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**Committee on Subsidies
and Countervailing Measures**

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STATEMENT BY HEAD OF THE CHINESE DELEGATION ON THE TRANSITIONAL REVIEW OF CHINA TO THE COMMITTEE ON SUBSIDIES AND COUNTERVAILING MEASURES

The following communication, dated 1 November 2002, has been received from the Permanent Mission of the People's Republic of China.

Statement by Head of Chinese Delegation on the Transition Review of China by the Committee on Subsidies and Countervailing Measures – 2002-11-1:

China welcomes this opportunity to present to this Committee the following information within the framework of the transitional review under paragraph 18 of the Protocol of China's Accession to the WTO. My statement will begin with some updated information regarding subsidies and pricing policy in China. The second part is relating to China's Countervailing Regulations which has been notified to this Committee with full text in English. I believe that the information is sufficient to address concerns and respond to questions that members raised to China prior to this meeting. And my statement may be circulated after this meeting with literal double checking by my colleagues.

Part I

Mr. Chairman, regarding subsidy programmes and the notification obligations under the Subsidies Agreement, China, in common with many other members, has experienced difficulty in obtaining accurate data and details of all types of subsidies. Some members of my delegation participated in the subsidies notification seminar for capital-based officials prior to this meeting of the Committee. They are impressed by the delay of notifications of many other members.

Soon after WTO accession, China begun to collect the information of subsidies, although the preoccupation was placed on regulation and policy streamlining and formulation to honour the commitments and undertakings made. Due to the time constraints and also the complexity of this job known to all of us, this information collection process is far from finishing, and it seems very difficult at this moment to tell a clear cut deadline. However, the work that we have done did turn up with some new information which I would like to share with other members at today's meeting, although in our view these incomplete information are not sufficient for us to update the subsidy notification we made during the accession negotiations, I think it is sufficient for a meaningful review at today's meeting. We will certainly continue our efforts to collect more information and further improve their quality, so as to notify to the Committee at an earlier date. The information that I am going to disclose here will be reflected in our future notification.

First and foremost, on the subsidy programme related to the Strategy of the Chinese Government to develop the western regions. The Strategy initiated in year 2000 aims at accelerating the social and economic development of the western regions of China. The subsidy programme takes the form of preferential taxation treatment for enterprises in the West. To be more specific, for the industries and sectors encouraged by the State, all the enterprises in the regions, both domestic and foreign-invested, are all entitled to a preferential income tax rate of 15% from year 2001 to 2010. The Ministry of Finance, the General Administration of Taxation and the taxation authorities at the local levels are responsible for the implementation.

Secondly, regional subsidy programmes in China as notified in Annex 5A to the Accession Protocol, including those for special economic zones, are still valid. The purpose of the programmes is to promote regional social and economic development and absorbing foreign investment, and is by no means contingent upon export performance or on use of domestic products. China believes that these programmes are extremely important and necessary to achieve the development goal of the nation, and they are not in any way prohibited by the Subsidies Agreement. Therefore China has no plan to cancel these programmes.

During the accession negotiations, China committed to eliminating the subsidy programmes contained in Annex 5B to the Accession Protocol. Till now the two programmes relating to the Industrial Policy on Automobiles were ceased from implementation as of 1 January 2002, according to a Decree of the Ministry of Finance dated 11 December 2001. China now maintains no longer subsidy programmes that are contingent upon export performance or use of domestic products. The subsidies provided to certain state-owned enterprises running at a loss by the central budget, as listed also in Annex 5B, were eliminated in 2001. Since 2001 such an item no longer existed in the central budget. The subsidies provided to certain state-owned enterprises running at a loss by the local budget, which appeared in Annex 5A have also been eliminated since 2001.

One member mentioned the incentive programme for export of new and hi-tech products. China takes it as a general policy to encourage export of new and hi-tech products with a view to upgrading the export products structure and to adapting enterprises to the competition in the international market. However, up to now no specific trade policy or concrete incentive measure has been applied and we will fulfill our notification obligation once we have such specific incentive programmes.

One member is asking about new policies of China to support export. I want to reiterate that now and in the future, all the promotion policies and measures taken by China to support the export will not go out of the scope permitted by the Subsidies Agreement.

For the industry of integrated circuits in China, some preferential taxation policies have been adopted to promote the development since year 2001. More specifically, (1) for integrated circuit manufacturing enterprises established in China with total investment of RMB 8 billion and above or for manufacturing of circuit minor than 250 millimicron, import of certain specialized construction materials for purification rooms, manufacturing equipment and spare parts etc are exempted from tariff and value-added tax from 1 January 2001; (2) for the same kind of enterprises, import of certain manufacturing raw materials and consumption goods for self-use is exempted from tariff and value-added tax from 1 July 2001; (3) From 1 January 2001 to the end of 2010, for the value-added tax applied to integrated circuit products at the rate of 17%, collection exceeding 3% of actual tax shall be refunded upon collection.

These three taxation policies were adopted for a product or an industry, regardless of the ownership of the enterprise or the source of the investments. They are not based upon export performance. Therefore these policies are consistent with the Subsidies Agreement. We have no plan to eliminate or change them.

Mr. Chairman, China eliminated its export subsidies for agriculture products as early as in the beginning of 1990s. During the course of the WTO accession negotiations, China committed itself not to resume agricultural export subsidies. This commitment has been honoured by China since accession.

After accession, to alleviate burdens of farmers and to increase competitiveness of the agricultural products, one thing China did is to increase transportation and distribution efficiency for the agricultural products. The railway construction fund imposed on transportation of agricultural products including grain and cotton, and unreasonable fees and charges imposed by some local railway enterprise were also ruled out. This has led to a drastic decrease of cost of transportation and distribution, facilitating domestic circulation and export of agricultural products. Furthermore, taking the international prevailing practice, agriculture products are now also exported with zero value-added tax. All these measures have contributed to the decline of export cost of agriculture products and are all WTO consistent and in line with international common practices.

Mr. Chairman, following subsidies, I would like to turn to pricing policy in China. In advance of this meeting, the Chinese delegation provided this Committee with some information as required by Annex 1A to the China's Accession Protocol.

Currently, prices of most products and services in China are completely determined by the market. Price control by the government takes only two forms of state pricing and government guidance pricing, and is limited to very few products and services as listed in Annex 4 of the Protocol of China's Accession to the WTO.

The State Development and Planning Commission is the government authority now responsible for implementation of price control. The Catalogue of Pricing by the State Development Planning Commission and Relevant Administrative Bodies of the State Council, which was promulgated by the State Development Planning Commission on 4 July 2001, is now still in force. This catalogue was fully discussed by the members of the Working Party on China during the accession negotiations, and its conformity to China's commitment has been recognized by all WTO members.

Reasons behind use of price control in China are specifically provided in Article 18 of the Pricing Law of the People's Republic of China, which states that price control is restricted only to: (1) a limited number of products that are of great importance to national economy and people's livelihood, (2) a small number of products of scarce resources, (3) products under natural monopoly, (4) important public utilities, and (5) important services of public interest.

In China, the practice of one product or service under multiple pricing has been terminated. Transparency of pricing policy is well observed, with list of products and services subject to state pricing and government guidance pricing as well as their price-setting mechanism published with the Price Gazette of the People's Republic of China.

Regarding the pricing mechanism of state trading enterprises, about which some members are concerned, I want to emphasize here that according to the Pricing Law of the People's Republic of China, state pricing and government guidance pricing only apply to products and services as published, regardless of the ownership of the enterprises. Prices of products and services that are not subject to state pricing and government guidance pricing shall all be determined by the market, and eventually by the enterprises themselves. Therefore pricing mechanism of state trading enterprises is also determined by themselves according to the market situation. On this particular issue, more information will be provided in our notification to the Council for Trade in Goods concerning state trading enterprises.

Part II

Mr. Chairman, now I would like to respond to the questions posed to us prior to this meeting by several members regarding China's Countervailing Regulations. Since China has not initiated any countervailing investigation and no questions in this regard were raised, my instruction will be limited to the regulatory aspect.

1. The function of various government authorities in countervailing investigations in China

Mr. Chairman, in this regard the situation is quite similar to what we explained in the previous safeguard and anti-dumping exercises. Presently, three government agencies in China are legislatively involved in countervailing investigation matters, namely the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), the State Economic and Trade Commission (SETC) and the Tariff Commission under the State Council (TCSC).

According to the Regulations on Countervailing Measures, MOFTEC and SETC are the investigating authorities. MOFTEC is in charge of investigation and determination of subsidy. If a provisional countervailing measure takes the form of undertakings, a decision shall be made and published by MOFTEC as the foreign trade administrative authority. SETC is responsible for investigation and determination of injury. TCSC is to decide whether to levy provisional countervailing duty or definitive countervailing duty, upon proposal made by MOFTEC on the basis of the investigation findings. The specific provision governing the decision-making of TCSC can be found in Article 43 of the notified regulation. According to that Article, no countervailing duties shall be levied in excess to the amount of subsidy as determined in the final determination made by MOFTEC. Here I would like to make it clear that while TCSC has power to decide whether to adopt recommendations for application of countervailing measures, it is not in a position to overrule or modify the determination made by MOFTEC on the amount of subsidy.

Other than the above functions carried out by SETC and TCSC, MOFTEC is also responsible for the other issues relating to countervailing investigations, including consultations, notifications, dispute settlement and etc.

2. Implementation of Article 55 of the Regulations on Countervailing Measures

Mr. Chairman, some members are concerned that China may take the "corresponding measures" under Article 55 of our Regulations on Countervailing Measures. I would like to clarify here that so far China has not yet applied Article 55 of the Regulations on Countervailing Measures and therefore has not yet taken any "corresponding measures". Furthermore, being a WTO member, China will first resort to the dispute settlement provisions provided in the Agreement on Subsidies and Countervailing Measures and the dispute settlement provisions under Annex II of the WTO Agreement before taking the "corresponding measures", if the other party is also a WTO member.

3. Administrative reconsideration and judicial review

Mr. Chairman, if the parties concerned in a specific case disagree with the relevant countervailing decisions, Article 52 of our regulation prescribes the mechanism of administrative reconsideration and judicial review.

Where any interested party is not satisfied with a final determination, a decision on imposition of countervailing duties, a decision on retroactive imposition of a countervailing duty and review findings, it can apply for administrative reconsideration. In accordance with Article 14 of Law of the

People's Republic of China on Administrative Reconsideration, the reconsideration authority shall be the department under the State Council that carried out the administrative action.

For judicial review, we have Law of the People's Republic of China on Administrative Litigation Procedure, according to which, the People's Court at the intermediary level within whose jurisdiction the government authority making the administrative decision in question is located, will deal with the litigation against this government body. Furthermore, the Supreme People's Court of China is in the process of formulating rules on hearing administrative litigations on countervailing investigations. The Rules will be notified to the Committee once promulgated.

As to the standard of review, the reconsideration authority or the court shall focus on whether there are procedural irregularity, abuse of power, improper interpretation and application of law, etc. Nevertheless, they are not entitled to reinvestigate the case.

4. Anti-circumvention

Some Members raised concerns over Article 54 of our Regulations on Countervailing Measures, which stipulates that MOFTEC and SETC may take appropriate measures to prevent circumvention of countervailing measures.

Although this Article provides the possibility of taking remedy measures when circumvention takes place, up to date, China has not yet invoked this Article and has not taken any anti-circumvention measures. Meanwhile, we note that quite a number of other members also have relevant rules and practices on anti-circumvention. This issue has been long discussed in the WTO and it is also a subject in the Negotiation Group on Rules as well as in this Committee. In this regard, China will implement future new multilateral disciplines.

Mr. Chairman, paragraph 18 provides China with equal legitimate right to review this fulfilment of obligation of other members vis-a-vis China. I would like to take the opportunity to express our great concerns of the enterprises on the unjustifiable application of rules on subsidy and countervailing measures in some US anti-dumping cases against Chinese products. In the anti-dumping investigation against imports of windshields from China and several other cases on steel products, the prices actually paid by the Chinese companies concerned on raw materials imported from market economy countries were rejected by the US authority to be the basis in the calculation of the normal value. The reason the US gave us was that those source countries maintain generally available export subsidies. Such a decision was made without any investigations, and without any determinations on subsidies despite the fact that the Chinese companies, as importers of the raw materials, had demonstrated and proved themselves to the US authorities that imported raw materials had benefited nothing from those generally available subsidies in the source countries. The US practice in the above-mentioned cases directly goes counter to the due legal process. The anti-dumping case on windshields is now still pending in the Court of International Trade of the US, and we urge the US government to repeal immediately such unjustifiable practice and respect the principles of rule of law and due process.
