or alternatively, following development of the technology, might be offered the technology at a market price. Fifth, the non-profit research institutions might sub-contract specific research tasks to private companies. Sixth, if the private companies had the capacity to develop the required technology by themselves, the authorities could assist them in obtaining the necessary finance, or could provide other assistance. The ten promising industries specified in the six year Development Plan were as follows: telecommunications industry, information industry, consumer electronics industry, semi-conductors industry, precision machinery and automation industry, aerospace industry, advanced materials industry, specialty chemicals and pharmaceuticals industry, medical and health care industry and pollution control industry. The eight key technologies to support the development of the above-mentioned new and promising industries are: optoelectronics, information software, industrial automation, applied materials technology, advanced sensing technology, bio-technology, resource development and energy conservation.

110. In response to questions from members of the Working Party concerning the incentives allocated to the use of advanced technology and their consistency with WTO obligations, the representative of Chinese Taipei said that in addition to the funding of research and development by the MOEA, funds were also allocated for technology import or “Inward Technology Transfer”. Subsidies applied to the purchase of automation equipment and pollution prevention equipment. The subsidy took the form of a tax credit to purchasers. Depending on whether the equipment was imported or of domestic manufacture, different tax credits applied.

111. Some members of the Working Party expressed continued concern regarding the assistance granted for the purpose of developing the “Top-Ten Emerging Industries.” In their view, such assistance included practices that constituted import substitution and export subsidies and a wide range of R&D funding. These members sought assurances that Chinese Taipei had included all such assistance in its subsidy notifications, emphasizing that such notifications would be without prejudice to the legal status of such assistance. The representative of Chinese Taipei assured the concerned members and the Working Party that (1) the top-ten emerging industries did not now, and would not in the future, benefit from any measure meeting the definition of a “prohibited subsidy” under Article 3 of the SCM Agreement, other than those notified, and (2) Chinese Taipei had notified all domestic subsidies

that the top-ten emerging industries currently benefitted from, namely, (i) R&D grants provided under Article 10 of “Measures for Assistance in the Development of New Leading Products”; (ii) low-interest loan granted under Article 21 of the SUI and (iii) tax credits granted under SUI Article 6,7,8,9.

112. The representative of Chinese Taipei confirmed that the “Program for the Development of Critical Components and Parts” was nothing more than an illustrative list of the goods/products covered by Top Ten Emerging Industries and that the Program involves support or assistance measures only under the “Measures for Assistance in the Development of New Leading Products.” The Program ceased to be effective on 30 June 2000. With respect to low interest loans under Article 21 of the SUI, the representative of Chinese Taipei confirmed that the loans that Chinese Taipei maintained were not given to a specific enterprise, industry or group of enterprises or industries within the meaning of Article 2 of the SCM Agreement, did not require the purchase of domestically produced goods or services, and did not constitute an incentive or inducement to purchase domestically produced goods or services over imported goods or services. With respect to Article 6 tax credits, the representative of Chinese Taipei explained that under Article 6 of the SUI, enterprises that purchased domestically produced automation machinery and equipment, including “automatic machine equipment,” received a larger tax credit than if they purchased imported automation machinery and equipment.

113. The representative of Chinese Taipei confirmed that Chinese Taipei would eliminate the Article 6 tax credit differential upon accession and would not in the future reintroduce it or any other tax credit differential that favours domestically produced automation machinery and equipment, including “automatic machine equipment.” The Working Party took note of this commitment.

114. The representative of Chinese Taipei said that the Export/Import Bank (Ex-Imbank) was a government owned bank which provided financing and insurance schemes. It provided secured loans to export firms if the terms of sale provided payment terms of 181-360 days, in order to provide working capital prior to payment. Interest accrued on such loans at the rate of 0.75 per cent above LIBOR for US\$ loans in August 1997. The bank also provided deferred payment “export credits” with a duration of more than one year to exporters or importers in relation to shipments of machinery and equipment, and products including turnkey capital goods. The amount of the down payment was not less than 15 per cent of f.o.b. contract value. Interest was charged at the rate of 6.5 - 7.75 per cent for US\$ loans. Meanwhile the Bank also provided a fixed rate re-lending facility to overseas banks to enable the purchase of manufactured goods of Chinese Taipei origin, at the rate of 8 per cent, and 8.25 per cent depending on maturity date. He added that the Ex-Imbank provided an overseas investment financing system which financed domestic firms seeking overseas investments. That system did not provide a more favourable

interest rate than commercial loans from other banks. Financing by the Ex-Imbank was not linked to or conditional upon export performance. The representative of Chinese Taipei reiterated that no export subsidies were paid to export enterprises.

115. Some members of the Working Party referred in detail to the aeronautics and space industry. These members requested information concerning the Aeronautics and Space Industries Development Programme, asked whether private or government owned enterprises had received assistance from the government and enquired about the use of industrial cooperation programmes in this sector. In this connection, a member of the Working Party noted that Chinese Taipei had indicated that it would use defence operating funds, technical personnel, technology and equipment facilities to assist government-owned and private enterprises in the development of research and the development and the manufacturing of aeronautics and space products and their associated equipment. These members indicated that there could be no exemption, transitional or otherwise from subsidies disciplines for any sector or product such as the aeronautics and space industry. The representative of Chinese Taipei said that the Aeronautics and Space Development Centre of the Chung Shan Science Research Institute had entered into an agreement with the Taiwan Aerospace Corporation and the Industrial Technology Research Institute for technology transfer. If a government entity purchased imported aeronautics and space products, the Committee for Aviation and Space Industry Development could enter into a technology transfer agreement without penalty clauses, known as an "Industrial Co-operation Agreement". If the foreign supplier entered such an agreement, the supplier was required to provide a credit line in an amount equal to a percentage of the purchase price as a commitment to technology transfer and the purchase of domestic aeronautics and space products. Private companies that purchased foreign aeronautics and space products were encouraged to enter into such "Industrial Co-operation Agreements", and if they did so were recommended to commercial banks by the government of Chinese Taipei. If they did not enter such agreements, no such recommendation was made, and decisions by the banks whether to accord loans to those companies were taken by the banks.

116. The representative of Chinese Taipei stated that, as provided for in Article 28, any such measure falling within the scope of Article 3 of the SCM Agreement granted or maintained within its territory would be notified by Chinese Taipei. Such subsidies, with the exception of those provided under Article 12 of the Statute for Commodity Tax, would be repealed upon accession and subsidies provided to manufacturers of automobiles and motorcycles using domestically developed and designed parts would cease no later than 3 years after Chinese Taipei's accession to the WTO. The Working Party took note of these commitments.

117. The representative of Chinese Taipei stated that, upon accession, Chinese Taipei would provide a complete notification of all of its subsidies which were spe-

cific to an enterprise, industry or group thereof (within the meaning of Articles 1 and 2 of the SCM Agreement) in conformity with Article 25 of the SCM Agreement. The Working Party took note of this commitment.

*Technical Barriers to Trade*

118. In response to requests for information, with respect to the publication of the laws, regulations, administrative orders and technical rules and standards, invitation of comments by the public, inquiry points, consultation agencies and other agencies required under the Agreement, the representative of Chinese Taipei said that, currently, only the Regulation for the Establishment of National Standards promulgated in September 1996 contained a provision that set forth the length of time for soliciting comments. There were nine laws, regulations and administrative orders relevant to the implementation of the Agreement on TBT in Chinese Taipei. The respective notifications would be submitted to the WTO in due course.

119. The representative of Chinese Taipei added that Chinese Taipei had formed a special committee to deal with and to coordinate all matters relating to the Agreement. To ensure that the Agreement was applied by all domestic relevant bodies, Chinese Taipei had promulgated the "Points of Operation Concerning Enquiries under the World Trade Organization's Agreement on Technical Barriers to Trade". With respect to the publication of the technical regulations, standards and procedures for assessment of conformity, and to the invitation of comments by the public, details concerning the enquiry point and consultation agency that were required to be involved under the Agreement were as follows:

- (i) notices of proposed or adopted technical regulations, standards and procedures for assessment of conformity would be published in the monthly Official Gazette of Standards, distributed by the Bureau of Standards, Metrology and Inspection (previously the National Bureau of Standards) under the Ministry of Economic Affairs;
- (ii) currently, only the Regulation for the Establishment of National Standards promulgated in September 1996 contained a provision that set forth the length of time for soliciting comments. Apart from this, there were no explicit rules at any level of government that set forth the length of time required for soliciting comments. In principle, all government bodies would provide a reasonable time period (generally 60 days) for presentation comments.

120. In response to questions concerning the registration and certification requirements for imported pharmaceuticals, cosmetics and medical devices, the rep-

representative of Chinese Taipei said that the requirements and approval standards for the importation of pharmaceuticals, cosmetics and medical devices did not exceed the requirements applied in some advanced WTO members, and were the same for imported and domestic goods.

121. The representative of Chinese Taipei stated that recognition of foreign quarantine or other standards would be dealt with in a manner consistent with Article 2.7 of the Agreement on Technical Barriers to Trade. The Working Party took note of this commitment.

122. Some members of the Working Party reaffirmed that Chinese Taipei would need to reform its standards regime to bring it into conformity with the WTO Agreement on Technical Barriers to Trade, particularly in the area of notification procedures. The representative of Chinese Taipei replied that Chinese Taipei was reviewing its standards with a view to bringing them into conformity with the TBT Agreement and had decided to incorporate notification procedures into the draft amendments to its relevant laws.

123. The representative of Chinese Taipei also provided examples of particular differences between its standards and ISO and IEC standards, such as domestic electrical standards, Chinese Taipei television broadcasting systems, the designation of industrial products, and the requirement of “weight” certificates for all imports of automobiles. He said that Chinese Taipei was prepared to comply with the Agreement on TBT but might need a transitional period for the rectification of laws or practices which did not comply with the Agreement. In response, some members of the Working Party stated that they considered that a transitional period of general application was not appropriate.

124. Following examination of Chinese Taipei’s technical barriers to trade regime, some members of the Working Party stated that in addition to taking a commitment to apply the Agreement on Technical Barriers to Trade from the date of accession, without recourse to a transitional period, Chinese Taipei should commit itself to eliminate the specific problems members of the Working Party had identified and which were listed below. In this regard, some members of the Working Party stated that, as a condition of its accession, Chinese Taipei would be required to eliminate the mandatory conformity assessment procedures and standards for imports that were not applied to similar domestic goods and were not based on relevant internationally recognized criteria. Chinese Taipei would be required to accept equivalent third country standards and regulations in particular, in the case of automobiles and heavy-duty vehicles, concerning the safety requirements (lightening, specification of brakes, horns, emission standards and test procedures, fuel consumption, on board diagnostic systems, evaporative requirements, vehicle noise). Whenever new standards were imposed by Chinese Taipei, enough time

would have to be made available for manufacturers to adapt their products. Chinese Taipei would be required to abandon carry-over testing for vehicles whose model types were unchanged from one year to the next and which were identical in emission-related aspects with the previous model-year vehicles as well as additional quality control testing when manufacturers in-house test data were made available. Chinese Taipei would be required to provide for a simplified homologation for vehicles supplied in small volumes and to extend to CKD vehicles the same acceptance of self certification for emissions as applied to BU imports. The representative of Chinese Taipei said that because of the high density of cars, Chinese Taipei had serious concerns over pollution resulting from emissions. Furthermore, Chinese Taipei's current practice was to accept the results of tests carried out by the original car manufacturers according to the emission standards set by Chinese Taipei. New emission and noise standards were implemented with prior notice of three to four years.

125. Some members of the Working Party also stated that Chinese Taipei should ensure compliance with requirements for publication of mandatory conformity assessment procedures and standards and ensure the establishment of a recommended comment period of 60 days prior to finalization of such measures. Chinese Taipei should also eliminate from the date of its accession its requirements for performance testing of imported livestock. Chinese Taipei should also replace the weight certificate system for automobiles with an automobile safety certification system of general application, which would take effect prior to Chinese Taipei's accession. It was also noted that the current requirements for performance testing of imports of livestock were inconsistent with Article 2.2 of the Agreement on Technical Barriers to Trade. These members requested that all such inconsistencies with the Agreement on Technical Barriers to Trade be eliminated upon accession. They also stated that Chinese Taipei should submit its statement on implementation and administration of the Agreement on Technical Barriers to Trade to the Committee on Technical Barriers to Trade at the time of accession.

126. Some members of the Working Party further stated that Chinese Taipei should confirm that all relevant laws relating to its technical regulations, standards, conformity assessment procedures, and labelling, including product coverage, would be administered by Chinese Taipei in conformity with relevant international standards and guidelines. Chinese Taipei should also undertake that the controls applied in connection with technical regulations, standards, conformity assessment procedures, and labelling would be applied in no less favourable a manner for imported products than for like domestic products. Such requirements should be administered in a manner which did not unnecessarily impede trade or create barriers to imported products, and should not be applied to imported products in an arbitrary manner, in a way which discriminated between supplier countries where the same conditions prevail, or as a disguised restriction on international trade.

126*bis*. Some Members noted with concern that Chinese Taipei was considering adopting a technical regulation to define whisky that would unnecessarily discriminate against the exports of whiskies to Chinese Taipei by some Members. The representative of Chinese Taipei confirmed that Chinese Taipei would ensure that its definition for whisky would take into account generally accepted criteria for defining whisky, and would avoid restrictive criteria that resulted in unjustifiable discrimination among products, and be consistent with the TBT Agreement. The Working Party took note of this commitment.

127. The representative of Chinese Taipei stated that Chinese Taipei would fully apply the provisions of the Agreement on Technical Barriers to Trade from the date of its accession to the WTO, without recourse to any transitional period. The Working Party took note of this commitment.

*Sanitary and Phytosanitary Measures*

128. Some members of the Working Party asked whether the regulations regarding sanitary and phytosanitary measures including quarantine and inspection provisions were published and readily available to importers and exporters and whether these measures were based on sound scientific evidence. They also asked whether Chinese Taipei would accept the sanitary and phytosanitary measures of other economies which offered equivalent levels of health protection. In this connection, information was requested on certain provisions of the Commodity Inspection Law and its Implementation Rules concerning the inspection of imports, bilateral arrangements, inspection fees, the inspection quantities and sample quantities, the sanitary requirements obtaining products such as coconut and palm oil, milk, fresh fruits, poultry, bovine meat, pork. In response, the representative of Chinese Taipei said that the most commonly used SPS measures in the agricultural sector were set out in the Commodities Inspection Law, the Statute for Prevention and Control of Infectious Animal Diseases, the Plant Protection and Quarantine Act, the Quarantine Requirements on the Importation of Animal and Animal Products, the Quarantine Restrictions on the Importation of Plants and Plant Products, the Law Governing Food Sanitation, the Regulations Governing the Quarantine at International Port, and the Quarantine Regulation for Cholera on Imported Fishery Products.

129. In response to questions whether Chinese Taipei was prepared to apply phytosanitary standards in a transparent manner based on scientific evidence, the representative of Chinese Taipei stated that in developing its standards Chinese Taipei referred to relevant international biological and entomological publications. It also evaluated the probability of harm resulting from the introduction of the pests or diseases. In addition, comments on the proposed measures were often sought from relevant organisations. In order to ensure transparency in the future, when a

regulation was promulgated by the authority, it would be notified to the relevant associations and trading partners. The representative of Chinese Taipei also provided the Working Party with detailed information on various quarantine rules and import bans concerning the following products: rice and rice products, sugar, wheat flour, meat and offal, fish, dairy products, and fruits. The sanitary requirements for food stuffs were the same for imported and domestic goods. Domestic goods were also subject to inspection in order to maintain effective quarantine in certain instances. Goods found to be contaminated with toxigenic *vibrio cholerae* were destroyed. The regulation on pesticide residue tolerances had been developed on a “positive listing principle”. The same tests applied equally to domestic and imported goods. The CODEX standards set by FAO/WHO were one of the references used in determining the pesticide maximum residue limits. There were no procedures for the recognition of foreign quarantine or other standards in Chinese Taipei. Chinese Taipei was endeavouring to modify standards so that they complied with international standards, except where essential security, animal and plant health considerations, or differences in environment, climate, geography or important technology considerations necessitated deviations from international standards. He stated that even though all safety inspection requirements and standards applied equally to domestic goods, some phytosanitary requirements only applied to imported goods, when only imported goods risked contamination by particular diseases and pests.

130. The representative of Chinese Taipei added that the sanitary requirements for food were set by the Law Governing Food Sanitation. The standards set out in that law were developed with reference to the CODEX standards set by the FAO/WHO. In setting sanitary standards, Chinese Taipei used Codex standards with modifications as necessary, to allow a higher level of protection, if there was a scientific justification, or otherwise as set out in the relevant provisions of paragraphs 1 through 8 of Article 5 of the Agreement on SPS. He further added that imported products were subject to mandatory inspection by the Bureau of Commodity Inspection and Quarantine (BCIQ). The BCIQ’s statutory duties were to protect product safety, protect consumers’ interests and prevent the dissemination of plant and animal diseases and insect pests. The BCIQ applied scientific methods in its inspection and quarantine practices. Quarantine regulations were established in accordance with disease and insect pest variations, and international trends. The BCIQ had entered into arrangements to recognise the certification issued by inspection and veterinary authorities of certain of its trading partners. The determination and publication of infectious animal diseases had been transferred from the BCIQ to the Council of Agriculture. Chinese Taipei had determined that in addition to the List A and List B animal diseases of the Office International des Epizooties, the following were also among the infectious animal diseases: Vesicular exanthema, Erysipelas, Scabies, Bovine ephemeral fever (Bovine influenza), Gas gangrene, Streptococcal mastitis, Infectious pancreatic necrosis, Wirling disease and Bacterial Kidney disease. The plant pests or diseases referred to in the Enforcement Rules concerned

harmful organisms which were fungi, slime mould, bacteria, viroids, phytoplasma, parasitic plants, nematodes, insects, mites, molluscs, and invertebrates or vertebrates directly or indirectly causing harmful effects to plants and plant products.

131. The representative of Chinese Taipei added that the importation of fresh fruit was prohibited from areas where infestations of mango seed weevil, mango weevil, Chinese citrus fly, peach fruit fly, cucurbit fly or guava fruit fly had occurred. Fresh fruit could only be imported from areas under quarantine for Mediterranean fruit fly if the BCIQ approved the quarantine treatment at the place of origin. Fresh fruit could only be imported from areas subject to codling moth, apple maggot, plum curculio, peach twig borer, Mexican fruit fly, West Indian fruit fly, South American fruit fly or Queensland fruit fly and lethal yellowing, kaincoper disease, cadang-cadang disease, bronze leaf wilt, root (wilt) disease, Guam coconut disease, leaf scorch disease of coconuts, and arrowhead scale of Citrus and red and black citrus leafminer, if imported with a certificate stating that the fruit had been thoroughly inspected and found free of infestation or has been treated with an appropriate treatment prior to shipment. The representative of Chinese Taipei added that there were 449 standards applying to agricultural and processed agricultural products administered by the Bureau of Standards. He further added that the implementation of animal and plant quarantine regulations and measures carried out by the Bureau of Commodity Inspection and Quarantine (BCIQ) has been transferred to the Bureau of Animal and Plant Health Inspection & Quarantine (BAPHIQ), Council of Agriculture, from 1 August 1998. In addition, the BCIQ has been operating under a new name, the "Bureau of Standards, Metrology and Inspection" (BSMI), following reorganization on 26 January 1999.

132. In response to the information presented by the representative of Chinese Taipei on the sanitary and phytosanitary regime, some members of the Working Party requested that Chinese Taipei enter a commitment that in implementing the terms of the Agreement on Sanitary and Phytosanitary Measures as follows: Chinese Taipei would enforce its sanitary or phytosanitary measures based on accepted scientific principles and an assessment of the risks involved; follow the notification procedures of the SPS Agreement; not maintain a measure unless based on sufficient scientific evidence; ensure that existing international standards were applied when they exist; accept the sanitary and phytosanitary measures of other WTO Members as equivalent, even if these measures differed from Chinese Taipei's measures or from those used by other Members trading in the same product, upon demonstration that such measures achieved the appropriate level of sanitary or phytosanitary protection; and, ensure that sanitary and phytosanitary measures were adapted to the sanitary or phytosanitary characteristics of the area, including areas within a country or other political boundary, from which the product originated and to which the product was destined. Some members of the Working Party also requested that

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Chinese Taipei recognize exports as being from pest or disease free areas and areas of low pest or disease prevalence.

133. Some members of the Working Party stated that new quarantine regulations applying to air-freighted fresh fruit, whereby inspectors were being sent to the exporting countries to inspect the fruit prior to shipment imposed excessive burdens on importers and acted as a barrier to trade. The representative of Chinese Taipei replied that this measure was typically applied by developed economies. Chinese Taipei had held intensive discussions with the trading partners that had indicated they had problems with Chinese Taipei's SPS provisions. Some of the problems had been resolved, and technical experts had discussed existing problems.

134. Some members of the Working Party requested that Chinese Taipei eliminate the following practices from the date of its accession to the WTO without recourse to any transitional period: quarantine controls applied to imported agricultural commodities without adequate notification, consultation, or a clear scientific basis for their application; certificates nominally granted for health sanitation or quarantine reasons which were in fact never granted, and therefore acted as *de facto* bans on importation; and the arbitrary denial of certification with no criteria being made available to traders to indicate under what conditions certificates can be obtained, and no explanation being given for non-approval of certification.

135. The representative of Chinese Taipei stated that the ban on imports of live swine due to the infestation of Porcine Reproductive and Respiratory Syndrome (PRRS) had been removed, and that live swine which met the quarantine requirements would be allowed entry into Chinese Taipei from the date of accession. The Working Party took note of this commitment.

136. Some members of the Working Party raised various concerns regarding Chinese Taipei's practices with respect to application of SPS measures. In their view, Chinese Taipei had, in the past, adopted SPS measures without providing notice of the action and the criteria for its application to traders and often bases quarantine areas on political geographical regions, rather than scientifically justified areas. In addition, Chinese Taipei had at times failed to base its SPS measures on international guidelines or recommendations and had in some cases adopted and maintained measures without sufficient scientific evidence. In particular, scientific risk assessments that take into account assessment techniques developed by international organizations had not been provided in some cases.

137. The representative of Chinese Taipei stated that Chinese Taipei would fully apply the provisions of the Agreement on Sanitary and Phytosanitary Measures from the date of its accession, without recourse to any transitional period and would address the concerns raised by members. He also stated that Chinese Taipei

would, from the date of its accession, notify to the WTO all relevant laws, decrees, regulations, and administrative rulings of general application relating to its sanitary and phytosanitary measures, including product coverage and relevant international standards, guidelines and recommendations. The Working Party took note of these commitments.

*Trade Related Investment Measures*

138. Some members of the Working Party requested information on the investment regime of Chinese Taipei, in particular the local content requirements prevailing in the automotive sector. Some members of the Working Party said that Chinese Taipei needed to notify its trade-related investment measures such as the local content requirements for motor vehicles and the mixing requirements in force for coal and cement production, and specify a schedule for their elimination. In response the representative of Chinese Taipei said that Chinese Taipei only maintained local content requirements on automobiles and motorcycles. In the case of small automobiles, at least 40 per cent of the motor vehicle plus at least four items from a list of fifteen designated major items were required to be of local manufacture. For large automobiles (3.5 to 10 tons), at least 37 per cent of the motor vehicle plus at least three items from a list of fifteen designated major items were required to be of local manufacture. For large automobiles over ten tons, at least 31 per cent of the motor vehicle plus at least two items from a list of fifteen designated major items were required to be of local manufacture. For motorcycles, at least 90 per cent was required to be of local manufacture. These local content rules applied equally to domestic and foreign enterprises. He added that a local content requirement on government procurement of incinerators had been eliminated, but that a local content requirement on electric locomotives remained. He noted that this was an exception to national treatment permitted under Article III of the GATT 1994, as these products were not intended for commercial resale.

139. Some members of the Working Party said that Chinese Taipei needed to notify its trade related investment measures such as the mixing requirements in force for coal and cement production, and specify a schedule for their elimination. The representative of Chinese Taipei said that Chinese Taipei had no mixing requirements for cement production. The mixing requirements for coal were imposed upon importers of coal. Importers of coal were required to purchase local coal which was at least 1.41 per cent of the amount of coal that they wished to import. Chinese Taipei planned to lower this requirement to 0.72 per cent by the end of 1998. However, the ratio had actually been lowered to 0.55 per cent as of the end of 1996. This measure was eliminated in January 2001.

140. The representative of Chinese Taipei stated that Chinese Taipei undertook to eliminate the existing local content and sourcing requirements applied to the

production of automobiles and motorcycles and the mixing requirement relating to the use of coal upon accession to the WTO. The Working Party took note of this commitment.

141. The representative of Chinese Taipei confirmed that Chinese Taipei did not apply any other measures inconsistent with the Agreement on Trade-Related Investment Measures and would not do so in the future. The Working Party took note of this commitment.

#### *State-Trading*

142. Some members of the Working Party requested that Chinese Taipei provide information on the State owned enterprises covered by Article XVII of the GATT, and the WTO Understanding on the Interpretation of Article XVII, operating in Chinese Taipei. At the request of members of the Working Party, the representative of Chinese Taipei supplied details of the State enterprises operating in the energy industry, the agriculture-fertiliser industry, the metals-mining industry, heavy industry, the petrochemical industry, the paper manufacturing industry, and the tobacco products and alcoholic beverages industry. He noted that the Taiwan Chung Hsin Paper Corporation, the Tang Zong Iron Works Co. Ltd, the Agricultural and Industrial-Enterprise Co. Ltd, the Kao-Hsiung Ammonium Sulphate Co. Ltd, and the Taiwan Tobacco and Wine Monopoly Board (TTWMB) previously owned by the Taiwan Provincial Government were now owned by various Ministries. He indicated that the Chinese Petroleum Corporation had enjoyed a monopoly to import crude oil and refined products and to export refined products. The import and export monopoly of the Chinese Petroleum Corporation was eliminated in January 1999. The Taiwan Sugar Corporation enjoyed a monopoly to import and export sugar. All liquid ammonia imports were monopolised by the Taiwan Fertiliser Company, which also centrally administered purchase and sales, except for imports of waste acid gas. The Taiwan Fertilizer Company was privatised in September 1999. The Taiwan Salt Industrial Corporation held a monopoly to import salt, except for imports of industrial salt used in the production of alkali-chloro. It was expected to be abolished by the end of June 2002. Taiwan Sugar Corporation supplied all the alcohol requirements of the TTWMB. The representative of Chinese Taipei asserted that neither Taiwan Power Company, China Steel Corporation (before it was privatized) nor Aerospace Industrial Development Corporation enjoyed import or export monopoly. These enterprises did not enjoy any special treatment in their trade or production activities. Private traders could import alcohol and tobacco products using TTWMB as the nominal importer.

143. In response to further questions from some members of the Working Party, the representative of Chinese Taipei said that the above-mentioned State-owned enterprises were profit oriented and operated on the basis of commercial considera-

tions. Purchases by State enterprises in principle were made by public tender and the purchase decisions were based upon such factors as qualities, specifications, deliveries and prices. Non-commercial factors did not come into play. Area restrictions applied to two neighbouring economies that were the only instances where purchase decisions could deviate from commercial considerations when the amount of the procurement involved exceeded US\$600,000 had been abolished on 1 June 1997. These State enterprises imported raw materials for products where production could meet the demand of the domestic market. The reselling price of the imported products was determined in the same way as for domestically produced products. There was no discrimination against imports. The purchasing decisions of Taiwan Power Company and China Steel Corporation (before it was privatized) were also generally based upon criteria such as quality, specification, delivery and price. However, since the government of Chinese Taipei was the largest shareholder in these enterprises, the purchasing decisions were affected by the government's economic and trade policies. Some members noted that the State-enterprises were not subject to the Fair Trade Law and asked how this could be justified in light of Articles XVII and III of the GATT 1994. The representative of Chinese Taipei replied that some of the practices of these enterprises had been exempted from the provisions of the Fair Trade Law for an interim period of five years to permit the commercial adjustment and their eventual privatization. This temporary exemption from the application of the Fair Trade Law had expired in February 1996. The procurement by these companies would be governed by the Agreement on Government Procurement once Chinese Taipei became a signatory.

144. Some members of the Working Party referred to the status and operations of the publicly owned retail stores which offered buyers between 20 per cent and 30 per cent discounts on identical merchandise purchased in the free market. In their view the pricing policies of these stores were highly irregular. Prices were fixed in a manner which could undermine sales in the free market as suppliers were required not to sell at a lower price to open market stores. There were no limits on purchases or resale of goods purchased in the publicly-owned retail stores and access was not restricted to members only. In response, the representative of Chinese Taipei said that there were 55 publicly owned retail stores in operation. These stores do not discriminate against imported products and do not create obstacles to importation and distribution of imported products. The United Cooperative Association (UCA) was a private entity commissioned by the government to supply daily necessities to employees of the government and educational institutions. The rules governing the negotiation practices contemplated the determination of a base price which was 15 per cent to 30 per cent lower than the market price. Access to these stores was restricted to members and the resale of merchandise was prohibited. In the PX stores, the selling price was 2 per cent above the sourcing price to cover the operating expenses. Some members of the Working Party said that many privately owned stores used the public stores as sources of supply, which resulted in market distor-

tions. Some members of the Working Party also said that the UCA requirement that suppliers not sell at lower prices to any store in the free market appeared to be in conflict with the Fair Trade Law. In addition, the operating practices of the UCA and the Military PX stores harmed both manufacturers who were forced to sell at unrealistically low prices, and private retailers who were forced to compete with subsidised publicly-owned stores. Prices in the publicly-owned retail stores were 15-30 per cent below retail levels, and in many cases manufacturers were forced to supply these stores at below cost prices. The publicly-owned retail stores appeared to have up to 40 per cent of market volume. This factor, combined with their prices, made it difficult for private retailers to compete in the market place. These members considered that the publicly-owned retail stores should be subject to the Fair Trade Law.

145. The representative of Chinese Taipei responded that the UCA and the Military PXs were not entirely exempted from the operation of the Fair Trade Law, and that the exemption was limited to the organisation of the UCA because it fell within the definition of horizontal collaboration among the stores participating in the organisation of the UCA. Otherwise, all other business practices of the UCA were subject to the Fair Trade Law. He further added that publicly owned businesses did not de jure or de facto discriminate against imported products and did not create obstacles to the importation and distribution of imported products in terms either of price or of quantity. Some members of the Working Party asked that Chinese Taipei take steps to control the persons allowed to gain access to the UCA and Military PX stores, the quantity of products allowed to be purchased by the public employees, establish and publish new procurement and product listing guidelines which reflected market dynamics, and establish a fairer price setting procedure. These members also asked whether the UCA and Military PX stores received any subsidisation in their operations. The representative of Chinese Taipei said that shopping centres, supermarkets and discount stores in many cases offered merchandise at the same or lower prices than those of the Military PX stores. Because of the prices of private stores, the incidence of resale of products purchased at Military PX stores was almost non-existent. In addition the Military PX Headquarters had made rules to prohibit the resale of products purchased in the Military PX stores. Concerning the purchasing decisions of the Military PX stores, the representative of Chinese Taipei noted that needs of military personnel and the condition of the market were examined. The decision to purchase was advertised in newspapers. All suppliers, whether importers of foreign goods or local manufacturers who could meet the limited purchase volume requirements of the Military PXs stores were eligible to enter into negotiations to supply the stores. The Fair Trade Commission, i.e. the administrative agency responsible for enforcing the Fair Trade Law, had been monitoring very closely the business practices of UCA. It had fined different UCA stores for their failure to prevent the entry by individuals who did not have legal access to these stores. It had also fined several private stores who held themselves out as

UCA stores in order to deceive consumers. The Fair Trade Commission had looked into the pricing practices of suppliers of the UCA stores to see whether there was any abuse of market power by the UCA stores. As a result of the Fair Trade Commission's investigation, the Fair Trade Commission launched a business correction campaign requiring large-scale marketing entities including, among others, UCAs, to eliminate as of 1 July 1995 the practice of imposing contractual obligations on suppliers to offer the most favorable pricing.

146. Some members of the Working Party stated that Chinese Taipei must agree to additional transparency in the operation of all of its State-trading enterprises, particularly in the area of agricultural products, e.g. by demonstrating that mark-ups on State-traded imports do not discriminate against imported goods *vis-à-vis* domestically-produced goods, and in the area of export subsidies. The representative of Chinese Taipei said that the operations of the State-owned enterprises were based on commercial considerations such as quantity, price, quality, supply stability and risk and that there was no discrimination against imports.

147. The representative of Chinese Taipei said that the following State enterprises would be notified as State-trading enterprises under Article XVII for the purposes of the Understanding on the Interpretation of Article XVII of the GATT 1994: Chinese Petroleum Corporation; Taiwan Sugar Corporation; Taiwan Salt Industrial Corporation, Taiwan Tobacco and Wine Monopoly Bureau; China Engraving and Printing Works; Council of Agriculture (rice imports); and Taiwan Provincial Fruit Marketing Cooperative. The Working Party took note of that commitment.

148. The representative of Chinese Taipei stated that the TTWMB, which was owned and managed by the Ministry of Finance, would also be notified under Article XVII as long as it maintains its current nominal import/distribution monopoly and other special privileges under law and regulation in the distribution, or trade of tobacco and alcohol products. The Working Party took note of that commitment.

149. The representative of Chinese Taipei stated that the statutory import/distribution monopoly would be abolished with the implementation of new laws establishing a tobacco and alcohol tax and administration system. The representative of Chinese Taipei also stated that some private trade in rice and sugar would be permitted as reflected in Part I of Annex I to the Draft Protocol of Accession. The Working Party took note of these commitments.

150. The representative of Chinese Taipei stated that upon accession to the WTO, import and export procedures of state trading enterprises would be fully transparent and in compliance with the WTO Agreement. In this regard, Chinese Taipei would provide complete information for any such activities as required in

WTO questionnaire G/STR/3. In addition, to assist in monitoring implementation of its commitments, Chinese Taipei would provide, upon the request of a WTO Member, specific information, which would be maintained on a confidential basis and not disclosed to the public, on all elements of particular import transactions by the following state trading enterprises: the Council of Agriculture (rice imports), the Taiwan Provincial Fruit Marketing Cooperative, the Taiwan Tobacco and Wine Monopoly and the Taiwan Sugar Corporation, for so long as those enterprises met the definition of state trading enterprises within the meaning of the WTO Agreement. He further stated that such information would include all elements affecting the price, such as the product, quality, grade, contract price, terms of delivery, financing provisions, discounts, government assistance, transportation, and insurance rates, but may exclude the name of the other party to the transaction. The Working Party took note of these commitments.

151. The representative of Chinese Taipei stated that for all state trading enterprises within the definition of Article XVII of the GATT 1994, Chinese Taipei would ensure that any fees or charges assessed to importers or end-users by these enterprises would not afford protection in excess of the tariff rate provided for imports listed in the Schedules in Annex I to Chinese Taipei's Draft Protocol of Accession, plus fees and charges consistent with Article VIII of the GATT. Imports in excess of the level of the tariff quotas specified in the Schedules in Annex I to Chinese Taipei's Draft Protocol of Accession would not be reserved for state-owned or state-operated enterprises, and would be able to be imported and distributed by private firms and other non-state-trading enterprises. He stated that state trading enterprises within the definition of Article XVII of the GATT 1994 would not be used as a conduit for subsidized exports, nor would notification of these enterprises under Article XVII exempt them from other requirements under WTO Agreements, such as Article 4(2) of the Agreement on Agriculture. He further stated that Chinese Taipei would not take any measure to influence or direct these enterprises as to the quantity, value, or country of origin of goods purchased. Furthermore, Chinese Taipei would not export rice imported under its minimum access commitment. The Working Party took note of these commitments.

152. The representative of Chinese Taipei also undertook that all State-trading enterprises within the definition of Article XVII of the GATT 1994 would operate in a transparent manner and in compliance with that Article and with the other relevant Articles of GATT 1994, in particular with Articles I, II, III, XI and XIII. The Working Party took note of these commitments.

#### *State Ownership and Privatization*

153. Some members of the Working Party enquired whether State owned enterprises would be privatized. The representative of Chinese Taipei said that the policy

was to privatize most State owned enterprises. The statutory framework required to implement this policy was in place.

154. In response to further requests for information, the representative of Chinese Taipei stated that information on the privatization of State owned enterprises could be obtained through the web site of the Council for Economic Planning and Development. Since 1989, more than 50 offerings (including CSC's two DR issues in 1992 and early 1997, representing 360 million shares and 203 million shares respectively), and several sales of assets had been conducted. The sales of government owned companies had yielded total proceeds of nearly NT\$ 400 billion, corresponding to US\$12.5 billion (based on 2000 data). Up to Dec. 2000, twenty-four of the targeted SOEs had been successfully privatized, including, Chung Kuo Insurance Co. Ltd. (CIC), China Petrochemical Development Corporation (CPDC), BES Engineering Corporation, China Steel Corporation (CSC), Yang Ming Marine Transport Corporation (YMTC), Liquefied Petroleum Gas Supply Administration, Yuan Rong Industrial Gas Co., Ltd, Chang Hwa Commercial Bank, First Commercial Bank, Hua Nan Commercial Bank, Taiwan Business Bank, Taiwan Fire and Marine Insurance Co. Ltd., Taiwan Life Insurance Co., Ltd, Taiwan Navigation Co. Ltd., Kang Shan Ropery Factory, Taiwan Development & Trust Corporation, Taiwan Fertilizer Company, The Farmers' Bank of China, Chiao Tung Bank, Bank of Kaohsiung, Taipei Bank, Taipei City Government Printing House, Hsin Sheng Press Enterprise Co., Ltd., and Taiwan Motor Transport Co., Ltd. In addition, 3 plants of the Taiwan Machinery Manufacturing Corporation (TMMC) have been privatized by private placement. The details of the 24 privatized enterprises were as follows:

#### Privatized State-Owned Enterprises in Chinese Taipei

Company	Date of Privatization	% Government Shareholding (2000 data)
Chung Kuo Insurance Co. Ltd.	5 May 1994	30.60
China Petrochemical Development Co.	20 June 1994	15.73
BES Engineering Corporation	22 June 1994	0.00
China Steel Corporation	12 April 1995	40.52
Yang Ming Marine Transport Corporation	15 February 1996	42.62
Liquefied Petroleum Gas Supply Administration	16 March 1996	0.00
Yuan Rong Industrial Gas Co., Ltd	1 January 1998	39.82
Chang Hwa Commercial Bank	1 January 1998	23.38
First Commercial Bank	22 January 1998	36.31
Hua Nan Commercial Bank	22 January 1998	37.92
Taiwan Business Bank	22 January 1998	39.35
Taiwan Fire and Marine Insurance Co. Ltd.	22 January 1998	29.03
Taiwan Life Insurance Co. Ltd.	20 June 1998	28.92
Taiwan Navigation Co. Ltd.	30 June 1998	37.42
Kang Shan Ropery Factory	1 August 1998	0.00
Taiwan Development & Trust Corporation	8 January 1999	34.06
Taiwan Fertilizer Company	1 September 1999	45.29
The Farmers' Bank of China	3 September 1999	45.29

Company	Date of Privatization	% Government Shareholding (2000 data)
Chiao Tung Bank	13 September 1999	33.08
Bank of Kao-Hsiung	27 September 1999	48.85
Taipei Bank	30 November 1999	44.55
Taipei City Government Printing House	31 December 2000	0.00
Hsin Sheng Press Enterprise Co., Ltd.	31 December 2000	0.00
Taiwan Motor Transport Co., Ltd.	1 July 2001	0.00

Recent changes had made it easier for the shares of SOEs to be listed on the Taiwan Stock Exchange and the OTC market. The revision of legislation had been announced in 2000. In addition, the priority shares issued to employees of SOEs had been raised, with each employee now entitled to purchase shares, equal in value up to 48 months' pay, instead of just 24 months as before.

#### Privatization Timetable as of 2001

Date	Schedule for Privatization
December 2001	Food Products Factory
December 2001	Kao-Hsiung Ammonium Sulphate Corporation
December 2001	Aerospace Industrial Development Corporation
December 2001	Central Reinsurance Corporation
December 2001	China Shipbuilding Corporation
December 2001	Tao-Yuan Furniture Factory
December 2001	Tang Zong Iron Works Co. Ltd.
July 2002	Taiwan Salt Industrial Corporation
December 2002	Taiwan Railway Freight Co. Ltd.
December 2003	Chinese Petroleum Corporation
December 2003	Plastics Works
December 2003	Lung-Chi Chemical Plant
December 2003	Veterans Pharmaceutical Plant
June 2004	RSEA Engineering Corporation
June 2004	Taiwan Railway Administration
Undecided	Chung Hsing Paper Corporation
Undecided	Agricultural and Industrial Enterprise Co. Ltd.
Undecided	Chunghwa Telecom Co. Ltd.
Undecided	Taiwan Machinery Manufacturing Corporation

155. The representative of Chinese Taipei confirmed the readiness of Chinese Taipei to ensure the transparency of its ongoing privatization program and to keep WTO Members informed of its progress. He stated that his authorities would provide annual reports to WTO Members on developments in its programme of privatization as long as it was in existence. The Working Party took note of this commitment.

*Taiwan Tobacco and Wine Monopoly Bureau (TTWMB)*

156. The representative of Chinese Taipei said that the privatisation of the TTWMB was under review independently of the tax reform plan. He provided information concerning the calculation methodology, and stated that the units used by Chinese Taipei were 1000 sticks for cigarettes, and litres for alcohol. He explained that the prices of domestic wine and tobacco products were equal to the sum of operating costs plus the Monopoly Tax.

157. With regard to tobacco products, some members of the Working Party said that the future operations of the TTWMB should provide equal opportunities to all tobacco product exporters. The representative of Chinese Taipei replied that following the reforms the TTWMB would have no regulatory function, nor a monopoly on the distribution of tobacco and alcohol products. The TTWMB would, pursuant to the Tobacco and Alcohol Administration Law, be restructured so that it would only operate as a business venture. Within the government of the Separate Customs Territory, the regulatory functions would be carried out by the Ministry of Finance. Moreover, the TTWMB would have no influence upon the market access of tobacco exporters. He submitted to the Working Party the summary of the Tobacco and Alcohol Reform Plan reproduced in Attachment B to this Report.

158. The representative of Chinese Taipei stated that from the date of accession, TTWMB would be reformed to bring its operations in the area of international trade and domestic distribution into conformity with GATT 1994 and the other obligations of the WTO. He added that Chinese Taipei would establish an open and equitable trade and distribution system in these products and would ensure national treatment and non-discriminatory treatment for these products. From the date of accession, TTWMB would not have a regulatory function concerning tobacco and alcoholic beverages and would operate on a commercial basis subject to the same laws, regulations, rules, decrees, directives, administrative guidance, policies and measures applicable to other firms in Chinese Taipei. Any special or monopoly privileges granted to TTWMB in the domestic distribution and international trade of alcohol and tobacco products would be eliminated from that date. Both domestic and foreign firms would be eligible to participate in the distribution and trade of these products on an equal basis, as noted in the Schedules in Annex I to the Draft Protocol of Accession. The Working Party took note of these commitments.

159. The representative of Chinese Taipei confirmed that from the date of accession, TTWMB would be a business operation without any regulatory function. Within the government of the Separate Customs Territory, the regulatory functions would be carried out by the Ministry of Finance. All special or monopoly privileges granted to TTWMB in the domestic distribution and international trade of alcohol and tobacco products would be eliminated, and both domestic and foreign firms would

be eligible to participate in the distribution and trade of these products on an equal basis, as noted below and in the Schedules in Annex I to the Draft Protocol. The representative of Chinese Taipei further stated that the reform of TTWMB would also include the gradual elimination of its monopoly on the production of alcohol and tobacco products. Production of tobacco and alcohol products would be opened to other domestic and foreign firms according to the following schedule:

	Time Schedule	Category
Stage 1	X	brewed alcoholic beverages except beer, reprocessed alcoholic beverages (fruit), rice spirit
Stage 2	X+1 year	cooking alcoholic beverages, distilled spirits, reprocessed alcoholic beverages
Stage 3	X+2 year	beer, alcohol

Note: X = Accession Year

160. The representative of Chinese Taipei stated that any subsidies provided for the domestic production of tobacco and grapes would be bound and gradually reduced as provided for in the Schedule attached to the Draft Protocol of Accession. All firms producing tobacco or alcohol products in Chinese Taipei would have access on an equal basis to imported and domestic inputs, including any remaining benefits from such subsidies, for their production and processing activities consistent with the provisions of the WTO. He added that Chinese Taipei would, on the implementation date of the Tobacco and Alcohol Administration Law, begin processing applications for firms seeking authorization to produce alcohol products liberalized in the first stage, and for other alcohol products liberalized at other stages, six months in advance of the date when such activities were liberalized, in order to provide new entrants with the possibility of operating under the reform program from its inception. He further stated that all enterprises in Chinese Taipei that produce these products would be subject to the same protection, formalities, fees, and penalties under law, without regard to their ownership or length of establishment. He stated that fees charged would not be excessive or unduly burdensome and that penalties for violation of the Tobacco and Alcohol Tax and Administration Laws would not exceed in severity the penalties applied for similar violations in other sectors. To ensure adequate transparency after reform, Chinese Taipei would provide WTO Members with annual reports on the volumes of tobacco and alcoholic products manufactured in Chinese Taipei and on taxes paid by TTWMB by taxable category. Until TTWMB was privatized, this report would be accompanied by an annual independent accounting review of the operations of TTWMB based on standard and customary accounting procedures, including a fiscal balance sheet that reports on costs, expenditures, and revenues of TTWMB, and on its profits and losses. Realizing that sales into the domestic market of large quantities of smuggled or counterfeit imports of alcohol and tobacco products undermined Chinese Taipei's market for legally marketed products, and wishing to discourage such activities in the future, the representative of Chinese Taipei confirmed that all contraband smuggled or counterfeit imports of alcohol and tobacco

products seized would be destroyed or otherwise disposed of, taking into account the practices of WTO Members in a similar situation, and that Chinese Taipei would take additional efforts to prevent such illegal imports. In this regard, Chinese Taipei would ensure that certain alcoholic beverage imports would be accompanied by a certificate of origin similar to that issued by the regulatory authorities in the country of origin. The Working Party took note of these commitments.

#### *Government Procurement*

161. In response to questions concerning the Chinese Taipei's procurement policies, the representative of Chinese Taipei stated that the Procurement Department of the Central Trust of Chinese Taipei was a non-exclusive procurement agent for government entities and State enterprises which solicited offers and products from foreign sources. It did not exercise nor operate as an import monopoly. The Trading Department of the Central Trust of Chinese Taipei acted as a non-exclusive import/export agent for government organisations, public and private enterprises.

162. In response to a series of questions from members of the Working Party concerning tendering requirements for government procurement contracts, the representative of Chinese Taipei said that tender requirements set by the procurement agencies were based on factors such as performance, design, international standards, domestic standards, or reference brands (or equivalents to the reference brands). Any special tender requirements were clearly described in the tender documents. The threshold above which open tenders were required was NT\$50 million, except in circumstances that allowed for non-competitive tenders. The division of contracts in order to avoid the tender threshold was subject to an administrative penalty. Chinese Taipei's tender notices were required to contain similar types of information as that required by the WTO Government Procurement Agreement. All unsuccessful bidders were, at their request, informed of the reasons why they did not win a contract. There was no provision for an unsuccessful bidder to appeal against a decision not to award a tender.

163. In response to questions the representative of Chinese Taipei said that a bidder could be required to submit a commitment to implement an industrial co-operation plan (ICP) to the amount of a certain percentage of the contract price. Some members of the Working Party said that the increased use of the requirement that tenderers agree to technology transfers was inconsistent with the Agreement on Government Procurement.

164. Some members of the Working Party said that Chinese Taipei should apply for and commence negotiations on accession to the Agreement on Government Procurement (AGP). The representative of Chinese Taipei said that Chinese Taipei had carefully examined the request and had decided to accede to the Government Procurement Agreement. He added that prior to acceding to the Government Pro-

curement Agreement, Chinese Taipei would take steps to improve the procedural aspects of the current practices. The representative of Chinese Taipei said that Chinese Taipei had prepared a draft Government Procurement Law which would replace the existing procurement requirements set by the various audit laws and regulations. The draft Law took full account of the AGP requirements, including the establishment of a bid challenge procedure. The Government Procurement Law would take effect on May 27, 1999. A Government Procurement Gazette was being officially published from 1 November 1996 after a ten-month long trial publication. The ceiling limitation of 49 per cent for the acquisition of interests in existing construction firms had been abolished from 3 November 1995. Foreign experience could be counted in the determination of qualification for Class A construction company licenses. From 1 June 1997 the area restriction in the procurement practices had also been lifted. The issues of the industrial cooperation program (ICP), and the limitation on foreign suppliers' market access/lowering of the threshold were being dealt with in the accession negotiations for the AGP.

165. Some members of the Working Party noted that negotiations were continuing regarding Chinese Taipei's commitments regarding product coverage and implementation of procedures associated with the procurement process. In particular, additional clarity was required regarding procedures to address disputes arising in the context of the procurement and contract performance process. The representative of Chinese Taipei noted that the contract performance process did not fall within the coverage of any WTO rules.

166. The representative of Chinese Taipei stated that Chinese Taipei had notified the Committee on Government Procurement of its intention to accede to the Agreement on Government Procurement and had initiated negotiations to that end by the submission of an offer. The representative of Chinese Taipei confirmed that Chinese Taipei would accede to the Agreement on Government Procurement (GPA) within one year of its accession to the WTO. If, however, new government procurement laws necessary to comply with the GPA were enacted prior to Chinese Taipei's accession to the WTO, Chinese Taipei would accede to the GPA within one year of enactment of those laws or at the time Chinese Taipei accedes to the WTO, whichever was later. The Working Party took note of these commitments.

#### *Agreement on Textiles and Clothing*

167. The representative of Chinese Taipei stated that the quantitative restrictions on imports of textiles and clothing products originating in Chinese Taipei under arrangements between Chinese Taipei and WTO Members that were in force on the date prior to the date of accession of Chinese Taipei to the WTO would be notified to the Textiles Monitoring Body (TMB) as being the base levels for the purpose of application of Article 2 of the Agreement on Textiles and Clothing. The representa-

tive of Chinese Taipei stated that for the purpose of Chinese Taipei's accession to the WTO, the phrase "day prior to the date of entry into force of the WTO Agreement" contained in Article 2.1 of the Agreement on Textiles and Clothing would be deemed to refer to the day prior to the date of accession of Chinese Taipei to the WTO. To these base levels the increase in growth rates provided for in Articles 2.13 and 2.14 of the Agreement on Textiles and Clothing would be applied, in stages, from the date of accession of Chinese Taipei to the WTO. The Working Party took note of these commitments.

#### *Barter Trade*

168. Some members of the Working Party requested information on the treatment of imports under barter arrangements. The representative of Chinese Taipei said that Chinese Taipei had only had agricultural barter trade with Korea. Since 1992 the barter of Korean apples and pears for Chinese Taipei bananas had been stopped. In 1997, a new agreement had been made between Korea and Chinese Taipei, which provided for barter of Korean apples and pears for Chinese Taipei bananas, lychees, mangoes, garlic, onions and oranges. Under the existing bilateral arrangement, Korea was provided with access to the local market in respect of apples (which were currently subject to area restriction) and nashi pears (which were currently under import ban) up to a specified volume. He noted that following the elimination of the area restrictions on apples and quantity restrictions on nashi pears, there would be no need to maintain this arrangement after Chinese Taipei's accession to the WTO. The barter trade arrangement had been terminated from 1 October 1997.

169. In response to further questions concerning purchase requirements, the representative of Chinese Taipei said that no mandatory counter purchase requirements were imposed. The current practice of encouraging the purchase of locally manufactured components was granted to foreign investors who had exported substantial quantities of components or parts back to their home countries but had no monetary implications or value. The purpose of the scheme was to encourage export of locally made automotive parts by giving a public announcement of the Government's appreciation for increased export volume by particular suppliers. The scheme was not a subsidy program nor did it impose any mandatory requirement to make local purchases.

#### *Agricultural Policies*

170. Some members of the Working Party noted that Chinese Taipei had indicated that it did not apply subsidies to exports of products, and accordingly these members stated that Chinese Taipei should agree to bind its export subsidies at zero in its Schedule of Concessions. In response, Chinese Taipei agreed that its schedules would include a commitment to bind export subsidies at zero. These members noted

however, that Chinese Taipei exported the surpluses of rice generated by artificially high internal price supports sustained by an import ban on competitive products. On average from 1990 to 1992, exports had represented some 10 per cent of production and some 160,000 tons. These members asked that Chinese Taipei explain how the difference between the price paid to producers and the export price was funded as well as the meaning of the expression "a comfortable rate of self sufficiency in rice". Information was also requested on total price support expenditures of Chinese Taipei and the use of government assisted loans as provided in the Statute for Agricultural Development. Some members also enquired whether the import ban on rice was of a general application and requested its elimination.

171. The representative of Chinese Taipei stated that Chinese Taipei's policy was to liberalise the agricultural sector. In response to questions, the representative of Chinese Taipei indicated that the price support mechanisms operated to purchase agricultural products from farmers at guaranteed prices, which were set above the production cost of the product. In response to further questions the representative of Chinese Taipei informed members of the Working Party that Chinese Taipei operated a system to compensate farmers for damage caused by competition from imports of agricultural products. Relief was accorded if producers of major agricultural products suffered serious injury as a result of the liberalisation of imports due to trade negotiations or policy changes. If the quantity of such products imported during the injury period had increased by 20 per cent or more compared with a reference period of the previous three years; or the imported products had been subsidised or had otherwise benefited from unfair trade practices. Serious injury was deemed to occur when the market price fell below the cost of production. The sixteen products eligible for relief under the Regulations were as follows: citrus, apples, plums, peaches, guavas, pears, wax apples, grapes, tea leaves, beef, pork, duck meat, bred shrimps, pineapples, chicken meat and clams. In 1995, the legislation was amended to the "Rules for Redressing Damage to Farmers Caused by Agricultural Imports." It broadened the eligible products to all agricultural products. The representative of Chinese Taipei also submitted to the Working Party information concerning the draft Plan on implementation of this program. The representative of Chinese Taipei confirmed that measures taken to redress damage to farmers caused by agricultural imports would be included in the calculation of Chinese Taipei's AMS calculations and AMS reduction commitments according to the Agreement on Agriculture; measures taken for fishery products would be consistent with subsidy rules as set out in the SCM Agreement. The Working Party took note of this commitment.

172. The representative of Chinese Taipei also submitted Information Concerning Domestic Support and Export Subsidies in documents WT/ACC/SPEC/TPKM/4/Rev.3 and WT/ACC/SPEC/TPKM/10/Rev.1.

173. In response to questions, the representative of Chinese Taipei noted that the AMS would be scaled down consistent with the requirements of the WTO Agreement on Agriculture, i.e., phase-downs would be completed by the year 2000. The purpose of the rice price support was to maintain a stable food supply and to maintain farmers' income. The rice price support mechanism consisted of two elements: planned purchase and supplementary purchase. The purchase was made twice in a year divided into two crops. Aged rice was exported at prices lower than the production costs due to the lower quality when compared to new rice. The Council of Agriculture mandated the Central Trust to auction off the rice with the base price taking into account the international rice price. The feed plants, livestock farming business and aquaculture business could apply to the Council of Agriculture through the Feedstuff Association for the purchase of feed rice. The price was set at 90 per cent of the wholesale price for imported maize at the time of purchase price payment. The difference between the guaranteed price paid to producers and the export price was funded by the government budget. The guaranteed purchase price was the only price support measure employed by Chinese Taipei. Rice imports needed a Consent Letter of the Council of Agriculture. Because of overproduction consent letters were not given and rice could not be imported. He added that soybeans, corn and sorghum were eligible for crop purchase under the Rice Production and Ricefields Diversification Programme. In addition, the importation of soybeans, corn and sorghum had been liberalised, and the duties for those products were 1.5 per cent, 1 per cent and 1 per cent, respectively. He also stated that Chinese Taipei would gradually reduce excess rice production. A proposal on rice imports had been submitted to the Working Party in documents WT/ACC/SPEC/TPKM/5/Corr.4, WT/ACC/SPEC/TPKM/5/Rev.1 and Section 1B of the Schedule of Concessions and Commitments on Goods in Annex I to the Draft Protocol of Accession. Chinese Taipei's standards for paddy, milled and brown rice were provided to members of the Working Party.

174. Some members of the Working Party expressed continued concern about Chinese Taipei's practice of auctioning central rice stocks for export only. These members noted that only livestock feed businesses had access to these stocks for domestic use, and only at fixed prices. In the view of these members, this practice was an export subsidy. In response, the representative of Chinese Taipei stated that in addition to livestock feed businesses, livestock and fish farmers also had access to the rice stocks. Chinese Taipei did not consider that the practice amounted to an export subsidy. However, in order to alleviate members from the concern, the representative of Chinese Taipei stated that purchasers of rice from the central stock would not be required to export the purchased rice. Chinese Taipei also stated that upon accession, anyone having the right to trade in rice in Chinese Taipei would have access to aged rice from central stocks on the same terms offered to exporters, and that no further trade-based restrictions would be imposed. The Working Party took note of these commitments.

175. The representative of Chinese Taipei stated that the ban on imported rice would be lifted upon Chinese Taipei's accession to the WTO. Chinese Taipei intended to structure market access for rice imports along the lines of Annex 5 of the Agreement on Agriculture. The rice import quota would be 144,720 metric tons (calculated on a brown rice basis) in the first year after accession. Chinese Taipei agreed to negotiate with interested WTO Members upon accession as to whether there could be a continuation of this special treatment beyond the first year after accession pursuant to Annex 5 of the Agreement on Agriculture and to conclude this negotiation no later than 12 months after accession. With a view to maintaining a transparent rice import arrangement, Chinese Taipei would consult with any WTO Member upon request. The representative of Chinese Taipei further stated that 1990-92 would be used as the base period in the calculation of rice imports and for any calculations under paragraph 6 of Section A referred to above as 1990-92 was used concurrently as the base period in tariff negotiations, as well as the calculations for AMS and SSG trigger price. In response to further requests for information on its proposed SSG system, the representative of Chinese Taipei provided members of the Working Party with a detailed description of the proposed program in document WT/ACC/SPEC/TPKM/9/Rev.1.

176. In response to questions concerning exports of sugar, tobacco leaves and bananas, the representative of Chinese Taipei stated that Chinese Taipei's sugar exports fluctuated with changes in the United States import quota allocated to Chinese Taipei. All exports of sugar were to the United States. The sugar supply was the monopoly of Taiwan Sugar Corporation, which was an enterprise under the supervision of the Ministry of Economic Affairs with shares partly held by private parties. Taiwan Sugar Corporation had its own sugar cane farms; it also contracts with farmers for processing the sugar cane and sharing the sugar made from sugar cane sourced from such farmers. The sugar cane growers could share 55 per cent of the sugar, which in turn could be purchased by Taiwan Sugar Corporation for export or sale in the domestic market. The purchase price was calculated on the basis of domestic price if the sugar was sold to the domestic market; and on the basis of export guaranteed price or the settlement price after payment to the Sugar Stabilization Fund, if the sugar was to be exported.

177. The representative of Chinese Taipei stated that the Sugar Stabilization Fund had been in existence since 1966 for the purpose of stabilizing sugar export and farmers' income. The Fund operated as follows: when the export price was higher than a threshold payment was made to the Fund; the payment amount was calculated according to the scale of the price difference and at a cumulative rate. When the export price was lower than the export guaranteed price, payment to the farmers for the price difference was made out of the Fund. Taiwan Sugar Corporation, however, had to bear the price difference all by itself. The export price had been lower than the export guaranteed price in recent years. The price difference had been paid out of the

Fund contributed by the price difference resulting from the export price exceeding the export guaranteed price in the past. Sugar prices were of two types: one was for sugar of general use, and the other was for sugar used for processing exported food products. The domestic price for sugar of general use was set by the Ministry of Economic Affairs; while the prices for sugar of export processing use was determined on the basis of London spot market price (F.O.B.) for sugar plus importation cost. The food processing companies applied to Taiwan Sugar Corporation for purchase of the needed sugar and paid the domestic price in the first instance. When the products were exported, the differences were settled. Since 1 July 1994, the Fund had stopped operating.

178. The representative of Chinese Taipei stated that all tobacco exports were of tobacco purchased by the Taiwan Tobacco and Wine Monopoly Bureau (TTWMB). Banana exports were dealt with by the Fruit Transportation and Marketing Cooperative. When the export price of bananas was lower than the export guaranteed price, the difference was covered by a fund administered by the Cooperative; when the export price was higher than the export guaranteed price, contributions were made to the fund according to the scale of the difference and at a cumulative rate. Farmers could choose whether to sell their products to the domestic market or to the Cooperative for export. The prices for domestic sales and for export were determined according to the demand and supply. Generally, export prices were higher than the domestic price. The representative of Chinese Taipei also stated that soybeans, maize and sorghum were purchased by the Provincial Food Bureau, and summer vegetables were mostly purchased by the Taipei Agricultural Produce Marketing Company on the basis of guaranteed minimum prices. Guaranteed purchases of wine grapes and wheat had been terminated in the first part of 1997 and 1995, respectively.

179. Some members of the Working Party requested an assessment of the effect of the price support programmes operated by Chinese Taipei on the exportation of Chinese Taipei's agricultural products. In response, the representative of Chinese Taipei replied that he did not consider that the price support programme constituted a subsidy on exports..

180. The representative of Chinese Taipei stated that upon accession, in accordance with the provisions of the Agreement on Agriculture, Chinese Taipei would eliminate all of its WTO-inconsistent quantitative restrictions and bind all tariffs applied on imports of agricultural products listed in Annex I of the Agreement. Further, in accordance with Article 3, Part II of the Agreement on Agriculture, Chinese Taipei would not provide export subsidies, nor support in favour of domestic producers, in excess of the commitment levels specified in the Schedule in Annex I to the Draft Protocol of Accession and confirmed that from the date of accession, support previously granted for the production of tobacco and grapes would be calculated into AMS. The Working Party took note of these commitments.

181. Chinese Taipei's commitments on agricultural tariffs, on domestic support and export subsidies for agricultural products were reproduced in the Schedule of Concessions and Commitments in Annex I to the Draft Protocol of Accession of Chinese Taipei to the WTO. The Working Party took note of these commitments.

## VII. TRADE RELATED INTELLECTUAL PROPERTY REGIME

182. Some members of the Working Party noted that in recent years, Chinese Taipei had introduced a number of improvements to the protection of intellectual property rights and that Chinese Taipei was apparently ready to assume in full the obligations set out in the WTO Agreement on TRIPS. In their view the problems faced by Chinese Taipei in this area related to enforcement rather than to the intellectual property rights legislation itself. Information was requested with regard to the entry into force of the Patent Law, the Trademark Law, the Integrated Circuit Protection Law and the Industrial Design Law. Information was also requested on the existence of bilateral agreements, the border measures to combat counterfeiting, the procedures applicable to the infringement of intellectual property rights, the protection accorded to pharmaceutical inventions, the protection accorded to geographical indications and to appellations of origin for wines and spirits.

183. In response, the representative of Chinese Taipei said that the Action Plan to Comprehensively Protect Intellectual Property Rights approved on 29 June 1993 had set out the following eight directions for efforts to strengthen the protection of intellectual property rights: (i) improving the relevant legal framework; (ii) strengthening the relevant administrative organization; (iii) enhancing the enforcement of the relevant laws and regulations; (iv) increasing education and promotion; (v) increasing the capability to negotiate with other economies; (vi) strengthening investigation and research capabilities; (vii) providing adjustment assistance to the industries concerned; and (viii) monitoring the implementation of the plan. Some members of the Working Party responded that they had noted continued high levels of piracy of computer software in Chinese Taipei and export of pirated software embodied in semiconductors. Members of the Working Party expressed concern regarding the failure to impose penalties, in particular administrative penalties and seizure of infringing product and machinery predominately used to produce such products, sufficient to deter piracy.

184. The representative of Chinese Taipei stated that in January 1999 Chinese Taipei had established the Intellectual Property Office whose responsibility was exclusively for dealing with intellectual property matters.

### *Copyright and related rights*

185. Concerning copyrights, the representative of Chinese Taipei noted that

According to Article 4 of the Copyright Law, copyrights of economies or territories which have established reciprocity with Chinese Taipei were protected by Chinese Taipei. Protection also extended to foreign works published for the first time in the territory of Chinese Taipei, or foreign works which were published in Chinese Taipei within thirty days of their first publication in territories outside of Chinese Taipei. Chinese Taipei had revised the Copyright Law to meet the requirements of TRIPS. The main revision includes: (a) amending the definitions for public broadcast and public performance; (b) giving explicit protection for performers' performance; (c) deleting provisions concerning compulsory licenses for translation; and (d) affording a life-plus-50-years or 50 years term of retroactive protection in consistency with the obligation under Article 18 of the Berne Convention. The Amendment had been promulgated since 21 January 1998, and effective since 23 January 1998, except the retroactive protection provisions which would not take effect until Chinese Taipei's accession to the WTO.

186. In response to a question concerning Chinese Taipei's current protection for computer programs, the representative of Chinese Taipei stated that computer programs had been protectable since 1985 under the Copyright Law. The protection term was 50 years.

187. The representative of Chinese Taipei committed that Chinese Taipei would amend relevant Articles to protect computer programs as literary works and to extend the term of protection to life plus 50 years or 50 years from date of publication. The Working Party took note of these commitments.

188. The representative of Chinese Taipei stated that in his opinion, the Copyright Law was in conformity with the Berne Convention and the TRIPS Agreement. He provided details of the Copyright Law provisions to the Working Party. He said that Chinese Taipei had promulgated one Act and eight implementing regulations: Copyright Intermediary Organization Act; The Illustrated Contents of Each Kind of Works in Paragraph 1 of Article 5 of the Copyright Law; The Certain Amount in Item 2 and 3 of Paragraph 1 of Article 87bis of the Copyright Law; Regulations Governing Application for Approval of Compulsory License of Musical Works and Royalties for Use Thereof; Standards for Compensation for Fair Use of Works in Paragraph 4, Article 47 of Copyright Law; Regulations Governing Registration of Plate Rights; Implementation Regulations for Suspension of Release of Goods Infringing on Copyright or Plate Right by Customs Authorities; Regulations of Copyright Dispute Mediation; Organic Charter of the Copyright Examination and Mediation Committee of the IPO, MOEA.

189. In response to the assertion by some members of the Working Party that Chinese Taipei did not appear to protect against the transmission of infringing copy-

right material on its cable television network, the representative of Chinese Taipei indicated that the Government Information Office (GIO) had determined that a priority target was a crackdown on illegal cable television networks that transmitted illegal copyrighted television programmes without authorization. In the event of such a transmission being made, the GIO severed the cable connection of the broadcaster and referred the matter to the prosecuting authorities. After the Cable TV Law had been promulgated in 1993, the GIO had the authority to impose fines on those cable TV networks which transmitted copyrighted television programmes without authorization, and refer cases to the prosecuting authorities.

190. The representative of Chinese Taipei also noted that a bilateral agreement on protection of copyright with the United States had taken effect on 16 July 1993 and had been reinforced by a bilateral agreement regarding reciprocal treatment on the priority rights of trademarks and patents of 10 April 1996. In his view, the agreement in some cases gave a higher standard of protection than the Berne Convention. The text of this agreement was made available to the Working Party as well as the Agreement Concerning the Protection and Enforcement of Rights in Audiovisual Works between the Coordination Council for North American Affairs and the American Institute in Taiwan. The representative of Chinese Taipei welcomed any opportunity of entering into bilateral agreements on the enforcement and recognition of intellectual property rights with its other trading partners.

191. In this connection, the representative of Chinese Taipei noted that Article 4 of the Copyright Law provided that copyright protection for works created outside Chinese Taipei could be granted on the basis of reciprocity. The reciprocity required for granting protection to foreign copyrights could be established by way of (i) a treaty or agreement, (ii) unilateral action by other economies through their laws, regulations, or other legal instruments which provide protection to Chinese Taipei's copyrights, or (iii) customary practices. Chinese Taipei was willing to discuss with interested parties to find a mutually accepted way to establish such reciprocity. In addition to the reciprocity established with the United States, Chinese Taipei had decided to protect works originating in the United Kingdom; Hong Kong, China; New Zealand; Macao, China; and Switzerland through unilateral administrative action following those five economies actions protecting works of Chinese Taipei origin.

#### *Trademarks*

192. In response to questions, the representative of Chinese Taipei stated that Article 37(7) of the Trademark Law was applied to provide protection for well known foreign marks in accordance with Article 6 *bis* of the Paris Convention, i.e. even when the goods were not similar to the goods in respect of which a trademark was registered.

193. In response to further questions concerning the Trademark Law and the statement by a member of the Working Party that Chinese Taipei's Intellectual Property Office applied the standards for trademark registration in a manner that was not consistent with the requirements of the TRIPS Agreement, the representative of Chinese Taipei provided details of the system of protection and the respective time limits which, in his opinion, were basically consistent with the TRIPS Agreement. He stated that the Intellectual Property Office had recently adopted several measures to facilitate the examination process and to maintain consistency. Statistics revealed that in Chinese Taipei applications for trademark registration filed by foreign applicants had a consistently high approval rate. Concerning the question of geographic denominations of origins, he confirmed that the Trademark Law did not deal with geographic denominations of origin. However, if an application for a trademark was made and the trademark could cause confusion as to the geographic origin of the marked goods, the application could be rejected. If appellations of origin were used as trademarks their use would violate Article 37 of the Law.

194. The representative of Chinese Taipei said that the Trademark Law, Articles 4, 5, 23, 25, 34, 37 and 61 had been amended to achieve:

- (i) to broaden the scope of reciprocal granting of the right of priority to cover the situation where there was no formal agreement but the right of priority was granted to Chinese Taipei's owner of trademark through practice;
- (ii) to include a combination of colours in the group of items that were capable of constituting a trademark so as to be consistent with Article 15 of the TRIPS Agreement; and
- (iii) to extend administrative protection to well known marks by providing that no applications may be filed for registration of a trademark design which was identical with or similar to another person's well-known trademark or mark and likely to cause the public to form a mistaken belief. This amendment had been passed in April 1997 and has come into force on 1 November 1998.

#### *Geographic indications*

195. On geographic indications, he noted that currently, the Trademark Law did not have specific provisions for the protection of geographic indications and appellations of origin for wines and spirits. However, as a general rule, if a manufacturer's use of geographic indications as trademarks caused confusion to the general consumers as to the geographical origin of the product concerned, the Intellectual Property Office could on its initiative or upon petition by interested parties turn down the ap-

plication of trademark registration or cancel the existing registration, as the case may be, according to Article 37, sub-paragraph 6 of the Trademark Law. If appellations of origin were used as trademarks, there would be a violation of Article 37, sub-paragraph 10 regarding indications of origin. The relevant trademark application would be turned down or the registration would be cancelled. Chinese Taipei believed that the above protection should meet the requirement for the protection of geographical indications and appellations of origin contemplated in the WTO TRIPS Agreement.

### *Patents*

196. Concerning patents, the representative of Chinese Taipei noted that under paragraph 1 of Article 42 of the 1986 Patent Law, a patent holder had the exclusive right to make, sell, or use his invention. Therefore, a product patent gave protection to the product no matter which process was used in the manufacturing of the product. Paragraph 2 of the same Article provided that if the patented invention was a process, the patent protection extended to the product using the process in the manufacturing. However, if the product was subject to another party's patent, the use of the process invention required the consent of that other party. The above rules applied to all inventions, including pharmaceutical inventions. The Patent Law, (as amended in 1994) provided statutory bars to an invention patent in Article 21. Article 56 of the amended Patent Law conferred on the patentee of a patented article and patented manufacturing process the exclusive rights to manufacture, sell, use or import. Article 80 stipulates that where the product manufactured in accordance with a patented manufacturing process was under a product patent granted to others, the owner of such process patent would not put his process invention into practice without the consent of the product patentee.

197. In response to questions concerning whether pharmaceutical inventions could be the subject of a product patent giving protection to the product independently of the process with which it had been manufactured, the representative of Chinese Taipei said that a patent was granted on the invention, regardless of which process was used in the manufacture of the goods. He said that the examining authority could grant extensions of the time limits for the submission of supplementary information supporting a patent application.

198. He added that the 1994 Patent Law, Articles 21, 51, 56, 57, 78, 79, 80, 82, 88, 91, 105, 109, 117 and 122 had been amended to achieve the following objectives:

- (i) to delete the requirement of reciprocity in respect of the granting of patents for micro-organisms, extension of patent protection terms and the granting of exclusive import rights so as to be consistent with Articles 3 and 4 of the TRIPS Agreement;

- (ii) to limit compulsory licensing in respect of semi-conductor technology to public non-commercial use or to remedying anti-competitive practice, so as to be consistent with Article 31(c) of the TRIPS Agreement;
- (iii) to provide patent owners and his/her exclusive licensees the right to request destruction or other necessary disposition of the infringing goods, raw materials or instruments used, in connection with the infringement, so as to meet the requirement of Article 46 of the TRIPS Agreement which calls for giving the judicial authority to order disposition outside the channels of commerce;
- (iv) to provide for shifting the burden of proof in respect of process patents as required by Article 34 of the TRIPS Agreement; and
- (v) to provide for longer term of protection for industrial design, so as to meet the minimum requirement of 10 years of the TRIPS Agreement.

These amendments had been passed in April 1997 and would enter into force at the time of accession. Chinese Taipei also committed to amend Article 134 of the Patent Law so that upon accession patents issued prior to January 1994 that were still in effect would have a term of protection of 20 years and 12 years as from the date of filing for the invention patents and new design patents respectively. The Working Party took note of these commitments.

*Protection of undisclosed information*

199. In response to questions concerning whether Chinese Taipei protected trade secrets, the representative of Chinese Taipei said that the Trade Secrets Law was promulgated on 17 January 1996. He assured the Working Party that the protection of trade secrets would conform with the requirements of the TRIPS Agreement.

*Enforcement*

200. Concerning enforcement of intellectual property laws, the representative of Chinese Taipei noted that in addition to the administrative measures to be taken by the Intellectual Property Office, the Fair Trade Law and the Commodity Labelling Law also provided for the protection of intellectual property. Article 21(1) of the Fair Trade Law provided that enterprises (i.e. firms or individuals engaging in trade) could not make any false or misleading marking of place of origin or manufacturing or distribute, export or import goods bearing such marking. Violators could be fined up to one million NT Dollars. The fine had been raised to NT\$25 million as a result of the amended Fair Trade Law which had been promulgated on 3 February 1999.

Under the Commodity Labelling Law, importers and manufacturers were required to include information relating to the name and address of the manufacturer on product labels. An offender found guilty of violating this law and failing to rectify the impropriety within a prescribed time-limit would be punished by a fine of 5,000 to 50,000 yuan (equivalent to NT\$15,000 to NT\$150,000). In the case of grievous offence, the violator may also be subject to such disciplinary action as suspension or cessation of business operations. In addition, persons using false designations could be liable under Article 339 of the Criminal Code as having committed the offence of forgery.

201. Concerning the enforcement of intellectual property rights, the representative of Chinese Taipei said that Chinese Taipei provided training concerning intellectual property rights (intellectual property rights) to judges, prosecutors and other law enforcement officials. Newly appointed judges and prosecutors could not practice until they had completed an eighteen month training programme which included an introduction to intellectual property rights. Additional training was provided to incumbent public prosecutors. Chinese Taipei had also taken steps to co-ordinate the relevant agencies in the enforcement of intellectual property rights. The Public Prosecutors' Office attached to the Chinese Taipei High Court had conducted five seminars since 1 July 1992 for representatives from government agencies including Customs, the Government Information Office (GIO), the Board of Foreign Trade (BOFT), and the Police Administration. Specific public prosecutors had been appointed to deal with intellectual property rights infringement cases. Public prosecutors were directed to handle intellectual property rights complaints expeditiously and to press for harsh sentences whenever the circumstances warranted. Judgements which appeared not to have a deterrent effect would be appealed to the High Court. All prosecutors were directed that the discretion to commute prison terms to fines should be exercised very carefully in intellectual property rights cases.

202. To facilitate the investigation of intellectual property rights infringement cases, on 31 March 1993, the Public Prosecutor's Office had integrated all intellectual property rights agencies to form a task force. In a letter of 20 August 1996, all prosecutors had been directed to investigate cases where Chinese Taipei residents infringed copyrights in the PRC. If the result of the investigation met the requirements under Article 251 of the Criminal Procedure Code, prosecutors should prosecute the case. Article 100 of the Copyright Law provided that a prosecutor could initiate an investigation and issue an indictment in the absence of a complaint. If a complaint had initiated the investigation, Article 100 also provided that the prosecutor could continue with the investigation or prosecution even if the injured party withdrew the complaint. When a search warrant and the seizure of goods was considered appropriate, prosecutors were required to proceed promptly. In addition to the Copyright Law, all prosecutors had been directed that the discretion to not prosecute a case under the Criminal Code should be exercised very carefully in intellectual property rights crim-

inal cases. Judges had also been encouraged to impose the heaviest penalties possible on intellectual property rights infringers, and special intellectual property rights divisions had been established in District Courts. Specific prosecutors had been designated to deal with intellectual property rights cases. The Public Prosecutors' Office attached to the Chinese Taipei High Court had conducted several on-the-job seminars since 1 July 1992 for new and current prosecutors. The government would continue to hold educational seminars and courses for new and current prosecutors and judges on a regular basis to keep them informed of the new developments relating to intellectual property rights issues.

203. To further deter the export of counterfeit computer software, the Board of Foreign Trade of the Ministry of Economic Affairs promulgated the Guidelines for Handling Cases Where the Export of Products related to Computer Programs was Suspected of Copyright Infringement in 1996. In this connection, the representative of Chinese Taipei noted that in November 1992, export licensing requirements were introduced for the following products in order to control the export of infringing goods:

8473.30.10.00 Computer PC board (only PC boards with semiconductor chips and computer software within the chip); 8473.30.10.00 Printer PC board (only PC boards with semiconductor chips containing computer software); 9504.10.00.10 Television video game PC boards with semiconductor chips containing computer software; 9504.10.00.10 Video games of a kind used with a television receiver; 9504.90.90.00 Other articles for funfairs, table or parlour games (palmtop electronic games containing computer software); 9504.90.90.00 Other articles for funfairs, table or parlour games (cassettes for palmtop electronic games); 9504.10.00.20 Cassettes for television video games; 8471.20.00.00 Digital automatic data processing machines (containing in the same housing at least a CPU and output unit, whether combined or not); 8471.92.20.10 Dot matrix printer; 8471.92.20.20 Laser printer; 8471.92.20.30 Daisy printer; 8471.92.20.90 Other printer; 8524.90.30.00 Recorded data processing system magnetic disks (only disks containing computer software); 8524.11.90.00 Other digital integrated circuits (used in computers, printers or TV video games and containing chips with computer software); 8542.19.90.00 Other monolithic integrated circuits (used in computers, printers or TV video games and containing chips with computer software); 8542.20.00.00 Mixed integrated circuits (used in computers, printers or TV video games and containing chips with computer software); 8542.80.90.90 Other integrated circuits and micro assemblies (used in computers, printers or TV video games containing chips with computer software).

204. He noted that the export licensing requirements on the above computer-related products were eliminated on 15 July 1998. Since that date (and pursuant to a memorandum of understanding signed with the United States) the Customs had been delegated to examine packages of software consigned for export, to determine whether they conformed to the export permit, invoice and packaging list or other export documents. The examinations were carried out at random with 30-50 per cent of such exports being examined. All exports of an exporter who had been previously found to have exported intellectual property rights infringing products were subject to inspection, whether or not these exports were described as computer software. All exports suspected of being counterfeit were seized, unless the exporter could provide evidence to offset such suspicion. The seized products would be confiscated when the intellectual property rights right-holder obtained a final judgment from the Courts confirming that the products were infringing intellectual property rights. Public Prosecutors were required to prosecute forgers of documents including documents which were used to support the exportation of intellectual property rights infringing products. In response to further questions, the representative of Chinese Taipei noted that CD, VCD, CD-ROM and DVD manufacturers in Chinese Taipei were required to inscribe the source identification code (SID) on all CDs, VCDs, CD-ROMs and DVDs manufactured. This measure was aimed to further deter the circulation of pirated CDs, VCDs, CD-ROMs and DVDs. Concerning patents and trademark infringements, the representative of Chinese Taipei stated that the Anti-Counterfeiting Committee (ACC) under the Ministry of Economic Affairs worked closely with the Customs and the Prosecutors Office. The ACC had been designated as the coordination agency to assist the effective operation of the export monitoring system. The ACC was responsible for the enforcement of anti-counterfeiting efforts involving trademark, patents and copyright. The ACC directed the work of the intellectual property rights Enforcement Supervisory Task Force since July 1989. The ACC was empowered to refer suspected counterfeiting cases directly to the Courts for prosecution. Following conviction, the ACC could request the BOFT to impose punitive measures according to the degree of seriousness of the offence. The BOFT could refuse to issue export permits for a period of one year to the companies concerned. He added that the inspection by the Customs emphasized the examination of the product name, brand names, qualities, specifications, product serial numbers, model numbers, countries of manufacture, net weights etc. Trademark holders with sufficient information could file a petition to the Court for the provisional attachment of the counterfeit goods or inform the prosecutor. The Customs could only seize the goods when informed by the Court or the trademark authority. If Customs suspicions were aroused concerning the export of certain goods, it would refer the matter to the ACC. There was no such mechanism to deal with imported goods. He also stated that consultations with the United States on the protection for pharmaceuticals had been concluded. On 7 July 1993, the Department of Health had issued revised public notices regarding safety monitoring which applied to all pharmaceuticals regardless of their origin.

205. In reply to questions concerning border measures and the seizure by the Customs of infringing products, the representative of Chinese Taipei indicated that in relation to patented goods, it was necessary for the right holders to obtain a Court order before any seizure could be made by the Customs. All infringements of intellectual property rights had to be dealt with in the same manner as patent rights. The only exception was Article 90 *bis* of the Copyright Law, which provided that right-holders upon the posting of an appropriate bond could petition the Customs to seize imports reasonably suspected to be infringing copies. The goods would be confiscated upon a Court judgment confirming the infringement. In response to questions concerning the seizure of parts imported into Chinese Taipei for the purpose of being assembled into infringing goods which would be exported to a third country, the representative of Chinese Taipei replied that Chinese Taipei had never encountered such a situation, but the goods could be seized if a Court order was obtained.

206. Some members of the Working Party asked whether any additional measures were planned in order to combat the infringement of intellectual property rights, taking into account that existing measures did not appear to be having a sufficient deterrent effect on certain commercial scale counterfeiting operations, such as watches. Some members also noted the continued high levels of piracy of computer software embodied in semi-conductors. These members expressed concern regarding the failure to impose penalties, in particular administrative penalties and seizure of infringing products and machinery used to produce such products, sufficient to deter piracy. The representative of Chinese Taipei replied that Chinese Taipei had issued an Action Plan for Enforcement and Protection of Intellectual Property Rights. The Action Plan laid down a framework for the improvement of intellectual property protection, including the upgrading of the standards of protection, the application of stiff administrative measures, the strengthening of judicial enforcement and the education of the general public to respect intellectual property rights. An inter-agency Task Force had been established to co-ordinate and supervise the enforcement of intellectual property rights. Chinese Taipei was determined to enjoy a reputation as a territory that respected intellectual property rights.

207. The representative of Chinese Taipei noted that efforts to ensure fully conformity with the Agreement on TRIPS were ongoing. Amendments to the Trademark Law passed in April 1997 had entered into force on 1 November 1998. The amendments to the Patent Law passed in April 1997 would enter into force upon accession. The draft frameworks for the Integrated Circuits Layout Protection Law had been promulgated on 11 August 1995 and entered into force on 11 February 1996. Some members of the Working Party expressed their appreciation to the representative of Chinese Taipei for the information on efforts to implement the TRIPS Agreement. These members re-emphasized the need for effective enforcement of Chinese Taipei's intellectual property laws as part of its obligations under the TRIPS Agreement. The Working Party took note of these commitments.

208. Recognizing that sales into the domestic market of smuggled or counterfeit imports of alcohol and tobacco products undermine Chinese Taipei's market for legally marketed products, and wishing to discourage such activities in the future, the representative of Chinese Taipei confirmed that all contraband smuggled or counterfeit imports of alcohol and tobacco products seized would be destroyed, or otherwise disposed of, taking into account the practices of WTO Members in a similar situation, and that Chinese Taipei would take additional efforts to prevent such illegal imports. In this regard, Chinese Taipei would ensure that certain alcoholic beverage imports would be accompanied by a certificate of origin similar to that issued by the regulatory authorities in the country of origin in order to combat counterfeiting. The Working Party took note of these commitments.

209. The representative of Chinese Taipei stated that Chinese Taipei would fully apply the provisions of the Agreement on TRIPS by the date of accession, without recourse to any transitional period. Chinese Taipei would furthermore ensure by the date of accession:

- (a) full protection of geographical indications (including against trademarks which contain or consist of such an indication), as well as of well-known marks (including the enhanced protection pursuant to Article 16.2 and 3 of the TRIPS Agreement);
- (b) the establishment of a registration system for trademarks which incorporates all conditions as set out in the TRIPS Agreement;
- (c) the amendment of Chinese Taipei Copyright Law to comply with Article 14(1) of the TRIPS Agreement;
- (d) the extension to all WTO members of advantages currently given on the basis of reciprocity, the elimination of any reciprocity requirements; and in particular,
- (e) effective enforcement (including implementation of the special requirements related to border measures).

The Working Party took note of these commitments.

## VIII. POLICIES AFFECTING TRADE IN SERVICES

210. Several members of the Working Party stressed that Chinese Taipei must undertake a substantial package of initial commitments in its Services Schedule with minimum exceptions from MFN treatment. Chinese Taipei engaged in market access negotiations on services with members of the WTO. The results of those negotiations are reproduced in Part II of Annex I to the Draft Protocol of Accession. The representative of Chinese Taipei agreed that Chinese Taipei would schedule its best offer

on maritime services in the ongoing WTO negotiations on services in Geneva. He also stated that an enquiry point would be established as of the date of accession.

211. The representative of Chinese Taipei confirmed that MOTC would license additional facilities-based operators effective from July 2001; and, consistent with Chinese Taipei's commitments under the GATS, there would be no limitations on the numbers of licenses after Chinese Taipei becomes a member of the WTO. In addition, MOTC would deregulate international voice simple resale service from July 2001. From that time, market access to services-based competition would be fully open. The Working Party took note of these commitments.

Some members of the Working Party welcomed Chinese Taipei's commitment to permit attorneys of foreign legal affairs (AFLA) to establish a partnership with or employ a lawyer licensed in Chinese Taipei upon Chinese Taipei's accession to the WTO. They also noted that Chinese Taipei would grant AFLA status to all foreign lawyers who were employed in Chinese Taipei by the date of Chinese Taipei's accession and who complete a two-year employment period, in accordance with the "Regulation Concerning Chinese Taipei Lawyers' Employment of Foreigners and Administration" thereof. The cooperative arrangements between a Chinese Taipei lawyer and an AFLA would not constitute a violation of provision of Article 50 of the Lawyers' Law.

## IX. TRANSPARENCY

213. Some members of the Working Party noted that Article X of the GATT 1994 required that all laws, regulations, judicial decisions and administrative rulings relating to trade be published promptly so that governments and traders could become acquainted with them. Similarly, Article III of the GATS required prompt publication (at the latest by the time of entry into force - except in emergency situations) of all relevant measures of general application which pertain to or affect the operation of the GATS Agreement. These members also noted that transparency obligations arose from Article 63 of the TRIPS Agreement. They also requested that such laws, regulations, judicial decisions and administrative rulings relating to trade be systematically and immediately translated into a WTO official language.

214. Some Working Party members emphasized the importance of prior notice of laws, regulations and other measures affecting trade in goods, services and intellectual property rights, in particular the right to provide comments on proposed measures prior to their enactment and implementation. These members of the Working Party also noted that some of the WTO Agreements expressly provided for such a notice and prior comment process and urged Chinese Taipei to extend the coverage of this

process to all measures related to the WTO.

215. The representative of Chinese Taipei stated that the following laws would be among those repealed, amended or newly made by the date of accession to the WTO for the purpose of putting into effect Chinese Taipei's accession commitments:

- Foreign Trade Act
- The Commodity Inspection Law
- The Trademark Law
- The Patent Law
- Company Law
- Customs Law Articles
- Statute for Commodity Tax
- Business Tax Law
- The Securities and Exchange Law
- The Certified Public Accountants' Law
- Commercial Port Law
- Lawyers' Law
- Architects' Law
- Statute Governing Privileges and Immunities of the Foreign Missions and their Personnel in Chinese Taipei
- Law of Pharmaceutical Affairs
- Law Governing Food Sanitation
- The Publication Law
- Central Bank Act
- Banking Law
- Copyright Law
- Copyright Intermediary Organization Act
- Tobacco and Alcohol Administration Law
- Tobacco and Alcohol Tax Law
- Statute Governing the Organization of Department of National Treasury, Ministry of Finance
- Provincial Statute for Monopoly of Tobacco and Wine in Taiwan Province
- Customs Import Tariff and Classification of Import Export Commodity
- Statute for Establishment and Management of Export Processing Zones
- Statute for Agriculture Development
- Food Management Law
- Statute for Inspection Procedure Governing Construction Works and Procurement and Disposal of Properties by Government Agencies
- Statute for Vocational Assistance for Retired Servicemen

- Law for the Administration of State-owned Enterprises
- Government Procurement Law

216. An illustrative list of the amendments that would be introduced to some of the above-mentioned laws was reproduced in Attachment D to this Report. The representative of Chinese Taipei further stated that Chinese Taipei would ensure that from the date of accession, all laws, regulations, judicial decisions and administrative rulings relating to trade would be published promptly so that governments and traders could become acquainted with them. The Working Party took note of these commitments.

217. The representative of Chinese Taipei further stated that Chinese Taipei would ensure that from the date of accession, all laws, regulations, judicial decisions and administrative rulings of general application relating to trade in goods, as well as measures subject to the transparency provisions of the GATS and TRIPS Agreement would be translated and published in an official WTO language no later than 90 days after enactment or issuance. Such measures would, however, be published in the official language of Chinese Taipei prior to the date such measures were to be implemented or enforced except in cases of extreme emergency publication would be done on an expedited basis thereafter. In respect of enquiry points required to be established under the WTO Agreement or the Draft Protocol, the representative of Chinese Taipei stated that Chinese Taipei would establish or designate an enquiry point where, upon request of any individual or enterprise, all information relating to the measures required to be published may be obtained. Replies to enquiries for information would generally be provided within 30 calendar days after receipt of a request. In exceptional cases, replies may be provided within 45 calendar days after receipt of a request. Replies would be complete and would represent the authoritative view of Chinese Taipei. The Working Party took note of these commitments.

218. The representative of Chinese Taipei noted the existence of requirements in some WTO Agreements for prior notice and a reasonable time to present comments on proposed measures. He stated that Chinese Taipei had an open and transparent system for adopting laws, regulations and other measures.

219. The representative of Chinese Taipei stated that upon accession, Chinese Taipei, would provide, except in cases of extreme emergency, a period for appropriate authorities, including those of other WTO members, to comment on all laws, regulations and other measures pertaining to or affecting trade in goods, services, or TRIPS of at least 60 calendar days before such measures were implemented. If prior comment was not possible in such cases of emergency, comments would be accepted and considered immediately after implementation. The Working Party took note of these commitments.

*Notifications*

220. The representative of Chinese Taipei said that the latest upon entry to force of the Draft Protocol of Accession, Chinese Taipei would submit all notifications (other than those required to be made on an ad hoc basis) required by any Agreement constituting part of the WTO Agreement. Any regulations subsequently enacted by Chinese Taipei which gave effect to the laws enacted to implement any Agreement constituting part of the WTO Agreement would also conform to the requirements of that Agreement. The Working Party took note of these commitments.

**X. OTHER TRADE AGREEMENTS**

221. In response to questions from some members of the Working Party, the representative of Chinese Taipei stated that Chinese Taipei was not a party to any trade agreement which provided for the granting of preferences to trade in goods and/or services.

*Agreement on Trade in Civil Aircraft*

222. In response to questions concerning the aerospace sector, the representative of Chinese Taipei said that its aerospace industry did not presently have the capability to assemble civil aircraft or compete internationally. Chinese Taipei did not provide any subsidies specifically for the aerospace industry. Some members of the Working Party said that a modern and sophisticated economy such as Chinese Taipei, which was also a major participant in the globalization of the world's aeronautics and space industry, should accept the Agreement on Trade in Civil Aircraft upon accession to the WTO. They further added that due to the advanced state of the industrial development of Chinese Taipei and the plans to expand the aircraft and components industry, the acceptance by Chinese Taipei of the Agreement on Trade in Civil Aircraft was a prerequisite to accession to the WTO.

223. The representative of Chinese Taipei stated that Chinese Taipei would become a signatory to the Agreement on Trade in Civil Aircraft at the same time that it acceded to the WTO.

**XI. CONCLUSIONS**

224. The Working Party took note of the explanations and statements of Chinese Taipei concerning its foreign trade regime, as reflected in this Report. The Working Party took note of the commitments given by Chinese Taipei in relation to certain specific matters which are reproduced in paragraphs 12, 15, 19, 21, 22, 36, 37, 39, 40, 44, 45, 50, 55, 61, 66, 68, 69, 71, 72, 73, 78, 80, 82, 84, 86, 89, 97, 106, 113, 116, 117, 121, 126bis, 127, 135, 137, 140, 141, 147, 148, 149, 150, 151, 152, 155, 158, 160, 166, 167, 171, 174, 180, 181, 187, 198, 207, 208, 209, 211, 216, 217, 219 and 220

of this Report and noted that these commitments had been incorporated in the Draft Protocol of Accession

225. Having carried out the examination of the foreign trade regime of Chinese Taipei and in the light of the explanations, assurances and commitments given by the Chinese Taipei representatives, the Working Party reached the conclusion that Chinese Taipei be invited to accede to the Marrakesh Agreement Establishing the World Trade Organization on the terms set out in the draft Protocol of Accession reproduced in the Appendix to this Report, including the Annexes thereof.<sup>1</sup>

*Decision of the Ministerial Conference on 11 November 2001  
(WT/L/433)*

The Ministerial Conference,

*Having regard to* paragraph 2 of Article XII and paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization, and the Decision-Making Procedures under Articles IX and XII of the Marrakesh Agreement Establishing the World Trade Organization agreed by the General Council (WT/L/93),

*Taking note of* the application of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu for accession to the Marrakesh Agreement Establishing the World Trade Organization dated 7 December 1995,

*Noting* the results of the negotiations directed toward the establishment of the terms of accession of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu to the Marrakesh Agreement Establishing the World Trade Organization and having prepared a Protocol on the Accession of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu,

*Decides* as follows:

The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu may accede to the Marrakesh Agreement Establishing the World Trade Organization on the terms and conditions set out in the Protocol annexed to this Decision.<sup>2</sup>

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<sup>1</sup> Not reproduced.

<sup>2</sup> See under section "Legal Instruments".

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## GENERAL COUNCIL

### *Observership at the Fourth Session of the Ministerial Conference* (WT/GC/M/65)

#### Governments

[...]

33. [The Chairman] also recalled that in total, 39 countries had participated as observers in the Seattle Ministerial Conference in accordance with Annex 2 to the Rules of Procedure for Ministerial Conference and General Council meetings. Out of these 39 countries, 34 currently had obtained observer status in the General Council, either through a request to the General Council or through the establishment of a working party for their accession to the WTO. These countries were therefore automatically invited to attend the Ministerial Conference in Doha as observers. There were five countries which had attended the Ministerial Conference in Seattle and which did not currently have observer status in the General Council: Comoros, Equatorial Guinea, Eritrea, Libya and San Marino. He proposed that the General Council agree that these five countries also be invited to attend the Fourth Ministerial Conference as observers.

34. The General Council so *agreed*.

#### International intergovernmental organizations

35. The Chairman recalled that prior to each of the past sessions of the Ministerial Conference, the General Council had agreed to invite international intergovernmental organizations as observers on the basis of the following guidelines: (i) organizations that were observers to the General Council would be automatically invited; (ii) organizations that were observers to subsidiary bodies would be invited if they requested to attend; and (iii) consultations would be held to determine which other organizations that were not observers to the WTO and that had requested attendance to the Ministerial Conference should be invited. He proposed that the General Council proceed on the basis of these same guidelines for the Fourth Ministerial Conference.

[...]

41. The General Council *took note* of the statements and *agreed* to proceed on the basis of the same guidelines that had been adopted for previous Ministerial Conferences, as read out by the Chairman.

[...]

Attendance of non-governmental organizations (NGOs) at the Fourth Session of the Ministerial Conference

44. The Chairman said that in order to take care of the requests from NGOs to attend the 2001 Ministerial Conference, he proposed that the General Council adopt similar criteria to those which had been adopted by the General Council for the three previous Ministerial Conferences held in Singapore, Geneva and Seattle. He recalled that in preparing for these previous Ministerial Conferences, the General Council had agreed on the following procedures regarding registration and attendance of NGOs at the Conference:

- (a) NGOs would be allowed to attend only the Plenary Sessions of the Conference (without the right to speak);
- (b) applications from NGOs to be registered would be accepted on the basis of Article V, paragraph 2 of the WTO Agreement, i.e. NGOs “concerned with matters related to those of the WTO”; and
- (c) a deadline would be established for the registration of NGOs that wished to attend the Conference.

45. In light of the above procedures, NGOs that wished to attend the Doha Ministerial Conference would be requested to supply, in detail, the necessary information showing how they were concerned with matters related to those of the WTO. With regard to deadlines, he proposed that NGOs submit their requests for registration before 2 July 2001. Based on the information provided, the Secretariat would process a list of organizations that were eligible for registration under Article V, paragraph 2 of the WTO Agreement. In order to ensure that the Secretariat, the host country and NGOs would have sufficient time to prepare themselves, he proposed that this list be circulated to WTO Members for information during the course of July. Immediately thereafter, NGOs would be informed about further arrangements concerning their attendance and registration forms would be sent. Depending on the number of NGOs that wished to attend the Ministerial Conference, it could not be excluded at this stage that certain limits might have to be imposed on the number of representatives per NGO delegation. The registration forms should then be returned, duly completed by the NGOs, to the External Relations Division of the WTO no later than 17 September 2001. Confirmation of registration would be sent to the NGOs as from 1 October 2001. He proposed that the General Council agree at the present meeting to this procedure to allow sufficient time for the NGOs to be informed and to make the necessary arrangements for their attendance at the Fourth Ministerial Conference.

[...]

51. The General Council took note of the statements and agreed to the Chairman’s proposal on the procedures regarding registration and attendance of non-governmental organizations at the Fourth Ministerial Conference.

CONCESSIONS UNDER THE HARMONIZED COMMODITY  
DESCRIPTION AND CODING SYSTEM

A Procedure for Introduction of Harmonized System 2002  
Changes To Schedules of Concessions

*Decision of the General Council on 18 July 2001  
(WT/L/407)*

The General Council,

*Having regard to* Articles IV:2 and IX:1 of the WTO Agreement;

*Recalling* that the Contracting Parties of the GATT 1947 had originally agreed to a method for introducing the Harmonized System (HS) into schedules by their Decision of 12 July 1983<sup>1</sup>;

*Recalling* that the Contracting Parties to GATT 1947, by their Decision of 8 October 1991<sup>2</sup>, decided on simplified procedures for the implementation of HS changes to Schedules;

*Noting* the increased complexity of introducing HS changes into WTO schedules and the lengthy period of time it has taken to introduce HS 1996 changes into WTO schedules;

*Taking into account* the desire of Members to further facilitate and simplify the introduction of HS 2002 changes to WTO Schedules and that many WTO Members will need to implement HS 2002 changes into their customs tariffs on 1 January 2002 as a result of their commitments undertaken in the World Customs Organization (formerly known as the Customs Co-operation Council);

*Decides as follows:*

2. The proposed changes to schedules required to implement HS 2002, on the basis of Attachment A to this Decision, shall be implemented pursuant to the Procedures contained in the Attachment B to this Decision.

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<sup>1</sup> BISD 30S/17.

<sup>2</sup> BISD 39S/300.

Attachment A

ELECTRONIC VERIFICATION

1. Overview of Harmonized System 2002 (HS2002) Changes and Electronic Verification

The changes proposed to the HS by the Harmonized System Committee (HSC) of the World Customs Organization (WCO) for 2002 are similar to those introduced by the WCO in 1996. They can be summarized as follows: (1) new break-outs of the nomenclature, (2) condensing of the nomenclature, (3) textual changes of the nomenclature, and (4) typographical changes or corrections, based on the information from the WCO (HS2002 changes in G/MA/W/24 and correlation tables in G/MA/W/26).

The purposes of using electronic verification are to utilize the electronic means available in order to aid Members in the work of verifying HS2002 changes. While, in all instances electronic means cannot substitute for a manual verification, they can help to speed up the process. Electronic verification would reduce considerably the volume of items to be verified individually by Members and would thus bring this very time-consuming exercise within an easily manageable dimension. This section will set out the possibilities for electronic verification. For the purposes of electronic verification, the HS2002 changes have been analyzed and delineated so as to better explain what will be done in the electronic verification. The break-down can be summarized as follows (also see Summary table for full details in G/MA/W/27/Add.1):

373	<u>HS2002 changes or sets of changes</u>
87	New break-outs of the nomenclature (1)
48	Condensing (or deletion) of the nomenclature (2)
130	Textual changes of the nomenclature (3)
108	Typographical changes or corrections (4)

Thus, there are textual changes that would need to be verified (item numbers 3 and 4), and changes affecting tariff concessions (items 1 and 2).<sup>3</sup>

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<sup>3</sup> In addition, there are a few textual changes in the nomenclature (3) that may also involve a subsequent tariff change and verification, 14 items. This is based on the information provided by the WCO. However, Members may wish to examine these on an individual basis (see table in G/MA/W/27/Add.1 and inform the Secretariat if they believe there are other items that may have consequential tariff implications that the WCO did not identify.

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(a) Textual Changes

With respect to the textual changes for HS2002, the Secretariat could perform the verification that all textual changes were made and included in the WTO schedules.

However, it should be noted that many of the textual changes solely involve changes to the Chapter Notes or Subheading Notes. In analyzing the existing WTO schedules of Members, it should be noted that very few Members<sup>4</sup> included these Chapter Notes or Subheading Notes in their WTO schedules, therefore these items are not incorporated in the WTO schedules unless the Member chooses to do so at the time of introduction of HS2002 changes. Thus, the Secretariat proposes that these 103 items that are solely changes to Chapter Notes or Subheading Notes not be included in the electronic verification, as there would be nothing to verify. However, for the few Members that have the Notes incorporated, the Secretariat could verify these electronically if the Members so wished. Thus, of the 238 textual changes, minus the 102 'Notes' items, the Secretariat would verify 136 textual changes electronically.

(b) Changes Affecting Tariff Concessions and Other Concessions

As noted previously, the verification that the appropriate tariff treatment is given to the tariff lines/products concerned would require the use of a comparable electronic base, such as the Consolidated Tariff Schedules (CTS) database, in order to have a basis to compare rates. The CTS database has no legal status. However, for such an exercise, the CTS database could be used solely as a tool to permit electronic verification. Only the HS2002 changes which would be verified by WTO Members and subsequently certified would have legal status after conclusion of the process.

It should be noted that there are other concessions granted in schedules. These can be on a tariff-line basis or included in other parts of the schedule. Tariff-line concessions could include such things as initial negotiating rights (INRs), special safeguards (SSG), and other duties and charges (ODCs). Concessions in other parts of the schedule could include headnotes, tariff quotas, and other commitments made under the agricultural parts of the schedule. It should be noted that in the recent HS96 process, most countries did not include these in their HS96 submissions,<sup>5</sup> so it is presumed that these would not be submitted for HS2002, unless Members decide otherwise.

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<sup>4</sup> The Secretariat has only been able to identify 2 Members that have included these notes in their WTO schedules. However, during the HS96 exercise, only one of these Members had the notes in its submission.

<sup>5</sup> Some countries submitted tariff quota information, but hardly any submitted other information.

Therefore, assuming that the use of a comparable electronic base can be agreed, the Secretariat could verify many of the tariff concessions as well. To further explain, there are HS2002 changes that a) involve new breakout emanating from a single tariff line, b) transfers of a whole tariff line or part thereof to an existing tariff line, c) conversion of a few or many tariff lines into a new or existing tariff line or lines, and d) complex cases.<sup>6</sup>

In the first example (a), the appropriate tariff concession would be quite clear and easily identifiable in the electronic base, and thus the new tariff lines would appropriately have the rate from the emanating tariff line.<sup>7</sup>

In examples (b) and (c), the situation is not entirely clear as there could be differing rates from a number of different tariff lines. There are 64 such items. As is outlined in the 1983 Decision Related to the Introduction of the Harmonized System (BISD 30S/17), the basic principle was that tariff bindings should remain unchanged. This would normally involve a process that creates new breakouts in the nomenclature to maintain the existing concession on the product or products transferred. However, the Decision notes that in the case where it was unavoidable to combine tariff lines or parts of tariff lines, there were four basic methodologies for arriving at the new rate: 1) applying the lowest rate of any previous tariff line to the whole of the new tariff line, 2) applying the rate previously applied to the tariff line with the majority of trade, 3) applying the trade weighted average rate of duty for the new line, or 4) applying the arithmetic average of the previous rates of duty where no basis exists for establishing reasonably accurate trade allocations. It is recommended that a similar set of principles be applied here and the Member making the submission provide the details of which methodology (1-4 noted above) or 5) other (provide explanation) was taken for each particular item. In order for the electronic verification to proceed, if options 2) or 3) above were indicated, and the Member concerned did not have a current IDB submission in the Secretariat, the Member would also need to supply the necessary trade data.

Finally, there are complex cases (d) (19 items), which would likely have to be dealt with manually, without the use of electronic verification.

Thus, of the 149 changes that require verification of rates of tariff concessions, 67 have rates that are easily identifiable (see (a) above) and could be electronically verified, 64 have a more complex situation and as noted above may re-

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<sup>6</sup> Those items where there are multiple conversions or break-outs and/or allowing for the possibility of various options (e.g. transfer of certain wastes). These would have to be handled manually.

<sup>7</sup> The work has thus far been analyzed at the 6-digit HS level. There may be ensuing difficulties if a Member has a complex tariff system at the 8-, 9- or 10-digit tariff level, as the rate could emanate from a number of tariff lines.

quire additional information to electronically verify, and 19 are complex cases that would have to be handled manually (no electronic verification). After electronic verification by the Secretariat, a verification sheet would be prepared outlining the discrepancies found.

## 2. Documentation for HS2002 Changes

The documentation to be submitted for HS2002 changes would consist of two parts— 1) the looseleaf schedule (LLS) and 2) concordance tables. These would need to be submitted in electronic form and hard copy, but the specific format is flexible. While it is preferable that the documentation be submitted in database (e.g. MS Access) or spreadsheet format (e.g. MS Excel), the Member could also submit in a tabular text format (e.g. MS Word tables). With technological developments of standard software packages, the interchangeability has improved and thus the Secretariat is flexible with any of these formats.

For the loose-leaf part of the schedule, the Member concerned would need to submit only the items affected by HS2002 changes in the standard LLS format (see G/L/138).<sup>8</sup> However, all the items in the respective 4-digit category of the change would also need to be submitted for clarity. As shown in the example below, not only would the two tariff lines affected (0101.10 and 0101.90) need to be shown, but also the 4-digit level (0101) and any other applicable lines in the same 4-digit category.

HS	Description	Bound rate	etc.....
0101	Live horses, asses, mules and hinnies		
0101.10	- Pure-bred breeding animals	0	
0101.90	- Other	5	

For the concordance tables, the usual format (including rates) would be followed. This would include the concordance from HS96 to HS2002, and HS2002 to HS96.<sup>9</sup> This would be in a tabular 2-column format. See examples of documents to be submitted.

<sup>8</sup> Members are advised to add an additional column to indicate the methodology involved in arriving at the new tariff rate. The items would be coded 1, 2, 3, 4, or 5 to correspond to the examples noted in the present attachment, fifth para. under 1.(b).

<sup>9</sup> Correlation of the nomenclature that is in the old WTO schedule to the new nomenclature.

## Example – Loose-leaf part of the schedule

HS2002	Description	Rate of duty		Implement- tion	Present concession established	INR	Concession first incorp- in GATT in schedule	INRs on earlier con- cessions	ODCs	Rate indication column
		Base	Bound							
0101	Live horses, as..									
0101.10	-Pure-bred bre..									
0101.10.10	--Horses		0						0	
0101.10.90	--Other		5		UR/94				0	
0101.90.00	-Other	15	5	2002	UR/94				0	
0106	Other live ani....									
	-Mammals:									
0106.11.00	--Primates		10		UR/94				0	
0106.12.00	--Whales, dolphins and ...		10		UR/94				0	2
0106.19.00	--Other		10		UR/94				0	
0106.20.00	-Reptiles ....		10		UR/94				0	
	-Birds:									
0106.31.00	--Birds of prey		10		UR/94				0	
0106.32.00	--Psittaciformes.		10		UR/94				0	
0106.39.00	--Other		10		UR/94				0	
0106.90.00	-Other		10		UR/94				0	

## Example – Concordance Tables

## 1996 to 2002

HS96 nomenclature	Rate	HS2002 nomenclature	Rate
0101.11.00	0	0101.10.10	0
0101.20.10	5	0101.10.90	5
0101.19.00	5	0101.90.00	5
0101.20.90	5	0101.90.00	5
ex0106.00	10	0106.11.00	10
ex0106.00	15	0106.12.00	10
etc....			

## 2002 to 1996

HS96 nomenclature	Rate	HS96 nomenclature	Rate
0101.10.10	0	0101.11.00	0
0101.10.90	5	0101.20.10	5
0101.90.00	5	0101.19.00	5
0101.90.00	5	0101.20.90	5
0106.11.00	10	ex0106.00	10
0106.12.00	10	ex0106.00	15
etc...			

## Attachment B

## PROCEDURE TO INTRODUCE HS2002 CHANGES TO SCHEDULES OF CONCESSIONS

Contracting parties to the HS Convention are required, pursuant to Article 16 of the HS Convention, to introduce HS changes into their national tariffs on 1 January 2002. WTO Members who are HS contracting parties should introduce these changes to their schedules of concessions. In addition, WTO Members applying the HS on a *de facto* basis and who intend to implement HS changes to their national tariffs should also introduce the relevant changes to their WTO schedules of concessions. For the purpose of introducing HS changes to schedules of concessions, a decision entitled “GATT Concessions under the Harmonized Commodity Description and Coding System - Procedures to Implement Changes in the Harmonized System” (Annex to L/6905, BISD 39S/300) was adopted by the GATT Council on 8 October 1991. However, for those Members intending to apply HS2002 changes to national tariffs, specific procedures to introduce those changes to schedules of concessions have been drawn up and are set out below.

Members should aim to complete the following procedures sufficiently in advance of their implementation of the HS2002 changes so as to allow adequate time for required domestic procedures. They should submit the documentation envisaged under paragraph 1 of the procedures as soon as possible.

## Procedures

1. The Member shall submit the proposed changes to its loose-leaf schedule arising from HS2002 (including the four digit HS tariff lines), in hard copy and electronic form to the Secretariat. The submission shall be circulated or made available to all Members in hard copy and electronic form.
2. The Secretariat will review the proposed changes using electronic verification as provided for in Section I, paragraph 1 and will prepare a verification sheet which will be circulated or made available to all Members at the latest four weeks after the circulation of the documentation under 1.
3. Multilateral review of the proposed changes shall take place in the framework of informal dedicated sessions of the Committee on Market Access. Such sessions shall take place every second month or as required.
4. No earlier than six weeks after the circulation of the verification sheet under paragraph 2, the Committee on Market Access will meet as indicated under paragraph 3. Specific queries by Members should,

to the extent possible, be submitted by that meeting with respect to a schedule, and the Member to which the questions are addressed should, to the extent possible, respond by the time of the first multilateral review session after the expiry of a six-week period following receipt of the query. The status of bilateral discussions and consultations between Members including Article XXVIII renegotiations<sup>10</sup> should be reported to other Members at these Committee sessions to ensure full transparency.<sup>11</sup> For this purpose, Members are advised to keep the Secretariat informed, to the extent possible.

5. Any revisions and addenda that a Member may wish to introduce to its original submission of proposed changes should be provided in hard copy and in electronic form and they will be circulated or made available to all Members by the Secretariat. Revised verification sheets might need to be prepared in light of the new notification and will be circulated or made available to all Members by the Secretariat. Steps 2 to 4 will apply to the new documentation, unless otherwise agreed by the Committee.<sup>12</sup>
6. The Secretariat will maintain a written record (along the lines of the informal list detailing the status of submissions of HS96 documentation) of the progress made on each schedule which will be circulated to all Members prior to the informal dedicated sessions of the Market Access Committee. Informal records of these informal dedicated sessions will also be prepared by the Secretariat and will be available for consultation.
7. For introducing the proposed changes in the authentic texts of schedules, no later than 4 months after the circulation of the verification sheet by the Secretariat in paragraph 2 above, and provided no specific queries are outstanding in relation to paragraphs 4-5 above, a final version of the schedule incorporating any corrections, revisions and addenda shall be prepared by the Secretariat and certified by the Director-General.
8. Developing country Members may request technical assistance from the Secretariat for the preparation of the relevant documentation in hard copy and electronic form. Bearing in mind that technical assist-

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<sup>10</sup> In case where a request for renegotiation or consultation has been made under Article XXVIII, the Procedures for Negotiations under Article XXVIII (BISD27S/26) shall apply.

<sup>11</sup> Status reports by the Secretariat would include: the number of countries objecting, the date of objection(s), and the date of response(s).

<sup>12</sup> The Committee might agree that the changes introduced to the original notification are so minimal in nature so as to not warrant such lengthy time-periods for their review.

ance takes many forms, it is possible for the Secretariat to prepare a Member's documentation on proposed changes in Geneva subject to the Member providing its national tariff schedule in the HS 2002 nomenclature.

9. In case a Member has a query or comment concerning another Member's HS2002 changes, but is unable to attend the meeting at which these changes are to be verified, it may request, through a written communication to the Chair that the Chair make a statement on its behalf at that meeting.

## WTO PENSION PLAN

*Rules of Procedure of the Management Board  
Approved by the General Council on 8 May 2001  
(WT/L/402)*

Pursuant to Article 5 of the Regulations of the WTO Pension Plan, the duties and authority of the Management Board as well as rules for the auditing of accounts shall be laid down in rules of procedure which shall be approved by the General Council.

The rules of procedure reproduced hereunder submitted by the Chairman of the Management Board were approved by the General Council on 8 May 2001.

## WTO PENSION PLAN

### Rules of Procedure of the Management Board

#### SECTION A – MANAGEMENT BOARD

##### Membership

- A.1 The Management Board shall be composed in accordance with Article 4 of the Regulations.
- A.2 The Chairman, members and alternates appointed or elected to the Management Board shall have as their responsibility the fulfilment of the roles and responsibilities of the Board as defined in the Regulations, the Administrative Rules and Rules of Procedure. They shall act solely with the interests of the Plan in view and shall observe discretion and confidentiality in the exercise of their duties.

- A.3 Members and alternates shall disclose to the Management Board any personal or financial interest that they may have that may be construed to be in conflict with the duties and responsibilities flowing from their membership of the Management Board.
- A.4 The Management Board shall examine any such disclosure and decide on the action to be taken.

Duties and authority

- A.5 The Management Board shall represent the Plan and shall be responsible for the management and administration of the Plan in accordance with the Regulations and Administrative Rules approved by the General Council.
- A.6 The Management Board shall not delegate any of its responsibilities except where authorized to do so in the Regulations, Administrative Rules, Rules of Procedure or otherwise expressly in writing by the General Council.
- A.7 The Management Board shall be responsible for the payment of relevant entitlements in accordance with the Plan Regulations.
- A.8 The Management Board shall be responsible for the financial security and probity of the Plan and in particular the maintenance of its actuarial balance and of financial controls and accounts.
- A.9 The Management Board shall be responsible for the secure investment of all Plan assets, the formulation of investment policies after taking appropriate professional advice, and the appointment of investment managers to implement that policy.
- A.10 The Management Board shall, pursuant to Article 3 of the Regulations and subject to the appeals procedure set out therein, be competent to interpret the Regulations.
- A.11 The Management Board shall make a recommendation to the Director-General for the appointment of a Secretary and for the terms of the appointment. The role, responsibilities and authority of the Secretary shall be determined by the Management Board and shall be set out in a document approved by the Management Board.
- A.12 The Management Board shall make a recommendation to the Director-General for the appointment of a consulting actuary to undertake actuarial valuations of the Plan and shall make recommendations to the General Council on the outcome of those valuations, in accordance with the Regulations.
- A.13 The Management Board shall seek the advice of such experts and appoint such service providers as it considers appropriate to ensure the sound operation of the Plan in accordance with the Regulations.

## Meetings

- A.14 The Management Board shall meet as required, at least three times a year.
- A.15 The Management Board shall be convened by the Secretary upon the decision of the Chairman or at the written request of at least two members of the Management Board. Other than in exceptional circumstances, the draft agenda, together with the documents referred to in that agenda, shall be circulated at least ten working days prior to the meeting. Scheduled meetings shall be changed only in exceptional circumstances where the Chairman so decides. Furthermore, meetings may be convened and documents circulated at shorter notice only where the Chairman so decides.
- A.16 If the Chairman is unable to attend all or part of a meeting, he/she shall designate a member elected by the General Council to act as Chairman in his/her stead.
- A.17 If a member is unable to attend all or part of a meeting, he/she may designate an alternate drawn from the corresponding group elected by the General Council, appointed by the Director-General, or appointed by the Director-General from a list drawn up by the participants. If the absent member has not designated a replacement, the Chairman shall designate the alternate drawn from the corresponding group to replace a member on a rotational basis. An alternate member may not replace more than one member.
- A.18 Alternate members shall have the right to attend all meetings of the Management Board and to speak, but not the right to participate in decision-making except when replacing a member.
- A.19 The Chairman and a majority of the members of the Management Board, including alternate members replacing members, shall constitute a quorum, provided that at least the Chairman, three such members elected by the General Council and three such members appointed by the Director-General, including at least one such member selected by the Director-General from a list drawn up by the participants, are present.
- A.20 The observer designated by the beneficiaries in accordance with Article 4(a) of the Regulations shall have the right to attend all meetings of the Management Board and to speak with the permission of the Chairman, but not the right to participate in decision-making.
- A.21 The Secretary appointed under Article 6 of the Regulations shall attend the meetings of the Management Board in an *ex officio* capacity, without the right to participate in decision-making.
- A.22 The Consulting Actuary or other advisers appointed under Article 7 of the

Regulations, or any external service provider, shall attend the meetings of the Management Board upon the invitation of the Chairman and Secretary.

- A.23 A decision shall be taken by the Management Board only when the conditions for quorum set out in Rule A.19 are satisfied. Such decisions shall normally be taken by consensus<sup>1</sup>.
- A.24 If the Management Board is unable to take a decision on a particular matter on two consecutive occasions owing to the lack of a quorum, a further meeting shall be convened within a period of 15 working days, at which meeting the matter shall be decided.
- A.25 In normal circumstances, the Management Board shall take its decisions at duly convened meetings. In exceptional circumstances, where it is not possible to convene a meeting of the Management Board in a reasonable time, the Chairman may agree that a proposal be distributed by the Secretary in writing by recorded delivery to all members and alternate members of the Management Board for their views in writing. Any decision relating to such a proposal may be taken only by consensus and shall be reported in detail at the next meeting of the Management Board.
- A.26 The meetings of the Management Board shall be held in private. The records and all correspondence of the Management Board shall be private and kept in the care of the Secretary.
- A.27 A report of each meeting of the Management Board shall be prepared under the responsibility of the Secretary for approval by the Management Board at its next meeting.

#### SECTION B – COMMITTEES OF THE MANAGEMENT BOARD

- B.1 The Management Board may decide to set up subsidiary bodies to deal with specific issues. The Chairman shall, in consultation with the Management Board, determine the composition of the subsidiary body which shall have no power to take decisions on behalf of the Management Board except where delegated by specific mandate and without prejudice to the provisions of Rule A.6. The rules of procedure to be observed by the subsidiary body shall be approved by the Management Board.

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<sup>1</sup> The Management Board shall be deemed to have decided by consensus on a matter submitted for its consideration if no member present at the meeting, or alternate member replacing a member at the meeting, when the decision is taken formally objects to the proposed decision.

## SECTION C – AUDITING OF ACCOUNTS

- C.1 Pursuant to Article 5(e) of the Regulations, an audit of the accounts of the Plan shall be made annually by the External Auditor, namely the External Auditor of the WTO. The provisions of Chapter XI (“External Audit”) and the Appendix (“Additional terms of reference governing external audit”) of the WTO Financial Regulations shall apply *mutatis mutandis* to the audit.

## SECTION D – MEDICAL ADVISER

- D.1 The Management Board shall appoint a Medical Adviser who shall assist the Management Board in all medical questions.
- D.2 The Medical Adviser shall prepare an annual report on the application of the medical standards prescribed by the Management Board under Article 37 of the Regulations and on medical information affecting the granting of benefits from the Plan.

**DISPUTE SETTLEMENT BODY**

## Appointment of Appellate Body members

*Statement made by the Chairman of the Dispute Settlement Body on  
12 March 2001*

*(WT/DSB/23)*

On 10 December this year the contracts of three of the present members of the Appellate Body will expire. The three members who will conclude their terms are: Claus-Dieter Ehlermann; Florentino Feliciano and Julio Lacarté-Muro.

You will recall that under Article 17.3 of the Dispute Settlement Understanding “... The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject-matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of the membership in the WTO...”.

Procedures for the selection of Appellate Body members are set out in the decision of the Dispute Settlement Body of 10 February 1995. The appointments are made by the DSB. A joint proposal is put to the DSB, after appropriate consultations, by a selection committee comprising the Director-General, the Chair of the DSB, the Chairs of the General, Goods, Services and TRIPs Councils. Suggestions for candidates can be forwarded by delegations to the Director-General.

With the termination of the three Appellate Body members' terms on 10 December, a time-frame needs to be decided upon for the commencement and conclusion of the selection process. Factors to be taken into account in this connection include the northern summer break in August, and also the fact that the WTO Ministerial in Qatar is to be held in November. It is probably fair to assume that, after the summer break, considerable time will be devoted by delegations to preparations for the Ministerial. In addition, were the decision of the DSB on the appointments to be made after the November Ministerial, there would be little more than three weeks before the expiry of the existing three contracts. This would put considerable pressure on signing of the new contracts, on the reasonable time necessary to familiarize the new members with Appellate Body procedures, and on allowing for a smooth transition.

On this basis, therefore, I would like to propose to you for consideration at our next regular DSB meeting that we adopt the following 15 week time-frame for the appointment of the three new members of the Appellate Body:

- Invitation to forward nominations to the Director-General from 17 April 2001, with the deadline for nominations closing on 15 June 2001.
- Start of the Selection Committee's work on 22 June 2001.
- Possible decision by the DSB on the appointees on approximately 27 July 2001.

This timetable would hopefully allow for a well-ordered appointment process allowing the Appellate Body to operate effectively and with a smooth changeover from 11 December 2001.

*Statement made by the Chairman of the Dispute Settlement Body on  
25 September 2001*

*(Abstract from WT/DSB/M/110)*

The Chairman recalled that a fax had been despatched to all Heads of Delegation on 19 September 2001 relating to the Appellate Body appointments. It was the responsibility of the Selection Committee to make a recommendation to the DSB on the appointment of the three new Appellate Body members who were to replace Messrs. Claus-Dieter Ehlermann, Florentino Feliciano and Julio Lacarte-Muró, whose terms of office would expire on 10 December 2001. He noted that the Selection Committee comprised of the Chairpersons of the General Council, the Councils for Trade in Goods, Services and TRIPS, the Director-General and the Chairperson of the DSB. All 12 candidates had been interviewed with a common set of questions relating to the Appellate Body. In addition, interested delegations

had been invited to share their views with the Selection Committee, and close to 60 delegations had done so either through oral dialogue or by sending their written views. There was no doubt in the view of the Selection Committee that all the 12 candidates were of excellent quality and most impressive. This meant that for the Selection Committee the task had been indeed challenging and all members of the Selection Committee, as had been mentioned in the fax to Heads of Delegation, wished to extend their full appreciation and gratitude to all the individual candidates who had presented themselves, and to express considerable appreciation to their respective governments. The Selection Committee had approached the matter with great care, consistent with the guidelines, rules and procedures laid down. After a full and extensive deliberation on all the candidates the Selection Committee had reached a firm consensus recommendation. As notified to delegations, the Selection Committee's recommendation was that the following persons be appointed to the Appellate Body: (i) Mr Luiz Olavo Baptista (Brazil); (ii) Mr John S. Lockhart (Australia); and (iii) Mr Giorgio Sacerdoti (European Communities). The Selection Committee shared a consensus view that these three outstanding individuals were highly qualified for appointment to the Appellate Body. In light of this consensus recommendation by the Selection Committee, he proposed that the DSB decide to appoint these three candidates to the Appellate Body for four years, as from a date to be fixed in the near future on which their contracts would commence. He proposed that this recommendation be agreed by the DSB and said that delegations would be free to make statements, if they wished, after the adoption of the recommendation.

The DSB so *agreed*.

[..]

#### Remuneration of Appellate Body members

*(Abstract from WT/DSB/M/101)*

The Chairman, speaking under "Other Business", recalled that in the decision approved by the DSB on 10 February 1995, the question of the conditions of employment of members of the Appellate Body had been covered and the 10 February 1995 text included a reference to determining whether a move to full-time employment was warranted. It seemed appropriate for this matter to be raised in the context of new appointments to the Appellate Body. If a decision on this happened to be made in the course of the appointment process, it could potentially be applied to new members and the option could be put to existing members of the Appellate Body. He recalled that, at the time of the last set of interviews for the Appellate Body, the point had been made to applicants that the positions were very close to full time. He had since obtained from the Secretariat figures indicating that, in practice, it had become very close to a full-time job. Time records shown that, based on an eight-hour working day, four of the Appellate Body members in the year 2000

had worked more than 100 per cent full time, based on a 12-month work year of 220 working days. These four figures ranged from 104 per cent to 117 per cent. This raised the question of whether the DSB should discuss moving Appellate Body members from their existing part-time employment situation – which involved retainers, travel expenses, per diems and communication costs, for example – to a full-time employment basis involving a salary and a pension scheme. He fully appreciated that there were other options which could also be considered, including the expansion of the size of the Appellate Body. Advice that he had received from the Secretariat suggested that enlargement of the Appellate Body would require an amendment to the DSU. However, he had been advised by the Secretariat that there was no barrier in Article 17.8 of the DSU to moving to full-time employment. It would seem that the language did not limit employment to part time. In the light of paragraph 11 of document WT/DSB/1 concerning the establishment of the Appellate Body, it would seem appropriate for this matter to be discussed initially in the DSB, any change to full-time terms would need to be decided by the General Council assuming the functions of the Ministerial Conference. Because of the budgetary consequences, there would be a need for a consequential recommendation from the Committee on Budget, Finance and Administration. He stressed that he was not suggesting that a decision on full-time employment, or on enlargement of the Appellate Body, should necessarily be driven by budget considerations. However, it might nonetheless be useful to convey the fact that, according to a careful 10-year simulation done by the Secretariat, the cost of moving to salary plus pension would be budget-neutral, compared with the existing part-time remuneration package. In fact it seemed that there could indeed be savings. In addition, the Secretariat had done a simulation looking at enlargement of the Appellate Body and its conclusion was that, although enlargement could make it possible for members of the Appellate Body to treat the job as a less than full-time occupation, increasing the number of members would in all cases add to the expense of the Appellate Body's operation. He was making this statement to provide at least some initial background to the question so as to enable delegations at a subsequent meeting of the DSB to air views on the subject. This should in turn allow Members to consider whether the full-time issue was one which might be resolved in parallel with the new appointments or whether it was a matter for longer-term consideration.

[...]

The DSB *took note* of the statements.

(*Abstract from WT/DSB/M/106*)

The Chairman said that he had taken over this subject from his predecessor as Chairman of the DSB and had continued the discussion on this matter with Members. He expressed appreciation for the Secretariat's factual contribution to the discussion. He said that he had engaged in a variety of informal consultations, including with the entire DSB membership and other groups who had expressed

particular interest in the subject. His sense was that there was no consensus on the subject of remuneration of Appellate Body members and, therefore, he had placed this item on the agenda of the present meeting. While no delegation was obliged to make a statement on this matter, any delegation wishing to express its views could do so at the present meeting.

[...]

The DSB *took note* of the statements and *agreed* to potentially revert to this matter at a later date.

#### Timing of notification of third-party interest in panel proceedings

*(Abstract from WT/DSB/M/101)*

The Chairman recalled that at the 1 March 2001 DSB meeting it had been agreed to include this item on the agenda of the present meeting in order to allow delegations to exchange views on the matter and to comment, if they so wished, on the Secretariat's advisory opinion contained in JOB(01)/25. He considered that it would be useful to have a discussion on this subject in light of some of the preliminary views already aired by Members on 1 March. He first wished to clarify how the timing issue had been addressed in the past. He was not assuming that Members wished to take any further binding general decisions about future practice, unless of course there were to be a consensus at the present meeting to adopt such decisions. He was not prejudging this point. He underlined that there were three different situations where the timing of notification of third-party interest was to be considered. First, and most fundamentally, a 10-day period for notifying third party interest was followed in the DSB as the general norm. That general practice had been endorsed at the 21 June 1994 Council meeting, and Article XVI:1 of the WTO Agreement noted that the WTO "... shall be guided by the decisions, procedures and customary practices followed by the Contracting Parties to GATT 1947 and the bodies established in the framework of GATT 1947". Second, this practice varied in the case of panels relating to Article 4 of the SCM Agreement and dealing solely with prohibited subsidies issues. The DSB asked that third-party rights be notified within five rather than 10 days. This halving of the time-frame appeared to have reflected the shortened time-frame under Article 4 of the SCM Agreement for dispute settlement proceedings. Third, there was the question of Article 21.5 compliance panels. This seemed to relate to whether, given the halving of the time period for Article 21.5 compliance panel proceedings, there should also be a five-day period for notification of third-party interests applied to all such cases. The Secretariat noted factually in this connection – in footnote 2 of the background paper – that the five-day period had not been followed where 21.5 panels involved issues other than Article 4 of the SCM Agreement.

[...]

The Chairman said that in the light of the discussion it would seem appropriate to suggest to apply a five-day notification period in all Article 21.5 compliance cases other than in the case of panels relating exclusively to prohibited subsidies matters. There had been no consistent practice applied in this regard. He therefore wished to make the following suggestions. First, the general 10-day notification period should remain as the norm. Second, with cases exclusively involving Article 4 of the SCM Agreement on prohibited subsidies, Members had accepted to modify the 10-day period to five days. Therefore, Members should continue to take this practice into account in future cases solely involving Article 4 of the SCM Agreement. He also wished to comment on the status of the note prepared by the Secretariat. It was clear that the note was not more than a background paper and had no formal status. That was why it had been circulated as a job number. The note provided background material which had been advanced by the Secretariat with the intention of putting it forward in a positive spirit and delegations did not have to agree with its content. The purpose of the note was to contribute to the dialogue and debate on this matter.

[..]

The DSB *took note* of the statements.

Article 5 of the Dispute Settlement Understanding  
Good offices, conciliation and mediation

*(Abstract from WT/DSB/M/106)*

The Deputy Director-General, Mr. A. Stoler, speaking under “Other Business”, said that the purpose of the DSU was to provide avenues for the settlement of disputes among Members. He noted that to date, nearly all disputes involving provisions of covered agreements had been settled through recourse to panel proceedings. Article 5 of the DSU provided for the use of good offices, conciliation and mediation, but this provision had not been used since the inception of the WTO. Because the Director-General was of the view that Members should be afforded every opportunity to settle their disputes through negotiations wherever possible, the Director-General wished to call Members’ attention to the fact that he was ready and willing to assist them by making Article 5 operational. Article 5.6 of the DSU provided that the Director-General might offer his services in regard to good offices, conciliation and mediation in his *ex officio* capacity; that was, within the powers inherent in his office. In order to facilitate the use of good offices, conciliation and mediation, the Director-General planned to issue a note to Members in the near future<sup>1</sup>. The note would explain the background of this provision of the DSU, and

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<sup>1</sup> See Article 5 of the Dispute Settlement Understanding, Communication from the Director-General, below.

would provide some specific procedures for Members to use in requesting his assistance. This note and the procedures were intended to help Members resolve their differences and would in no way limit their rights under the WTO Agreement. The purpose of the forthcoming note would be to make operational the Director General's specific role envisioned in Article 5.6 of the DSU. These specific procedures would not in any way limit the Director-General's availability to assist Members more generally whenever they requested his help. He said that the Director-General looked forward to working with delegations and hoped that the note would be useful to Members who might wish to avail themselves of the provisions of Article 5 of the DSU.

The DSB *took note* of the statement.

Article 5 of the Dispute Settlement Understanding  
Communication from the Director-General

(WT/DSB/25)

The Dispute Settlement Understanding is rightly considered a critical aspect of the international trading system. It provides an avenue for the Members to settle their disputes in a multilateral forum. Fortunately, many disputes brought to the WTO have been settled through negotiated mutually acceptable solutions. However, many have also required panel and Appellate Body proceedings.

I am of the view that Members should be afforded every opportunity to settle their disputes through negotiations whenever possible. Article 5 of the DSU provides for the use of good offices, conciliation and mediation, but this Article has not been used since the inception of the WTO. In light of that, I would like to call Members attention to the fact that I am ready and willing to assist them as is contemplated in Article 5.6. It is time to make this provision operational.

There are two attachments to this letter which will assist Members in this regard. Attachment A is a short background note and Attachment B provides some simple procedures for Members to use to request assistance.

I would like to emphasize that these procedures are purely to help Members resolve their differences and do not limit their treaty rights in any manner. I would also like to assure Members that these procedures do not in any way limit my availability to assist delegations more generally whenever they request my help.

I look forward to working with delegations and hope the note will prove useful to Members that might wish to avail themselves of the provisions of Article 5.

## ATTACHMENT A

### Background Note Regarding Requests for Good Offices, Conciliation and Mediation Pursuant to Article 5 of the DSU

Article 5 of the DSU, *Good Offices, Conciliation and Mediation*, has never been utilised. The predecessor procedures under the GATT were only rarely used.<sup>2</sup> Specifically, Article 5.6 provides that the Director-General may, acting in his *ex officio* capacity, offer good offices, conciliation or mediation to the parties to a dispute. This authority is considered inherent in the post even though not further detailed in law.<sup>3</sup> Thus, no new powers are being provided to the Director-General by this provision; rather, he may exercise his normal powers to assist Members in negotiating and resolving disagreements.<sup>4</sup>

#### Historical Background

The 1979 Understanding on dispute settlement provided for the use of good offices to settle disputes. Paragraph 8 of the Understanding stated as follows:

If a dispute is not resolved through consultations the contracting parties concerned may request an appropriate body or individual to use their good offices with a view to the conciliation of the outstanding differences between the parties. If the dispute is one in which a less-developed contracting party has brought a complaint against a developed contracting party, the less developed contracting party may request the good offices of the Director-General who, in carrying out his tasks, may consult with the Chairman of the CONTRACTING PARTIES and the Chairman of the Council.<sup>5</sup>

This provision was resorted to unsuccessfully by the United States and the European Communities in 1982 regarding their dispute over EC tariff treatment of citrus products. Also in 1982, the Ministerial Declaration stated as follows:

With reference to paragraph 8 of the Understanding, if a dispute is not

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<sup>2</sup> We do not include actions taken pursuant to the provisions of the Decision of 5 April 1966 (BISD 14S/18). These are now covered by Article 3.12 of the DSU and are taken in lieu of action under Articles 4, 5, 6, and 12 of the DSU. The 1966 Decision provides some specific procedural rules.

<sup>3</sup> *lack's Law Dictionary* provides the following definition of *ex officio*: "From office; by virtue of the office; without any other warrant or appointment than that resulting from the holding of a particular office. Powers may be exercised by an officer which are not specifically conferred upon him, but are necessarily implied in his office; these are *ex officio*. Thus, a judge has *ex officio* the powers of a conservator of the peace."

<sup>4</sup> This should be distinguished from the provision for formal arbitration provided for in Article 25 as an alternative to dispute settlement procedures.

<sup>5</sup> Understanding on Notification, Consultation, Dispute Settlement and Surveillance of 28 November 1979 (26S/210).

resolved through consultations, any party to a dispute may, with the agreement of the other party, seek the good offices of the Director-General or of an individual or group of persons nominated by the Director-General. This conciliatory process would be carried out expeditiously, and the Director-General would inform the Council of the outcome of the conciliatory process. . . .<sup>6</sup>

In 1987-1988 this procedure was used by Japan and the European Communities to assist in the resolution of their dispute concerning pricing and trading practices for copper in Japan. The Director-General nominated a personal representative to submit a report on the dispute. In addition, another outside expert was retained to assist in developing the factual basis for the report. The Director-General communicated to the Contracting Parties a report which included a short factual finding as well an “advisory opinion” to the effect that the European Communities and Japan should enter into mutually advantageous and reciprocal negotiations regarding certain Japanese tariffs as part of the Uruguay Round.<sup>7</sup>

In 1988 the Director-General reported that he had been requested to provide good offices by Canada and the European Communities. As requested by the parties, he provided an advisory opinion on a question that arose during Article XXIV negotiations regarding whether a tariff concession granted by Portugal to Canada included wet salted cod.<sup>8</sup>

Paragraph D of the Decision of 12 April 1989 on Improvements to the GATT Dispute Settlement Rules and Procedures (36S/61), provided further rules for requesting good offices. These new rules are quite similar to the current Article V of the DSU. Also, the reference to appointing a personal representative of the Director-General contained in the 1982 Decision was dropped. There is no record that this provision was utilized.

#### Current Proposal

The Director-General is of the view that Members should attempt to settle disputes as often as possible without resort to panel and Appellate Body procedures. In this regard, he wishes Members to be aware of his willingness to actively support attempts to settle their disputes through use of good offices, conciliation and mediation. Unlike the situation under the 1982 Decision, there is no explicit authorization for appointment of another person to conduct the proceeding. Instead the DSU provides that this is to be considered part of the Director-General’s *ex officio* powers.<sup>9</sup>

<sup>6</sup> Ministerial Declaration of 29 November 1982, Decision on Dispute Settlement (29S/13).

<sup>7</sup> Measures Affecting the World Market for Copper Ores and Concentrates, Note by the Director General (36S/199).

<sup>8</sup> C/M/225, p.2.

<sup>9</sup> Obviously, as these are *ex officio* powers to be used in this specific setting, it follows that the Director-General could offer his services to assist in settling disagreements between Members in other settings. The language of Article 5 should not be seen as limiting his role elsewhere.

Thus, it is appropriate that there be closer involvement of the Director-General as these are the powers specifically derived from his office. Therefore, it is contemplated that the proceedings will be handled directly by the Director-General or, with the concurrence of the parties, a designated Deputy Director-General. There will, necessarily, need to be provision for assistance from the Secretariat or, following consultation with the parties, other consultants retained for these purposes.

Another distinction arises in light of the considerably different situations existing with respect to dispute settlement under the GATT and the WTO. The negative consensus rule which provides certainty in access to the dispute settlement system as well as the introduction of an appellate process to ensure greater consistency have significantly changed the nature of the dispute settlement system. In light of these changes, the Director-General does not expect to provide “advisory opinions”, strictly speaking, although informal non-legal advice regarding the best path to finding a solution may be appropriate. Legal conclusions regarding a particular dispute are best left to the formal dispute settlement process. Rather, Article 5 proceedings should be seen more as efforts to assist in reaching a mutually agreed solution. It should also be recalled that Article 25 provides for Arbitration and the Director-General does not wish to encroach upon this provision of the DSU.

In light of the above, the Director-General proposes to provide some procedural steps for parties to take when requesting Article 5 proceedings and such steps would be based on the following considerations:

Requests under Article 5 may only be made after commencement of a formal dispute pursuant to a request for consultations in accordance with Article 4 of the DSU. The nature of the Article 5 request should be specified.<sup>10</sup>

The Director-General should meet with the parties as soon as possible after a request to: (a) listen to their views of the dispute; (b) assess the resources that he should devote to the process to help reach a settlement;<sup>11</sup> and (c) provide any preliminary assessments as might seem appropriate.

The Director-General may designate a Deputy Director-General to assist and/or act in his stead. Except for the limited case of good offices, the Director-General or designated Deputy Director-General shall be present at meetings held pursuant to the process. As this is an exercise of *ex officio* powers, further delegation beyond the Deputy Director-General level should be avoided.

The Director-General may provide Secretariat staff to support the process as he deems appropriate. Care will be taken to insulate such staff from involvement

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<sup>10</sup> Good offices, conciliation and mediation are seen as three different levels of involvement of the Director-General with good offices being overseeing of logistical and Secretariat support, conciliation involving direct participation in negotiations and mediation including the possibility of actually proposing solutions, if appropriate. Flexibility is to be maintained with regard to changing the role.

<sup>11</sup> This will, in any event, vary depending on the type of assistance requested.

in formal dispute settlement procedures in order to ensure the objectivity of the Secretariat.<sup>12</sup> To the extent necessary, outside consultants could be retained to assist in the process.

The Director-General and the Deputy Directors-General are not directly involved in on-going panel and Appellate Bodies cases so no further “firewalls” should be necessary in this regard.<sup>13</sup> With respect to other staff and consultants it would be necessary to require that they have no direct involvement in the dispute in question either before or after the Article 5 procedures. This should already be covered by the Rules of Conduct and no further action would be required.

#### ATTACHMENT B

##### Procedures for Requesting Action Pursuant to Article 5 of the DSU

Any time after a request for consultations is made pursuant to Article 4 of the DSU, any party to the dispute<sup>9</sup> may submit a request to the Director-General<sup>10</sup> for provision of good offices, conciliation or mediation.<sup>11</sup>

Such request shall identify whether the request is for good offices, conciliation and/or mediation. It is recognized that the Director-General’s role may change during the process if the parties agree. Such a request shall include any proposed issues for such proceedings, which may include any or all of the issues included in the request for consultations.

The Director-General shall meet with the parties within 5 days to discuss the issues raised. If all parties to the dispute agree, the Director-General shall proceed forward with an offer of good offices, conciliation and/or mediation. The Director-General shall arrange further meetings with the parties as appropriate.

As soon as possible, the Director-General shall identify to the parties any Secretariat staff or, after consultation with the parties, consultants that will assist him in carrying out the procedures.

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<sup>12</sup> As a general matter, staff from Divisions primarily responsible for dispute settlement will not be involved in Article 5 proceedings.

<sup>13</sup> Article 8.7 of the DSU provides that the Director-General shall determine the composition of the panel if requested by one of the parties. As a general matter, this role would not seem to involve a substantive conflict of interest and, in any event, is specifically contemplated by Articles 5.6 and 8.7 taken together.

<sup>9</sup> Article 1.1 of the DSU indicates that a “dispute” in this context arises upon initiation of consultations pursuant to Article 4.

<sup>10</sup> References to the Director-General may, upon concurrence of the parties, include a designated Deputy Director-General.

<sup>11</sup> Good offices shall consist primarily of providing physical support and Secretariat assistance to the parties. Conciliation shall consist of good offices plus the further involvement of the Director-General in promoting discussions and negotiations between the parties. Mediation shall consist of conciliation plus the possibility of the Director-General to propose solutions to the parties.

The process shall be terminated upon the request of any party to the dispute, except in a circumstance where there are two or more complainants and at least one complainant and the respondent wish to continue in the process. In such situations, the Director-General shall continue his efforts with respect to the remaining parties.

A process which has been terminated may be re-started at any time by the request of the parties. The considerations of the previous paragraph regarding multiple party situations shall apply *mutatis mutandis*.

*Ex parte* communications are permitted. All communications made during the process shall remain confidential and shall not be revealed at any time, including during any other procedures undertaken pursuant to the DSU.

There shall be no third party participation in the process unless the parties to the dispute mutually agree.

If a mutually agreed solution to a dispute is reached pursuant to an Article 5 process, the notification to the DSB and relevant Councils and Committees pursuant to Article 3.6 shall so indicate.

#### Amendment to Rule 5(2) of the Working Procedures for Appellate Review

*(Abstract from WT/DSB/M/107)*

The Chairman, speaking under “Other Business”, drew attention to the fax that he had sent to Heads of Delegations on 13 July 2001. This fax contained the text of a memorandum dated 10 July 2001, from the Chairman of the Appellate Body to the Director-General concerning an amendment of Rule 5(2) of the Working Procedures for Appellate Review. As indicated in that fax, Members wishing to express their views on the amendment set out in the memorandum from the Chairman of the Appellate Body, were invited to do so, in writing, by 31 July 2001. He would subsequently communicate these views to the Appellate Body.

The DSB *took note* of the statement.

## COUNCIL FOR TRADE IN GOODS

### DECISIONS ON EXTENSIONS OF THE TRANSITION PERIODS FOR THE ELIMINATION OF TRADE-RELATED INVESTMENT MEASURES NOTI- FIED UNDER ARTICLE 5.1 OF THE AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES

The following table lists the Decisions adopted in 2001 by the Council for Trade in Goods on extensions of transition periods for the elimination of TRIMs notified under Article 5.1 of the TRIMs Agreement.

Member	Type of request	Decision of	Expiry	Document
Argentina	Extensions of transition period	31 July 2001	31 December 2001	G/L/460
		5 November 2001	31 December 2003	G/L/497
Colombia	Extensions of transition period	31 July 2001	31 December 2001	G/L/461
		5 November 2001	31 December 2003	G/L/498
Malaysia	Extensions of transition period	31 July 2001	31 December 2001	G/L/462
		5 November 2001	31 December 2003	G/L/499
Mexico	Extensions of transition period	31 July 2001	31 December 2001	G/L/463
		5 November 2001	31 December 2003	G/L/500
Pakistan	Extension of transition period	31 July 2001	31 December 2001	G/L/466
		5 November 2001	31 December 2003	G/L/501
Philippines	Extensions of transition period	31 July 2001	31 December 2001	G/L/464
		5 November 2001	30 June 2003	G/L/502
Romania	Extensions of transition period	31 July 2001	31 December 2001	G/L/465
		5 November 2001	31 May 2003	G/L/503
Thailand	Extension of transition period	5 November 2001	31 December 2003	G/L/504

## COMMITTEE ON ANTI-DUMPING PRACTICES

### RECOMMENDATION CONCERNING INDICATIVE LIST OF ELEMENTS RELEVANT TO A DECISION ON A REQUEST FOR EXTENSION OF TIME TO PROVIDE INFORMATION

*Adopted by the Committee on Anti-Dumping Practices on 26 April 2001  
(G/ADP/7)*

The Committee notes the obligation to complete investigations within the time limits set out in Article 5.10 of the Agreement on Implementation of Article VI of GATT 1994 and the obligation to allow parties a full opportunity for the defense of their interests set out in Article 6.2 of that Agreement.

The Committee recognizes that investigating authorities gather informa-

tion necessary to make determinations in an anti-dumping investigation through questionnaires and other requests for information, and establish deadlines for the submission of replies to such questionnaires and requests, as well as for other aspects of investigations, in order to ensure the orderly conduct and timely completion of the investigation. The Committee is mindful that each Members' investigating authority has discretion to grant or deny a particular request for extension of a particular deadline, in light of the facts and circumstances of the investigation at hand.

The Committee considers that a non-binding, non-exhaustive indicative list of elements relevant to a decision whether to grant or deny such a request for extension of time to respond to a questionnaire or other request for information would be useful. In light of the foregoing, the Committee considers that the following elements may be considered by an investigating authority in deciding whether to grant or deny a request for extension of time to provide information:

1. the time available for the conduct of the investigation and making the necessary determinations, including the time periods established in national legislation, regulations, and schedules governing the conduct of the investigation at hand, and whether the information can be considered in a subsequent phase of the investigation;
2. previous extension(s) of time granted to the same party in the same investigation;
3. the ability of the party from whom information is sought to respond to the request, in light of the nature and extent of the information requested, including the party's available resources, personnel, and technological capability;
4. any unusual burdens that will be incurred by the party being asked for information in searching for, identifying and/or compiling the information requested;
5. whether the party requesting the extension has provided a partial response to the request, or has previously provided information requested in the same investigation, although the absence of a partial response alone is not an appropriate basis for denial of a request;
6. any unforeseen circumstances affecting the ability of the party to provide the information requested within the time limit established;
7. whether other parties have been granted extensions of time for similar reasons during the same phase of the same investigation.

The decision whether to grant or deny a request for an extension of time to provide information should be made promptly, and if denied, the party making such a request should be informed of the reason for its denial.

### COMMITTEE ON CUSTOMS VALUATION

#### DECISIONS ON EXTENSIONS OF DELAY PERIODS AS WELL AS ON MINIMUM VALUES ACCORDING TO PARAGRAPHS 1 AND 2, ANNEX III OF THE AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFF AND TRADE 1994

The following table lists the Decisions adopted in 2001 by the Committee on Customs Valuation on extensions of delay periods according to paragraph 1, Annex III of the Agreement on Implementation of Article VII of the General Agreement on Tariff and Trade in 1994, as well as on minimum values according to paragraph 2, Annex III of the Agreement on Implementation of Article VII of the General Agreement on Tariff and Trade 1994.

Member	Type of request	Decision of	Expiry	Document
Guatemala	Maintenance of a system of official minimum values	5 December 2001	21 November 2002 21 May 2003 21 November 2004 <sup>1</sup>	G/VAL/43
Jamaica	Maintenance of a system of official minimum values	9 March 2001	10 March 2003	G/VAL/40
Sri Lanka	Extension of the delay period in the application of the Agreement on Implementation of Article VII of GATT 1994	23 November 2001	30 April 2002	G/VAL/42

<sup>1</sup> Different expiry dates according to goods as indicated in the Decision.

**COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES**

**DECISION ON THE IMPLEMENTATION OF ARTICLE 4  
OF THE AGREEMENT ON THE APPLICATION OF SANITARY  
AND PHYTOSANITARY MEASURES**

*Adopted by the Committee on Sanitary and Phytosanitary Measures on  
24 October 2001  
(G/SPS/19)*

The Committee on Sanitary and Phytosanitary Measures,

*Having regard* to paragraph 1 of Article 12 of the Agreement on the Application of Sanitary and Phytosanitary Measures;

*In response* to the request from the General Council that the Committee examine the concerns of developing country Members regarding the equivalence of sanitary or phytosanitary measures and develop concrete options as to how to deal with them;

*Reaffirming* the right of Members to establish sanitary and phytosanitary measures necessary to ensure the protection of human, animal and plant life or health and the protection of their territory from other damage caused by the entry, establishment or spread of pests, in accordance with the Agreement on the Application of Sanitary and Phytosanitary Measures;

*Desiring* to make operational the provisions of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures;

*Noting* that equivalence of sanitary or phytosanitary measures does not require duplication or sameness of measures, but the acceptance of alternative measures that meet an importing Member's appropriate level of sanitary or phytosanitary protection;

*Recognizing* that equivalence can be applied between all Members, irrespective of their level of development;

*Noting* that Members have faced difficulties applying the provisions of Article 4 recognizing the equivalence of sanitary and phytosanitary measures;

*Taking into account* the specific concerns raised by developing country Members, and particularly the least developed among them, regarding their difficulties in having the equivalence of their sanitary or phytosanitary measures accepted by

importing Members;

*Recognizing* the importance of minimizing possible negative effects of sanitary or phytosanitary measures on trade and of improving market access opportunities, particularly for products of interest to developing country Members;

*Recognizing* that transparency, exchange of information and confidence-building by both the importing and exporting Member are essential to achieving an agreement on equivalence;

*Recognizing* that there may be other less resource-intensive and time-consuming means for Members to enhance trade opportunities;

*Decides as follows:*

1. Equivalence can be accepted for a specific measure or measures related to a certain product or categories of products, or on a systems-wide basis. Members shall, when so requested, seek to accept the equivalence of a measure related to a certain product or category of products. An evaluation of the product-related infrastructure and programmes within which the measure is being applied may also be necessary.<sup>1</sup> Members may further, where necessary and appropriate, seek more comprehensive and broad-ranging agreements on equivalence. The acceptance of the equivalence of a measure related to a single product may not require the development of a systems-wide equivalence agreement.

2. In the context of facilitating the implementation of Article 4, on request of the exporting Member, the importing Member should explain the objective and rationale of the sanitary or phytosanitary measure and identify clearly the risks that the relevant measure is intended to address. The importing Member should indicate the appropriate level of protection which its sanitary or phytosanitary measure is designed to achieve.<sup>2</sup> The explanation should be accompanied by a copy of the risk assessment on which the sanitary or phytosanitary measure is based or a technical justification based on a relevant international standard, guideline or recommendation. The importing Member should also provide any additional information which may assist the exporting Member to provide an objective demonstration of the equivalence of its own measure.

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<sup>1</sup> Product-related infrastructure and programmes is in reference to testing, inspection and other relevant requirements specific to product safety.

<sup>2</sup> In doing so, Members should take into account the *Guidelines to Further the Practical Implementation of Article 5.5* adopted by the Committee on Sanitary and Phytosanitary Measures at its meeting of 21-22 June 2000 (document G/SPS/15, dated 18 July 2000).

3. An importing Member shall respond in a timely manner to any request from an exporting Member for consideration of the equivalence of its measures, normally within a six-month period of time.

4. The exporting Member shall provide appropriate science-based and technical information to support its objective demonstration that its measure achieves the appropriate level of protection identified by the importing Member. This information may include, *inter alia*, reference to relevant international standards, or to relevant risk assessments undertaken by the importing Member or by another Member. In addition, the exporting Member shall provide reasonable access, upon request, to the importing Member for inspection, testing and other relevant procedures for the recognition of equivalence.

5. The importing Member should accelerate its procedure for determining equivalence in respect of those products which it has historically imported from the exporting Member.

6. The consideration by an importing Member of a request by an exporting Member for recognition of the equivalence of its measures with regard to a specific product shall not be in itself a reason to disrupt or suspend on-going imports from that Member of the product in question.

7. When considering a request for recognition of equivalence, the importing Member should analyze the science-based and technical information provided by the exporting Member on its sanitary or phytosanitary measures with a view to determining whether these measures achieve the level of protection provided by its own relevant sanitary or phytosanitary measures.

8. In accordance with Article 9 of the Agreement on the Application of Sanitary and Phytosanitary Measures, a Member shall give full consideration to requests by another Member, especially a developing country Member, for appropriate technical assistance to facilitate the implementation of Article 4. This assistance may, *inter alia*, be to help an exporting Member identify and implement measures which can be recognized as equivalent, or to otherwise enhance market access opportunities. Such assistance may also be with regard to the development and provision of the appropriate science-based and technical information referred to in paragraph 4, above.

9. Members should actively participate in the ongoing work in the Codex Alimentarius Commission on the issue of equivalence, and in any work related to equivalence undertaken by the Office International des Epizooties and in the framework of the International Plant Protection Convention. Bearing in mind the difficulties faced by developing country Members to participate in the work

of these bodies, Members should consider providing assistance to facilitate their participation.

10. The Committee on Sanitary and Phytosanitary Measures recognizes the urgency for the development of guidance on the judgement of equivalence and shall formally encourage the Codex Alimentarius Commission to complete its work with regard to equivalence as expeditiously as possible. The Committee on Sanitary and Phytosanitary Measures shall also formally encourage the Office International des Epizooties and the Interim Commission on Phytosanitary Measures to elaborate guidelines, as appropriate, on equivalence of sanitary and phytosanitary measures and equivalence agreements in the animal health and plant protection areas. The Codex Alimentarius Commission, the Office International des Epizooties and the Interim Commission on Phytosanitary Measures shall be invited to keep the Committee on Sanitary and Phytosanitary Measures regularly informed regarding their activities relating to equivalence.

11. The Committee on Sanitary and Phytosanitary Measures shall revise its recommended notification procedures to provide for the notification of the conclusion of agreements between Members which recognize the equivalence of sanitary and phytosanitary measures.<sup>3</sup> Furthermore, the procedures shall reinforce the existing obligation in paragraph 3(d) of Annex B of the Agreement on the Application of Sanitary and Phytosanitary Measures for national Enquiry Points to provide information, upon request, on the participation in any bilateral or multilateral equivalence agreements of the Member concerned.

12. Members should regularly provide to the Committee on Sanitary and Phytosanitary Measures information on their experience regarding the implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures. In particular, Members are encouraged to inform the Committee on Sanitary and Phytosanitary Measures of the successful conclusion of any bilateral equivalence agreement or arrangement. The Committee on Sanitary and Phytosanitary Measures shall consider establishing a standing agenda item for its regular meetings for this purpose.

13. The Committee on Sanitary and Phytosanitary Measures shall develop a specific programme to further the implementation of Article 4, with particular consideration of the problems encountered by developing country Members. In this respect, the Committee on Sanitary and Phytosanitary Measures shall review this decision in light of the relevant work undertaken by the Codex Alimentarius Commission, the Office International des Epizooties and the Interim Commission

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<sup>3</sup> G/SPS/7/Rev.1.

on Phytosanitary Measures, as well as the experience of Members.

14. The Committee on Sanitary and Phytosanitary Measures requests that the General Council take note of this decision.

## **COMMITTEE ON SUBSIDIES AND COUNTERVAILING MEASURES**

### **PROCEDURES FOR EXTENSIONS UNDER ARTICLE 27.4 FOR CERTAIN DEVELOPING COUNTRY MEMBERS**

*Approved by Ministers at Doha on 14 November 2001*

*(G/SCM/39)*

The Committee on Subsidies and Countervailing Measures (“SCM Committee”) shall follow the procedures set forth below in respect of extensions of the transition period under Article 27.4 of the Agreement on Subsidies and Countervailing Measures (“SCM Agreement”) for certain developing country Members. The programmes to which these procedures shall apply are those meeting the criteria set forth in 2.

1. Mechanism for extension
  - (a) A Member that maintains programmes meeting the criteria set forth in 2 and that wishes to make use of these procedures, shall initiate Article 27.4 consultations with the Committee in respect of an extension for its eligible subsidy programmes as referred to in 2, on the basis of documentation to be submitted to the Committee not later than 31 December 2001. This documentation shall consist of (i) an identification by the Member of those programmes for which it is seeking an extension under SCM Article 27.4 pursuant to these procedures; and (ii) a statement that the extension is necessary in the light of the Member’s economic, financial and development needs.
  - (b) Not later than 28 February 2002, the Member seeking an extension shall submit to the SCM Committee an initial notification as referred to in 3(a) providing detailed information about the programmes for which extension is being sought.
  - (c) Following receipt of the notifications referred to in 1(b), the SCM Committee shall consider those notifications, with an opportunity

for Members to seek clarification of the notified information and/or additional detail with a view to understanding the nature and operation of the notified programmes, and their scope, coverage and intensity of benefits, as referred to in 3(b). The purpose of this consideration by the SCM Committee shall be to verify that the programmes are of the type eligible under these procedures as referred to in 2, and that the transparency requirement referred to in 3(a) and 3(b) is fulfilled. Not later than 15 December 2002, Members of the SCM Committee shall grant extensions for calendar year 2003 for those programmes notified pursuant to these procedures, provided that the notified programmes meet the eligibility criteria in 2 and that the transparency requirement is fulfilled. The notified information on the basis of which the extensions are granted, including information provided in response to requests from Members as referred to above, shall form the frame of reference for the annual reviews of the extensions as referred to in 1(d) and 1(e).

- (d) As provided for in SCM Article 27.4, the extensions granted by the SCM Committee pursuant to these procedures shall be subject to annual review in the form of consultations between the Committee and the Members receiving the extensions. These annual reviews shall be conducted on the basis of updating notifications from the Members in question, as referred to in 3(a) and 3(b). The purpose of the annual reviews shall be to ensure that the transparency and standstill requirements as set forth in 3 and 4 are being fulfilled.
- (e) Through the end of calendar year 2007, subject to annual reviews during that period to verify that the transparency and standstill requirements set forth in 3 and 4 are being fulfilled, Members of the Committee shall agree to continue the extensions granted pursuant to 1(c).
- (f) During the last year of the period referred to in 1(e), a Member that has received an extension under these procedures shall have the possibility to seek a continuation of the extension pursuant to SCM Article 27.4, for the programmes in question. The Committee shall consider any such requests at that year's annual review, on the basis of the provisions of SCM Article 27.4, i.e., outside the framework of these procedures.
- (g) If a continuation of the extension pursuant to 1(f) is either not

requested or not granted, the Member in question shall have the final two years referred to in the last sentence of SCM Article 27.4.

2. Eligible programmes

Programmes eligible for extension pursuant to these procedures, and for which Members shall therefore grant extensions for calendar year 2003 as referred to in 1(c), are export subsidy programmes (i) in the form of full or partial exemptions from import duties and internal taxes, (ii) which were in existence not later than 1 September 2001, and (iii) which are provided by developing country Members (iv) whose share of world merchandise export trade was not greater than 0.10 per cent<sup>1</sup>, (v) whose total Gross National Income (“GNI”) for the year 2000 as published by the World Bank was at or below US \$ 20 billion,<sup>2</sup> (vi) and who are otherwise eligible to request an extension pursuant to Article 27.4,<sup>3</sup> and (vii) in respect of which these procedures are followed.

3. Transparency

- (a) The initial notification referred to in 1(b), and the updating notifications referred to in 1(d), shall follow the agreed format for subsidy notifications under SCM Article 25 (found in G/SCM/6).
- (b) During the SCM Committee’s consideration/review of the notifications referred to in 1(c) and 1(d), notifying Members can be requested by other Members to provide additional detail and clarification, with a view to confirming that the programmes meet the criteria set forth in 2, and to establishing transparency in respect of the scope, coverage and intensity of benefits (the “favourability”) of the programmes in question.<sup>4</sup> Any information provided in response to such requests shall be considered part of the notified information.

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<sup>1</sup> According to the calculations performed by the WTO Secretariat as reflected in Appendix 3 to the Report of the Chairman (G/SCM/38).

<sup>2</sup> The SCM Committee shall consider other appropriate data sources in respect of Members for whom the World Bank does not publish total GNI data.

<sup>3</sup> The fact that a Member is listed in Annex VII(b) shall not be deemed to make that Member otherwise ineligible to request an extension pursuant to Article 27.4.

<sup>4</sup> The scope, coverage and intensity of the programmes in question will be determined on the basis of the legal instruments underlying the programmes.

4. Standstill

- (c) The programmes for which an extension is granted shall not be modified during the period of extension referred to in 1(e) so as to make them more favourable than they were as at 1 September 2001. The continuation of an expiring programme without modification shall not be deemed to violate standstill.
- (d) The scope, coverage and intensity of benefits (the “favourability”) of the programmes as at 1 September 2001 shall be specified in the initial notification referred to in 1(b), and standstill as referred to in 4(a) shall be verified on the basis of the notified information referred to in 1(d) and 3(b).

5. Product graduation on the basis of export competitiveness

Notwithstanding these procedures, Articles 27.5 and 27.6 shall apply in respect of export subsidies for which extensions are granted pursuant to these procedures.

6. Members listed in Annex VII(b)

- (e) A Member listed in Annex VII(b) whose GNP per capita has reached the level provided for in that Annex and whose programme(s) meet the criteria in 2 shall be eligible to make use of these procedures.
- (f) A Member listed in Annex VII(b) whose GNP per capita has not reached the level provided for in that Annex and whose programme(s) meet the criteria in 2 may reserve its right to make use of these procedures, as referred to in 6(c), by submitting the documentation referred to in 1(a) not later than 31 December 2001.
- (g) If the per capita GNP of a Member referred to in 6(b) reaches the level provided for in that Annex during the period referred to in 1(e), that Member shall be able to make use of these procedures as from the date at which its per capita GNP reaches that level and for the remainder of the period referred to in 1(e), as well as for any additional periods as referred to in 1(f) and 1(g), subject to the remaining provisions of these procedures.

- (h) For a Member referred to in 6(b), the effective date for the standstill requirement referred to in 4(a) shall be the year in which that Member's GNP per capita reaches the level provided for in Annex VII(b).

7. Final provisions

- (i) The decision by Ministers, these procedures, and the SCM Article 27.4 extensions granted thereunder, are without prejudice to any requests for extensions under Article 27.4 that are not made pursuant to these procedures.
- (j) The decision by Ministers, these procedures, and the SCM Article 27.4 extensions granted thereunder, shall not affect any other existing rights and obligations under SCM Article 27.4 or under other provisions of the SCM Agreement.
- (k) The criteria set forth in these procedures are solely and strictly for the purpose of determining whether Members are eligible to invoke these procedures. Members of the Committee agree that these criteria have no precedential value or relevance, direct or indirect, for any other purpose.

## **COMMITTEE ON BUDGET, FINANCE AND ADMINISTRATION**

*Abstract of the Report adopted by the General Council on 18 December 2001  
(WT/BFA/56)*

The Director-General is authorized to make budgetary expenditures of the World Trade Organization for 2002 (CHF 140,313,850), and the permanent costs for the Appellate Body and its Secretariat for 2002 (CHF 2,816,000) amounting to a total of CHF 143,129,850.

This expenditure is to be financed by contributions amounting to CHF 142,100,000, and by miscellaneous income estimated at CHF 1,029,850.

The contributions of the Members shall be assessed in accordance with the attached scale of contributions. Contributions from Members in respect of the 2002 budget are considered as due and payable in full as at 1 January 2002.

<b>SCALE OF CONTRIBUTION FOR 2002</b> <i>(Minimum contribution of 0.015%)</i>		
<b>MEMBERS</b>	<b>%</b>	<b>CHF</b>
Albania	0.015	21,315
Angola	0.057	80,997
Antigua and Barbuda	0.015	21,315
Argentina	0.510	724,710
Australia	1.218	1,730,778
Austria	1.438	2,043,398
Bahrain	0.068	96,628
Bangladesh	0.105	149,205
Barbados	0.020	28,420
Belgium	2.683	3,812,543
Belize	0.015	21,315
Benin	0.015	21,315
Bolivia	0.026	36,946
Botswana	0.041	58,261
Brazil	0.988	1,403,948
Brunei Darussalam	0.044	62,524
Bulgaria	0.094	133,574
Burkina Faso	0.015	21,315
Burundi	0.015	21,315
Cameroon	0.027	38,367
Canada	3.914	5,561,794
Central African Republic	0.015	21,315
Chad	0.015	21,315
Chile	0.311	441,931
China, People's Rep. of	2.973	4,224,633
Colombia	0.233	331,093
Congo	0.024	34,104
Costa Rica	0.104	147,784
Côte d'Ivoire	0.068	96,628
Croatia	0.147	208,887
Cuba	0.064	90,944
Cyprus	0.064	90,944
Czech Republic	0.511	726,131
Democratic Republic of the Congo	0.024	34,104
Denmark	0.948	1,347,108
Djibouti	0.015	21,315

<b>SCALE OF CONTRIBUTION FOR 2002</b> <i>(Minimum contribution of 0.015%)</i>		
<b>MEMBERS</b>	<b>%</b>	<b>CHF</b>
Dominica	0.015	21,315
Dominican Republic	0.125	177,625
Ecuador	0.085	120,785
Egypt	0.266	377,986
El Salvador	0.058	82,418
Estonia	0.063	89,523
European Communities	0.000	0
Fiji	0.016	22,736
Finland	0.672	954,912
France	5.541	7,873,761
Gabon	0.034	48,314
Gambia	0.015	21,315
Georgia	0.015	21,315
Germany	9.291	13,202,511
Ghana	0.042	59,682
Greece	0.311	441,931
Grenada	0.015	21,315
Guatemala	0.063	89,523
Guinea	0.015	21,315
Guinea-Bissau	0.015	21,315
Guyana	0.015	21,315
Haiti	0.015	21,315
Honduras	0.039	55,419
Hong Kong, China	3.345	4,753,245
Hungary	0.413	586,873
Iceland	0.045	63,945
India	0.830	1,179,430
Indonesia	0.831	1,180,851
Ireland	1.141	1,621,361
Israel	0.548	778,708
Italy	4.407	6,262,347
Jamaica	0.057	80,997
Japan	6.629	9,419,809
Jordan	0.066	93,786
Kenya	0.047	66,787
Korea, Republic of	2.381	3,383,401

<b>SCALE OF CONTRIBUTION FOR 2002</b> <i>(Minimum contribution of 0.015%)</i>		
<b>MEMBERS</b>	<b>%</b>	<b>CHF</b>
Kuwait	0.194	275,674
Kyrgyz Republic	0.015	21,315
Latvia	0.051	72,471
Lesotho	0.015	21,315
Liechtenstein	0.027	38,367
Lithuania	0.083	117,943
Luxembourg	0.297	422,037
Macao, China	0.062	88,102
Madagascar	0.015	21,315
Malawi	0.015	21,315
Malaysia	1.313	1,865,773
Maldives	0.015	21,315
Mali	0.015	21,315
Malta	0.048	68,208
Mauritania	0.015	21,315
Mauritius	0.041	58,261
Mexico	2.106	2,992,626
Moldova	0.015	21,315
Mongolia	0.015	21,315
Morocco	0.160	227,360
Mozambique	0.015	21,315
Myanmar, Union of	0.032	45,472
Namibia	0.029	41,209
Netherlands, Kingdom of the	3.625	5,151,125
New Zealand	0.266	377,986
Nicaragua	0.020	28,420
Niger	0.015	21,315
Nigeria	0.204	289,884
Norway	0.859	1,220,639
Oman	0.099	140,679
Pakistan	0.185	262,885
Panama	0.124	176,204
Papua New Guinea	0.033	46,893
Paraguay	0.064	90,944
Peru	0.137	194,677
Philippines	0.628	892,388

<b>SCALE OF CONTRIBUTION FOR 2002</b> <i>(Minimum contribution of 0.015%)</i>		
<b>MEMBERS</b>	<b>%</b>	<b>CHF</b>
Poland	0.703	998,963
Portugal	0.609	865,389
Qatar	0.076	107,996
Romania	0.170	241,570
Rwanda	0.015	21,315
Saint Lucia	0.015	21,315
Senegal	0.023	32,683
Sierra Leone	0.015	21,315
Singapore	2.080	2,955,680
Slovak Republic	0.205	291,305
Slovenia	0.169	240,149
Solomon Islands	0.015	21,315
South Africa	0.521	740,341
Spain	2.468	3,507,028
Sri Lanka	0.095	134,995
St. Kitts and Nevis	0.015	21,315
St. Vincent and the Grenadines	0.015	21,315
Suriname	0.015	21,315
Swaziland	0.018	25,578
Sweden	1.497	2,127,237
Switzerland	1.536	2,182,656
Tanzania	0.025	35,525
Thailand	0.999	1,419,579
Togo	0.015	21,315
Trinidad and Tobago	0.045	63,945
Tunisia	0.134	190,414
Turkey	0.792	1,125,432
Uganda	0.020	28,420
United Arab Emirates	0.519	737,499
United Kingdom of Great Britain and Northern Ireland	5.862	8,329,902
United States of America	15.723	22,342,383
Uruguay	0.064	90,944
Venezuela	0.315	447,615
Zambia	0.021	29,841
Zimbabwe	0.034	48,314
Total	100.00	142,100,000

**COMMITTEE ON TRADE AND DEVELOPMENT**  
**Sub-Committee on Least-Developed Countries**

**PILOT SCHEME FOR INTEGRATED FRAMEWORK**

*Adopted by the Sub-Committee on Least-Developed Countries on  
12 February 2001  
(WT/LDC/SWG/IF/13)*

The Sub-Committee on Least-Developed Countries at its 23<sup>rd</sup> Session on 12 February 2001, adopted the attached proposal for an Integrated Framework Pilot Scheme. This is a concrete step in the implementation of the decision by the Heads of the six Core Agencies,<sup>1</sup> in the Joint Statement on 6 July 2000,<sup>2</sup> to improve the functioning of the Framework.

Preamble:

*Recognizing* the importance of trade as a key component in fostering development and poverty reduction in Least-Developed Countries (LDCs);

*Recognizing* also the need for trade to be addressed in a coherent manner in countries' development strategies;

*Recalling* that the Integrated Framework (IF), as stipulated in the recommendations of the High Level Meeting in 1997, aims to ensure that trade-related technical assistance (TRTA) and trade-related capacity building (TRCB) activities are demand-driven, thus enhancing ownership by LDCs;

*Recalling* further that the IF aims to enable each agency involved to increase efficiency and effectiveness in the delivery of TRTA and TRCB to LDCs, in the light of information about the specific needs of each country and about current and projected activities being undertaken by other agencies in the area of TRTA and TRCB;

*Recalling* the decision of the Heads of Agency in the Joint Statement on 6 July 2000, following the mandated review of the Integrated Framework;

*Emphasizing* the importance of the IF, *inter alia*, as a concrete contribution to the Third United Nations Conference on the LDCs to be held in Brussels in May 2001.

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<sup>1</sup> International Monetary Fund (IMF), International Trade Center (ITC), United Nations Conference on Trade and Development (UNCTAD), United Nations Development Programme (UNDP), International Bank for Reconstruction and Development (World Bank), and the World Trade Organization (WTO).

<sup>2</sup> WT/LDC/SWG/IF/2, 12 July 2000.

## I. A PILOT SCHEME

1. As a first element of the IF reform, it is recommended to proceed with a pilot scheme. The pilot scheme will assist countries that have demonstrated a clear choice and commitment to mainstream a “trade integration chapter” as part of their country development strategies such as Poverty Reduction Strategy Papers (PRSPs) or United Nations Development Assistance Framework (UNDAF).

2. Complementary to the pilot scheme, bilateral donors are encouraged to identify LDCs in which they have a strong field presence and an existing program of trade-related technical assistance, and that have committed to integrate trade into their overall development strategies. In such cases, bilateral donors will coordinate their TRTA and TRCB activities as set out in paragraph 4.

## II. MAINSTREAMING TRADE

3. For the effectiveness of the IF, it is essential that trade is mainstreamed into each LDC’s overall development strategy. This will ensure that thereafter the delivery of TRTA and TRCB is fully supportive of the development objectives of the partner country. Support will be given to enable the LDC, fully assisted and supported by the IF agencies with field offices in the concerned LDC, to devise a trade integration chapter in order to strengthen participation in the global economy. This trade integration chapter would encompass a number of issues, including establishing the link between trade and development on the one hand and poverty reduction on the other; the impact of trade reform on economic growth and development in the country; market access issues; and an assessment of the trade-related capacity requirements of LDCs. The trade integration chapter will include the identification and prioritisation of trade-related requirements from infrastructure to human resources within a coherent policy framework.

## III. PROVISION OF TRTA AND TRCB

4. A key objective for the strengthened IF will be to ensure coordination and collaboration amongst all partners, bilateral and multilateral, involved in TRTA and TRCB activities, on-going or being envisaged. Beneficiary LDCs would elaborate an appropriately prioritised and sequenced programme of assistance, and in so doing, may request support from agencies or bilateral donors, if needed. This program of assistance would be coherent with and complementary to the development strategy of the country concerned. The programme, including infrastructural requirements, would be actively considered at World Bank Consultative Group and UNDP Round Table meetings. The programs and projects ensuing from the Consultative Group and Round Table meetings would be financed and implemented by relevant multilateral and regional inter-governmental organisations, bilateral development

partners and the private sector, according to their comparative advantage.

#### IV. ESTABLISHMENT OF A TRUST FUND

5. It is recommended to seek donor support for the establishment and voluntary funding of an IF Trust Fund, while fully taking into account bilateral contributions to the IF and its Pilot Scheme. For details, see Section VII (Annex on the IF Trust Fund)

#### V. IF MANAGEMENT

6. It is proposed to establish an IF Steering Committee, and an Inter-Agency Working Group (also performing Trust Fund functions).

7. The IF Steering Committee will meet as necessary, but at least once a year. It will be composed of 6 LDC representatives<sup>3</sup>, the 6 core agencies, and donors. In instances where the IF Steering Committee discusses or provides guidance on the allocation of financial resources, be it bilateral funds or IF Trust Fund, decision-making will be restricted to the contributing donors of those respective funds. LDCs in the pilot phase, as well as other interested countries, will have observer status. The IF Steering Committee will be chaired by a donor, with an LDC as vice-chair, at high level, in the initial phase. These positions will be subsequently alternated.

8. The responsibilities of the IF Steering Committee will include:

- setting policy guidelines, coordination, and providing oversight; and
- assessing progress of the IF.

9. The IAWG/IFTF will comprise the 6 core agencies, the DAC/OECD Secretariat, and special representatives (of donors and LDCs) in the pilot phase. The IAWG/IFTF will decide on its own rules of procedure. However, the responsibilities will include:

- exchange of information;
- coordination of events;
- preparation of work program and budget;

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<sup>3</sup> Pursuant to the decision by LDCs taken at the meeting on 10 January 2001, the LDC representatives to the IF Steering Committee will rotate annually, with the exception of Bangladesh, as global LDC Coordinator, and the rotating LDC Coordinator.

- sequencing of activities;
- selection of experts;
- resource management of the IF Trust Fund when the IAWG is performing IFTF functions; and
- monitoring and evaluation of field level operations.

10. The diagrammatic representation of the Governance structure is attached as annex. The structure will be reviewed by contributing donors, LDCs, and agencies at the completion of the pilot scheme.

#### VI. ASSESSMENT OF PROGRESS

11. As the pilot scheme advances, progress will be monitored and reviewed on a country-by-country basis. Periodic progress reports will be prepared by the IAWG to the IF Steering Committee. In the light of the lessons learned from the Pilot Scheme, consideration shall be given, no later than the WTO Fourth Ministerial Conference, to extend the initiative to other LDCs.

ANNEX

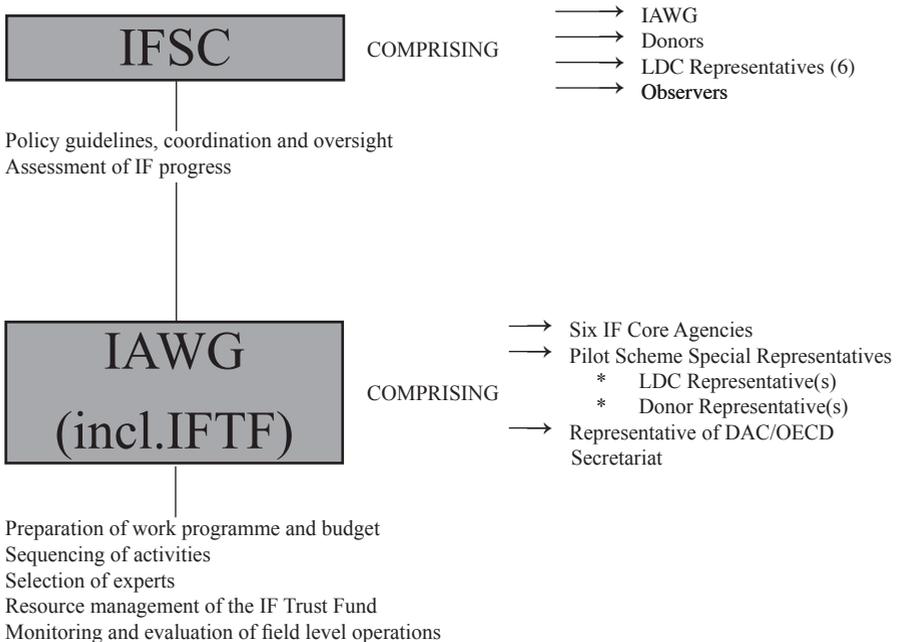
VII. THE IF TRUST FUND

12. Trust Fund resources would primarily be dedicated to assisting LDCs in developing the necessary analytical and policy framework for mainstreaming trade into national development strategies, and for developing costed proposals for programs and projects.

13. In limited and exceptional cases, Trust Fund resources could be deployed for selected projects. The TRTA and TRCB, supported with the IF Trust Fund resources, would only relate to human capacity building, and would be properly integrated with other relevant projects identified within the programme of assistance elaborated by the IF.

14. There would be two windows operating simultaneously:

- Window I: un-earmarked contributions; and
- Window II: earmarked contributions.



## COUNCIL FOR TRADE IN SERVICES

### GUIDELINES FOR THE SCHEDULING OF SPECIFIC COMMITMENTS UNDER THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

*Adopted by the Council for Trade in Services on 23 March 2001  
(S/L/92)*

#### Explanatory note<sup>1</sup>

#### INTRODUCTION

1. This note is intended to assist in the preparation of offers, requests and national schedules of specific commitments. Its objective is to explain, in a concise manner, how specific commitments should be set out in schedules in order to achieve precision and clarity. It is based on the view that a common format for schedules as well as standardization of the terms used in schedules are necessary to ensure comparable and unambiguous commitments. The note cannot answer every question that might occur to persons responsible for scheduling specific commitments; it does attempt to answer those questions which are most likely to arise. The answers should not be considered as a legal interpretation of the GATS.

2. The GATS contains two sorts of provisions. The first are general obligations, some of which apply to all service sectors (e.g. MFN, transparency) and some only to scheduled specific commitments (e.g. Article XI: Payments and Transfers). The second are specific commitments which are negotiated undertakings particular to each GATS signatory. Specific commitments, upon the conclusion of negotiations, are to be recorded in national schedules which will be attached to, and form an integral part of, the GATS. By virtue of Article XX, every signatory must attach to the GATS its national schedule. This note addresses two main questions: what items should be entered on a schedule, and how should they be entered.

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<sup>1</sup> This document is the result of a revision exercise carried out in the Committee on Specific Commitments. The exercise was based on the two documents which were produced and circulated during the Uruguay Round negotiations: MTN.GNS/W/164, entitled Scheduling of Initial Commitments in Trade in Services: Explanatory Note of 3 September 1993, and document MTN.GNS/W/164/Add.1, entitled Scheduling of Initial Commitments in Trade in Services: Explanatory Note, Addendum of 30 November 1993. These guidelines shall be applicable as of the date of their adoption. It should be understood that schedules in force prior to the date of this document have been drafted according to MTN.GNS/W/164 and MTN.GNS/W/164/Add.1.

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**PART I : WHAT ITEMS SHOULD BE SCHEDULED?**

3. Since schedules, including footnotes, headnotes and attachments, are a record of legal commitments, nothing should appear in them which a Member does not intend to be legally binding. A schedule contains the following main types of information: a clear description of the sector or sub-sector committed, limitations<sup>2</sup> to market access, limitations to national treatment, and additional commitments other than market access and national treatment. If a Member undertakes a commitment in a sector then it must indicate for each mode of supply that it binds in that sector:

- what limitations, if any, it maintains on market access;
- what limitations, if any, it maintains on national treatment; and
- what additional commitments, relating to measures affecting trade in services not subject to scheduling under Articles XVI and XVII, it may decide to undertake under Article XVIII.

4. Where commitments do not cover the entire national territory, the entry should describe the geographical scope of measures taken according to Article I:3(a)(i).

5. If attachments are used, clear reference should be made to the part of the schedules they refer to (i.e. definitions in the first column, market access commitments in the second column, national treatment commitments in the third column and additional commitments in the fourth column).

6. Exchange control restrictions are subject to the general disciplines of Articles XI (Payments and Transfers) and XII (Restrictions to Safeguard the Balance of Payments) of the GATS.

7. There is no requirement in the GATS to schedule a limitation to the effect that the cross-border movement of goods associated with the provision of a service may be subject to customs duties or other administrative charges. Such measures are subject to the disciplines of the GATT.

**A. LIMITATIONS ON MARKET ACCESS (ARTICLE XVI)**

8. A Member grants full market access in a given sector and mode of supply when it does not maintain in that sector and mode any of the types of measures listed in Article XVI. The measures listed comprise four types of quantitative restrictions

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<sup>2</sup> The term “limitations” will be used throughout this note to refer to the “terms”, “conditions”, “limitations”, and “qualifications” used in Articles XVI and XVII of the GATS.

(sub-paragraphs a-d), as well as limitations on forms of legal entity (sub-paragraph e) and on foreign equity participation (sub-paragraph f). The list is exhaustive and includes measures which may also be discriminatory according to the national treatment standard (Article XVII). In other words, all measures falling under any of the categories listed in Article XVI:2 must be scheduled, whether or not such measures are discriminatory according to the national treatment standard of Article XVII. The quantitative restrictions can be expressed numerically, or through the criteria specified in sub-paragraphs (a) to (d); these criteria do not relate to the quality of the service supplied, or to the ability of the supplier to supply the service (i.e. technical standards or qualification of the supplier).

9. With regard to market access limitations, such as numerical ceilings or economic needs tests, the entry should describe each measure concisely indicating the elements which make it inconsistent with Article XVI. Numerical ceilings should be expressed in defined quantities in either absolute numbers or percentages; regarding economic needs tests the entry should indicate the main criteria on which the test is based, e.g. if the authority to establish a facility is based on a population criterion, the criterion should be described concisely.

10. Approval procedures or licensing and qualification requirements, such as financial soundness or membership in a professional organization, are frequently stipulated as conditions to obtain a licence. If they are of a non-discriminatory nature, and therefore to be applied equally to nationals and foreigners, they should not be scheduled under Article XVII. Nor should they be scheduled under Article XVI as long as they do not contain any of the limitations specified in Article XVI. However, if such approval procedures or licensing and qualification requirements are discriminatory, they should be scheduled as national treatment limitations. If approval procedures or licensing and qualification requirements contain any of the limitations specified in Article XVI, they should be scheduled as market access limitations. It has been pointed out that in some schedules the granting of licences has been subject to review, possibly meaning they are granted on a discretionary basis. In such a case the right to supply the service is uncertain. Therefore such entries should be avoided unless the objective criteria on which such a review is based are precisely described.

11. It should be noted that the quantitative restrictions specified in sub-paragraphs (a) to (d) refer to maximum limitations. Minimum requirements such as those common to licensing criteria (e.g. minimum capital requirements for the establishment of a corporate entity) do not fall within the scope of Article XVI. If such a measure is discriminatory within the meaning of Article XVII and, if it cannot be justified as an exception, it should be scheduled as a limitation on national treatment. If such a measure is non-discriminatory, it is subject to the disciplines

of Article VI:5. Where such a measure does not conform to these disciplines, and if it cannot be justified as an exception, it must be brought into conformity with Article VI:5 and cannot be scheduled.

12. The following are examples of limitations on market access drawn from the schedules of specific commitments. In this regard, paragraph 39 on the scheduling of limitations is also relevant.

- (a) Limitations on the number of service suppliers:
  - Licence for a new restaurant based on an economic needs test.
  - Annually established quotas for foreign medical practitioners.
  - Government or privately owned monopoly for labour exchange agency services.
  - Nationality requirements for suppliers of services (equivalent to zero quota).
- (b) Limitations on the total value of transaction or assets:
  - Foreign bank subsidiaries limited to x percent of total domestic assets of all banks.
- (c) Limitations on the total number of service operations or quantity of service output:
  - Restrictions on broadcasting time available for foreign films.
- (d) Limitations on the total number of natural persons:
  - Foreign labour should not exceed x percent and/or wages xy percent of total.
- (e) Restrictions or requirements regarding type of legal entity or joint venture:
  - Commercial presence excludes representative offices.
  - Foreign companies required to establish subsidiaries.
  - In sector x, commercial presence must take the form of a partnership.
- (f) Limitations on the participation of foreign capital:
  - Foreign equity ceiling of x percent for a particular form of commercial presence.

## B. LIMITATIONS ON NATIONAL TREATMENT (ARTICLE XVII)

13. A Member grants full national treatment in a given sector and mode of supply when it accords in that sector and mode conditions of competition no less favourable to services or service suppliers of other Members than those accorded to its own like services and service suppliers. The national treatment standard does not require formally identical treatment of domestic and foreign suppliers: formally

different measures can result in effective equality of treatment; conversely, formally identical measures can in some cases result in less favourable treatment of foreign suppliers (*de facto* discrimination). Thus, it should be borne in mind that limitations on national treatment cover cases of both *de facto* and *de jure* discrimination as shown in the following examples.

Examples of limitations on national treatment<sup>3</sup>

- (a) Domestic suppliers of audiovisual services are given preference in the allocation of frequencies for transmission within the national territory. (Such a measure discriminates explicitly on the basis of the origin of the service supplier and thus constitutes formal or *de jure* denial of national treatment.)
- (b) A measure stipulates that prior residency is required for the issuing of a licence to supply a service. (Although the measure does not formally distinguish service suppliers on the basis of national origin, it *de facto* offers less favourable treatment to foreign service suppliers because they are less likely to be able to meet a prior residency requirement than like service suppliers of national origin.)

It is useful to keep in mind that, unlike Article XVI, Article XVII does not contain an exhaustive listing of the types of measure which would constitute limitations on national treatment.

14. Regarding the need to schedule residency requirements, it should be decided on a case-by-case basis, and in relation to the activity concerned, which requirements (e.g. the need to live in the country as opposed to having a mailing address in the country) constitute a *de facto* national treatment restriction and therefore must be scheduled under Article XVII unless justifiable as an exception. If the residency requirement is not discriminatory, it would be subject to the disciplines of Article VI:5. If it is not consistent with these disciplines and if it cannot be justified as an exception, it must be brought into conformity with Article VI:5.

15. There is no obligation in the GATS which requires a Member to take measures outside its territorial jurisdiction. It therefore follows that the national treatment obligation in Article XVII does not require a Member to extend such treatment to a service supplier located in the territory of another Member.

16. Article XVII applies to subsidies in the same way that it applies to all other measures. Article XV (Subsidies) merely obliges Members to “enter into

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<sup>3</sup> More examples of frequently occurring national treatment restrictions are listed in Attachment 1.

negotiations with a view to developing the necessary multilateral disciplines” to counter the distortive effects caused by subsidies and does not contain a definition of subsidy. Therefore, any subsidy which is a discriminatory measure within the meaning of Article XVII would have to be either scheduled as a limitation on national treatment or brought into conformity with that Article. Subsidies are also not excluded from the scope of Article II (MFN). In line with the paragraph above, a binding under Article XVII with respect to the granting of a subsidy does not require a Member to offer such a subsidy to a services supplier located in the territory of another Member.

17. Restrictions on the purchase, lease or use of real estate, connected with the supply of a service inscribed in a schedule, are national treatment limitations to the extent that different conditions apply to foreign services suppliers which alter the conditions of competition in favour of service suppliers of the Member compared to like service suppliers of any other Member.

18. A Member may wish to maintain measures which are inconsistent with both Articles XVI and XVII. Article XX:2 stipulates that such measures shall be inscribed in the column relating to Article XVI on market access. Thus, while there may be no limitation entered in the national treatment column, there may exist a discriminatory measure inconsistent with national treatment inscribed in the market access column. However, in accordance with Article XX:2, any discriminatory measure scheduled in the market access column is also to be regarded as scheduled under Article XVII and subject to the provisions of that Article. When measures inconsistent with both Articles XVI and XVII are inscribed in the column relating to Article XVI (as provided for in Article XX:2), Members could indicate that this is the case (e.g. by stating “also limits national treatment” in the market access column).

#### C. ADDITIONAL COMMITMENTS (ARTICLE XVIII)

19. A Member may, in a given sector, make commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI and XVII. Such commitments can include, but are not limited to, undertakings with respect to qualifications, technical standards, licensing requirements or procedures, and other domestic regulations that are consistent with Article VI. Additional commitments are expressed in the form of undertakings, not limitations. In the schedule, the Additional Commitments column would only include entries where specific commitments are being undertaken, and need not include those modes of supply where there are no commitments undertaken or any entries at all where no Article XVIII undertakings are made.

D. EXCEPTIONS

20. All measures falling under Article XIV (General Exceptions) are excepted from all obligations and commitments under the Agreement, and therefore should not be scheduled. Clearly, such exceptions cannot be negotiated under Part III of the Agreement. Likewise, any prudential measure taken in accordance with paragraph 2(a) of the Annex on Financial Services constitutes an exception to the Agreement and should not be scheduled. Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons in accordance with paragraph 2(a) of the Annex on Financial Services. Measures falling under Article XII (Restrictions to Safeguard the Balance of Payments) are also exceptions and should not be scheduled. Article XII provides for separate disciplines for such measures, including notification and consultation.

E. SPECIFIC COMMITMENTS AND MFN EXEMPTIONS

21. A Member taking a national treatment or a market access commitment in a sector must accord the stated minimum standard of treatment specified in its schedule to all other Members. The MFN obligation requires that the most favourable treatment actually accorded in all sectors, whether the subject of a commitment or not, must also be accorded to all other Members. Where an MFN exemption has been granted for a measure, a Member is free to deviate from its Article II obligations, but not from its Article XVI and Article XVII commitments. Therefore, in such cases, a Member may accord treatment in that sector more favourable than the minimum standard to some Members, as long as all other Members receive at least that minimum standard of market access and national treatment appearing in its schedule. In such cases, it is not possible for a Member to accord less favourable treatment to certain Members than that specified in its schedule (for example, on grounds of reciprocity or the lack of it).

PART II: HOW SHOULD ITEMS BE SCHEDULED?

22. Schedules record, for each sector, the legally enforceable commitments of each Member. It is therefore vital that schedules be clear, precise and based on a common format and terminology. This section describes how commitments should be entered in schedules. The main steps involved are:

- A. How to describe committed sectors and sub-sectors;
- B. How to treat the modes of supply;
- C. How to record commitments:
  - 1. Horizontal commitments;
  - 2. Sector-specific commitments;

### 3. Levels of commitment.

#### A. HOW TO DESCRIBE COMMITTED SECTORS AND SUB-SECTORS

23. The legal nature of a schedule as well as the need to evaluate commitments, require the greatest possible degree of clarity in the description of each sector or sub-sector scheduled. In general the classification of sectors and sub-sectors should be based on the Secretariat's Services Sectoral Classification List.<sup>4</sup> Each sector contained in the Secretariat list is identified by the corresponding Central Product Classification (CPC) number. Where it is necessary to refine further a sectoral classification, this should be done on the basis of the CPC or other internationally recognised classification (e.g. Financial Services Annex). A breakdown of the CPC, including explanatory notes for each sub-sector, is contained in the UN Provisional Central Product Classification.<sup>5</sup>

Example: A Member wishes to indicate an offer or commitment in the sub-sector of map-making services. In the Secretariat list, this service would fall under the general heading "Other Business Services" under "Related scientific and technical consulting services" (see item I.F.m). By consulting the CPC, map-making can be found under the corresponding CPC classification number 86754. In its offer/schedule, the Member would then enter the sub-sector under the "Other Business Services" section of its schedule as follows:

Map-making services (86754)

24. If a Member wishes to use its own sub-sectoral classification or definitions it should provide concordance with the CPC in the manner indicated in the above example. If this is not possible, it should give a sufficiently detailed definition to avoid any ambiguity as to the scope of the commitment.

25. It is understood that market access and national treatment commitments apply only to the sectors or sub-sectors inscribed in the schedule. They do not imply a right for the supplier of a committed service to supply uncommitted services which are inputs to the committed service.

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<sup>4</sup> Document MTN.GNS/W/120, dated 10 July 1991.

<sup>5</sup> Statistical Papers Series M No. 77, Provisional Central Product Classification, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991.

## B. HOW TO TREAT THE MODES OF SUPPLY

26. The four modes of supply listed in the schedules correspond to the scope of the GATS as set out in Article I:2. The modes are essentially defined on the basis of the origin of the service supplier and consumer, and the degree and type of territorial presence which they have at the moment the service is delivered.

## MODES OF SUPPLY

Supplier Presence	Other Criteria	Mode
Service supplier <u>not present</u> within the territory of the Member	Service delivered <u>within</u> the territory of the Member, from the territory of another Member	CROSS-BORDER SUPPLY
	Service delivered <u>outside</u> the territory of the Member, in the territory of another Member, to a service consumer of the Member	CONSUMPTION ABROAD
Service supplier <u>present</u> within the territory of the Member	Service delivered within the territory of the Member, through the commercial presence of the supplier	COMMERCIAL PRESENCE
	Service delivered within the territory of the Member, with supplier present as a <u>natural</u> person	PRESENCE OF NATURAL PERSON

27. It is important to have a common understanding of what each mode covers. To this end, further examples and explanations are given below.

## 1. Cross-border supply

28. International transport, the supply of a service through telecommunications or mail, and services embodied in exported goods (i.e. services supplied in or by a physical medium, such as a computer diskette or drawings) are all examples of cross-border supply, since the service supplier is not present within the territory of the Member where the service is delivered.

## 2. Consumption abroad

29. This mode of supply is often referred to as “movement of the consumer”. The essential feature of this mode is that the service is delivered outside the territory of the Member making the commitment. Often the actual movement of the consumer

is necessary as in tourism services. However, activities such as ship repair abroad, where only the property of the consumer “moves”, or is situated abroad, are also covered.

30. Whatever the mode of supply, obligations and commitments under the Agreement relate directly to the treatment of services and service suppliers. They only relate to service consumers insofar as services or service suppliers of other Members are affected. It should be noted that a Member may only be able to impose restrictive measures affecting its own consumers, not those of other Members, on activities taking place outside its jurisdiction.

31. Limitations in the schedule of a Member - if any - with respect to mode 2 on market access and/or on national treatment should only relate to measures affecting the consumers of that Member, and not to measures affecting consumers of another Member, in the territory of that Member.

### 3. Commercial Presence

32. This mode covers not only the presence of juridical persons in the strict legal sense, but also that of legal entities which share some of the same characteristics. It thus includes, *inter alia*, corporations, joint ventures, partnerships, representative offices and branches (see Definitions: Article XXVIII).

### 4. Presence of natural persons

33. This mode covers natural persons who are themselves service suppliers, as well as natural persons who are employees of service suppliers.

34. With respect to the fourth mode of supply, many participants have chosen to inscribe their bound commitments in the form of undertakings rather than in the form of market access limitations. In such cases the bound measures affecting the entry and temporary stay of natural persons are explicitly stated. Thus, in the absence of a reference to a specific duration for the temporary stay of a foreign service supplier, it could be understood that no binding is being undertaken in respect of the duration of that stay. It is noted in this regard that, according to Article XX:1(a) of the Agreement, with respect to sectors where commitments are undertaken, each schedule shall specify the terms, limitations and conditions on market access. Commitments should include the duration of temporary stay of natural persons for the purpose of supplying a service. In any event a Member's regulatory measures would still be subject to the general requirement, in paragraph 4 of the Annex on the Movement of Natural Persons, that they do not nullify or impair the benefits accruing to any other Member under the terms of a specific commitment.

5. Relationship between modes of supply

35. Where a service transaction requires in practical terms the use of more than one mode of supply, coverage of the transaction is only ensured when there are commitments in each relevant mode of supply.

Example: A Member has made a commitment in the cross-border supply of architectural services (e.g. by telecommunications or by mail). This commitment alone does not extend to the presence of natural persons (e.g. visits by architects). A separate commitment would have to be taken under “Presence of natural persons” to cover this case.

C. HOW TO RECORD COMMITMENTS

1. Horizontal commitments

36. A horizontal commitment applies to trade in services in all scheduled services sectors unless otherwise specified. It is in effect a binding, either of a measure which constitutes a limitation on market access or national treatment or of a situation in which there are no such limitations. Where measures constituting limitations are referred to, the commitment should describe the measure concisely, indicating the elements which make it inconsistent with Articles XVI or XVII. In order to avoid repetition, it is desirable to enter these commitments in a separate section at the beginning of the schedule according to the four modes of supply. Such a section could be entitled: “Horizontal commitments applicable to sectors listed in the sectoral part of the schedule”. Some horizontal measures may be specific to only one mode of supply:

Example: Legislation may refer to foreign investment, formation of corporate structures or land acquisition regulations. Such measures affect above all commercial presence.

Example: Legislation may stipulate requirements regarding entry, temporary stay and right to work of natural persons; the categories of natural persons covered by a particular offer may also be specified. Such measures affect above all the presence of natural persons.

Other horizontal measures may affect more than one mode of supply:

Example: Legislation may provide for tax measures which are contrary to national treatment and not covered by Article XIV(d). Such measures would normally affect the supply of services in several modes.

37. Horizontal commitments condition all other entries in the schedule unless

otherwise specified. Hence:

- A “none” in the sectoral section must be read as meaning “none except the conditions set out in the horizontal section”.<sup>6</sup>
- To indicate in a given sector that no restrictions whatever are imposed, a Member must make clear in the horizontal section or in the relevant sectoral section that the horizontal restrictions do not apply in the sector in question.
- In the case of a sector-specific restriction the entry must be read as the combination of the horizontal restrictions and of the sector-specific restriction unless explicitly provided otherwise in the entry.

38. To the extent that domestic laws of general application contain measures which constitute limitations, and if the Member wishes to maintain them, the commitment should describe the measures concisely. According to the agreed scheduling procedures, schedules should not contain general references to laws and regulations as it is understood that such references would not have legal implications under the GATS.

## 2. Sector-specific commitments

39. A sector-specific commitment applies to trade in services in a particular sector. If in the context of such a commitment, a measure is maintained which is contrary to Articles XVI or XVII, it must be entered as a limitation in the appropriate column (either market access or national treatment) for the relevant sector and modes of supply; the entry should describe the measure concisely, indicating the elements which make it inconsistent with Articles XVI or XVII.

40. Given the legal nature of a schedule, it should contain only descriptions of bound commitments. Any additional information for transparency purposes should not be entered in the schedule. A reference to the legal basis of a scheduled measure (i.e. the relevant law or regulation) may be entered if thought necessary. In any event, such information will be subject to the obligations of Article III.

## 3. Levels of commitment

41. Since the terms used in a Member’s schedule create legally binding commitments, it is important that those expressing presence or absence of limitations to market access and national treatment be uniform and precise. Depending on the

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<sup>6</sup> Due account must be taken, if need be, of the provision of Article XX:2 of the GATS relating to the scheduling of measures inconsistent with both market access and national treatment in the market access column.

extent to which a Member has limited market access and national treatment, for each commitment with respect to each mode of supply, four cases can be foreseen:

(a) Full commitment

42. In this case the Member does not seek in any way to limit market access or national treatment in a given sector and mode of supply through measures inconsistent with Articles XVI and XVII. The Member in this situation should mark in the appropriate column: NONE. However, any relevant limitations listed in the horizontal section of the schedule will still apply.

43. Regardless of what is inscribed in the market access column, a “no limitations” entry in the National Treatment column (expressed as “None”) would mean that national treatment is bound for the entire mode; it is not limited to what may be bound in a market access commitment with limitations. Thus, if a Member makes a commitment under Article XVI in a sector, where commercial presence is limited to partnerships, an entry “None” or any other entry in the national treatment column would refer to the whole mode of supply and not only to partnerships. (See also paragraphs 3 and 13)

(b) Commitment with limitations

44. Where market access or national treatment limitations are inscribed, two main possibilities can be envisaged in this case. The first is the binding of an existing situation (“standstill”). The second is the binding of a more liberal situation where some, but not all, of the measures inconsistent with Articles XVI or XVII will be removed (“rollback”). In either case the Member must describe in the appropriate column the measures maintained which are inconsistent with Articles XVI or XVII. The entry should describe each measure concisely, indicating the elements which make it inconsistent with Articles XVI or XVII. It would not be correct merely to enter in a column words such as “bound”, “freeze” or “standstill”.

45. In some cases a Member may choose to partially bind measures affecting a given category of suppliers. For example, a Member may bind measures affecting the entry and temporary stay only of some categories of natural persons while leaving all other categories unbound. This may be achieved through an indication in the horizontal section of a schedule such as “Unbound except for measures affecting the entry and temporary stay of natural persons in the following categories...”. In such cases, the corresponding sectoral entry under the fourth mode of supply should be “Unbound except as indicated in the horizontal section”.

(c) No commitment

46. In this case, the Member remains free in a given sector and mode of supply to introduce or maintain measures inconsistent with market access or national treatment. In this situation, the Member must record in the appropriate column the word: UNBOUND. This case is only relevant where a commitment has been made in a sector with respect to at least one mode of supply. Where all modes of supply are “unbound”, and no additional commitments have been undertaken in the sector, the sector should not appear on the schedule.

(d) No commitment technically feasible

47. In some situations, a particular mode of supply may not be technically feasible. An example might be the cross-border supply of hair-dressing services. In these cases the term UNBOUND\* should be used. The asterisk should refer to a footnote which states “Unbound due to lack of technical feasibility”. The term may not be used as an entry in the national treatment column for modes 1 and 2 when, for the same service, there is a market access commitment. Where the mode of supply thought to be inapplicable is in fact applicable, or becomes so in the future, the entry means “unbound”.

(e) Special cases

48. It could be argued that a reservation for a residence requirement, a nationality condition or a commercial presence requirement under cross border trade amounts to an “unbound”. However in some cases there is clearly an advantage in inscribing those requirements instead of the term “unbound” in that trading partners have the certainty that there are no other limitations with respect to the cross border mode (see also paragraph 14 on residency requirements and paragraph 12 on nationality requirements).

49. Where a national schedule refers to foreign companies and national companies, it is necessary to offer a definition for those cases where a Member uses terms which are not covered by the common definitions contained in Article XXVIII of the GATS.

ANNEX 1

SCHEDULE OF SPECIFIC COMMITMENTS OF COUNTRY X

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	(1)	(1)	
	(2)	(2)	
	(3)	(3)	
	(4)	(4)	
	(1)	(1)	
	(2)	(2)	
	(3)	(3)	
	(4)	(4)	

<u>Key:</u>	(1) Cross-border supply	(3) Commercial presence
	(2) Consumption abroad	(4) Presence of natural persons

NOTE: The schedule shall also indicate the date of entry into force of the commitments and where appropriate the time-frame for their implementation. For all future commitments the relevant date of entry into force should be inscribed.

ANNEX 2

LIST OF ATTACHED DOCUMENTS RELEVANT FOR SCHEDULING PURPOSES<sup>1</sup>

- 1) Examples of frequently occurring national treatment restrictions, which appear in schedules of specific commitments.
- 2) Informal Note by the Secretariat for the Committee on Trade in Financial Services, dated 24 June 1997, "The Distinction between Modes 1 and 2", (Also included in document S/FIN/W/14).
- 3) Job No. 3706, dated 3 July 1997, Informal Note by the Secretariat for the Committee on Trade in Financial Services, Report of Informal Consultations

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<sup>1</sup> It is understood that the status of each of the documents listed is unique and that therefore each document should be looked at based on its specific background and nature. The fact that such documents are annexed to these guidelines should not be interpreted as changing their status. In the same manner, it is understood that some of the documents listed in this annex deal with scheduling questions only for the sector they refer to.

held on 27 June 1997 on the Distinction between Modes 1 and 2 in Financial Services (Also included in document S/FIN/W/14).

- 4) Job No. 6496, dated 25 November 1998 (also included in document S/WPPS/4, dated 10 December 1998), Informal Note by the Chairman of the Working Party on Professional Services “Discussion of matters relating to Articles XVI and XVII of the GATS in connection with the disciplines on domestic regulation in the accountancy sector”.
- 5) S/GBT/W/2/Rev.1, dated 16 January 1997, Note by the Chairman of the Negotiating Group on Basic Telecommunications on Scheduling Basic Telecom Services Commitments.
- 6) S/GBT/W/3, dated 3 February 1997, Note by the Chairman of the Negotiating Group on Basic Telecommunications on Market Access Limitations on Spectrum Availability.
- 7) Annex to Job No. 1311, dated 12 April 1995, Informal Note by the Secretariat “Model Schedule of Commitments on Basic Telecommunications”.
- 8) MTN.GNS/W/120, dated 10 July 1991, Note by the Secretariat “Services Sectoral Classification List”.

#### Attachment 1

#### EXAMPLES OF FREQUENTLY OCCURRING NATIONAL TREATMENT RESTRICTIONS WHICH APPEAR IN SCHEDULES OF SPECIFIC COMMITMENTS

1. These examples are based on existing entries in the schedules and represent frequently occurring types of limitations on national treatment. It should be noted that the list is of an illustrative nature and therefore it is by no means exhaustive. Moreover, since the listed examples come from individual existing schedules and are based on their own interpretation of Article XVII of the GATS, the list does not represent the common view of WTO Members on this subject and therefore it does not prejudice Members’ positions on the interpretation of Article XVII of the GATS. In other words, the list does not imply that all measures presenting similarities with one of the measures below would need to be listed as national treatment restrictions. Only discriminatory measures (i.e. measures which modify

conditions of competition in favour of services suppliers of national origin) would need to be scheduled.

2. For instance, licensing and qualification requirements, registration requirements and authorization requirements will constitute national treatment limitations subject to scheduling only where they discriminate in favour of services and service suppliers of national origin. In the absence of discrimination, these same type of requirements will not constitute measures subject to scheduling under Article XVII and would possibly fall under Article VI of the GATS.<sup>1</sup> Similarly, whether residency requirements constitute national treatment limitations has to be determined on a case-by-case basis.

3. Finally, although there is no definition of what constitutes a subsidy under the GATS and disciplines under Article XV are still subject to negotiations, paragraph 16 in the revised guidelines recalls that a discriminatory subsidy constitutes a national treatment limitation. For this reason, an example of a discriminatory subsidy has been included in this list. The same goes *mutatis mutandis* for tax measures and other financial measures such as fees.

I. Subsidy measures

- Eligibility for subsidies reserved to nationals

II. Tax measures

- A 4 per cent federal excise tax is imposed on all non-life insurance premiums that are paid to companies that are not nationally incorporated
- An excise tax of 10 per cent is applicable on net premiums paid to non-resident insurers

III. Other financial measures (fees, charges, etc.)

- Charges taken for port services from foreign and national ships may differ in favour of national flag vessels
- Higher licence fees are charged for non-residents

IV. Nationality requirements

- Provision of yacht chartering and cruising services reserved to nationals

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<sup>1</sup> On the determination of whether a measure is subject to scheduling under Articles XVI or XVII or whether it falls under Article VI of the GATS, see also the attached Informal Note by the Chairman of the Working Party on Professional Services "Discussion of matters relating to Articles XVI and XVII of the GATS in connection with the disciplines on domestic regulation in the accountancy sector", 25 November 1998, document Job No. 6496.

- Agents or managers must be citizens
  - Sale or purchase of travellers cheques by individuals requires citizenship status
- V. Residency requirements
- Permanent residency requirement for chiropractors
  - Residency requirement for managers and the members of the board of directors of a company
  - Residence requirement for actuarial profession
  - Advisory and auxiliary financial services and asset management: The establishment must be managed by a resident of the province
  - For foreign bank employees residence is required
- VI. Licencing and qualification requirements
- In order to work as a mountain guide or ski instructor, passing of an examination is required; access to such exams for foreigners may be restricted
  - Barristers and commercial lawyers in national law are required to be graduates of national universities
  - Condition of licences is one year previous residency
  - Three years of prior professional practice in the country required
  - Non-residents must be registered and licenced in order to purchase unprocessed fish from primary producers and/or process fish
- VII. Registration requirements
- Marketing of legal advice activities by foreign companies is restricted to registered law firms
  - It is necessary to be registered as an accountant, for which it is necessary to be a national or an alien domiciled in the country for at least three years prior to the application
  - Foreign companies are required to have a registered office in the country
  - Certification of certain works involving health and safety is limited to registered engineers, who to become registered, must be ordinarily resident in the country
- VIII. Authorisation requirements
- Loans to non-residents need to be approved by the Central Bank
  - Banks: until 30 June 1999, ministerial approval is required for foreign bank subsidiaries to open more than one bank

- A non-national needs permission to become a director of a financial institution
- IX. Technology transfer/training requirements
- The foreign service supplier shall use appropriate and advanced technology and managerial experience, and shall have the obligation to transfer its technology and pass on its experience to national personnel
  - The foreign service supplier must prove commitment to recruit and develop more local human resources
  - Foreign service suppliers, in the context of JV are required to offer on-the-job training for national employees
  - Skilled foreign employees required to provide training to locals
- X. Local content requirements
- Preferential use of local services to the extent they are available under conditions of quality, price and delivery equivalent to those of like services of foreign origin
  - With regard to personnel, materials, equipment, facilities and services required in the petroleum operations, priority shall be given to the employment of national subcontractors, provided that they are competitive in delivery, time, price and quality
- XI. Ownership of property/land
- Foreigners may not acquire direct ownership of land in a 100 km strip along the frontiers
  - The acquisition, purchase as well as rent or lease of real estate by foreign natural persons and juridical persons requires an authorization by the competent regional authorities which will consider whether important economic, social or cultural interests are affected or not
  - Foreign entities may only acquire real property through participation in joint ventures
  - Non-residents are excluded from the acquisition of real estate.

Attachment 2

Committee on Trade in Financial Services

24.6.97

The Distinction between Modes 1 and 2

Informal Note by the Secretariat

At the meeting of the Committee on Trade in Financial Services on 5 June, the Secretariat was asked to organise informal consultations on the issue of the distinction between modes 1 and 2 which would be open to all delegations. The Secre-

tariat was requested to report on the results of such consultations to the next meeting of the Committee on 17 July. The purpose of this note is to assist delegations in those informal consultations by identifying the nature of the issue and laying down some possible options for a solution.

1. The mode 1 – mode 2 issue arises because of a perceived ambiguity in the distinction between the two modes for scheduling purposes. The question becomes particularly relevant when one of the two modes is unbound in a Member's schedule, while the other mode is either fully bound or bound with few limitations.<sup>1</sup>

2. As indicated in the agreed scheduling guidelines (MTN.GNS/W/164 of 3 September 1993), the modes of supply are essentially defined on the basis of the origin of the service supplier and consumer, and the degree and type of territorial presence which they have at the moment the service is delivered. In both modes 1 and 2, the supplier is not present within the territory of the Member. The distinction between mode 1 and mode 2, therefore, hinges upon whether the service is delivered within the territory of the Member from the territory of another Member or whether the service is delivered outside the territory of the Member.<sup>2</sup>

3. The ambiguity is due to the fact that the delivery of a financial service very often does not require the physical presence of the consumer. Electronic means associated with the globalization of financial markets has made it possible to “deliver” a financial service almost anywhere in the world. Once the physical presence of the consumer ceases to be a benchmark for determining the place of delivery of a service, it becomes extremely difficult to determine in an unambiguous manner where a service is delivered.

4. Some examples may illustrate this point:

Deposits: A bank account is opened abroad by a consumer of a Member. If the consumer travelled abroad to open the account, this may be mode 2 supply, while the absence of travel (opening of the account through mail order and bank transfer, or through electronic means) may imply mode 1. However, the services directly as-

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<sup>1</sup> If both modes were unbound, a Member would be entitled to introduce any measures inconsistent with Article XVI or XVII with respect to both modes, and drawing a line between them would not serve any practical purpose. If both modes were bound, a Member would be entitled to apply only the measures inscribed in its schedule. In this latter case, any ambiguity in the distinction between modes 1 and 2 could result in a misplacement of scheduled measures, but the consequences of this might not be as far-reaching as the non-scheduling of a measure. If the measures applicable to services supplied under the modes are prudential, there is no need to schedule them.

<sup>2</sup> In making this distinction between modes 1 and 2, one should focus on the delivery of the service itself, and not confuse this with the underlying flows of capital or the act of ordering or requesting the supply of a service.

sociated with this account (payment of interest, debiting and crediting of payments and transfers, offsetting of balances, etc.) can be delivered either abroad or in the consumer's home country at the request of the consumer.

**Loan:** A loan is made from a foreign bank established abroad to a consumer of a Member. The loan can be delivered either within or outside the territory of the consumer's home country.

**Insurance:** The consumer of a Member concludes a property insurance contract with an insurer established abroad. It can be argued that if the insured property is abroad, the service is also delivered abroad, since the protection provided by the insurance contract is "delivered" with respect to the property; therefore this belongs to mode 2. However, it can equally be argued that the insurance provides protection to the consumer in his or her home country, as the premiums are paid by the consumer, and in the event of an accident, the indemnity will be paid to the consumer in the home country; therefore this would come under mode 1.

5. Given the diversity and complexity of financial services, there may be an infinite number of such examples. It would seem very difficult, if not impossible to reach agreement on each of those cases. On the other hand, some general substantive solutions have been proposed such as the following:

- (a) all financial transactions (between non-resident suppliers and resident consumers) that take place inside a Member's territory could be classified as mode 1;
- (b) mode 1 transactions could be defined as those that take place under the laws of the Member, while mode 2 transactions could be defined as those that take place under the laws of the foreign country from which the service is supplied;
- (c) the supply of services accompanied by solicitation could be defined as mode 1, if not, mode 2;
- (d) any measure applicable to the supplier of the service could be classified under mode 1, any measure applicable to the consumer under mode 2;
- (e) modes 1 and 2 could be merged.

6. In (a) above, the question of determining where the delivery of the service took place would be substituted by the question of where a financial transaction took place. If the answer to the latter question is based on where the payment of fees, commissions or charges took place, it would seem to require a departure from the

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general principle of determining the place of supply of a service according to where the service was delivered. However, this may have the merit of being consistent with balance-of-payment statistics.

7. In (b) , one would need to recognize the fact that the territorial application of laws differ between countries, and between civil and administrative laws within a country. A Member may also encounter a situation in which its mode 2 commitments would become unenforceable, since it may not be possible to implement any commitments concerning transactions which took place entirely outside the Member's legal jurisdiction. The fact that the parties to a financial transaction could choose the laws applicable to them might also complicate the issue.

8. The solution in (c) above would also seem to require a departure from the principle of determining the mode of supply by the place of delivery of a service. The exact meaning of solicitation (or active marketing) would also need to be clarified and agreed.

9. In (d), there could be cases in which the regulatory measures are applicable to both suppliers and consumers.

10. Finally, (e) would not seem to be feasible without modifying the basic principle of scheduling and possibly Article I of the GATS.

11. If Members find it difficult to agree on any substantive solutions such as those above within the time-frame of the current financial services negotiations, i.e. before 12 December 1997, some practical solution may need to be found.<sup>3</sup> Such a practical solution could involve clarifying in the headnote of each schedule the distinction employed by the Member.

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<sup>3</sup> Another point worth noting is that any substantive solution would have immediate implications for a broad range of other services which are commonly traded cross-border, such as telecommunication services. Since any attempt to draw the line between the modes of supply for a financial service would have direct relevance to other service sectors, this issue might ideally be dealt with in parallel by the Committee on Specific Commitments. Such a major exercises would not be completed in the time-frame of the financial services negotiations.

Attachment 3

Job 3706

3.7.97

Committee on Trade in Financial Services

Report of Informal Consultations held on 27 June 1997  
on the Distinction between Modes 1 and 2 in Financial Services

Informal Note by the Secretariat

At the meeting of the Committee on Trade in Financial Services held on 5 June, the Secretariat was asked to organize informal consultations open to all delegations on the question of the distinction between modes 1 and 2 in financial services schedules. The Secretariat was also requested to report on the results of such consultations to the next meeting of the Committee on 17 July. The purpose of this note is to summarize the results of an informal meeting held in accordance with this request which took place on 27 June 1997.

1. Discussions in the informal meeting took place on the basis of an informal note by the Secretariat dated 24 June 1997. The Secretariat also made an oral presentation at the beginning of the meeting, explaining the technical nature of the issue and some options for removing the ambiguities or uncertainties in the schedules. Ideally, a definitive and watertight solution for clarification of the distinction between modes 1 and 2 should be found, which would be accepted by all Members and would be valid not just for financial services but for all sectors. It was recalled, however, that at the formal meeting of the Committee on 5 June, there seemed to be a general view that it would be impossible to find the necessary time before the end of the current negotiations to look for such a definitive solution. A new definition of the coverage of modes 1 and 2, or the merging of the two modes, would entail re-negotiation either of the scheduling guidelines or of articles of the GATS itself, and would be very time-consuming. To develop an agreed list of financial transactions falling under mode 1 and those falling under mode 2 would also require substantial time and effort. There had been general agreement at the 5 June meeting of the Committee that it would not be possible or desirable to devote a great deal of time to this question in the final months of the negotiation.

2. It was therefore necessary to try to find a pragmatic solution which would suffice for the purposes of the current negotiations. Such a solution must provide as much clarity as possible, must be neutral with regard to existing commitments while facilitating the negotiation of new ones under the two modes, should if possible be accepted at the 17 July meeting of the Committee, and should close the discussions on this issue until the conclusion of the financial services negotiations in December this year.

3. A large number of delegations stated that they had not encountered any major problems or difficulties regarding the distinction between modes 1 and 2 in financial services schedules. They were, however, willing to discuss this issue in order to

achieve as much clarity as possible. Several delegations also added that while they themselves had not encountered difficulties with regard to this issue, they were willing to discuss bilaterally with any delegation which had found difficulties in scheduling commitments under these modes.

4. Delegations generally thought that the issue was a horizontal one, which meant that any definitive agreement or understanding on the distinction between the two modes would necessarily apply to other services as well as financial services. Given the difficulties involved in finding a definitive solution, there was general support for a pragmatic solution to the issue, which could be put together in the limited time frame of the current financial services negotiations. It was made clear that no solution to this issue could affect the rights of Members to modify or withdraw commitments during the negotiations; the solution should be “neutral” in the sense that it would not affect the substance of existing commitments. It was also confirmed that the rights of Members to take necessary prudential measures could not be affected by any discussion or “solution” of the modes issue.

5. There was a broad willingness to consider the use of headnotes as a means of clarifying the distinction between modes 1 and 2. Several delegations cautioned, however, that it would be extremely difficult to negotiate a common headnote for use by all Members. It was also pointed out that if all countries needed to adopt a common headnote, all existing schedules in financial services would need to be reconsidered, regardless of whether there were changes in the substance of the commitments. Based on these discussions, there was general support for a suggestion to consider developing a non-binding model headnote or a menu of possible headnotes which could be used by delegations on a voluntary basis.

6. The Secretariat distributed an example of such a headnote (see attached) which focused on the object of the measure to be listed in the schedule. The example was based on the question on whom a mode 1 or mode 2 binding conferred rights of action and on whom limitations would consequently bite; if it was the foreign service supplier who was restricted from supplying the service, the limitation would be scheduled under mode 1, while if it was the consumer who was restricted from consuming the service abroad, then the limitation would be scheduled under mode 2. It was pointed out that such a headnote would not address the issue of location - where the supply of the service took place - but it would make clear the limits of the obligations, in terms of rights conferred, assumed by governments in making commitments under these two modes. Delegations generally thought that such an example would be helpful in considering options.

7. Another possible headnote listed in the example was a reference to solicitation. The example stated that there was no commitment to allow solicitation of business or active marketing under mode 2. It was accepted that headnotes clarifying other issues might be required, and that the Secretariat should be ready to assist in drafting them on request. It was made clear that any delegation which thought that the exam-

ples were insufficient could ignore or modify them at will. Discussion of these models implied no commitment to use them.

8. The main conclusions of the informal consultations were therefore as follows. It was agreed that the responsibility for clarifying the content of commitments under modes 1 and 2 must lie with those individual Members feeling the need to do so; to develop a common multilateral solution for the purposes of the financial services negotiations would be infeasible in the time available and was in any case unnecessary. The simplest means of providing such clarification appeared to be the use of a headnote. Again, it was not thought necessary or feasible to develop a common headnote, but delegations undertook to give thought to the possible value of the two examples circulated by the Secretariat, and to any other examples which may come forward. There was also wide support for the view that in the longer term - after the conclusion of the financial services negotiations - consideration should be given, perhaps in the Committee on Specific Commitments since this was a horizontal issue, to definitive clarification of the distinction between modes 1 and 2. However, some delegations had reservations on this point, being unconvinced of the need for further consideration of the matter in the near future.

27.6.97

Example of a headnote explaining the distinction between Modes 1 and 2 in financial services schedules

- Market access and national treatment limitations with respect to the mode (1) (cross-border supply) and mode (2) (consumption abroad) supply of financial services are inscribed in this section of the Schedule in accordance with the following distinction between the measures affecting these two modes of supply:
  1. Measures affecting mode (1)

Any limitation on the ability of a non-resident supplier of financial services to supply the service in the territory of the Member.
  2. Measures affecting mode (2)

Any limitation on the ability of a resident consumer to purchase the service in the territory of another Member.

Optional texts

If applicable, the following can be added as optional texts.

“The absence of any limitation on the ability of a resident consumer to purchase the service in the territory of another Member does not signify a commitment to allow a non-resident service supplier to solicit business or to conduct active marketing in the territory of the Member.”

## Attachment 4

Job 6496

## Working Party on Professional Services

DISCUSSION OF MATTERS RELATING TO ARTICLES XVI AND XVII OF  
THE GATS IN CONNECTION WITH THE DISCIPLINES ON DOMESTIC  
REGULATION IN THE ACCOUNTANCY SECTOR

## Informal Note by the Chairman

1. For the purpose of transparency, this Note explains the method by which the Working Party on Professional Services (WPPS) pursued its work with respect to the question of the types of measures it would address in creating the disciplines in the accountancy sector. For the avoidance of any doubt, it is emphasised that this Note has no legal status.

2. In the course of work to develop multilateral disciplines on domestic regulation in the accountancy sector, pursuant to paragraph 4 of Article VI of the GATS, the WPPS addressed a wide range of regulatory measures which have an impact on trade in accountancy services. In discussing the structure and content of the new disciplines, it became clear that some of these measures were subject to other legal provisions in the GATS, most notably Articles XVI and XVII. It was observed that the new disciplines developed under Article VI:4 must not overlap with other provisions already existing in the GATS, including Articles XVI and XVII, as this would create legal uncertainty. For this reason, a number of the suggestions for disciplines were excluded from the text.

3. Although it was not in the mandate of the WPPS to provide an interpretation of GATS provisions, the important relationship between the new disciplines and Articles XVI and XVII was noted. While these two Articles relate to the scheduling of specific commitments on measures falling within their scope, the disciplines developed under Article VI:4 aim at ensuring that other types of regulatory measures do not create unnecessary barriers to trade. It has been noted that Article XVI (Market Access) covers the categories of measures referred to in paragraph 2 (a) to (f), whether or not any discrimination is made in their application between domestic and foreign suppliers. Article XVII (National Treatment) captures within its scope any measure that discriminates - whether *de jure* or *de facto* - against foreign services or service suppliers in favour of like services or service suppliers of national origin. A Member scheduling commitments under Articles XVI and XVII has the right to maintain limitations on market access and national treatment and inscribe them in its schedule. On the other hand, the disciplines to be developed under Article VI:4 cover domestic regulatory measures which are not regarded as market access limitations as such, and which do not in principle discriminate against foreign suppliers. They

are therefore not subject to scheduling under Articles XVI and XVII. However, it is also recognized that for some categories of measures the determination as to whether an individual measure falls under Article VI:4 disciplines or is subject to scheduling under Article XVII will require careful consideration.

4. The following types of measures affecting trade in accountancy services were raised by some Members as examples of those which may be subject to negotiation and scheduling under Articles XVI and XVII:

- \* Restrictions relating to the number of foreign accountants that can be employed, the number of new licences to be issued, the legal form of establishment and the ownership of firms.
- \* Discriminatory requirements and procedures relating to the licensing of foreign individuals and the establishment of natural persons and legal persons in the accountancy sector, including the use of foreign and international firm names. Discriminatory elements which set prior conditions unrelated to the ability of the supplier to provide the service when preparing, adopting or applying licensing requirements.
- \* Discriminatory residency requirements or requirements for citizenship, including those required for sitting examinations related to obtaining a licence to practice. Discriminatory requirements for membership of a particular professional body as a prior condition for application.
- \* Discriminatory treatment of applications from foreign service suppliers vis-à-vis domestic applications including: criteria relating to education, experience, examinations and ethics; the overall degree of difficulty when testing competence of applicants; the need for in-country experience before sitting examinations.

5. The above mentioning of these types of measures does not prejudice future negotiations, which are mandated under Article XIX of the GATS.

Attachment 5

## GROUP ON BASIC TELECOMMUNICATIONS

Note by the Chairman

Revision

(S/GBT/W/2/Rev.1)

*It has been suggested by a number of delegations that it might be helpful to produce a brief and simple note on assumptions applicable to the scheduling of*

*commitments in basic telecoms. The purpose of the attached note is to assist delegations in ensuring the transparency of their commitments and to promote a better understanding of the meaning of commitments. This note is not intended to have or acquire any binding legal status.*

#### NOTES FOR SCHEDULING BASIC TELECOM SERVICES COMMITMENTS

1. Unless otherwise noted in the sector column, any basic telecom service listed in the sector column:
  - (a) encompasses local, long distance and international services for public and non-public use;
  - (b) may be provided on a facilities-basis or by resale; and
  - (c) may be provided through any means of technology (e.g., cable<sup>1</sup>, wireless, satellites).
2. Subsector (g) --private leased circuit services -- involves the ability of service suppliers to sell or lease any type of network capacity for the supply of services listed in any other basic telecom service subsector unless otherwise noted in the sector column. This would include capacity via cable, satellite and wireless network.
3. In view of points 1 and 2 above, it should not be necessary to list cellular or mobile services as a separate subsector. However, a number of Members have done so, and a number of offers have commitments only in these subsectors. Therefore, in order to avoid extensive changes in schedules, it would seem appropriate for Members to maintain separate entries for these subsectors.

Attachment 6

#### GROUP ON BASIC TELECOMMUNICATIONS CHAIRMAN'S NOTE

##### Market Access Limitations on Spectrum Availability (S/GBT/W/3)

Many Members have entries in the market access column of their schedules indicating that commitments are "subject to availability of spectrum/frequency" or similar wording. In light of the physical nature of spectrum and the constraints inherent in its use, it is understandable that Members may have sought to rely on these words to adequately protect legitimate spectrum management policies.

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<sup>1</sup> Including all types of cable.

There is, however, doubt that words such as “subject to availability of spectrum/frequency” as listed in the market access column of many Members’ schedules achieve that objective.

Spectrum/frequency management is not, *per se*, a measure which needs to be listed under Article XVI. Furthermore under the GATS each Member has the right to exercise spectrum/frequency management, which may affect the number of service suppliers, provided that this is done in accordance with Article VI and other relevant provisions of the GATS. This includes the ability to allocate frequency bands taking into account existing and future needs. Also, Members which have made additional commitment in line with the Reference Paper on regulatory principles are bound by its paragraph 6.

Therefore, words such as “subject to availability of spectrum/frequency” are unnecessary and should be deleted from Members’ schedules.

Attachment 7

Job 1311

12 April 1995

Negotiating Group on Basic Telecommunications

Informal Note by the Secretariat

#### DRAFT MODEL SCHEDULE OF COMMITMENTS ON BASIC TELECOMMUNICATIONS

1. As requested by the Chairman at the meeting of 27-28 February 1995, the Secretariat has prepared a revision of the draft model schedule for further discussion and elaboration at subsequent meetings of the Negotiating Group on Basic Telecommunications. As further agreement is obtained among participants on any outstanding elements of the draft model schedule, the Secretariat can continue to provide updated versions of the model to assist participants in the drafting of their offers and final schedules.

2. Only four minor and non-substantive adjustments have been made to the draft model schedule as it appeared in *Negotiations on Basic Telecommunications* (TS/NGBT/W/1/Rev.1, 10 June 1994). These are as follows:

- (i) the paragraph preceding the table format, concerning the provision of information regarding the regulatory environment for reasons of transparency has been deleted. Most such information has been

or is being provided in the context of participants' responses to the *Questionnaire on Basic Telecommunications* (S/NGBT/W/3, 15 July 1994);

- (ii) for clarity, a complete list of the telecommunications services subsectors from the *Services Sectoral Classification List* (MTN.GNS/W/120, 10 July 1991), previously referred to in the model as (a)-(g) and (o), has been listed in the sector or subsector column;
- (iii) the reference to "modes of delivery" has been changed to "modes of supply" and has been moved to the top of the table so as to be consistent with the terminology and format used in the final schedules of commitments resulting from the Uruguay Round; and
- (iv) the footnote referring to an emerging consensus on the use of the positive list approach in scheduling the commitments has been deleted as there has been no apparent outstanding disagreement on this point.

3. Regarding elements of this draft model schedule which have been left unchanged, it may be useful to recall the possible implication of certain issues for the continued drafting process. These include, but are not limited to, the following:

- (i) many of the remaining footnotes refer to outstanding issues now under discussion, as further described in the *Review of Outstanding Issues* (TS/NGBT/W/2, 8 July 1994) and the Reports of previous meetings of the Group. The footnotes have been retained since the issues to which they refer are not yet resolved. As resolution of the issues is achieved, it would be possible to delete such footnotes and, in some cases, make relevant changes to the model;
- (ii) the model's reference to 2.C(o) Other services is, and should probably remain, open ended. However, it may be useful to draw from "other" basic services cited in participants' responses to the *Questionnaire on Basic Telecommunications*<sup>1</sup>, in order to furnish the model with some examples of "other" basic telecommunications on which commitment might be undertaken;
- (iii) the examples of measures listed in the model under the columns on

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<sup>1</sup> Some such examples might include: paging services, satellite transmission services, intra-corporate communications, video dialtone, wireless access, fixed line access, analogue/digital cellular mobile networks and services, PCS networks and services, mobile data services, international switching and other international gateway facilities such as satellite earth stations, domestic/international satellite services and satellite links/capacity.

limitations on market access and on national treatment may not be complete and may be further elaborated as a result of discussions on limitations relevant to the modes of supply for basic telecommunications (see also the informal note by the Secretariat on *Modes of Supply and Market access Limitations* (14 February 1995). For example, mode 2 in both columns and mode 4 under national treatment in the model currently list no examples;

- (iv) as currently drafted, the additional commitments column of the draft model schedule contains entries referring to areas of regulation in which some participants believe that additional commitments may be sought. Most of these entries do not yet specify any actual examples of how additional commitments might be drafted in the regulatory areas noted.

4. With regard to techniques to be used in the drafting of offers and schedules of commitments on basic telecommunications, the draft model schedule entails few, if any, departures from the techniques recommended in *Scheduling of Initial Commitments in Trade in Services: Explanatory Note* (MTN.GNS/W/164, 3 September 1993 and Add.1, 30 November 1993). However, for additional clarity of commitments in the telecommunications sector, the model provides some additional scheduling tools not addressed in the *Explanatory Note*. These include the list of “categories” that may be used in conjunction with entries in the sector or subsectors column and the list of possible areas of additional commitments. How these tools could be used to clarify the drafting and hence the understanding of offers/schedules may be viewed as follows:

- (i) the “categories” are intended to supplement, where relevant to a participant’s telecommunications regime, the listing of subsectors 2.C(a)-(g)&(o). Using a “positive list” approach to scheduling, the combined use of subsectors and categories would mean, for example, that a participant could list “a. Voice telephone services: on a resale basis”, along with any applicable limitations, as a commitment and might not list “Voice telephone services: facilities based”, thus offering no commitment on the latter. Also, “a. Voice telephone services: wire based” and “a. Voice telephone services: radio based” might be listed separately in a schedule where different sets of limitations apply to each;
- (ii) whether a participant undertakes particular additional commitments and how such a commitment would be formulated will be likely to depend on the regime concerned and the agreed results of bilateral negotiations and/or multilateral discussions. For example, participants that agree

to undertake additional commitments on establishing or maintaining the separation of regulatory and operational functions might adopt a common formulation for such commitments. Alternatively, a regime that has posed a particular problem for its trading partners with respect to, for example, assignment or allotment of radio frequencies might inscribe a unique and appropriately drafted additional commitment as a result of bilateral negotiations.

**DRAFT** MODEL SCHEDULE OF COMMITMENTS ON BASIC TELECOMMUNICATIONS

Modes of Supply:<sup>1</sup> 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
2.C.TELECOMMUNICATION SERVICES (UNCPC) a. Voice telephone services 7521 b. Packet-switched data transmission services 7523** c. Circuit-switched data transmission services 7523** d. Telex services 7523** e. Telegraph services 7522 f. Facsimile services 7521**+7529** g. Private leased circuit services 7522**+7523** and o. Other <sup>b</sup>  Relevant categories: <sup>d</sup> Local/long distance/international service - wire-based - radio-based - on a resale basis - facilities-based - for public use - for non-public use	<i>Types of measures to be listed:<sup>c</sup></i>  1) e.g., Quantitative limitations/needs tests applied to the number of service suppliers (incl. monopolies, duopolies, etc.) total value of transactions, total number of operations or quantity of output.  2)	<i>Types of measures to be listed:</i>  1) e.g., Preferences given to domestic suppliers or restrictions imposed on foreign suppliers in the allotment of frequencies.  2)	<i>Types of measures relevant to possible undertakings:</i> (Commitments on measures not subject to scheduling under Articles XVI and XVII, including but not limited to those regarding qualifications, standards, or licensing requirements or licensing procedures and other domestic regulations that are otherwise consistent with Article VI and the Annex on Telecommunications.)  e.g., Separation of regulatory and operational functions;  Safeguards against anti-competitive practices (i.e., of monopolies and dominant providers);

<sup>1</sup>There may be a need to determine whether any telecom-specific clarifications regarding modes of supply are required.

<sup>b</sup> Refers to services mentioned in the *Services Sectoral Classification List* (MTN.GNS/W/120, 10 July 1991) which is considered as an illustrative list.

<sup>c</sup> It has been noted that there is a need for further discussion of measures related to international agreements between operators and the applicability of the Agreement to such measures.

<sup>d</sup> Depending on the services being offered or on the limitations existing in the regulatory regime concerned, the specific commitments on these services may be subdivided in to the categories as noted.

Modes of Supply:<sup>e</sup> 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-Sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
2.C.(a) through (g), and (o) (continued)	<p>3) e.g., Quantitative limitations/needs tests applied to the number of service suppliers (incl. monopolies, etc.), total value of transactions or assets, total number of operations or quantity of output;</p> <p>Quantitative limitation on the number of available frequencies to be allotted to foreign service suppliers;<sup>f</sup></p> <p>Restrictions or requirements regarding the type of legal entity permitted to supply the services (also, a requirement of certain forms of commercial presence could rule out cross-border supply);</p> <p>Limits on foreign equity participation.</p> <p>4) e.g., Limitations/needs test applied to the total number of natural persons that may be employed.</p>	<p>3) e.g., Preferences given to domestic suppliers or restrictions imposed on foreign suppliers in the allotment of frequencies;</p> <p>Limitations on the nationality or residency of directors or board members;</p> <p>Restrictions on foreign ownership of land, or foreign ownership of facilities.</p> <p>4)</p>	<p>Procedures or requirements related to<sup>g</sup>:</p> <ul style="list-style-type: none"> <li>- licensing</li> <li>- allotment of radio frequencies</li> <li>- numbering and identification codes</li> <li>- type approval</li> <li>- interconnection;</li> </ul> <p>Pricing related measures, e.g. cost-oriented pricing<sup>g</sup>;</p> <p>Participation in the standards-setting process, including review and comment prior to adoption of new standards;</p> <p>Rights of way for the construction of infrastructure.<sup>g</sup></p>

<sup>e</sup> There may be a need to determine whether any telecom-specific clarifications regarding modes of delivery are required.

<sup>f</sup> This example is a discriminatory limitation. Some participants consider non-discriminatory limitations on the number of service suppliers that are established strictly for technical reasons (e.g. availability of frequency bands for radio-based services) to be covered by the disciplines of Article VI, rather than by Article XVI. This is not the view of all participants.

<sup>g</sup> Further discussion is required to determine whether these measures would need to be addressed in the context of the negotiations; if so, whether they are adequately covered by other provisions of the Agreement or whether they need to be addressed as additional commitments.

## Attachment 8

## SERVICES SECTORAL CLASSIFICATION LIST

Note by the Secretariat

*(MTN.GNS/W/120)*

The secretariat indicated in its informal note containing the draft classification list (24 May 1991) that it would prepare a revised version based on comments from participants. The attached list incorporates, to the extent possible, such comments. It could, of course, be subject to further modification in the light of developments in the services negotiations and ongoing work elsewhere.

SERVICES SECTORAL CLASSIFICATION LIST

<u>SECTORS AND SUB-SECTORS</u>	<u>CORRESPONDING CPC</u>
1. <u>BUSINESS SERVICES</u>	<u>Section B</u>
A. <u>Professional Services</u>	
a. Legal Services	861
b. Accounting, auditing and bookkeeping services	862
c. Taxation Services	863
d. Architectural services	8671
e. Engineering services	8672
f. Integrated engineering services	8673
g. Urban planning and landscape architectural services	8674
h. Medical and dental services	9312
i. Veterinary services	932
j. Services provided by midwives, nurses, physiotherapists and para-medical personnel	93191
k. Other	
B. <u>Computer and Related Services</u>	
a. Consultancy services related to the installation of computer hardware	841
b. Software implementation services	842
c. Data processing services	843
d. Data base services	844

e.	Other	845+849
C.	<u>Research and Development Services</u>	
a.	R&D services on natural sciences	851
b.	R&D services on social sciences and humanities	852
c.	Interdisciplinary R&D services	853
D.	<u>Real Estate Services</u>	
a.	Involving own or leased property	821
b.	On a fee or contract basis	822
E.	<u>Rental/Leasing Services without Operators</u>	
a.	Relating to ships	83103
b.	Relating to aircraft	83104
c.	Relating to other transport equipment	83101+83102+83105
d.	Relating to other machinery and equipment	83106-83109
e.	Other	832
F.	<u>Other Business Services</u>	
a.	Advertising services	871
b.	Market research and public opinion polling services	864
c.	Management consulting service	865
d.	Services related to man. consulting	866
e.	Technical testing and analysis serv.	8676
f.	Services incidental to agriculture, hunting and forestry	881
g.	Services incidental to fishing	882
h.	Services incidental to mining	883+5115
i.	Services incidental to manufacturing (except for 88442)	884+885
j.	Services incidental to energy distribution	887
k.	Placement and supply services of Personnel	872
l.	Investigation and security	873
m.	Related scientific and technical consulting services	8675
n.	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	633+ 8861-8866
o.	Building-cleaning services	874
p.	Photographic services	875
q.	Packaging services	876
r.	Printing, publishing	88442
s.	Convention services	87909*

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\* The (\*) indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in this classification list.

t.	Other	8790
2.	<u>COMMUNICATION SERVICES</u>	
A.	<u>Postal services</u>	7511
B.	<u>Courier services</u>	7512
C.	<u>Telecommunication services</u>	
a.	Voice telephone services	7521
b.	Packet-switched data transmission services	7523**
c.	Circuit-switched data transmission services	7523**
d.	Telex services	7523**
e.	Telegraph services	7522
f.	Facsimile services	7521**+7529**
g.	Private leased circuit services	7522**+7523**
h.	Electronic mail	7523**
i.	Voice mail	7523**
j.	On-line information and data base retrieval	7523**
k.	electronic data interchange (EDI)	7523**
l.	enhanced/value-added facsimile services, incl. store and forward, store and retrieve	7523**
m.	code and protocol conversion	n.a.
n.	on-line information and/or data processing (incl.transaction processing)	843**
o.	other	
D.	<u>Audiovisual services</u>	
a.	Motion picture and video tape production and distribution services	9611
b.	Motion picture projection service	9612
c.	Radio and television services	9613
d.	Radio and television transmission services	7524
e.	Sound recording	n.a.
f.	Other	
E.	<u>Other</u>	
3.	<u>CONSTRUCTION AND RELATED ENGINEERING SERVICES</u>	
A.	<u>General construction work for buildings</u>	512
B.	<u>General construction work for civil engineering</u>	513
C.	<u>Installation and assembly work</u>	514+516
D.	<u>Building completion and finishing work</u>	517

\*\* The (\*\*) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance (e.g. voice mail is only a component of CPC item 7523).

E.	<u>Other</u>	511+515+518
4.	<u>DISTRIBUTION SERVICES</u>	
A.	<u>Commission agents' services</u>	621
B.	<u>Wholesale trade services</u>	622
C.	<u>Retailing services</u>	631+632+6111+6113+6121
D.	<u>Franchising</u>	8929
E.	<u>Other</u>	
5.	<u>EDUCATIONAL SERVICES</u>	
A.	<u>Primary education services</u>	921
B.	<u>Secondary education services</u>	922
C.	<u>Higher education services</u>	923
D.	<u>Adult education</u>	924
E.	<u>Other education services</u>	929
6.	<u>ENVIRONMENTAL SERVICES</u>	
A.	<u>Sewage services</u>	9401
B.	<u>Refuse disposal services</u>	9402
C.	<u>Sanitation and similar services</u>	9403
D.	<u>Other</u>	
7.	<u>FINANCIAL SERVICES</u>	
A.	<u>All insurance and insurance-related services</u>	812**
a.	Life, accident and health insurance services	8121
b.	Non-life insurance services	8129
c.	Reinsurance and retrocession	81299*
d.	Services auxiliary to insurance (including broking and agency services)	8140
B.	<u>Banking and other financial services (excl. insurance)</u>	
a.	Acceptance of deposits and other repayable funds from the public	81115-81119
b.	Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction	8113
c.	Financial leasing	8112
d.	All payment and money transmission services	81339**
e.	Guarantees and commitments	81199**
f.	Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:	
	- money market instruments (cheques, bills, certificate of deposits, etc.)	81339**
	- foreign exchange	81333
	- derivative products incl., but not limited to, futures and options	81339**

	- exchange rate and interest rate instruments, inclu. products such as swaps, forward rate agreements, etc.	81339**
	- transferable securities	81321*
	- other negotiable instruments and financial assets, incl. bullion	81339**
g.	Participation in issues of all kinds of securities, incl. under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues	8132
h.	Money broking	81339**
i.	Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services	8119+** 81323*
j.	Settlement and clearing services for financial assets, incl. securities, derivative products, or and other negotiable instruments	81339** 81319**
k.	Advisory and other auxiliary financial services on all the activities listed in or Article 1B of MTN.TNC/W/50, incl. credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy	8131 8133
l.	Provision and transfer of financial information, and financial data processing and related software by providers of other financial services	8131
C.	<u>Other</u>	
8.	<u>HEALTH RELATED AND SOCIAL SERVICES</u> (other than those listed under 1.A.h-j.)	
A.	<u>Hospital services</u>	9311
B.	<u>Other Human Health Services</u> (other than 93191)	9319
C.	<u>Social Services</u>	933
D.	<u>Other</u>	
9.	<u>TOURISM AND TRAVEL RELATED SERVICES</u>	
A.	<u>Hotels and restaurants (incl. catering)</u>	641-643
B.	<u>Travel agencies and tour operators services</u>	7471
C.	<u>Tourist guides services</u>	7472
D.	<u>Other</u>	
10.	<u>RECREATIONAL, CULTURAL AND SPORTING SERVICES</u> (other than audiovisual services)	

A.	<u>Entertainment services (including theatre, live bands and circus services)</u>	9619
B.	<u>News agency services</u>	962
C.	<u>Libraries, archives, museums and other cultural services</u>	963
D.	<u>Sporting and other recreational services</u>	964
E.	<u>Other</u>	
11.	<u>TRANSPORT SERVICES</u>	
A.	<u>Maritime Transport Services</u>	
a.	Passenger transportation	7211
b.	Freight transportation	7212
c.	Rental of vessels with crew	7213
d.	Maintenance and repair of vessels	8868**
e.	Pushing and towing services	7214
f.	Supporting services for maritime transport	745**
B.	<u>Internal Waterways Transport</u>	
a.	Passenger transportation	7221
b.	Freight transportation	7222
c.	Rental of vessels with crew	7223
d.	Maintenance and repair of vessels	8868**
e.	Pushing and towing services	7224
f.	Supporting services for internal waterway transport	745**
C.	<u>Air Transport Services</u>	
a.	Passenger transportation	731
b.	Freight transportation	732
c.	Rental of aircraft with crew	734
d.	Maintenance and repair of aircraft	8868**
e.	Supporting services for air transport	746
D.	<u>Space Transport</u>	733
E.	<u>Rail Transport Services</u>	
a.	Passenger transportation	7111
b.	Freight transportation	7112
c.	Pushing and towing services	7113
d.	Maintenance and repair of rail transport equipment	8868**
e.	Supporting services for rail transport services	743
F.	<u>Road Transport Services</u>	
a.	Passenger transportation	7121+7122
b.	Freight transportation	7123
c.	Rental of commercial vehicles with operator	7124
d.	Maintenance and repair of road transport equipment	6112+8867

e.	Supporting services for road transport services	744
	<u>Pipeline Transport</u>	
a.	Transportation of fuels	7131
b.	Transportation of other goods	7139
H.	<u>Services auxiliary to all modes of transport</u>	
a.	Cargo-handling services	741
b.	Storage and warehouse services	742
c.	Freight transport agency services	748
d.	Other	749
I.	<u>Other Transport Services</u>	
12.	<u>OTHER SERVICES NOT INCLUDED ELSEWHERE</u>	
	95+97+98+99	

## GUIDELINES AND PROCEDURES FOR THE NEGOTIATIONS ON TRADE IN SERVICES

*Adopted by the Special Session of the Council for Trade in Services on  
28 March 2001  
(S/L/93)*

### I. OBJECTIVES AND PRINCIPLES

1. Pursuant to the objectives of the GATS, as stipulated in the Preamble and Article IV, and as required by Article XIX, the negotiations shall be conducted on the basis of progressive liberalisation as a means of promoting the economic growth of all trading partners and the development of developing countries, and recognizing the right of Members to regulate, and to introduce new regulations, on the supply of services. The negotiations shall aim to achieve progressively higher levels of liberalization of trade in services through the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access, and with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

2. The negotiations shall aim to increase the participation of developing countries in trade in services. There shall be appropriate flexibility for individual developing country Members, as provided for by Article XIX:2. Special priority shall be granted to least-developed country Members as stipulated in Article IV:3.

3. The process of liberalization shall take place with due respect for national policy objectives, the level of development and the size of economies of individual

Members, both overall and in individual sectors. Due consideration should be given to the needs of small and medium-sized service suppliers, particularly those of developing countries.

4. The negotiations shall take place within and shall respect the existing structure and principles of the GATS, including the right to specify sectors in which commitments will be undertaken and the four modes of supply.

## II. SCOPE

5. There shall be no *a priori* exclusion of any service sector or mode of supply. Special attention shall be given to sectors and modes of supply of export interest to developing countries.

6. MFN Exemptions shall be subject to negotiation according to paragraph 6 of the Annex on Article II (MFN) Exemptions. In such negotiations, appropriate flexibility shall be accorded to individual developing country Members.

7. Negotiations on safeguards under Article X shall be completed by 15 March 2002 according to the Decision adopted by the Council for Trade in Services on 1 December 2000. Members shall aim to complete negotiations under Articles VI:4, XIII and XV prior to the conclusion of negotiations on specific commitments.

## III. MODALITIES AND PROCEDURES

8. The negotiations shall be conducted in Special Sessions of the Council for Trade in Services, which will report on a regular basis to the General Council, in accordance with decisions taken by the General Council.

9. Negotiations shall be transparent and open to all Members and acceding States and separate customs territories according to Decisions taken in this regard by the General Council.

10. The starting point for the negotiation of specific commitments shall be the current schedules, without prejudice to the content of requests.

11. Liberalization shall be advanced through bilateral, plurilateral or multilateral negotiations. The main method of negotiation shall be the request-offer approach.

12. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation

and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

13. Based on multilaterally agreed criteria, account shall be taken and credit shall be given in the negotiations for autonomous liberalization undertaken by Members since previous negotiations. Members shall endeavour to develop such criteria prior to the start of negotiation of specific commitments.

14. The Council for Trade in Services in Special Sessions shall continue to carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of the GATS and of Article IV in particular. This shall be an ongoing activity of the Council and negotiations shall be adjusted in the light of the results of the assessment. In accordance with Article XXV of the GATS, technical assistance shall be provided to developing country Members, on request, in order to carry out national/regional assessments.

15. To ensure the effective implementation of Articles IV and XIX:2, the Council for Trade in Services in Special Session, when reviewing progress in negotiations, shall consider the extent to which Article IV is being implemented and suggest ways and means of promoting the goals established therein. In implementing Article IV consideration shall also be given to the needs of small service suppliers of developing countries. It shall also conduct an evaluation, before the completion of the negotiations, of the results attained in terms of the objectives of Article IV.

16. While the Council for Trade in Services in Special Sessions may establish subsidiary bodies as it deems necessary, the proliferation of such bodies should be avoided to the maximum extent possible. Existing subsidiary bodies shall be utilised to their maximum capacity.

17. The needs of smaller delegations should be taken into account, e.g. by scheduling meetings in sequence and not in parallel.

18. The Council for Trade in Services in Special Sessions shall, when appropriate, develop time schedules for the conduct of the negotiations in accordance with any relevant decisions taken by the General Council.

CERTIFICATION

Schedule of Specific Commitments in Basic Telecommunications of: Brazil

*Notification of Objection from the United States  
(S/L/94)*

The following communication has been received from the delegation of the United States concerning the certification of Brazil's Schedule of Specific Commitments in Basic Telecommunications (S/C/W/191).

This notification is in response to document S/C/W/191, dated 26 April 2001, which contain a draft schedule of commitments on basic telecommunications, submitted by the Government of Brazil for certification pursuant to the Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments (S/L/84). According to document S/C/W/191, the Government of Brazil intends for this draft schedule to constitute an integral part of the Schedule of Specific Commitments of Brazil (GATS/SC/13) upon ratification.

The United States believes that further information and clarification is necessary to assess the basis for and effect of the draft schedule. In particular, the United States seeks clarification regarding Brazil's proposed horizontal limitation that would permit the Executive Branch to use its "legal prerogative" to establish limits on foreign participation in the capital composition of telecommunications service providers. In the view of the United States, this limitation potentially allows for arbitrary action of the part of the Executive branch, and accordingly, would create needless uncertainty in the market. The United States also believes that further clarification is necessary on other aspects of Brazil's draft schedule.

Bearing in mind the need for further information and clarification, the United States objects to the certification of Brazil's draft schedule of commitments in basic telecommunications pursuant to the Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments (S/L/84). As further contemplated by these procedures, the United States looks forward to entering into consultations expeditiously with Brazil in order to reach a satisfactory resolution to this matter.

CERTIFICATION

Schedule of Specific Commitments in Basic Telecommunications of: Brazil

*Notification of Objection from Hong Kong, China  
(S/L/95)*

The following communication has been received from the delegation of Hong Kong, China concerning the certification of Brazil's Schedule of Specific Commitments in Basic Telecommunications (S/C/W/191).

Hong Kong, China would like to refer to the Secretariat's communication of 26 April 2001 (S/C/W/191) seeking certification of Brazil's revised Schedule of Commitments in Basic Telecommunications.

It is our understanding that Brazil would like to initiate the certification procedure in accordance with the "Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments" (the "Procedure") (S/L/84). However, we note that Brazil's revised offer contains some substantial revisions to its original offer made in the last round of negotiations on basic telecommunication services which led to the conclusion of the Fourth Protocol to the GATS. Hong Kong, China appreciates that some improvements to the original offer are contained in the current offer. In the meantime, the revision also includes, *inter alia*, a new horizontal limitation imposed on foreign participation in the capital composition of telecommunications service providers by the executive branch, which would have serious systemic implications on the original commitments undertaken in respective basic telecommunication services sectors. In view of the complexity and uncertainty of the overall implication entailed by all the proposed revisions, Hong Kong, China considers that the present request for certification is at variance with the provision of the "Procedures", which are intended for those modifications arising from "new commitments, improvements to existing ones, or rectifications or changes of a purely technical character that do not alter the scope or substance of the existing commitments".

Hong Kong, China considers that further substantive discussion on the current offer would be useful.

## CERTIFICATION

### Schedule of Specific Commitments in Basic Telecommunications of Brazil

#### *Notification of Objection from the European Communities and their Member States (S/L/96)*

The following communication has been received from the delegation of the European Communities and their Member States concerning the certification of Brazil's Schedule of Specific Commitments in Basic Telecommunications (S/C/W/191).

The European Communities and their Member States have, from the out-

set, supported the process of opening up Brazil's telecommunications sector to competition and establishing a regulatory framework for it. The European Communities and their member States therefore attached great importance to Brazil's participation in the negotiations on basic telecommunications in order to fulfil its desire to consolidate this process through WTO commitments under the General Agreement on Trade and Services.

Nevertheless, the offer submitted by Brazil in document S/C/W/191 raises a systemic problem for the European Communities and their Member States, inasmuch as it introduces legal uncertainty *vis-à-vis* foreign investment, which is furthermore contrary to what was initially negotiated. The European Communities and their member States are therefore unable to accept the offer as it stands. The European Communities and their Member States are ready to hold talks with Brazil with a view to finding a satisfactory solution as rapidly as possible.

## CERTIFICATION

Schedule of Specific Commitments in Basic Telecommunications of: Brazil

*Notification of Objection from Japan*

*(S/L/97)*

The following communication has been received from the delegation of Japan concerning the certification of Brazil's Schedule of Specific Commitments in Basic Telecommunications (S/C/W/191).

With reference to document S/C/W/191, dated 27 April 2001, containing Brazil's revised Schedule of Specific Commitments in Basic Telecommunications, Japan welcomes, in general terms, the improvements made, in particular that on the binding Reference Paper included as additional commitments.

Japan does, however, have some concern about headnote (iii) in Brazil's revised Schedule of Specific Commitments, since the headnote could imply that there be room for a comprehensive limitation on the participation of foreign capital. If such a description is then used by other Members in their Schedules of Specific Commitments, there will remain the possibility of impeding the legal certainty or predictability of the GATS.

In view of the above concern and pursuant to the Decision by the Council for Trade in Services on 14 April 2000 (S/L/84), Japan hereby objects at present to Brazil's revised Schedule of Specific Commitments in Basic Telecommunications and wishes to enter into consultations with Brazil in order to discuss on the way to reach a satisfactory solution.

COMMUNICATION FROM BRAZIL

*Certification*

*(S/L/98)*

The attached communication has been received from the delegation of Brazil with the request that it be circulated to Members of the Council for Trade in Services.

As stated by the delegation of Brazil at the regular meeting of the Council for Trade in Services held on 9 July 2001, the Brazilian government decided to withdraw its schedule of specific commitments in basic telecommunications submitted in document S/C/W/191 for certification pursuant to the "Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments" (S/L/84) in view of the objections notified by the United States (S/L/94), Hong Kong, China (S/L/95), the European Communities and their Member States (S/L/96) and Japan (S/L/97).

In accordance with paragraph 4 of the "Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments" (S/L/84), this certification procedure ceases to apply as of the date of this communication.

CERTIFICATION

Schedule of Commitments in Basic Telecommunications of Egypt

*Notification of objection from the European Communities and their Member States  
(S/L/99)*

The following communication has been received from the delegation of the European Communities and their Member States concerning the certification of Egypt's Schedule of Specific Commitments in Basic Telecommunications (S/C/W/195).

1. The European Communities and their Member States welcome the proposal for certification of telecommunications services commitments made by Egypt in document S/C/W/195, dated June 22 2001. The European Communities and their Member States have entered into consultation with Egypt and had understood in the course of those consultations, on the basis of clarifications given, that a number of points in the proposal would require rectification. It had further understood that Egypt would submit such a rectification to the WTO.

2. Indeed, among other points, according to the explanations provided by the delegation of Egypt, the “reference paper” on the regulatory framework mentioned in document S/C/W/195 is to be integrated as an annex to the commitments. Also, the economic needs test referred to as regards licenses is not an economic needs test but a non-discriminatory test for capacity to supply the service which thus would not need to be scheduled.

3. Accordingly, pending the submission of a revised text by Egypt, the European Communities and their Member States are unable to formally agree to the schedule in the form presented in document S/C/W/195. We look forward to receiving such a revised submission in the near future and remain available for further clarification on the technical issues involved.

#### CERTIFICATION

##### Schedule of Commitments in Basic Telecommunications of Egypt

##### *Notification of objection from the United States (S/L/100)*

The following communication has been received from the delegation of the United States concerning the certification of Egypt’s Schedule of Specific Commitments in Basic Telecommunications (S/C/W/195).

1. The United States welcomes the submission by the Government of Egypt of document S/C/W/195, dated 22 June 2001, which contains a draft schedule of commitments on basic telecommunications, submitted for certification pursuant to the Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments (S/L/84). We believe that this is an important step towards liberalization in the Egyptian telecommunications market.

2. Nevertheless, the United States believes that further information and clarification would assist us in assessing the basis for and effect of the draft schedule. For instance, the United States notes that Egypt intends to undertake the commitments contained in the Reference Paper; however, because the draft schedule does not set out these specific commitments in any detail, the United States does not have the basis to assess their scope. In addition, the United States seeks clarification regarding the “economic needs test” listed in Egypt’s mode 3 market access limitations. The United States also believes that further clarification is desirable on other aspects of Egypt’s draft schedule.

3. Bearing in mind the need for further information and clarification, the

United States regrettably objects to the certification of Egypt's draft schedule of commitments in basic telecommunications pursuant to the procedures contained in S/L/84. The United States looks forward to consultations with Egypt to clarify these matters.

## TURKEY – CERTAIN IMPORT PROCEDURES FOR FRESH FRUIT

### *Request for Consultations by Ecuador*

*(WT/DS237/1 - G/L/472 - G/SPS/GEN/276 - G/LIC/D/33 - G/AG/GEN/48 - S/L/101)*

The following communication, dated 31 August 2001, from the Permanent Mission of Ecuador to the Permanent Mission of Turkey and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Upon instructions from my authorities I hereby request consultations with the Government of Turkey pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII:1 of the 1994 General Agreement on Tariffs and Trade (GATT 1994), Article 11 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), Article 6 of the Agreement on Import Licensing Procedures, Article 19 of the Agreement on Agriculture and Article XXII:1 of the General Agreement on Trade in Services (GATS).

This request is in respect to certain import procedures for fresh fruits and, in particular, bananas. The procedure requires the issuance by the Turkish Ministry of Agriculture of a document, known as "Kontrol Belgesi". This procedure is established under the "Communiqué for Standardization in Foreign Trade" published by the Under-Secretariat of Foreign Trade in the Official Journal 24271 of 25 December 2000 (Annex 1 thereof).

The Government of Ecuador is of the view that this procedure, as applied by the Turkish authorities, is a barrier to trade which is inconsistent with the obligations of Turkey under GATT 1994, the Agreement on the Application of Sanitary and Phytosanitary Measures, the Agreement on Import Licensing Procedures, the Agreement on Agriculture and the GATS.

In particular, the Government of Ecuador considers that the provisions of the WTO agreements with which Turkey's "Kontrol Belgesi" procedure appears to be inconsistent include the following:

1. Articles II, III, VIII, X and XI of the GATT 1994;
2. Articles 2.3 and 8 and Annexes B and C of the Agreement on the Application of Sanitary and Phytosanitary Measures;
3. Paragraphs 2, 3, 5 and 6 of Article 1 of the Agreement on Import Licensing

Procedures;

4. Article 4 of the Agreement on Agriculture; and
5. Articles VI and XVII of the General Agreement on Trade in Services (GATS).

I look forward to receiving the reply of Turkey to this request as Ecuador is ready to consider with Turkey mutually convenient dates to commence consultations in Geneva with a view to clarifying the facts of the situation and to arriving at a mutually agreed solution.

The Government of Ecuador reserves the right to raise additional factual or legal points related to the aforementioned measure during the course of consultations and any other subsequent actions under the DSU.

## WAIVERS

### WAIVERS UNDER ARTICLE IX OF THE WTO AGREEMENT

Country	Type	Decision of	Expiry	Document
Nicaragua	Implementation of the Harmonized Commodity Description and Coding System - Extensions of Time-Limit	8 May 2001 31 October 2001	31 October 2001 30 April 2002	WT/L/397 WT/L/426
Sri Lanka	Implementation of the Harmonized Commodity Description and Coding System - Extensions of Time-Limit	8 May 2001 31 October 2001	31 October 2001 30 April 2002	WT/L/398 WT/L/427
Zambia	Renegotiation of Schedule - Extensions of Time-Limit	8 May 2001 31 October 2001	31 October 2001 30 April 2002	WT/L/399 WT/L/428
Cameroon	Agreement on Implementation of Article VII of GATT 1994	8 May 2001	1 July 2001	WT/L/396
Argentina, Brazil, Egypt, El Salvador, Guatemala, Iceland, Israel, Malaysia, Morocco, New Zealand, Norway, Pakistan, Panama, Paraguay, South Africa, Switzerland, Thailand, Uruguay, Venezuela	Introduction of Harmonized System changes into WTO Schedules of Tariff Concessions on 1 January 1996 - Extension of Time-Limit	8 May 2001	30 April 2002	WT/L/400
Madagascar	Agreement on Implementation of Article VII of GATT 1994	18 July 2001	17 November 2003	WT/L/408

Country	Type	Decision of	Expiry	Document
Switzerland	Preferences for Albania and Bosnia-Herzegovina	18 July 2001	31 March 2004	WT/L/406
Thailand	Agreement on Trade-Related Investment Measures	31 July 2001	31 December 2001	WT/L/410
European Communities	Transitional Regime for the EC Autonomous Tariff Rate Quotas on Imports of Bananas	14 November 2001 (Ministerial Conference)	31 December 2005	WT/L/437
European Communities	The ACP-EC Partnership Agreement	14 November 2001 (Ministerial Conference)	31 December 2007	WT/L/436
Colombia	Article 5.2 of the Agreement on Trade-Related Investment Measures	20 December 2001	31 December 2003	WT/L/441
Cuba	Article XV:6 of GATT 1994 - Extension of Time-Limit	20 December 2001	31 December 2006	WT/L/440
Dominican Republic	Minimum values under the Agreement on Implementation of Article VII of GATT 1994	20 December 2001	1 July 2003	WT/L/442
Haiti	Agreement on Implementation of Article VII of GATT 1994	20 December 2001	30 January 2003	WT/L/439

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- Costa Rica	WT/TPR/S/83
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- Mozambique	WT/TPR/S/79
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- Slovak Republic	WT/TPR/S/91
- Uganda	WT/TPR/S/93
- United States	WT/TPR/S/88
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Annual report (2001)	G/L/492
<i>Committee on Agriculture</i>	
Annual report (2001)	G/L/483
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<i>Committee on Anti-Dumping Practices</i> Annual report (2001)	G/L/495 and Corr.1
<i>Committee on Customs Valuation</i> Annual report (2001)	G/L/488
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<i>Committee on Market Access</i> Annual report (2001)	G/L/486
<i>Committee on Rules of Origin</i> Annual report (2001)	G/L/490/Rev.1
<i>Committee on Safeguards</i> Annual report (2001)	G/L/494
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