

**Working Party on the
Accession of China**

Original: English/
anglais/
inglés

**DRAFT REPORT OF THE WORKING PARTY ON THE
ACCESSION OF CHINA TO THE WTO¹**

Revision

Following the Chairman's remarks at the conclusion of the Eleventh Meeting of the Working Party on 27 July 2000, this further revision of the Draft Report of the Working Party on the Accession of China to the WTO is being circulated on the Chairman's own responsibility. This revision attempts to take into account developments during the Eleventh Meeting and is submitted to the Working Party for the purpose of facilitating further discussions.

**Groupe de travail de
l'accession de la Chine**

**PROJET DE RAPPORT DU GROUPE DE TRAVAIL DE
L'ACCESSION DE LA CHINE À L'OMC¹**

Révision

Suite aux remarques formulées par le Président à l'issue de la onzième réunion du Groupe de travail le 27 juillet 2000, cette nouvelle révision du projet de rapport du Groupe de travail de l'accession de la Chine à l'OMC est distribuée sous la responsabilité du Président. Cette révision vise à tenir compte des faits nouveaux intervenus au cours de la onzième réunion du Groupe de travail et est soumise au Groupe pour faciliter la suite des débats.

**Grupo de Trabajo sobre la
Adhesión de China**

**PROYECTO DE INFORME DEL GRUPO DE TRABAJO
SOBRE LA ADHESIÓN DE CHINA A LA OMC¹**

Revisión

Como consecuencia de las observaciones formuladas por el Presidente al concluir la undécima reunión del Grupo de Trabajo del 27 de julio de 2000, se distribuye esta nueva revisión del proyecto de informe del Grupo de Trabajo sobre la Adhesión de China a la OMC bajo la responsabilidad del Presidente. La presente revisión tiene por objeto tener en cuenta los nuevos acontecimientos que se han producido durante la undécima reunión y se somete al Grupo de Trabajo con el fin de facilitar la continuación de los debates.

¹ In English only./En anglais seulement./En inglés solamente.

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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 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.8.

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 China's Accession to the WTO Agreement met on _____ and _____ under the same 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.

2. INTRODUCTORY STATEMENTS

4. In statements to the GATT 1947 Working Party and subsequently to the Working Party on China's Accession to the WTO, 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 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 believed that its 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 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% of the world's total.

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

9. In response, 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 agreements available to developing country WTO Members. Each agreement and China's situation should be carefully considered and specifically addressed.

10. Many members of the Working Party expressed their interest in carrying out bilateral market access negotiations with China with respect to industrial and agricultural products, and initial commitments in services. The representative of China stated that China was keen to undertake such negotiations with interested Working Party members.

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

12. 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. The Group of Experts submitted its report to the Chairman of the Working Party on 30 June 1994.

13. The Working Party reviewed the foreign trade regime of China. The discussions and commitments resulting therefrom are contained in paragraphs ... below and in the Draft Protocol of Accession ("Draft Protocol") and in China's Schedules annexed to the Protocol.

II. ECONOMIC POLICIES

1. Non-discrimination (including national treatment)

14. 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.

15. 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.

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

17. 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.

18. 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 other WTO Members, in particular with respect to any benefit accorded to Members of the WTO that were separate customs territories. The Working Party took note of this commitment.

19. 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, Members re-iterated 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.

20. Some members of the Working Party drew China's attention to the variety of types of requirements which could contravene GATT Article III. 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 technical 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 GATT Article III.

21. 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 to the WTO. 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.

22. In particular, the representative of China confirmed that measures would be taken at national and subnational 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 3rd 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 provisions 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 "Environmental Control Regulations for 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.

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

23. 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.

24. 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.

25. In respect of future fiscal policy, 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

26. 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 its system of forex was undergoing 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. Some members of the Working Party stated that China should undertake appropriate commitments on its reform of forex.

27. In response, the representative of China stated that China was a member of the International Monetary Fund ("IMF"). The purpose of China's forex reform was to gradually 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 investment 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, Sections 2, 3, and 4 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.

28. 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.

29. 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.

30. 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% of the reference rate. For the HK dollar and Japanese yen, the permitted range was 1%. 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% of the reference rate, whereas for the HK dollar and Japanese yen, the permitted range was 1%. 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%.

31. 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, a Chinese Foreign Exchange Trading System was set up in Shanghai and branches were opened in dozens of cities. The Shanghai 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.

32. 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.

33. 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.

34. The representative of China stated that significant steps had been taken to reform, rationalize and liberalize its forex market. In particular, China had unified its forex market and achieved current account convertibility. In the light of these advances, China would provide complete information on its exchange controls in the context of the transitional review mechanism and such other information as was deemed necessary in the context of the transitional review mechanism. The Working Party took note of this commitment.

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 that concerned the IMF. In particular, China confirmed that it would not subject individual requests for forex for the making of payments and transfers for current international transactions,

including the issuance of credit or credit guarantees for current international transactions (e.g., letters of credit; direct loans; guarantees of loans by financial institutions or other entities; or insurance of financing by financial institutions or other entities), to any form of approval or restriction (including a requirement for the presentation of an invoice), in a manner inconsistent with its obligations under the Articles of Agreement of the IMF. The Working Party took note of this commitment.

4. Balance-of-Payments Measures

36. 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.

37. Those members 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") and 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 on an annual basis, if so requested by China or a WTO Member.

38. Some other members 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.

39. 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. The representative of China 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 not exceed what was necessary to address the BOPs

situation and would be maintained only so long as considered necessary by the BOPs Committee. China 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. The Working Party took note of these commitments.

5. Investment Regime

40. 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.

6. State-Owned and State-Invested Enterprises

41. 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 the central revenue would no longer be used to invest in these enterprises. China was furthering its reform of state-owned enterprises and establishing a modern enterprise system.

42. 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.

43. 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.

44. 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 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.

45. 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.

46. 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.

47. 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"). China confirmed that the terms and conditions of technology transfer, production processes or other proprietary knowledge, particularly in the context of an investment, would be agreed between the parties to the investment. The Working Party took note of these commitments.

7. Pricing Policies

48. 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 the goods and services listed in Annex 4 to the Draft Protocol were expected to remain 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. 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.

49. 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.

50. Members 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.

51. 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.

52. He 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% to 15%. 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.

53. 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%, that of government guidance prices 1.2%, and that of market-regulated prices 94.7%. For agricultural products, the share of government prices was 9.1%, government guidance prices 7.1%, and market-regulated 83.3%. For production inputs, the share of government prices was 9.6%, that of government guidance prices 4.4%, and market-regulated prices 86%. The share of directly government-controlled prices had been much reduced. The Government of China considered that China's price system was becoming increasingly rationalized, creating a relatively fair marketplace for all enterprises to compete on an equal footing.

54. 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.

55. 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.

56. 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.

57. In addition, the representative of China confirmed that China would apply its current price controls and any other price controls from the entry into force of the Draft Protocol 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. The Working Party took note of these commitments.

8. Competition Policy

58. 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 1992 and implemented on 1 December 1992, 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. Power of Executive, Legislative and Judicial Branches of Government

59. 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 and commissions 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. The Government of China believed that these features of the Chinese legal system would ensure an effective and uniform implementation of the obligations after China's accession.

60. 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 in an effective and uniform way after China's accession.

61. In response to questions from some Members, the representative of China stated that pursuant to Article 142 of the General Principles of Civil Law, if any international treaty concluded or acceded to by China contained provisions differing from those in China's civil laws, the provisions of the international treaty would apply, unless the provisions were ones on which China had announced reservations. for ratification. Upon ratification by the National People's Congress, the WTO Agreement would have the status of domestic law.

2. Authority of Sub-Central Governments

62. Several members of the Working Party raised concerns about the continued presence of multiple and overlapping 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. In addition, some members expressed concerns about the limited control exercised by the central government over trade measures introduced at the sub-national level.

63. Some members of the Working Party raised concerns in relation to the uniformity of administration of the foreign trade and economic regime within China. In particular, those members raised concerns about measures taken by sub-national authorities. In response, the representative of China emphasized that the central government had full constitutional authority to ensure compliance with WTO obligations by both national and sub-national governmental authorities in China. Some members requested that an appropriate commitment be undertaken in this regard by China.

64. In response to questions from members of the Working Party, the representative of China confirmed that all fiscal, financial and budgetary activities performed by sub-central governments would be in compliance with Article III of the GATT 1994. The Working Party took note of this commitment.

65. Some members of the Working Party raised concerns about the limited ability of China's central government to be sufficiently informed about non-uniform practices and to 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.

3. Uniform Administration of the Trade Regime

66. 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.

67. Members of the Working Party also stated that China should ensure that the provisions of the WTO Agreement and any additional obligations created by the Draft Protocol were applied uniformly throughout its entire customs territory, including at the sub-national level. Members of the Working Party also noted that China should administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex. In this connection, members of the Working Party requested that China establish a mechanism under which individuals and enterprises could bring to the attention of the national authorities cases of non-uniform application of the trade regime. Members of the Working Party also noted that China's laws, regulations and other measures of government entities at the sub-national level would be required to conform to the obligations undertaken in the Draft Protocol and the WTO Agreement.

68. The representative of China 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 also 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. The Working Party took note of these commitments.

69. The representative of China further confirmed that the mechanism established pursuant to Section 2(A) of the Draft Protocol would be operative upon entry into force of the Draft Protocol. 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. When China's authorities were informed of such cases, relevant government authorities would act promptly to remedy the situation without requiring affected parties to petition through the courts, taking into consideration the need to provide a meaningful remedy. The individual or entity making the notification would be informed promptly in writing of any decision and action taken. The Working Party took note of these commitments.

4. Judicial Review

70. 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 any other measures within the scope of the WTO Agreement. Those members stated that notwithstanding Article X:3(c) of the GATT 1994, the tribunals should be independent of the agencies entrusted with administrative enforcement of provisions contained in the WTO Agreement.

71. Those members also stated that the administrative actions subject to review should include measures relating to the availability and distribution of import and export licences, permits or quotas; application of measures for safeguard or BOPs purposes or to protect against unfair trade; and any other measures within the scope of the WTO Agreement, in particular any actions required to be reviewed under the relevant provisions of the TRIPS Agreement and the GATS. 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 for 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.

72. Some members of the Working Party expressed concern that China needed to improve its institutions and procedures for the prompt review of disputes over trade-related matters in China, in particular with respect to the independence of the administrative and judicial authorities responsible for reviewing measures. These members also sought to ensure that all measures related to the WTO, including forex measures, would be subject to review under Chinese domestic procedures; in particular they sought a commitment to cover measures related to services trade and intellectual

property. These members sought explicit confirmation that certain types of measures, such as decisions relating to statutory inspection and chemical registration, would be subject to judicial review.

73. The representative of China expressed concern over the expectation of a few members for China to assume higher obligations than those required by the WTO covered agreements with regard to judicial review, obligations which no Member in the WTO had ever been required to undertake. The representative of China took the position that such requirements for China would surely undermine the fundamental principle of non-discrimination of the organization.

74. 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 all WTO covered agreements on procedures for judicial review of specific administrative actions. In this respect, China would assume its obligations relating to judicial review only to the extent required by the relevant WTO agreements. The Working Party took note of this commitment.

75. In response to questions from members, the representative of China confirmed that administrative actions relating to any measure within the scope of the WTO, including decisions relating to national treatment, conformity assessments, grant or denial of a licence to provide a service and other matters, would be subject to the procedures established for prompt review under Section 2(D) 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.

76. The representative of China confirmed that measures subject to review would include measures affecting in any way the regulation, control, supply or promotion of transportation and transportation-related services, insurance and insurance-related services, banking and other financial services, telecommunications services, distribution services, entertainment services, information processing services, construction and maintenance services, professional services, and retail sales services. China undertook to ensure that all such measures would be subject to review. The Working Party took note of this commitment.

IV. POLICIES AFFECTING TRADE IN GOODS

A. TRADING RIGHTS

77. 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 restricted to enterprises in China. Objective criteria for the grant of trading rights needed to be agreed

and applied to facilitate implementation of the national treatment provisions in Section 5 of the Draft Protocol. Certain members emphasized that upon accession China would need to apply the same criteria to foreign enterprises and individuals that it applied to Chinese enterprises in authorizing foreign enterprises and individuals to import and export goods, rather than approving the grant of such rights on a case-by-case basis. This would ensure that the process of progressive liberalization would proceed more rapidly and uniformly.

78. Those members noted China's commitment to accord foreign enterprises and individuals, including those not invested or registered in China, national treatment with respect to obtaining the right to trade. Moreover, goods imported or exported by foreign enterprises and individuals should be accorded national treatment under Article III of GATT 1994, especially paragraph 4 thereof, in respect of internal sale, offering for sale, purchase, transportation, distribution or use, including their direct access to end-users. In respect of goods that would remain subject to designated trading listed in Annex 2b of the Draft Protocol, China should phase out limitations on the grant of trading rights pursuant to the schedule in that Annex. They also stated that China should complete all necessary legislative procedures to implement these commitments during this transition period.

79. The representative of China stated that the end-users mentioned above referred to the Chinese enterprises without right to import and/or export. At present, these enterprises imported products for their own use through enterprises with the right to import and export. Three years after China's accession to the WTO, the right to trade would be liberalized, as a result of which all enterprises in China would have the right to trade. Therefore, the end-users at that time would be legal persons of enterprises which used imported products. The Working Party took note of these commitments.

1. Designated Trading

80. 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 criteria for enterprise under 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.

81. Members of the Working Party requested that China provide detailed information regarding the process for enterprises and individuals to qualify to import and export goods. The need for specific, objective and automatic criteria for the prompt grant of rights was emphasized. Existing enterprises should be able to engage in importation and exportation without need to amend their scope of business or obtain a new business licence, since the approval process could itself delay and form a

barrier to obtaining these important rights. Members of the Working Party sought assurances that China's requirements for various licences, such as import business licences, would not adversely affect the realization of the right to trade. Nor should enterprises be required to establish in a particular form or create separate entities to engage in importing or exporting.

82. The representative of China confirmed that during the three years of transition, China would progressively liberalize the scope and availability of trading rights in China. Upon accession, China would eliminate export performance and trade and foreign exchange balancing requirements as criteria for obtaining or maintaining the right to import and export. The representative of China also confirmed that any enterprise in China was free to apply for the trading rights and would be granted such rights in accordance with criteria set out in the Foreign Trade Law. The enterprises with trading rights in China would be permitted to import and export all goods, except for those goods listed in Annex 2a and Annex 2b of the Draft Protocol. The Working Party took note of these commitments.

83. 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 that were subject to a tariff rate quota ("TRQ") or to an agreed volume of imports by non-state trading enterprises, except for the quantity of such goods specifically reserved for importation by state trading enterprises. Any firm 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 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 tariff rate. The Working Party took note of these commitments.

84. 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 within three years of entry into force of its Draft Protocol. In responding to questions raised by WTO members, the representative of China said 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 extend the right to register as designated importing and exporting enterprises for the goods in Annex 2b in each of the first, second and third years after entry into force of its Draft Protocol, 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. The Working Party took note of this commitment.

B. IMPORT REGULATION

1. Ordinary Customs Duties

85. 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.

86. The representative of China provided members of the Working Party with a copy of the Customs Import Tariff of the People's Republic of China 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.

87. 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 tariff headings in the Customs Import and Export Tariff of the People's Republic of China. 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%. Among the 7062 tariff headings, tariff rates for 525 headings were below 5%, 1488 were between 5% (inclusive) and 10% (exclusive), 2022 between 10% (inclusive) and 15% (inclusive) and 3027 were above 15%. Information on tariff rates for specific products and import statistical data for recent years had been provided to the Working Party.

88. 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. The representative of China clarified that the term "HS 2000" was China's own nomenclature for applied rates, referring to China's specific 8-digit classification in 2000 but based on the 4-digit HS'96 classification.

89. 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.

90. 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, China confirmed that it 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%. The Working Party took note of this commitment.

91. 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 10 to the Draft Protocol.

2. Other Duties and Charges

92. 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 that commitment.

3. Rules of Origin

93. 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.

94. 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 Import

and Export Tariff of the People's Republic of China ("Customs Tariff"); or (b) the value-added component was 30% or more in the total value of a new product.

95. He further noted that under current arrangements, 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. Substantial transformation was understood to mean processing which resulted in a change of the four-digit level tariff classification or an added value (including all cost-related expenditures) exceeding 30% of the total value. These rules of origin were applicable to all imported products. The rules of origin applied for statistical purposes were the same. However, for statistical purposes, the General Customs Administration ("Customs") also recorded countries of consumption and trading countries.

96. The representative of China stated that China's rules of origin for import and export were non-preferential rules of origin. Upon its accession to the WTO, China would implement the Agreement on Rules of Origin. Once the international harmonization of non-preferential rules of origin was concluded, China would fully adopt the internationally harmonized non-preferential rules of origin. The Working Party took note of these commitments.

97. 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. The Working Party took note of this commitment.

98. The representative of China confirmed that from the date of accession, China's preferential and non-preferential rules of origin would comply fully with the Agreement on Rules of Origin, and that a mechanism that met the requirements of Article 2(h) and Annex II, paragraph 3(d) of the Agreement, which required provision upon request of an assessment of the origin of the import and outlined the terms under which it would be provided, would be established in China's legal framework prior to accession. The Working Party took note of these commitments.

4. Fees and Charges for Services Rendered

99. Some members of the Working Party expressed concern over an apparent lack of uniformity of customs fees and charges administered by national and sub-national authorities. These members noted that as a condition of accession China should undertake a commitment to ensure conformity of such 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

100. 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 undertake a commitment to ensure that all such internal taxes and charges would be in conformity with the requirements of the GATT 1994.

101. 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 Customs at the point of entry. He noted that VAT was reimbursed once goods were exported. Exported goods were exempted from the Consumption Tax.

102. 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.

6. Tariff Exemptions

103. 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 statutory tariff reductions and exemptions were applied on an MFN basis.

104. 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 the processing programme;
- (j) goods imported at zero cost for offset purpose;
- (k) domestic- or foreign-funded projects encouraged by China;
- (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.

105. Some members of the Working Party expressed concerns over the broad availability and application of tariff reductions and exemptions for a wide 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 detrimental effect such reductions or exemptions could have on revenues and predictability and certainty in application of tariff and other trade measures.

106. The representative of China confirmed that upon entry into force of the Draft Protocol, China would adopt and apply reductions and exemptions so as to ensure MFN and national treatment for imported goods. The Working Party took note of this commitment.

7. Tariff Rate Quotas

107. Some members of the Working Party expressed concern over the lack of transparency, uniformity and security of China's administration of its TRQ regime. Those members suggested that China enter a commitment in relation to those matters. The representative of China confirmed that administration of TRQs would be consistent with the Agreement on Import Licensing Procedures. The Working Party took note of this commitment.

108. Some members of the Working Party raised concerns regarding the current operation of China's TRQ system for bulk agricultural commodities 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; 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 requested that China reduce tariffs and regulate access for bulk commodities by using TRQs with low in-quota duties.

109. The representative of China confirmed that China would adopt TRQs for certain goods and would ensure that these TRQs were administered on a transparent, predictable, and non-discriminatory basis using clearly specified time frames, administrative procedures and requirements that would provide effective import opportunities and promote filling each TRQ, including the grant of trading rights and import licences to non-state trading entities to import quota allocations permitted to be imported by such entities. China confirmed that for the goods listed in Annex 2 of the Draft Protocol that were subject to a TRQ, China would apply the provisions of its market access schedule relating to TRQ administration and related commitments in the Draft Protocol, including those relating to the right to trade. The Working Party took note of these commitments.

110. Members of the Working Party expressed concern that scheduled TRQs should be administered simply, effectively, transparently and in a non-trade restrictive manner. The representative of China agreed that China would administer the TRQs fully in accordance with WTO rules and principles and that the administration would be in accord with the provisions set out in the Schedule of Concessions and Commitments on Goods. The Working Party took note of this commitment.

111. The representative of China noted that in 1996, for the first time, China published a list of import products subject to tariff quota administration, together with their eligible tariff rates in and out quota. The allocation was based on historical performance and state trading administration. However, the administration on imports within the tariff quota was identical to that for pure quota products. In addition, China had also tried several ways of administration, including import at applied tariff rates, first come first served, and first come first served at the point of entry, on certain products and bonded import which was strictly monitored by Customs. In comparison with WTO rules and regulations, current administrative measures lacked transparency and the time-frame and quantity of allocation varied from year to year. Besides, the information was released only in internal documents, with no prior notice.

112. The representative of China further noted that market-oriented reform to agricultural production and trade conformed to China's construction of a socialist market economy. In the past several years, China had made great progress in freeing agricultural products from state pricing and trading, in guiding farmers to adjust the structure of agricultural production based on the demand of the market. In connection with that reform process, in the bilateral negotiations with agricultural exporting countries, China committed that as soon as it became a Member of the WTO, it would eliminate TRQ administration of a certain number of TRQ products and implement single tariff administration on those products, including barley, soybean, rape-seed, peanut oil, sunflower seed oil, corn oil, etc. In addition to that effort, China would apply tariffication on products including sugar, cotton and three types of fertilizers, which were currently subject to import quantitative restrictions, and list them under products subject to TRQ administration. When China acceded to the WTO, China would further shorten the list to 13 categories and 42 tariff lines. Ten categories were agricultural products including 39 tariff lines, namely wheat, corn, rice, soybean oil, rape-seed oil, palm oil, sugar, wool, wool tops and cotton. In addition, three categories (three tariff lines), namely urea, DAP and NPK fertilizer, would be put under TRQ administration. The Working Party took note of this commitment.

113. The representative of China stated that as a Member of the WTO China would strictly comply with relevant rules and regulations of the WTO. In line with that commitment, China was preparing for significant reform to the current TRQ administration, in a bid to have it conform to the relevant requirements of the WTO:

- (a) implement in-quota and out-quota rates to TRQ products, as specified in the Schedule;

- (b) identify and publish in advance the initial tariff quota quantity and annual increase within the implementation period, namely the minimum market access opportunity of the TRQ products in every year within the implementation period;
- (c) stipulate and publish TRQ administration and establish a TRQ administration system which was open, fair, transparent and non-discriminative;
- (d) publish in advance specific qualifications for applicants and specific administration for every TRQ product, and designate a fixed "enquiry point" to provide consultation and increase transparency;
- (e) set a fixed time-frame for TRQ application, allocation and reallocation;
- (f) limit imports share of the state trading enterprises and provide a gradually increasing opportunity to participate in trading the TRQ products for non-state trading enterprises including private enterprises, shareholding enterprises and foreign-funded enterprises, national treatment would be endowed to every non-state trading enterprise with trading rights;
- (g) establish and optimize feedback and supervision mechanism toward quota holders, and promote rational and full utilization of TRQ; and
- (h) set up a fixed "enquiry point", as an obligation by Article 13.3 of the GATT 1994 and other relevant provisions, for exporting countries and suppliers of TRQ products, so as to provide consultation and information on TRQ administration, allocation and implementation.

Moreover, the Government of China was trying to further simplify the administrative regime and procedures of TRQ administration, in a bid to facilitate users, enhance efficiency and adapt to the above-mentioned reform.

8. Quantitative Import Restrictions, including Prohibitions and Quotas

114. 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 various types of weapons, ammunition and explosives, narcotic drugs, poisons, obscene materials, and foodstuffs, medicines, animals and plants.

115. Some members of the Working Party noted that there were a large number of overlapping 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.

116. 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.

117. 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. 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 in conformity with the provisions of the WTO Agreement.

118. Those members of the Working Party also stated that in implementing the provisions of Articles III and XI of the GATT 1994 and the Agreement on Agriculture, China should eliminate and not introduce any new nor re-introduce any old non-tariff measures that could not be justified under the provisions of the WTO Agreement. Those members also stated 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 to the WTO, 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.

119. The representative of China stated that during the phasing-out period, China would administer relevant quotas, licences and tendering requirements in accordance with the current administrative regulations which had been notified to the Secretariat. China had also modified Annex 3 on the basis of the comments raised by certain members of the Working Party. Annex 3 contained all the products subject to quotas, licences and tendering requirements in China.

120. 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. Members expressed concern about complex and burdensome 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 sub-central and central 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.

121. The representative of China confirmed that the products currently covered under the HS categories listed in Annex 3 were the only products that would continue to be subject to quotas during the agreed phase-out periods and that additional products would not be added to these HS categories. Further, the representative of China stated that for products listed in Annex 3 as being subject to quota and licensing requirements, any entity possessing the right to trade, including enterprises in the sector importing the products or importing inputs for production purposes, would be eligible for a quota allocation and licence to import 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. All applications for an import licence and allocation of quota were to be submitted to the organization authorized to grant such allocations and licences. Applicants would be required to approach only one organization at one level (central or sub-central) to obtain both an allocation and licence. In exceptional cases, an applicant might be required to approach up to three organizations for approval of an allocation and licence. The relevant organization, amount of quota, including the growth in quota provided for in Annex 3, 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 paragraph 2(C)(2) of the Draft Protocol no later than 30 days prior to the beginning of the application period. Such application period would be from 1-30 June. Quotas and licences would be allocated to applicants no later than 30 days after closure of the application period. Members of the Working Party took note of these commitments.

122. The representative of China stated that China would grant quota allocations on a first-come-first served basis, valid for importations on a calendar year basis. If after the specified application period additional quota remained, the relevant organization would receive and process requests for quota allocations and licences until the full amount of the quota had been allocated. Such allocations would be made within 10 days after receipt of a request. If requests for a quota allocation received at

the same time exceeded the quota level, the relevant organization would ensure that quota was allocated in an equitable manner that promoted utilization of the allocation, including granting a proportionate share of individual requests and giving priority consideration to unfilled requests in the context of reallocated quota. In all cases, allocations would be established for commercially viable quantities and provision would be made for partial shipments against a single allocation. Inquiries regarding quota allocation and grant of a licence could be made to the relevant organization, with written responses provided within 10 working days. The Working Party took note of these commitments.

123. 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. 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 12 months 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 it within 6 months after the opening of the import period, 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 on a monthly basis. This reallocation would be valid for the duration of the original term. For quota quantities specified in terms of value, China would determine the value of any shipment based on the FAS ship value listed on the bill of lading. The Working Party took note of these commitments.

9. Import Licensing

124. 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.

125. 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. The import licensing system ensured that limited forex resources were used for imports most needed by national economic development and that necessary assistance could be provided to the domestic industries. In 1999, of

the total import value of US\$ 165.7 billion, imports subject to licensing represented 8.45%, covering US\$ 14 billion. MOFTEC determined which products should be subject to import licensing according to the relevant provisions of the "Foreign Trade Law".

126. 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.

127. 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 year. Import licences could be extended once for up to three months.

128. Some member 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 entry into force of the Draft Protocol. The Working Party took note of this commitment.

129. 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.

130. 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. If quota were reallocated pursuant to China's TRQ administration commitments, the provisions relating to licensing of such reallocated quantities would apply. The Working Party took note of this commitment.

10. Customs Valuation

131. Some members expressed concern regarding the methods used by China to determine duty-paying 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.

132. In response, the representative of China stated that from the date of accession, China would cease to use minimum or reference prices as a means to determine customs value. The Working Party took note of this commitment.

133. The representative of China considered that there would not be situations where the "normal transaction value" could not be "ascertained" since the Customs Valuation Agreement provided several methods for valuation.

134. The representative of China recalled that the overwhelming majority of China's customs duties were *ad valorem* duties. The customs or duty-paying value of imported goods was assessed according to the c.i.f. price based on the normal transaction value. If the transaction value of imported goods could not be determined, the duty-paying value was determined based on the transaction value or the computed value of identical or similar goods. 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.

135. The representative of China confirmed that, from the entry into force of the Draft Protocol, China would apply fully the WTO provisions concerning customs valuation. In this context, the representative of China stated that China had no intention to resort to Article 20.3 of the Customs Valuation Agreement. In addition, China would apply 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. The Working Party took note of these commitments.

11. Other Customs Formalities

136. The representative of China said that China joined the International Convention on the Simplification and Harmonisation of Customs System in 1988 and on 15 June 2000 signed the Protocol on the Amendment of the International Convention on the Simplification and Harmonisation of Customs System. 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

137. The representative of China stated that, currently, there were trade and commerce inspection agencies (including joint-venture agencies) engaged in preshipment inspection. China committed itself to 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.

138. 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 any laws and regulations relating to preshipment inspection by private entities currently or in the future would be consistent with relevant WTO agreements, in particular, the Agreements on Preshipment Inspection and Customs Valuation. 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

139. The representative of China said that China had promulgated regulations on anti-dumping and countervailing duties in 1997. He further noted that China had submitted an Action Plan setting out how it intended to revise its laws and regulations to bring them into conformity with the Agreement on Implementation of Article VI of GATT 1994 ("Anti-Dumping Agreement").

140. Some Members of the Working Party raised concerns that the current investigations by the Chinese authority would be judged to be inconsistent with the 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. The representative of China stated that China intended to comply fully with the letter and spirit of the Anti-Dumping Agreement.

141. The representative of China confirmed that, notwithstanding Article 18.3 of the Anti-Dumping Agreement,

(a) China would apply the provisions of the Anti-Dumping Agreement to:

(1) proceedings under Article 9.3, including the calculation of margins of dumping, in connection with anti-dumping measures adopted before the entry into force of the Draft Protocol ("existing measures") pursuant to requests made on or after the entry into force of the Draft Protocol;

(2) reviews of existing measures initiated under Articles 9.5, 11.2, and 11.3 pursuant to requests made on or after the entry into force of the Draft Protocol. 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.

142. 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.

143. The representative of China expressed concern with regard to past measures taken by certain WTO Members who 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. The representative of China thereupon stated the following positions with regard to the implementation of paragraph (1)(b) of Article 20 of the Draft Protocol ("Price Comparability in determining Dumping and Subsidization"):

- (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 has established and published rules in advance on (1) the criteria that it used for determining whether market economy conditions prevail in the industry producing the like product and (2) the methodology that it used in determining the price comparability. The importing WTO Member should select the prices or costs of the like product produced in an economy comparable to that of China. The process of investigation should be transparent and sufficient opportunities should be given to all interested parties, including Chinese producers or exporters, to make comments or counter-proposals;
- (b) The importing WTO Member should give notice of the information which it required and provide Chinese producers and exporters ample opportunity to present evidence in writing in a particular case;
- (c) The importing WTO Member should provide Chinese producers and exporters a full opportunity for the defence of their interests in a particular case;
- (d) The importing WTO Member should provide a sufficiently detailed reasoning of its determinations in a particular case; and

- (e) The Anti-Dumping and SCM Agreements should fully apply in proceedings involving imports of Chinese origin except as otherwise provided in the Draft Protocol. The provisions of the Dispute Settlement Understanding should apply to consultations and the settlement of disputes arising under Article 20 of the Draft Protocol.

144. The representative of China noted that pursuant to the provisions of "Regulation on Anti-dumping and Anti-subsidy 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 investigation on dumping and dumping margin 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, dumping or countervailing duties and monitoring its implementation.

D. Tariff Commission of State Council(TCSC)

Making final decisions on whether or not to levy the anti-dumping or countervailing duties and refund 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

145. 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 drafting work of this regulation was still under way. The contents of this new regulation would be fully consistent with the Agreement on Safeguards. He noted that, at present, China was in the process of drafting safeguard legislation in accordance with Article 29 of the Foreign Trade Law and the Agreement on Safeguards.

C. EXPORT REGULATIONS

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

146. 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.

147. The representative of China noted that the majority of products were free of export duty, although 36 items, including tungsten ore, Ferrosilicon and some aluminum products, were subject to export duties. He noted that the duty-paying value of exported goods was the F.O.B. price of the goods.

2. Export Licensing

148. 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.

149. 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% of the

total value of the China's exports, but by 1999, the total number of products subject to export licensing had been reduced to 58 categories and 73 items with an export value of US\$ 18.5 billion, taking up only 9.5% 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 licensing, 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 licensing was also used for statistical purposes.

150. 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 not produced by them were required to obtain export licences if the products to be exported were subject to the licensing requirement. If the products were not subject to licensing, customs clearance would be given after examination by Customs on the basis of export contracts and other relevant documents.

151. Some members of the Working Party expressed concern that China's export licensing rules had been used to restrict exports in a manner inconsistent with WTO requirements. They noted that Article XI of the GATT 1994 applied to both import and export restrictions and the same need for certainty, predictability, transparency and minimizing the burden on trade applied with respect to the granting of export licences as pertained to import licences.

152. The representative of China stated that upon accession, China would apply the same procedures to the granting of export licences as it applied to automatic and non-automatic import licences, depending on the WTO justification for such export licence. The Working Party took note of this commitment.

3. Export Restrictions

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

154. 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 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. Some members also noted that the requirements and procedures for obtaining import licences and export licences often were not transparent, and, when known, proved overly burdensome. Often, it took a long time to obtain all of the required approvals. The representative of China confirmed that upon entry into force of the Draft Protocol, restrictions on exports would be eliminated unless they could be justified under the WTO Agreement or the Draft Protocol. The Working Party took note of this commitment.

4. Export Subsidies

155. 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.

156. The representative of China confirmed that it would eliminate all export subsidies by the time of accession, and not re-introduce any export subsidies, including fiscal or other financial measures referred to in Article 1 of the SCM Agreement which were contingent upon export performance. 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, including tax exemptions, reductions, deferrals or forgiveness to enterprises, which were contingent, in law or in fact, upon an obligation to export. The Working Party took note of this commitment.

157. 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. 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

158. Some members of the Working Party expressed particular concern about the application of the VAT and additional charges levied by sub-central governments on imports. In some cases, producers of domestic goods either did not pay the VAT or failed to pass the charge along to

customers. The loss of revenue from this failure to pass along the VAT often put such firms into an unprofitable position and loans or other measures would then be provided to address the situation. Non-discriminatory application of the VAT and other internal taxes was deemed essential. Moreover, central-government discipline over the practices of sub-central authorities to ensure their conformity with the provisions of the Draft Protocol and the WTO Agreement was essential.

159. The representative of China confirmed that from the entry into force of the Draft Protocol, 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

160. Some members of the Working Party noted that the situation of differential treatment of minority autonomous regions and other areas of economic poverty within China was uncertain and could raise problems in relation to the requirements of the SCM Agreement. In response, the representative of China stated that, under the Constitution, the central government provided assistance to those disadvantaged areas.

161. Some members of the Working Party expressed concern about certain of the provisions of Article 27 of the SCM Agreement which could be interpreted as making special or differential rules available to China. In particular, these members stated that it would be inappropriate for China to benefit from treatment such as modified injury standards in dispute settlement proceedings involving subsidies pursuant to paragraphs 8 and 9 of Article 27, higher *de minimis* and negligibility thresholds in countervailing duty investigations pursuant to paragraphs 10, 11 and 12 of Article 27, or the inactionability of certain types of pre-privatization subsidies pursuant to paragraph 13 of Article 27. The representative of China stated that the injury standards applicable in dispute settlement proceedings involving actionable Chinese subsidies were set forth in Articles 5 and 6 and therefore Articles 27.8 and 27.9 had no relevance and would not be invoked by China. The representative of China also stated that the *de minimis* and negligibility standards applicable to China were set forth in Articles 11.9 and 15.3 and therefore China would have no reason to invoke Article 27.10, 27.11 or 27.12. The representative of China further stated that Article 27.13 had no applicability in China's case because China did not undertake privatization as contemplated under Article 27.13 and therefore China would not make use of this provision. The Working Part took note of these commitments.

162. Some members of the Working Party raised concerns about the provisions of Article 29 of the SCM Agreement, which created special rules for certain economies undergoing transformation. The

representative of China stated that these provisions did not apply to China's economy. He confirmed that China therefore would not make use of these provisions. The Working Party took note of this commitment.

163. Some members of the Working Party were concerned that the scope of subsidization in China should be adequately defined. In this regard, it was concluded that all activities of state-owned enterprises (including banks) which involved a financial contribution (e.g. provision of goods and services, purchases of goods, forgiveness of debt, provision of loans and/or guarantees) would fall within the scope of Article 1.1(a) of the SCM Agreement, since such enterprises were part of or controlled by the government. The representative of China confirmed this conclusion. The Working Party took note of this commitment.

164. Some members of the Working Party raised concerns over the notification which China had provided in Annex 5 to the Draft Protocol, regarding its subsidy regime, which was last modified on [31 May 2000]. Those members in particular raised concerns over China's failure to provide a comprehensive list of the subsidies that it granted or maintained, as sought in paragraph 1 of Article 11 of the Draft Protocol. Those members also considered that Annex 5 in some places did not contain the information required by Article 25 of the SCM Agreement and Document G/SCM/6. While those members understood many of the difficulties that China had encountered in attempting to provide the Working Party with a full notification, they noted the importance of China's notification of subsidies.

165. Some members of the Working Party explained that it was difficult to identify all of the subsidies that China had not notified in Annex 5, particularly because of transparency problems. Nevertheless, those members highlighted certain especially significant types of subsidies that had not been reported in Annex 5. Those members of the Working Party first identified state support through the banking system, which took the form of policy loans, the automatic roll-over of state-owned enterprises' unpaid principal and interest, forgiven or non-performing loans, and the selective use of below-market interest rates. They indicated that these subsidies were provided by government-owned banks, such as the Peoples Bank of China, and they distinguished these subsidies from the ones notified in Annex 5 as being provided by recently created policy banks. They also noted that some of these subsidies were only available to exporting firms. The representative of China acknowledged the existence of these types of measures, but indicated that China was attempting to reduce state-owned enterprises' reliance on these types of measures and, further, to confine them to the policy banks identified in Annex 5.

166. Some members of the Working Party also stated that, in their view, China provided significant subsidies in the form of tax deferrals and tax forgiveness, tax exemptions, tax credits and preferential tax rates, with state-owned enterprises again being the predominant recipient of this type of support. They noted that most of these subsidies had not been included in Annex 5. The representative of China acknowledged the existence of these types of measures. He explained that, as part of its effort to reform state-owned enterprises and make them more market-oriented, China was attempting to reduce substantially the availability of these types of measures.

167. Some members of the Working Party emphasized that Annex 5 contained only one subsidy programme provided by sub-central governments in China. They also noted that this subsidy programme was several times the magnitude of a similar subsidy programme maintained by the central government. While recognizing the special difficulties that China, like many members of the Working Party themselves, had encountered in attempting to notify sub-central subsidies, those members nevertheless expressed concern that subsidization by provincial and municipal governments in China was quite significant and could result in adverse effects on WTO Members. They also expressed concern that these sub-central governments continued to provide subsidies contingent upon export performance and subsidies contingent upon the use of domestic goods over imported goods; these practices were recognized as especially distortive of trade and were prohibited in Article 3 of the SCM Agreement. The representative of China acknowledged that China had not been able to report all sub-central subsidies but indicated that China would comply with its obligations under the Draft Protocol and the SCM Agreement.

168. Some members of the Working Party also raised concern regarding the subsidies that China provided in connection with SEZs and other special economic areas. Many of these subsidies were reported in Annex 5, but not as prohibited export subsidies. Those members considered many of the subsidies provided in connection with SEZs and other special economic areas to be prohibited export subsidies because they were contingent, at least in part, upon export performance. Those members also stated that the existing practice of granting preferential treatment to imported products and to joint-venture production enterprises in China's special economic areas conditional upon export or re-export of products manufactured or subject to additional processing in such areas met the definition of prohibited subsidies pursuant to Article 3 of the SCM Agreement. Those members requested that China eliminate all of these subsidies upon accession. In response, the representative of China stated that China would review the operation of the programmes providing subsidies in SEZs and other special economic areas. He stated that China, upon accession, would either eliminate any subsidies that it found to be contingent upon export performance or amend them to be consistent with the SCM Agreement. The Working Party took note of this commitment.

169. Some members of the Working Party stated their belief that China had granted, on a discretionary basis, *ad hoc* investment subsidies, which included free or preferential provision of goods and services. Those members stated that such subsidies, whether granted at national or sub-national level, should have been notified. The representative of China acknowledged the existence of these types of measures. He explained that China was attempting to reduce substantially the availability of these types of subsidies as part of its reform effort.

170. Some members of the Working Party stated that there was also no mention of subsidies to compensate for currency changes. The representative of China acknowledged the existence of this type of measure.

171. Some members of the Working Party requested information from China regarding an unreported subsidy programme known as the Steel Import Substitution Programme, which appeared to provide export subsidies. These members stated that they had been informed that this programme was begun in 1997 and provided large tax rebates to the big four steel groups in China in connection with sales of domestic inputs to producers of finished products for use in their exported products. These members requested an explanation with regard to the general operation of this programme, the specific products covered by it, and the amount of the rebates granted in relation to the amount of the value added tax, both under the terms of the relevant law and in practice. In response, the representative of China explained [...].

172. Some members of the Working Party also requested information from China regarding the "China High-Tech Product Export Catalogue", which was jointly published by the Ministry of Science and Technology, MOFTEC, the Ministry of Finance and Customs. These members understood that this Catalogue addressed preferential central government export policies for the telecommunications, computer software, aviation and aerospace, lasers, pharmaceuticals, medical equipment, new materials and energy industries. These members requested an explanation regarding the nature of the export policies addressed by this Catalogue. In response, the representative of China explained [...].

3. Technical Barriers to Trade

173. In response to requests for information from members of the Working Party, the representative of China confirmed that, further to China's application of the provisions of the GATT 1994 and the TBT Agreement, internal mechanisms existed in China (e.g. policy guidelines, inter-agency committees) 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. The Working Party took note of this commitment.

174. Concerning questions from members of the Working Party on the opportunity for public consultation and comment on proposed standards and technical regulations, the representative of China noted that China had already established such a mechanism. Currently, China provided a 45-day period to allow for comments on proposed standards, technical regulations, and conformity assessment procedures. If within that 45-day period a request for extension of the time-limit was received from a WTO Member, the period was extended to 60 days. In addition, provision was also made for a further extension of the time-limit beyond 60 days if requested by another Party to the TBT Agreement. The Working Party took note of these commitments.

175. Members of the Working Party noted that a compilation of technical regulations and relevant standards in force in China, was provided in Annex 7 to the Draft Protocol. Members agreed that Annex 7 did not prejudice the legal status, nature or effects of notified standards and technical regulations under the WTO Agreement.

176. Some members of the Working Party stated that pursuant to the requirements of the TBT Agreement, China's standards, technical regulations and conformity assessment procedures should be based, to the maximum extent possible, on relevant international standards, where they existed, except where use of different standards, technical regulations and conformity assessment procedures could be justified to the TBT Committee, pursuant to Article 2.4 of the TBT Agreement, as necessary to fulfil legitimate objectives as defined in Article 2.2 of the TBT Agreement. Those members also stated that any such standards, technical regulations and conformity assessment procedures should be administered so as not to create unnecessary barriers to trade.

177. Those members of the Working Party also stated that government inspection agencies should not apply compulsory standards to imported products which related solely to fulfilling unspecified criteria of quality, quantity or weight, nor require statutory inspection of products solely because of the volume of such imports. Those members stated that China should publish complete commodity inspection criteria, whether formal or informal, in its official journal. In this connection, those members noted that pursuant to Article 15.2 of the TBT Agreement, China should provide a notification Statement on Implementation and Administration of the Agreement consistent with the relevant Decisions adopted by the Committee on Technical Barriers to Trade of the Tokyo Round Agreement on Technical Barriers to Trade (TBT/16/Rev.7).

178. Some members of the Working Party stated that government-mandated inspection agencies should not inspect imported products to assess compliance with the terms of commercial contracts. Those members noted that China could inspect imported products or require conformity assessment when third-party testing or certification was not able to fulfil the legitimate objectives listed in the

TBT Agreement. They noted that once Mutual Recognition Agreements were concluded between China and a particular WTO Member, China should not require inspection nor retesting in respect of any product exported from that Member which had been tested or certified to meet relevant international standards by a widely recognized conformity assessment body. Concerning foreign and joint-venture commodity inspection agencies, 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.

179. Some members of the Working Party expressed their concern about China's practice of applying conformity assessment procedures to imported products and not accepting the results of conformity assessment by bodies in other WTO Members. 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. The Working Party took note of this commitment.

180. The representative of China stated that except those statutory inspections listed in Annexes 7a and 7b of the Draft Protocol, the Government of China, in accordance with legitimate objectives stipulated in the TBT Agreement for the protection of human, animal and plant health, national security, environmental protection, prevention of deceptive practices and guaranteeing quality of exported goods, carried out administration in terms of technical regulations, standards and conformity assessment, to a series of subjects such as medicine (including pesticides, veterinary medicine and organic medicine), airplanes, vessels and seaworthy installations, nuclear safety facilities, measuring instruments, pressuring vessels, pressuring tunnels and special equipment, fire extinguishing equipment, safety of telecoms, wireless equipment and networks, mining safety facilities and dangerous chemicals.

181. The representative of China stated that pursuant to the provisions of the TBT Agreement, China applied compulsory inspection and quarantine to commodities as well as to animals, plants and their processed products as required in the interests of national security, life and health of human beings, animals and plants, environmental protection, as well as prevention of deceptive activities. He also noted that most of China's standards were equal or equivalent to the international standards, and that China implemented the same standards, technical regulations and accreditation procedures of inspection and quarantine to both imported and domestic goods. There was no discrimination against the imported goods, animals and plants and their processed products.

182. The representative of China said that China had set up a TBT notification authority and two enquiry points which had been notified to the TBT Committee. Laws, regulations, rules, standards

and procedures on entry-exit inspection and quarantine had been published in publications such as the MOFTEC Gazette. Information could also be gathered from the TBT notification authority, MOFTEC or China's TBT enquiry points.

183. Some members of the Working Party expressed concerns about the complexity and lack of consistency of China's standards and inspection regime. In addition, members of the Working Party noted that imported and domestic products were not inspected by the same governmental entities and that this situation could result in less favourable treatment for imports. Some members also criticized mandatory government inspection requirements for compliance with terms of commercial contracts. In response to those concerns, the representative of China stated that China intended to comply fully with its WTO obligations concerning its standards, technical regulations and inspection regime.

184. The representative of China also indicated that China would ensure the transparency of its standard and certification systems by publishing all relevant laws and regulations, including the regulations concerning domestic products, which were not currently published. Members of the Working Party took note of this commitment.

185. Some members of the Working Party raised specific concerns regarding the standards and certification systems in China, including such matters as (a) registration of initial imports of chemical products, (b) procedures for the Chinese Commodity Inspection Bureau ("CCIB") safety mark and the "Great Wall" mark, (c) standards and certification for automobiles, and (d) the safety and quality licence system for boilers and pressure vessels. In response to those concerns, the representative of China stated that China intended to implement the following measures. These measures would be implemented prior to China's accession to the WTO, unless otherwise indicated.

(a) Registration of Initial Imports of Chemical Products

- Enact and implement, within one year after its accession to the WTO, 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

- Promulgate implementation regulations on the harmonization of the CCIB safety mark and the "Great Wall" mark, by introducing into these regulations the principle of "a single application, a single inspection and a single fee payment" for obtaining both marks at the same time. This principle would be applied before the promulgation of the regulations.
- Accept testing reports for products subject to the CB Scheme to which China was a party, and simplify the procedures for obtaining the CCIB safety mark and/or the "Great Wall" mark.
- Shorten the time period needed for importers to obtain both marks regarding the same products, to around three months in principle.

(c) Standards and Certification for Automobiles

- Unify its laws, regulations and standards applied to domestic and imported automobiles.
- Formulate, publish and implement laws and regulations, standards and implementation 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 to the greatest extent possible, and exempt imported products from inspection where like domestic products are not subject to such inspection.
- Simplify the inspection methods and procedures for factories and products certified by inspection agencies having bilateral mutual recognition arrangements.

4. Sanitary and Phytosanitary Measures

186. Members of the Working Party noted that China's notification of laws, regulations and other measures relating to sanitary and phytosanitary ("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, nature or effects of the notified laws, regulations and other measures under the WTO Agreement.

187. Members expressed the view that China should apply the Agreement on Sanitary and Phytosanitary Measures ("SPS Agreement") from the date of China's accession and should ensure the conformity with the SPS Agreement of all of its laws, regulations and practices relating to SPS measures. In response, the representative of China confirmed that China would fully apply the SPS Agreement from the date of accession and would ensure the conformity with the SPS Agreement of all of its laws, regulations and practices relating to SPS measures. The Working Party took note of these commitments.

188. The representative of China stated that pursuant to the provisions of the SPS Agreement, China applied compulsory inspection and quarantine as required in the interests of national security, life and health of human beings, animals and plants, environmental protection, as well as the prevention of deceptive practices. He also noted that most of China's standards were equivalent to the international standards, and that China implemented the same standards, technical regulations and accreditation procedures for inspection and quarantine to both imported and domestic goods. There was no discrimination against imported goods, animals and plants or their processed products.

189. The representative of China said that China had set up an SPS notification authority and an SPS enquiry point of inspection and quarantine which had been notified to the WTO's SPS Committee. Laws, regulations, rules, standards and procedures on entry-exit inspection and quarantine 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

190. 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. The Working Party took note of this commitment.

191. 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.

192. 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).

193. 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.

194. With respect to the manufacture of motor vehicle engines, the representative of China also confirmed that China agreed to remove the 50% foreign equity limit for joint-ventures upon accession.

6. State Trading Entities

195. 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.

196. 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 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 in light of the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, China should 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.

197. 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 stated that the notification of information on state trading enterprises would be provided in conformity with the relevant WTO agreement and interpretations. Meanwhile, such notification should be without prejudice to the commercial interests of the state trading enterprises.

198. 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.

199. 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.

200. Some members of the Working Party noted that prior to accession, enterprises in China were permitted to import goods for 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 traders, would still be permitted to import for production purposes goods which continued to be subject to state trading under the Draft Protocol and the WTO Agreement, and that such enterprises would have direct access to end-users of these goods, including processors. The Working Party took note of these commitments.

201. 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.

202. 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 2a-2 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 to the WTO. The Working Party took note of these commitments.

203. The representative of China also confirmed that China would eliminate state trading of cottonseed oil, sunflower seed oil, and corn oil by 1 January 2006. The Working Party took note of these commitments.

204. 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 claimed that its 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.

205. 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 that was not justified under WTO rules. The Working Party took note of this commitment.

7. Special Economic Areas

206. Members of the Working Party noted that there was insufficient information available concerning special economic areas, in particular their names, geographic boundaries, and relevant laws, regulations and other measures relating thereto. In response, the representative of China stated that since 1979 China had established a number of zones and areas where more open policies were applied. They included five SEZs, 14 coastal open cities, six open cities along the Yangtze River, 21 provincial capital cities and 13 inland boundary cities. Those 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.

207. 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% (the normal income tax was 33%). Profits remitted abroad by foreign investors were exempted from income tax. The preferential income tax rate of 15% 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.

208. 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.

209. 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.

210. Some members of the Working Party also raised concerns about the differential treatment within areas of minority autonomous regions and other areas of economic poverty. In response, the representative of China stated that China had a clear commitment to uniform administration of the trade regime within each such area and was also determined to prevent smuggling.

211. 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, imported into China's customs territory from the special economic areas.

212. 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. 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.

213. Some members of the Working Party requested that China notify the WTO Secretariat 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 Secretariat 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.

214. 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.

215. Some members of the Working Party also requested that any preferential arrangements provided for enterprises located within the special economic areas should be applied on the basis of non-discrimination.

8. Government Procurement

216. The representative of China stated that in order to promote China's government procurement, 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 procedure 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 the Government Procurement Law.

217. Some members of the Working Party stated that China should become a Signatory to the GPA and that prior to its accession to the GPA, China should conduct all government procurement, within the meaning of the Draft Protocol, 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.

218. The representative of China said that until such time as China became a signatory to the GPA, all government entities at the central and sub-central level 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. Such 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.

9. Transit

219. 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.

10. Agricultural Policies

220. Members of the Working Party noted that China's commitments on agricultural tariffs, 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. They further noted that China had bound its agricultural export subsidies at zero.

221. In response to requests for information, 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 would base its policies on domestic agricultural supply, especially on balanced supply and demand of grains. Meanwhile, China would actively seek international resources as a necessary supplement.

222. Some members of the Working Party requested further information concerning 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 requested that China undertake an appropriate commitment to eliminate these practices.

223. China confirmed that, in the agricultural sector, it would not maintain, resort or revert to guidance plans or administrative guidance at the national or sub-national level that regulated the quantity of imports, import controls, import substitution practices, or other non-tariff trade measures maintained through state trading enterprises at the national or sub-national level. The Working Party took note of this commitment.

224. Some members of the Working Party requested additional information about the use of fiscal transfers and other forms of domestic subsidies to government-owned and government-controlled entities in the agricultural sector. Those members stated that China's notifications under the Agreement on Agriculture and other WTO Agreements and related commitments for subsidies should include reference to such measures. Those members also stated that the information notified should also detail export subsidies within the meaning of Article 9 of the Agreement on Agriculture. In response, the representative of China confirmed that China did not intend to resort to agricultural export subsidies in the future and that this fact was set out clearly in China's Schedule of Concessions and Commitments on Goods wherein China had bound its agricultural export subsidies at zero. The Working Party took note of this commitment.

225. Some members of the Working Party stated that China should undertake a commitment not to invoke the provisions in Articles 6:2, 6:4(b), 6:5, 9:4, 12:2, 15 or 16, or Annex 5, Section B of the Agreement on Agriculture.

226. The representative of China confirmed that China would fully implement the Agreement on Agriculture from the date of entry into force of the Draft Protocol. The Working Party took note of this commitment.

11. Trade in Civil Aircraft

227. 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.

228. 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. Members of the Working Party took note of this commitment.

12. Textiles

229. 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 the accession of China to the WTO 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 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 accession of China to the WTO. 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 accession of China to the WTO. The Working Party took note of these commitments.

[It is proposed to move the following paragraph to the Draft Protocol.]

230. 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 to the WTO:

- (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.

The Working Party took note of these commitments.

13. Measures Maintained Against China

231. 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 to the WTO. 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.

232. 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 8 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.

14. Transitional Safeguards

233. Some members of the Working Party stated that there was a need, during a transitional period, for a special safeguard mechanism to guard against imports from China in such increased quantities or under such conditions as to cause or threaten injury to domestic producers of like or directly competitive products.

234. The representative of China stated that China opposed the creation of such a discriminatory safeguards provision and considered that the safeguards provisions of the GATT provided sufficient protection to the domestic industries of WTO Members. Some members of the Working Party considered that the provision of a transitional safeguard would have to be carefully circumscribed to prevent abuse in its invocation.

235. The representative of China expressed the following position concerning the implementation of the Product-Specific Safeguard provided in Section 19 of the Draft Protocol:

- (a) The Safeguard Agreement should apply in proceedings involving imports of Chinese origin except as otherwise provided in the Draft Protocol.
- (b) The Dispute Settlement Understanding should apply to consultations and the settlement of disputes arising under Section 19 of the Draft Protocol.
- (c) "Diversion of trade" mentioned in paragraph 8 of the Product-Specific Safeguard Section of the Draft Protocol, existed only when there was clear evidence to show:
 - (a) that imports of a product, like or directly competitive with a product produced by the domestic industry, were increasing significantly and absolutely as a result of the imposition of the Product-Specific Safeguard measure by other WTO Members against imports from China; and
 - (b) such increased imports were a significant cause of material injury to the domestic industry. The affected WTO Member should consider objective factors including the volume of imports, the effect of imports on prices for the like or directly competitive products and the effect of such imports on the domestic industry producing like or directly competitive products and any such other factors.
- (d) If a measure taken as a result of diversions of trade remains in effect more than 90 days, China would have the right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the Member applying the measure.

15. Transitional Review Mechanism

236. Members of the Working Party stated that following China's accession to the WTO it would be necessary to establish a transitional review mechanism constituted by a working party to monitor China's compliance with its Draft Protocol and the WTO Agreement within the overall framework of

China's progress in the reform of its economic and foreign trade regimes. Some members considered that the review should be held every two years (or more frequently upon request of China or another WTO Member), and that a major review should be held, e.g., every six years. That working party would have regard to the outline contained in Annex 9 to the Draft Protocol and could make recommendations, as appropriate, to China or to the other WTO Members concerned. Those members stated that that working party should also decide whether and to what extent the transitional provisions provided in paragraphs ... of this Draft Report should no longer apply. Those members noted that once the transitional provisions ceased to apply, the Transitional Review Mechanism would be extinguished.

237. The representative of China stated that his government did not in principle oppose such a review mechanism but considered that the review could be carried out as part of the regular Trade Policy Review to which China would be subject. In response, some members of the Working Party stated that they considered that the WTO Agreement's Trade Policy Review Mechanism was not well adapted to the type of specific review of compliance with conditions of accession that they considered to be necessary. Some members stated that the Trade Policy Review of China in the WTO should occur as regularly scheduled, notwithstanding the possible creation of a special transitional review mechanism for China.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

238. Members of the Working Party expressed concern that certain elements of China's laws were not yet fully compatible with the provisions of the TRIPS Agreement. This related, in particular, to provisions in the fields of copyright and neighbouring rights, trademarks, patents, geographical indications and layout-designs of integrated circuits, and to the enforcement of intellectual property rights. Members also expressed concern that there was a continued need for additional enforcement efforts by the Government of China.

239. Some members of the Working Party stated that China should amend the following laws: the Copyright Law to provide for a rental right for computer programmes and phonograms; the Trademark Law to provide for protection of trade-names, famous marks and marks consisting of colours, letters or numerals; the Patent Law to allow compulsory licensing only within the limits prescribed in the TRIPS Agreement, and the Criminal Code to provide remedies which constitute a deterrent to further infringements. In addition, China should provide for the protection of geographical indications and layout-designs of integrated circuits to implement the respective provisions of the TRIPS Agreement. China should also strengthen the legislative framework for the enforcement of intellectual property rights for all right-holders. In particular, 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. Other procedural rights should be strengthened as well, so that right-holders could obtain information on government enforcement activities and that investigations could be conducted within reasonable time-limits supported, where necessary, by significant fines that constitute an effective deterrent to further infringements. In addition, China should ensure the vigorous application by Chinese authorities of the enforcement legislation in order to considerably reduce the existing high levels of piracy and 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.

240. The representative of China confirmed that upon accession China would fully apply the provisions of the TRIPS Agreement and did not intend to have recourse to the provisions of Article 65 of that Agreement. The Working Party took note of this commitment.

VI. POLICIES AFFECTING TRADE IN SERVICES

241. Some members of the Working Party expressed concerns regarding the issue of transparency in China's services regime, in particular in respect of obtaining, extending and renewing licences and other approvals required to provide services in China's market. These members 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. Those members also expressed the view that upon its accession, China should publish a list of authorities responsible for authorizing, approving or regulating those service sectors in which China made specific commitments as well as the specific procedures and conditions for obtaining, extending, renewing, denying or terminating licences or approvals. These members also stated the need to ensure the independence and impartiality of regulatory authorities from the enterprises and individuals that they regulated.

242. The representative of China stated that China would publish promptly and, except in emergency situations, at the latest by their entry into force, all relevant measures of general application which pertained to or affected the supply of services and make relevant information publicly available. The Working Party took note of this commitment.

1. Licensing

243. Some members of the Working Party noted that the procedures and conditions for obtaining, extending or renewing licences or approvals for providing services had to be consistent with the provisions of the WTO Agreement, including the Draft Protocol and China's Schedule of Specific Commitments. Any licensing or approval process should not itself act as a barrier to market access

and should not be more trade restrictive than necessary. Specific time frames for decision, the opportunity to cure deficiencies in an application and to submit additional information, and the prompt provision in writing of reasons for denial of an application, should be provided for in the procedures. Fees charged for processing of applications should be commensurate with the administrative cost of processing the application. Conditions for filing an application and the time taken to approve applications were not to have the effect of quantitative limitations on service suppliers or denial of national treatment. Those members expressed particular concern regarding the practice of inviting only certain service providers to apply for licences or approvals and the practice of automatically terminating the effectiveness of an application if the approving authority did not act within a set period of time. Moreover, automatically terminating the effectiveness of pending applications after a certain period of time without providing reasons had the effect of denying a licence with no effective right of appeal as required under the Draft Protocol. Applicants needed to be informed of the reasons for denial of a licence and such reasons needed to be consistent with China's WTO commitments.

244. The representative of China confirmed that, in the application of its commitments under the WTO Agreement, the Draft Protocol and its Schedule of Specific Commitments, China would, upon accession, ensure that its licensing and approval procedures for foreign service suppliers to provide services in China would be consistent with Article VI of GATS. For authorization required for the supply of a service on which a specific commitment had been made in China's Schedule of Specific Commitments, the competent authorities of China would, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. For the services included in China's Schedule of Specific Commitments, the decisions and procedures used by regulators would be impartial with respect to all market participants unless otherwise specified in the Schedule. Where China required an examination to licence professionals, such examinations would be scheduled at reasonable intervals. The Working Party took note of these commitments.

245. The representative of China also confirmed that established foreign service suppliers would be able to agree with their joint-venture partners on the modification of their equity interest and implement this. He further confirmed that such an agreement would be approved if consistent with the relevant equity commitments in China's GATS Schedule. The Working Party took note of these commitments.

246. The representative of China submitted an action plan for implementing China's services and related commitments, circulated to the Working Party in [WT/ACC/CHN/X]. The action plan outlined the steps that China was taking to ensure full implementation of its services commitments, in

particular, focusing on revisions in its laws, regulations and other measures relating to licensing of enterprises to provide services to comply with its obligations. The representative of China confirmed that China would inform WTO Members regarding its revision of relevant laws, regulations and other measures to comply with China's obligations. The Working Party took note of this commitment.

247. Members of the Working Party welcomed China's commitments in the area of distribution, noting that implementation of its commitments in this area would modernize China's infrastructure for supplying this essential service. Moreover, China's commitments were subject to a progressive phase-in of rights which would require changes in China's laws and regulations concerning distribution activities generally. New regulations on sales away from a fixed location, for example, were specifically referenced in China's Schedule of Specific Commitments. Some members noted that the World Code of Conduct provided a strong ethical basis for regulating sales away from a fixed location. Members also sought confirmation that the supply of franchising services was different from the establishment of a "chain store" since franchises with numerous establishments could be envisioned in a country of the size and population of China.

248. The representative of China confirmed that China would consult with WTO Members and develop regulations, consistent with the commitments in its services schedule, on direct sales activities. The Working Party took note of this commitment.

249. The representative of China clarified that franchising services could be supplied in the form of chain stores and that therefore the limitations on certain chain stores would apply to enterprises established and operating under franchising agreements.

250. 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. 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% 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% 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% 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) The subject-matter insured of Large Commercial Risk was limited to large-scale commercial enterprise or large-scale construction project.

I. For an insurance risk written on any large-scale commercial enterprise, the following conditions had to be met:

(i) the fixed asset of the enterprise exceeded 200 million RMB; and

- (ii) in one single insurance contract, either the sum-insured exceeded 500 million RMB or the total annual premium income exceeded one million RMB.
 - II. For an insurance risk written on any large-scale construction project, the following conditions had to be met:
 - (i) the project had to be approved by relevant state departments;
 - (ii) the total amount of investment exceeded 200 million RMB; and
 - (iii) in one single insurance contract, the sum insured exceeded 500 million RMB and the total annual premium income exceeded one million RMB.
 - III. The calculation basis for the above-mentioned sum insured and premium income did not include motor insurance, credit insurance, employer liability insurance, statutory insurance, policy insurance and other insurance business stipulated by CIRC.
- (c) Motor insurance, credit insurance, employer liability insurance, statutory insurance and other insurance business excluded by the CIRC could not be underwritten or co-insured by insurers located other than where the subject-insured was located, or covered under a master policy.
- (d) Statutory insurance products in China's Schedule of Specific Commitments were limited to the following specific categories, and no additional products or categories would be added: Mandatory third-party liability of auto insurance, driver and operator liability for buses and other commercial vehicles (by railway, road and ships); and the 20% compulsory reinsurance of all lines of the primary risks for non-life, personal accident and health insurance business with an appointed Chinese reinsurance company.
- (e) The term "foreign insurers" included services providers that provided reinsurance services or services auxiliary to insurance only.
- (f) China could make changes to the definitions of the above-defined "Master Policy" and "Large Commercial Risk", and the new definitions would be implemented on a national treatment basis.

251. Members of the Working Party welcomed China's commitment to permit internal branching for all insurance firms consistent with the phase-out of geographic restrictions. Some members noted that China had certain qualifications in addition to prudential measures that foreign insurers had to meet to apply for a licence to provide services in China. Those qualifications related to a minimum period of establishment in a WTO Member, total assets and maintenance of a representative office in China. These qualifications did not apply to those established foreign insurance companies in China seeking to practice internal branching.

2. Choice of Partner

252. Some members 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 a Chinese entity of its choice as long as the Chinese partner was legally established in China and met the criteria set out in relevant Chinese laws and regulations. The Working Party took note of this commitment.

3. Modification of the Equity Interest

253. With respect to its Schedule of Specific Commitments, the representative of China confirmed that established foreign service suppliers would be able to agree with their joint-venture partners on the modification of their equity interest and implement such modification. 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

254. In response to questions from members, 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, as long as the insurance activities were maintained in the new entity. The Working Party took note of this commitment.

5. Inspection Services

255. 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. The Working Party took note of this commitment.

6. Market Research

256. 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 to the WTO, 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 Working Party took note of these commitments.

7. Legal Services

257. 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 a practising permit and had registered in a Chinese law firm for practising.

8. Schedule of Specific Commitments

258. China's Schedule of Specific Commitments was annexed to the Draft Protocol reproduced in the Appendix to this Draft Report. This Schedule of Specific Commitments contained the market access commitments of China in respect of services.

VII. OTHER ISSUES

1. Notifications

259. Members of the Working Party requested that China provide to the WTO Secretariat the notifications described in paragraphs ... of this Draft Report.

2. Trade Agreements

260. 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. Those members requested that China enter a commitment to eliminate such arrangements or bring them into conformity with WTO obligations by no later than the date of its accession to the WTO Agreement.

3. Transparency

261. Some members of the Working Party requested that China undertake to ensure that upon request, and prior to implementation or enforcement, all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex would be published and made available to WTO Members.

262. Those members of the Working Party also requested that China designate an official journal in which all laws, regulations and other measures pertaining to or affecting matters covered by the WTO Agreement would be published and that those laws regulations and other measures should only become effective following a period within which interested parties could submit comments to the designated authorities. They asked that China publish that journal on a regular basis and make copies of all issues of this journal readily available to individuals and enterprises.

263. Members of the Working Party also requested that China set up an enquiry point where information relating to all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex could be obtained. Those members stated that replies to such enquiries should generally be provided within 30 days of a request, and should in no case take longer than 45 days, and if so delayed a statement indicating the reasons therefore should be provided in writing to the interested party. Members noted that replies to enquiries would need to be complete and represent the authoritative view of the Government of China.

264. The representative of China stated that China would, according to the requirements of all WTO covered agreements, make available to WTO Members, upon request, relevant laws, regulations and other measures when such measures were implemented or enforced. He further stated that China would establish or designate an enquiry point where, upon request of other WTO Members, laws, regulations and other measures pertaining to or affecting the subject-matters of the WTO Agreement could be obtained and replies to relevant inquiries from other WTO Members be provided within a reasonable period of time. The Working Party took note of these commitments.

265. Members of the Working Party further requested that China provide the WTO Secretariat with statistical data and information describing China's economy and trading system, as specified in Annex 1 of the Draft Protocol, every two years, and 30 calendar days prior to a meeting of the Working Party on Trade with China that would be established by the Draft Protocol.

266. 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 local authorities. Transparency of regulations and other measures, particularly of sub-central 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. 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.

267. Members of the Working Party also emphasized the importance of a meaningful opportunity to provide comments prior to final implementation of laws, regulations and other measures. Such an opportunity could enhance understanding of the provision and permit China to take such comments into account before implementing a measure.

268. 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 administrative rules and regulations of the State Council relating to foreign trade were all published, as were regulations issued by Ministries and Commissions. Such laws and regulations were available in the "Bulletin 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 periodicals.

269. 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.

270. Concerning administration of imports and exports, the representative of China noted that MOFTEC, together with the relevant departments, decided the items and specific quantities of products subject to import and export licensing and made timely adjustments according to the need of the current situation. Such information would be published in the "International Business" newspaper and the "MOFTEC Gazette".

271. He also noted that information on China's customs laws and regulations, import and export duty rates, and customs procedures were published in the "State Council Bulletin" and in the press media, and were 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.

272. 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.

273. 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 [] calendar days before they were implemented or enforced. The Working Party took note of these commitments.

274. 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. Where appropriate, 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.

275. 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.

276. 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. The Working Party took note of this commitment.

277. The representative of China confirmed that China would establish or designate an enquiry point 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. This 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.

278. 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; Proclamation of the Ministry of Finance of the People's Republic of China.

VIII. CONCLUSIONS

279. The Working Party took note of the explanations and statements of China concerning its foreign trade regime, as reflected in this Draft Report. The Working Party took note of the commitments given by China in relation to certain specific matters which are reproduced in paragraphs [...] of this Draft Report and noted that these commitments are incorporated in paragraph 1.2 of the Draft Protocol.

280. 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 to this Draft Report, and took note of China's Schedule of Concessions and Commitments on Goods [(document WT/ACC/SPEC/CHN...)] and China's Schedule of Specific Commitments on Services [(document WT/ACC/SPEC/CHN...)] that were annexed to the Draft Protocol. It was proposed that these texts be adopted by the General Council when it adopted the Draft 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.
