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**Working Group on the Interaction
between Trade and Competition Policy**

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COMMUNICATION FROM CHINA

The following communication from the Permanent Mission of China incorporates an oral intervention made by that delegation at the Working Group's meeting of 20-21 February 2003.

Elements contained in Paragraph 25 of the Doha Ministerial Declaration

1. First of all, my delegation would like to express our thanks to the OECD Secretariat for its final version of the paper on the Core Principles in a Trade and Competition Context (WT/WGTCP/W/221) which we believe is enlightening for our deliberations under this agenda item. Our thanks also go to the WTO Secretariat and Members for their new submissions since the last meeting of the Working Group. In conjunction with reading the paper of the OECD, my delegation would like to make the following comments on the three core principles of transparency, non-discrimination and procedural fairness on top of what was stated by this delegation at the previous meetings of the Working Group.
2. The three core principles referred to are of fundamental importance to a possible multilateral framework on trade and competition policy, are consistent with the direction of China's competition law development and have been embraced to various degrees in China's existing domestic competition legislation. Hence, China supports that these three principles should be incorporated into a future multilateral framework on trade and competition.
3. However, as a developing country, China has not long experience since it adopted its market economy system. Although China has already a set of legal instruments for the establishment, development and further improvement of this economic system, China's legislation on competition is far from being comprehensive and complete. There is much room even for improvement on the implementation of the relevant existing laws and regulations. To meet the needs of its national economic construction and in implementing its commitment made during its WTO accession process, China has been accelerating its work in drafting its Anti-Monopoly Law. At present, and in the near future, the focus of our work will be on the resolution to problems related to economic and administrative monopolistic practices.
4. In the area of competition policy, Mr. Chairman, it is our firm belief that there are some developing Members in the WTO who have done better than China since they have a longer history of a market economy. It is also our belief, however, that there are more developing Members whose legislation on competition and implementation thereof are behind that of China. For many developing countries, they simply do not have a single legislation or regulation on competition. It is a basic and

fundamental element to be fully taken into account and accommodated when we talk about and start to negotiate on a set of multilateral rules on trade and competition policy.

5. In our future work on possible negotiations on a multilateral framework on trade and competition, Mr. Chairman, we must always bear in mind the specific difficulties faced by the developing countries. The possible excessive burden arising from the requirements for transparency, the problem of national treatment in applying the principle of non-discrimination, the necessary protection of the weak, small and infant industries in developing countries as well as an appropriate treatment of the interrelationship between foreign investment policy and competition policy are just a few examples. The following are some of our comments on the specific principles:

I. ON TRANSPARENCY

6. China stands for the inclusion of the principle of transparency in a future multilateral framework on competition policy, provided Members could reach explicit consensus on modalities before the Cancún Ministerial Conference for the negotiations on such a framework. This principle is in line with China's Law on Legislation and the Draft Anti-Monopoly Law which is taking shape, both of which require the publication of all applicable laws and regulations in a comprehensive and timely manner. They also require the publication of administrative rulings in the same manner.

7. However, transparency has a large scope of areas to cover. The paper prepared by the OECD Secretariat before us alone already covers five areas. To keep all these five aspects transparent may be an easy job for the developed countries. For most developing countries including China, however, it will be a great success if they are able to do a good job of keeping the first two transparent in the foreseeable future, i.e. the access to the law and implementation regulations and the access to case decisions including the legal bases for the decisions. As far as the other aspects such as the relevant theories and analyses that are applied are concerned, they will constitute too much of a burden to the governments of developing countries. China therefore strongly supports the point made by Thailand in its submission (WT/WGTCP/W/213) that developing countries should be given enough time to build up their transparency and procedural fairness mechanisms progressively.

II. ON NON-DISCRIMINATION

8. China's current Anti-Unfair Competition Law places domestic and foreign firms on an equal footing, thereby observing the principle of non-discrimination. We believe in the philosophy that the enforcement of competition law should reflect the competitive nature of the market as a whole. On the other hand, we have also noted and are very much concerned about the potential contradiction and conflict between competition policy and our industrial and development policy objectives. We believe that more flexibility is needed for developing countries in applying the principle of non-discrimination, the aspect of national treatment in particular, in their legislation on competition and the implementation thereof. This flexibility should also be reflected in any future multilateral framework on trade and competition policy.

9. The flexibility for developing members as provided in the existing WTO Agreements related to competition policy is inadequate. Due to the big gap and contrast between the developing countries and the developed ones in terms of economic systems, economic sizes, economic structures, levels of economic development as well as the sizes and competitiveness of various industries and enterprises, many specific de jure and de facto distinctions by the developing countries in the treatment offered to domestic enterprises as compared to that to foreign enterprises as referred to in the paper of the OECD will not be completely avoidable.

III. ON PROCEDURAL FAIRNESS

10. China agrees in principle that the principle of procedural fairness should be incorporated in any future multilateral framework on competition policy. China has an Administrative Review Law, an Administrative Litigation Law and an Administrative Penalty Law to ensure procedural fairness in Government administration, including the administration of competition policy. However, procedural fairness relates not only to legal provisions, but also to many specific and complicated operational and technical practices. It is not a simple matter that can be resolved easily. The Working Group certainly needs more detailed discussions in this connection. As far as the position of China is concerned, we hold that each and every Member of the WTO is entitled to design, establish and maintain its own procedural system that is suitable to its specific national conditions and in accordance with its level of development.

IV. ON S&D TREATMENT

11. Due to the various reasons stated above, Mr. Chairman, we believe that if the negotiations on a multilateral framework on trade and competition are to be launched, the three core principles of transparency, non-discrimination and procedural fairness should be incorporated into it with a view to enhancing "the contribution of competition policy to international trade and development"¹. But at the same time, overall, adequate and effective special and differential treatment should be accorded in all related aspects to developing countries including the least developed countries. In this regard, we fully share the concerns shown by Thailand in its submission (WT/WGTCP/W/213) and similar concerns expressed by other developing Members.

¹ Paragraph 23 of the Doha Ministerial Declaration.