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China - WTO 1996 [1]

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. paper	China - Reivew of Licensing-Related Rules (5 pages)	01/22/1997	P1/b(1)
001b. paper	Tariff-Rate Quota Administration (4 pages)	01/08/1997	P1/b(1)
001c. talking points	China's Non-Paper on TRQ Administration. (1 page)	01/22/1997	P1/b(1)
002. paper	Duplicate of 001a. (5 pages)	01/22/1997	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Economic Council
Lael Brainard
OA/Box Number: CF 1192

FOLDER TITLE:

China -- WTO 1996 [1]

2010-1024-F

vz1785

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]

P2 Relating to the appointment to Federal office [(a)(2) of the PRA]

P3 Release would violate a Federal statute [(a)(3) of the PRA]

P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]

P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]

P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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RR. Document will be reviewed upon request.

b(1) National security classified information [(b)(1) of the FOIA]

b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

b(3) Release would violate a Federal statute [(b)(3) of the FOIA]

b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]

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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

AGENDA

NEC DEPUTIES MEETING ON CHINA ECONOMIC ISSUES

Thursday, October 10, 1996

3:00 p.m.

Room 231, OEOB

- I. JCCT: Stu Eisenstat
- II. JEC: Jeff Shafer or Larry Summers
- III. Trade Issues
 - A. Renewal of Bilateral Textiles Agreement: Rita Hayes
 - B. WTO Discussions: Lee Sands
 - C. Intellectual Property Agreement Enforcement: Lee Sands

DECLASSIFIED

E.O. 13526

White House Guidelines, September 11, 2006

By 172 NARA, Date 2/8/2017

2910-1027-f

~~CONFIDENTIAL~~



Draft 9/18 1:30 pm

**Testimony of
Ambassador Charlene Barshefsky
Before the Ways and Means Committee
Subcommittee on Trade
September 19, 1996**

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you today to discuss the efforts by China and Taiwan to join the World Trade Organization (WTO). While I will focus on our bilateral relationships with China and Taiwan and the negotiations for China and Taiwan to accede to the WTO, I would also like to take this opportunity to describe the accession process and briefly report on the work being done with the other applicants for WTO membership.

CHINA

Now let me turn specifically to China. The U.S.-China relationship is complex and multifaceted. The United States has a wide range of issues with China that go far beyond trade. We have a deep and abiding interest in human rights, worker rights, and a range of other areas from non-proliferation to environmental protection.

Increasingly, however, trade plays a central role in our relationship with the world's largest nation. We cannot ignore the fact that the United States has a significant commercial stake in China. China is the fastest growing major economy in the world, with annual growth rates of more than 10 percent for each of the past four years. Already possessing the world's largest population, by early in the next century, China may have the world's largest economy.

China is the world's eleventh largest trading nation, the United States' fifth largest trading partner. In 1995 alone, U.S. exports to China increased by nearly 27 percent, and -- at \$11.8 billion -- these exports were more than double their 1990 level. That is why more than 170,000 American workers owe their jobs to U.S. exports to China.

The Clinton Administration's policy toward China remains consistent and unchanged. It is a policy of engagement. But let me be clear about what we mean by engagement, Mr. Chairman. Engagement with China does not mean *ignoring* our differences. It means actively engaging China to *resolve* our differences and it means *protecting our interests* when consultations are not fruitful.

In June of this year, President Clinton urged Congress to renew MFN for China for another year. He did this -- and the Congress supported him -- because the United States' interests are best promoted and achieved if we maintain MFN as the foundation for our trade relationship with China.



When the President delinked human rights and MFN in 1994, he said that his Administration was prepared to use a whole array of legislative and administrative methods to address specific issues with China. In the President's words, "We must enforce our trade laws and our trade agreements with all the tools and energy at our disposal." I can assure you that we have consistently used all of the tools at our disposal to open China's market.

Since the outset of the Clinton Administration, we have pursued a vigorous bilateral trade agenda with China, and we have sought and achieved real results. By working successfully with Congress and the private sector, we have opened markets ranging from heavy machinery to telecommunications technology.

We have made important progress but it is clear that there is much more work to be done. Before I specifically address China's WTO accession, let me review some of the areas in which progress has been made with regard to opening China's vast market:

1995 Intellectual Property Rights Agreement

U.S. copyright industries employ more than 5 percent of the U.S. work force -- roughly equal to the auto industry -- and are growing three times as fast as the rest of the economy. The copyright industries contribute more than \$350 billion a year to the U.S. economy, accounting for more than 6 percent of GDP. The U.S. computer software industry alone maintains a 75 percent market share worldwide, and created almost 60,000 jobs in 1995. Therefore, when firms in China pirate American products, they are stealing the ideas of these industries. We will not tolerate the theft from our leading industries.

Since the signing of the IPR Agreement in February 1995, U.S. government delegations traveled to China nine times to ensure enforcement and held more than forty formal and informal consultations from Beijing to Shanghai to Guangzhou. However during 1995, there was a great deal of talk on the part of the Chinese, but little concrete action on important aspects of the Agreement. That is why, in May 1996, the Clinton Administration threatened to take action against China as a result of China's failure to enforce satisfactorily its commitments under the 1995 agreement on intellectual property protection.

In June 1996, after substantial verification activities on the part of a U.S. government delegation, it was determined that a critical mass of enforcement actions in connection with the 1995 IPR Enforcement Agreement had been taken by the Chinese, and sanctions were averted. Our discussions in June confirmed that China had begun to take action in a number of key areas. China had closed a total of 15 CD factories, and had begun a new initiative targeting underground CD plants. The Ministry of Public Security would now play a leading role in these efforts. China also had put a moratorium on the establishment of any new CD factories, and had issued regulations which virtually ban the importation of CD presses and other manufacturing equipment. The Chinese had strengthened border enforcement by executing seizures during the past several months -- netting tens of thousands of pirated CDs, VCDs, LDs, and other pirated goods. Chinese Customs officials had continued cooperative efforts with Hong Kong Customs and would continue to work with U.S. Customs. China also had clamped down on the import of



illegal CD presses. And finally, significant progress had been made to secure opportunities in China for American IPR industries -- for sound recordings, motion pictures, and software.

Of course, the ultimate test is real and ongoing implementation. The United States will continue to monitor the situation and ensure that our economic interests are protected. To that end, a USTR team is in China now to verify that the Chinese are continuing to take the agreed-upon steps to crack down on piracy and provide market access.

The 1992 Market Access Agreement

In October 1992, the United States and China signed a market access agreement that committed China to make sweeping changes in its import regime. To its credit, China has done much to implement the 1992 agreement. It has taken important steps toward making its trade regime more transparent. It has made a major commitment to eliminate non-tariff barriers, and since the end of 1993, it has eliminated or substantially reduced the several thousand barriers that existed. Once these barriers are eliminated, the markets in China for computers, medical equipment, heavy machinery, textiles, steel products, chemicals, pharmaceuticals, and other products will open.

While China has removed a substantial number of non-tariff barriers, we are concerned with China's tendency to give with one hand and take away with the other. In some instances, China has substituted new barriers in the place of those removed. For example, quotas have been replaced with "tendering requirements" or "registration requirements." In sectors such as medical equipment and film, new regulations have prevented the market access we anticipated as a result of the 1992 agreement. China must live up to its agreement and eliminate these impediments to fair trade.

A number of other market access problems remain, most importantly for U.S. agricultural products. In the Agreement, China committed to eliminate unscientific sanitary and phytosanitary restrictions used as barriers to market access. However, China has failed to scientifically justify restrictions which block exports on a number of important agricultural products, particularly wheat and citrus fruit. Even where China has taken positive steps, for example with cherries and apples, subsequent phytosanitary requirements or tariffs have blocked meaningful access to the market. In order to continue to engage the Chinese on these important issues of market access for our agricultural exports, our agricultural officials are currently in China.

Services

The United States is the largest exporter of services in the world, and producer of the highest quality services that range from financial services to engineering and construction. We are pursuing discussions with China on services, both bilaterally and multilaterally, in particular in the areas of value-added telecommunications and insurance.

In addition, USTR continues to pursue market access for other services sectors. This includes

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efforts in the areas of business facilitation, distribution, travel services and advertising.

Xinhua Control over Financial News Services

Xinhua News Agency, also known as the New China News Agency, has recently been authorized to control the release of economic information in China by foreign news agencies. We are very concerned about this development which could adversely affect U.S. commercial presence in China, impinge on U.S. intellectual property rights and constitute yet another significant WTO-related issue. We are now in consultations with the Chinese on the regulations and their implementation.

The World Trade Organization

In the twenty months that the WTO has been in existence, the process of negotiating the terms of accession to the WTO Agreement for new members has become a major focus of our efforts to expand market access for U.S. exports and to strengthen the existing rules of the international trading system. This is nowhere more relevant than in the negotiations for China's membership.

A signatory to the Marrakesh Agreement Establishing the World Trade Organization, China formally applied for WTO membership in late 1995, and participated in the first meeting of its WTO Accession Working Party in March 1996. From the beginning of this process, WTO members have proceeded from the principle that China's membership would have to be accomplished on terms that provide for meaningful market access and the incorporation of the disciplines of WTO provisions into China's trade regime. While recognizing the importance of China's accession to the WTO, there is consensus among the major WTO Members for a tough and principled approach to this process.

President Clinton has repeatedly affirmed U.S. support for China's accession to the WTO on the basis of commercially viable commitments that provide greatly expanded market access and ensure compliance with WTO obligations. We have worked hard, both bilaterally and multilaterally, to organize and facilitate China's accession process.

Unfortunately, China's offers on Goods and Services Market Access are not acceptable in their current form, and a number of important protocol issues, such as the right to trade, the removal of non-tariff measures, how state trading is conducted, disciplines on agricultural supports and subsidies, and China's industrial policies, remain unresolved.

China needs to give special attention to market access for agricultural products. We and other WTO Members continue to carefully review China's proposals on how its state trading system will work, how it will discipline subsidies and internal supports, and how it will implement its sanitary and phytosanitary rules. We have made a number of concrete suggestions, and look forward to China's responses.

The operation of China's state trading system is a clear example of the important relationship between WTO rules and basic market access issues. We must ensure that state trading does not operate as a barrier to imports and that it provides fair market opportunities for U.S. exporters.



Congress has provided important guidance to our negotiators in this area. Completion of China's accession process requires that these and other difficult outstanding issues be addressed.

On the President's instructions, we prepared a document that has been referred to as a WTO roadmap for China. The roadmap crystallizes for China the basic actions it must make to make progress in each substantive area covered by the WTO. It draws on the draft protocol text that was tabled and negotiated in Geneva in 1994.

China has responded with a preliminary presentation in Washington on February 12, but we expect further, more detailed responses at a later stage. WTO issues were also discussed during meetings of China's Accession Working Party that took place in late March. The next meeting of China's Accession Working Party, where non-tariff measures will be discussed, is scheduled for late October.

To move the accession process forward, China's intentions in each of the areas identified need to be expressed in terms of specific, contractual commitments to implement WTO rules. China must also provide for substantial improvement of market openings in goods, in services, and in agriculture. Without progress in all these areas, none of the major countries negotiating China's accession terms will be prepared to complete the accession.

We are committed to a pragmatic and realistic accession process. As President Clinton made clear to President Jiang, we stand ready to negotiate a balanced, commercially-based accession agreement.

Let me stress a key point about moving this process forward. To make progress, China must stop erecting new trade barriers to replace those previously removed. And it must cease implementing policies that move it further away from WTO consistency.

Of course, China must also fully implement its existing bilateral trade agreements. The Administration's actions this spring to ensure satisfactory implementation of the 1995 Intellectual Property Enforcement Agreement demonstrate our commitment to enforcing our trade agreements. Complete and timely implementation of the IPR Agreement, as well as our market access, textiles, and other agreements, will help to put our bilateral trading relations on a more stable, long-term foundation.

TAIWAN

Taiwan is the world's fourteenth largest trading economy, and the United States' eighth largest trading partner. The United States and Taiwan have a bilateral trade relationship of long standing that has benefitted both economies. U.S.-Taiwan bilateral trade reached \$48 billion in 1995. In the last decade, as Taiwan has reformed its political structure and moved toward the democratic mainstream, bilateral negotiations between the U.S. and Taiwan have laid the foundation of a more open and liberalized trade regime in Taiwan. Difficult bilateral issues of market access, protection of endangered species (Pelly Amendment), and intellectual property protection have

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been addressed and resolved.

While we expect that implementation of Taiwan's WTO accession package will greatly benefit U.S. export interests, we continue to work bilaterally with Taiwan on other issues parallel to the accession process. Before turning to the WTO accession, I would like to review our ongoing bilateral efforts.

Market Access

Although not a participant in the Uruguay Round, Taiwan has in the past several years taken steps to provide greater market access. Taiwan is engaged with the United States in negotiations for WTO accession that will further open Taiwan's goods and services markets to a significant degree. Taiwan's Trade Action Plan, self-initiated in 1989, reduced industrial tariffs to an average of 8.6 percent. Taiwan's Legislature enacted a law in late June 1995 implementing an Executive branch commitment made in February 1994 to reduce tariffs by an average of 21 percent on 483 items of prime U.S. export interest valued at \$890 million.

Telecommunications

In February, Taiwan approved a plan to transform its monopoly telecommunications agency to a strictly regulatory role, spinning off its operational arm as a newly privatized entity. The plan opened up the telecommunications sector to domestic and, with some limitations, foreign competition in providing equipment and services. U.S. equipment and service providers were concerned with certain aspects of the plan, in particular restrictions on foreign investment and the possible continuing influence of the newly-privatized telecommunications entity, including a ceiling of twenty percent on foreign investment, an 11.9 percent cap on return on investment, limits on debt/equity ratios, and limited spectrum allocation on which to develop a customer base.

Bilateral consultations with Taiwan authorities in July succeeded in securing commitments to removal of the profit cap and of restrictions on debt equity ratios. It was also confirmed that the newly-privatized telecommunications entity would not be able to cross-subsidize its wireless services with revenues from its remaining basic telecommunications monopoly activities, nor discriminate in pricing of connections for its own wireless subsidiaries and new competitors in that sector.

We are continuing to monitor the implementation of our July Understanding with Taiwan to ensure that U.S. firms are permitted to compete fairly in the Taiwan telecommunications market. In addition, we are working with U.S. equipment and services suppliers to assure that our concerns are taken into account as regulations are developed to implement further this element of the liberalization.

Intellectual Property Rights

As a result of many years of bilateral Special 301 work with the United States, Taiwan has made

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significant improvements in its IPR protection as it has worked to bring this effort up to TRIPS standards. These improvements have resulted in movement from a special 301 designation by USTR as a "priority foreign country" in 1992 to watch list in 1995. This year, we have removed Taiwan from the U.S. Special 301 lists to the category of special mention.

Last April, the U.S. and Taiwan reached agreement on an 18 point Action Plan outlining enhanced IPR enforcement commitments in areas of concern to U.S. industry. Taiwan's commitment to implement the Action Plan within six months resulted in a USTR downgrading Taiwan's status from the special 301 "Watch list" to the "special mention" category. At the urging of the United States, Taiwan has worked to prevent cross-strait investment in PRC-based CD manufacturers, required all Taiwan CD manufacturers to use a source identification code on all products, and has recommended simplification of the power of attorney provision under Taiwan law to the Ministry of Justice. We remain concerned, however, that Taiwan's money and equipment continues to foster CD piracy in China. We will conduct an out-of-cycle special 301 review, tentatively scheduled for October, to assess Taiwan's continued efforts to protect IPR.

Medical Devices

Taiwan's efforts to contain costs under its National Health Insurance Program have led to implementation of brand-name based price lists for determining reimbursements which reportedly favor domestic medical devices and generic pharmaceuticals over imported or foreign invested manufactured products. U.S. medical device manufacturers and pharmaceutical companies allege that prices assigned their leading products are arbitrary, non-transparent and may deny national treatment due to pricing formulas designed to benefit local producers of competing products. The Health Industry Manufacturer's Association (HIMA) filed a petition on July 2 on the concern in response to the Federal Register notice requesting comments for practices to be considered under Super 301. The issue was raised during bilateral consultations with the Taiwan authorities in mid-July and most recently during subcabinet-level meetings in Taiwan last week. We will continue to work with our suppliers to persuade Taiwan to establish more transparent, non-discriminatory formulas.

Sanitary and Phytosanitary Issues

The United States and Taiwan have been able to resolve several outstanding sanitary and phytosanitary (SPS) concerns on plants and plant products over the past several years. However, Taiwan still implements several unnecessary quarantine restrictions on livestock and meat. Taiwan also has a restrictive performance testing system for breeding swine which effectively prevents imports of certain breeds of swine. In addition, they subject dietary supplements to a registration process such as that used for pharmaceuticals.

The World Trade Organization

The United States and Taiwan have resolved many issues relating to Taiwan's efforts to accede to the WTO but critical issues remain. Taiwan has negotiated some significant commitments and concessions on market access (tariffs and non-tariff barriers), trade in services including financial

services, and adherence to the WTO Government Procurement Agreement.

However, major issues remain outstanding. They relate, for example, to the tariffs and quotas for automobiles and other industrial goods, tariffs and trade and distribution arrangements on certain agricultural commodities; and tariffs, taxes, and other aspects of market access on products that are currently the responsibility of the Taiwan Tobacco and Wine Monopoly Bureau (TTWMB). Another major element of the accession negotiation is agreeing on reforms to the TTWMB so that Taiwan meets WTO requirements of national treatment, MFN, and transparency. Taiwan also needs to address U.S. requests for commitments in legal and financial services, and to respond positively to our request for their adherence to the WTO Aircraft Agreement after accession.

At the close of Taiwan's last accession Working Party meeting in Geneva, it was agreed that the next task to be undertaken by the group would be the discussion of issues for a protocol text based on a checklist developed by participants in the negotiation last year. Contacts with the Taiwan delegation on remaining issues continue, and we will certainly meet with them prior to the next Working Party meeting.

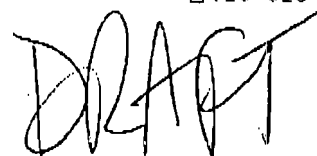
WTO ACCESSION

I would now like to turn to specifics of the WTO accession process and efforts by other countries seeking to join the WTO. Increasingly, Congress is taking an interest in the accession process, and we have been responsive to the provisions established in U.S. trade law, seeing them as a baseline for all the negotiations. Section 121 of the URAA gives guidance on objectives related to Uruguay Round results, and section 1106 of the Omnibus 1988 Trade Act speaks to the issue of state trading and accession. More broadly, we have been responsive to the general objectives set in the Uruguay Round legislation in areas such as market access, (e.g. the zero-to-zero tariff harmonization proposals and in our continuing negotiating authority under section 111. We feel we are working with Congress to set the parameters for a commercially viable accession package, following your mandate and the yardstick for success is the same for all acceding countries.

Accession Process

In the twenty months that the WTO has been in existence, the accession process conducted under Article XII of the WTO Agreement has become a major focus of our efforts to expand market access for U.S. exports and strengthen the existing rules of the international trading system.

There are 31 countries and customs territories in various stages of the WTO accession process at this time, with the accessions of China and Taiwan among the most important of them. Among the other twenty nine applicants are Russia, Ukraine, Kazakhstan, and six other former Soviet republics of the Commonwealth of Independent States (CIS); the Baltic States, Saudi Arabia, Jordan, and Vietnam.



The United States and other WTO Members adopted the Uruguay Round as a single undertaking--all aspects of the Agreements that emerged from the Uruguay Round negotiations were mandatory for all who wished to become WTO members. Through the accession process, we maintain the integrity of that commitment for future WTO members as well as for original ones.

The rules for joining the WTO are stated in Article XII of the Agreement, and are functionally identical to those that operated for accessions to the GATT 1947, i.e., that

"Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto."

As was the case under GATT 1947, the negotiations required for membership provide broad opportunity for current WTO members, including the United States, to ensure that new memberships take place on terms that reduce barriers to trade and support the credibility and strength of the WTO. In practice, this means that applicants must negotiate terms for membership in the organization, giving current WTO members an opportunity (1) to ensure that applicant trade regimes can implement WTO obligations and (2) to secure commitments and concessions on specific issues and for enhanced market access on tariff levels, agricultural market access, and trade in services.

The accession process involves a two part negotiation:

- bilateral negotiations to identify specific goods and services market access commitments and
- multilateral discussions in a Working Party composed of all interested WTO members to identify aspects of the applicant's trade regime conflicting with WTO provisions so they can be amended.

To initiate the WTO accession process, the applicant describes its foreign trade regime to WTO members, responds to questions, and provides any other information on its trade practices and laws requested by WTO members. There is a long list of basic information that all applicants for WTO accession are required to provide for WP review. The WP will meet as many times as is necessary to complete the review of the applicant's trade regime, and to discuss concerns expressed by WTO members on the consistency of the applicant's trade regime. The pace of these discussions traditionally depends on the applicants willingness to identify the problems with WTO-consistency in its trade regime, and to provide assurances or commitments to bring these measures into line with the WTO Agreements. Ultimately, the WP makes a collective assessment of where changes or commitments to change must be made in the applicant's regime to



meet WTO obligations.

These assessments, and specific requests for changes or commitments to change to bring the applicant's trade regime into conformity with WTO provisions, are reflected in the final accession package approved first by the Working Party and then by the full WTO:

- a Protocol, listing the commitments undertaken by the applicant concerning WTO rules;
- a Working Party report elaborating on the commitments;
- a schedule of initial market access commitments for trade in services; and
- a schedule of market access concessions for goods, including an agricultural country schedule, with commitments on export subsidies and internal supports.

These elements constitute the accession applicant's "entry fee" to bring them up to a level of commitment to WTO provisions and to trade liberalization commensurate with that of current WTO members. Because every trade regime is different, and because every applicant has its own views on how rapidly it is willing or able to respond in the negotiations, there is no way to tell how long the negotiations will take. The accession process can be very detailed and take time, particularly if the trade regime of the applicant is very complex or in the process of transition from a state-trading basis to a regime based on market principles.

The U.S. traditionally has taken a leadership role in developing the terms for acceding countries. This is as true for Mongolia and Bulgaria as for China and Taiwan. Over the past several years we have worked hard in Geneva to develop a strong multilateral consensus on the elements of a commercially viable protocol package in the accession process, including with China, and we intend to continue to provide leadership to building that consensus.

The accession process involves both bilateral negotiations to reach agreement on specific concessions for goods and services market access and multilateral discussions in a Working Party of WTO members to ensure that the applicant's trade regime is consistent with WTO provisions. The results of the negotiations form the final accession package, containing a Protocol and Working Party Report listing the commitments on WTO rules and schedules of market access commitments for both goods and services. Both the Working Party and then the General Council must approve these results.

This package is the applicant's "entry fee" into the WTO and is intended to bring that government's trade regime to a level commensurate with that of current WTO members and to specify changes need to implement WTO provisions. Because every trade regime is different, and because every applicant has its own views on how rapidly it is willing or able to respond in the negotiations, there is no way to tell how long the negotiations will take.



Results of Other Accessions

Since WTO Implementation in January 1995, four countries have completed their negotiations under Article XII to accede to the WTO. These are: Ecuador, which became a member in January 1996; Mongolia, whose accession was approved by the WTO in June 1996; and Bulgaria and Panama where approval is expected this fall of the accession packages completed before the summer break. In all four cases, the commitments and concessions in both goods and services market access and in implementation schedules for the WTO Agreements exceeded those generally accepted by countries with similar economies in the Uruguay Round, particularly in market access for goods and services, and in full implementation of WTO commitments on an accelerated basis.

The commitments included:

full binding of all tariff lines, industrial as well as agricultural, with full or partial acceptance of chemical harmonization;

elimination upon date of accession or with very short transitions of most existing practices inconsistent with GATT 1994 or other WTO Agreements, including: minimum import valuation; non-tariff taxes and charges on imports, customs charges, or internal taxes also applied to similar domestic goods; and several categories of restrictions on imports, including quotas, minimum import prices, and restrictive licensing schemes;

broad initial commitments by all four countries to market access and national treatment for foreign service providers in key sectors of interest to the United States, including value-added telecommunications and a wide range of financial services (including insurance), as well as in accounting, management consulting, construction, engineering, wholesale distribution, and hotel services and tourism;

early implementation of TRIPs and the Agreements on SPS and TBT without recourse to transitions, and immediate implementation of the Customs Valuation Agreement by Mongolia, Panama, and Bulgaria

commitments from Mongolia and Bulgaria (the first transforming economies to complete accession to the WTO) that the state foreign trade monopoly was abolished and to provide additional periodic reports on privatization and reforms and enhanced transparency for remaining price controls.

CONCLUSION

In conclusion, let me return to the topic of China. The U.S.-China relationship is as important as any bilateral relationship in the world. But relationships are a two-way street. For China, the potential of the U.S. market is great. Roughly one third of China's exports go to the U.S.,

including tens of billions of dollars of textiles and footwear. In addition, Chinese companies -- like all foreign companies -- are allowed to establish freely in the United States. No one restricts their right to do business with American customers.

For the United States, it is certainly true that China offers unmatched potential. Unfortunately, while progress has been made, for the United States, the potential of the Chinese market remains largely untapped in many respects. China's highly restrictive import policies mean that less than 2 percent of U.S. exports go to China. China must open its markets, and the first step is to ensure compliance with commitments already made.

The Chinese feel that is only "fair" that China -- the country with the largest population and the fastest growing major economy, the country that may soon be the world's largest economy -- be admitted to the WTO. The United States also sees accession to the WTO as a matter of fairness. Fairness is abiding by rules and living up to one's commitments. Fairness is a matter of meeting agreed-upon standards and eliminating unfair barriers. Accession to the WTO *is* a matter of fairness. In fact, it is a matter of fair trade.

1/23/97

MEMORANDUM FOR CHINA WTO WORKING GROUP

FROM: CAROLA MCGIFFERT, USTR ^{CUM}

SUBJECT: Attached Documents

Attached for your review are the following documents:

1. Commerce paper on China's Licensing Code
2. State paper on TRIMS *(delete US company names when we send)*
3. USDA analysis of China's TRQ non-paper

We would greatly appreciate if you could take a look at these documents in advance of tomorrow's 10:30 am interagency meeting. Thank you very much.

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001a. paper	China - Reivew of Licensing-Related Rules (5 pages)	01/22/1997	P1/b(1)

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Freedom of Information Act - [5 U.S.C. 552(b)]

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- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001b. paper	Tariff-Rate Quota Administration (4 pages)	01/08/1997	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Economic Council
Lael Brainard
OA/Box Number: CF 1192

FOLDER TITLE:

China -- WTO 1996 [1]

2010-1024-F
vz1785

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

Freedom of Information Act - [5 U.S.C. 552(b)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

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List of TRIMs

Local Content Requirements

Investment Guide Restricting Foreign Electronics Companies' Investment in China's Color TV Industry, Ministry of Electronics Industry, New China News Agency, 7/16/95

Foreign investors ... are required to purchase more components within the country.

Law of the PRC on Chinese-Foreign Equity Joint Ventures, as amended by the National People's Congress, April 4, 1990

Article 9: In its purchase of required raw and processed materials, fuels, parts, and auxiliary equipment, etc., an equity joint venture should give first priority to purchases in China.

Automotive Sector Industrial Policy, adopted by SPC on 2/19/94, published in People's Daily on 7/4/95

Article 31: Sino-foreign automotive joint ventures ... when selecting components ... must give priority to local products of the same rank ...

Article 42: Automotive industry enterprises must localize imported items or manufacturing technology. The State regards the progress they have made in localizing imported items or manufacturing techniques as a condition for supporting their efforts to develop cars of the second type.

Article 43: Automotive industry enterprises will not import semi-knockdown (SKD) or component knock-down (CKD) parts for assembling.

Article 44: The State will formulate preferential import duty policies according to the degree of localization of automotive industrial products.

Regulations of the PRC on Sino-Foreign Cooperation in the Development of Continental Petroleum Resources, promulgated on October 7, 1993 by Decree No. 131 of the State Council

Article 22: In the purchase of machinery and equipment, raw materials, accessories, means of transport and office supplies necessary for oil development operations, preference should be given to those of China provided that these are competitive.

-2-

Trade and Forex Balancing Requirements

Automotive Sector Industrial Policy, adopted by SPC on 2/19/94,
published in People's Daily on 7/4/95

Article 31: Sino-foreign automotive industry joint ventures are required to meet the following conditions before establishment: ... (3) the enterprise shall balance its earnings and use of foreign exchange, relying mainly on the export of its own products.

Provisional Procedures on Control of Import of Machinery and Electronic Products, SETC and MOFTEC, October 7, 1993

Article 6: Overall guidance is given by the State on annual amount of imports of machinery and electronic products in line with the ... basic balance between import and export.

Article 9: The State shall exercise quota administration over ... products that threaten the status of the State foreign exchange payment.

Article 26: Parts and accessories of machinery and electronic products imported by foreign-funded enterprises for producing products for domestic sales shall be handled according to the provisions of this set of procedures. (Clarification needed on whether "this set of procedures" mean Articles 6 and 9 above.)

Ministry of Foreign Economic Relations and Trade, Contracts and Articles of Association of Foreign Investment Enterprises Examination and Approval Principles and Items of Examination, October 5, 1993

Article 2 begins, "Items of Examination" and continues with "whether or not the methods for balancing the enterprise's foreign exchange revenue and expenditure are feasible."

Joint Venture Implementing Regulations

Article 75: Requires foreign firms to balance their foreign exchange.

Cooperative Venture Law, 1988

Requires foreign firms to balance their foreign exchange.

State Council Provisions on Balancing of Joint Venture Receipts and Expenditures, 1986

Requires foreign firms to balance their foreign exchange.

-3-

Export Requirements

Provisional Regulations on Foreign Investment and The Industrial Catalog for Encouraging Foreign Investment, 6/27/95

Article 5: Foreign investment projects meeting the following conditions will be included in the "encouraged" category for foreign investment... (3) investment projects that ... expand and increase exports.

Article 11: For restricted (A) projects may be approved as "permitted" category foreign investment projects if the export volume is greater than 70% of the total sales volume.

Law of the PRC on Chinese-Foreign Equity Joint Ventures, as amended by the National People's Congress, April 4, 1990

Article 9: An equity joint venture is encouraged to market its products outside China.

Automotive Sector Industrial Policy, adopted by the State Planning Commission on 2/19/94, published in the People's Daily on 7/4/95

Article 41: The State encourages enterprises that can meet the following conditions to enlarge the scale of export products and grants them priority support for loans and foreign investment.

Investment Guide Restricting Foreign Electronics Companies' Investment in China's Color TV Industry, Ministry of Electronics Industry, New China News Agency, 7/16/95

Foreign investors ... in joint ventures ... About 70% of products in these joint ventures should be exported.

Detailed Rules for the Implementation of the Law of the PRC on Sino-Foreign Contractual Joint Ventures, promulgated by MOFTEC, September 4, 1995

Article 38: The State encourages a contractual JV to sell its products on the world market.

Press Report on Proposed Regulations on Electronic Goods Joint Ventures, China News Agency, October 31, 1995

Over 70 percent of production must be for export.

Large labor intensive processing and production units, be they either joint ventures or wholly funded by foreign businessmen, must be 100 percent export orientated.

-4-

Sichuan to Increase Electronic Product Exports (Sichuan Economic Daily, 9/13/95)

On September 12, Sichuan provincial government adopted 12 measures to support and increase machinery and electronic products exports. The measures are:

To implement a credit policy that benefits machinery and electronic product exports, to return 30% of income tax to provincial level export enterprises for three years ... to set up an export development fund ... In addition, machinery and electronic product enterprises will link wages to increased exports and will be rewarded for increasing foreign exchange earnings ... The provincial government also decided that loans for machinery and electronic product exports will be given preference and banks will give machinery and electronic product enterprises preference in the allocation of funds.

Wholly-Owned Enterprise Law

Mandates that WOFEs either adopt advanced technology, or export at least 50 percent of total annual production.

Tech Transfer Requirements

Management of Electronics Goods Joint Ventures to Improve, China News Agency, 10/31/95

Further (more advanced) technology, increased capital and a capital market are requisite for JVs whose electronic wares already are produced in China. Such JVs should produce a new generation of electronic goods. The foreign partner must ensure a continuous technology transfer and develop direct sales channels.

The principle of allowing market penetration in exchange for technology transfer will apply to those key projects requiring the introduction of foreign technology.

Automotive Sector Industrial Policy, adopted by the State Planning Commission on 2/19/94, published in the People's Daily on 7/4/95

Article 31: Sino-foreign automotive industry joint ventures are required to meet the following conditions before establishment: (1) a technology research institute shall be set up within the enterprise.

Investment Guide Restricting Foreign Electronics Companies' Investment in China's Color TV Industry, Ministry of Electronics Industry, New China News Agency, 7/16/95

Foreign investors must bring new technologies that China lacks and set up development centers in new joint ventures.

-5-

Regulations of the PRC on Sino-Foreign Cooperation in the Development of Continental Petroleum Resources, promulgated on October 7, 1993 by Decree No. 131 of the State Council

Article 18: In carrying out the petroleum contracts, foreign contractors shall use advanced technology and managerial experience and shall be obliged to transfer the technology and pass on the experience to the Chinese side and undertake the training of Chinese personnel.

Electromechanical Product Import Control Measures, Wengao, May 24, 1995

Article 14: Render active support to industrial sector in linking technology and trade...

Equity Caps

Guidelines of the Industrial Catalog for Foreign Investment, Xinhua, June 27, 1995

Lists areas in transportation, electric power, metals, petroleum, machine building, satellites, agriculture, mining, domestic and foreign trade, tourism, real estate, service trades, light industry, media, telecommunications services in which wholly funded operations are not permitted or the state should have controlling ownership.

Other

Foreign-Invested Enterprise Import Control Implementation Regulations, MOFTEC, 7/20/95 Wengao, Serial No. 76

Article 5: Goods that foreign-invested enterprises import for the production of goods to be sold internally, including quota goods, must be included in the foreign-invested enterprise's overall annual import quota plan. Enterprises shall apply for import licenses against quota certificates.

TRIMS Concerns Stated by U.S. Companies

Motorola: 1) Believes that MEI intends to impose export, equity cap and other requirements, even if they are not written in the published policy; 2) Is told that its products must have at least 60 percent local content, as defined by local authorities in order to be exempted from quota restrictions on imported inputs; 3) Feels uncomfortable that China still has the requirements on the books, even though it is not being enforced per se; 4) Has had to agree to a volume target or some export indication in order to get project approval from the SPC and

-6-

contract approval from MOFTEC, even though these are not considered absolute obligations; 5) While tech transfer not spelled out in law, Motorola says that there is open talk of the unwritten policy to require tech transfer for market share. China continues to limit royalties to a maximum, ordinarily 5 percent.

Lucent: Assumes that any future electronic industrial policy will include local content and trade balancing requirements.

Ford: 1) Supports phasing out of foreign exchange balancing rules for a 5-7 year period; 2) Implies that technology transfer is part of government policy; 3) Willing to accept equity cap for JVs in the short term, but wants phase-out.

Nintendo: China requires that half of the video game units produced by Nintendo be exported.

ISAC5: 1) Export requirements usually must be specified as a target in a foreign investor's original feasibility study. These targets are then treated as commitments and spelled out either in the investment contract, or in the approval document. Even when a particular percentage of exports has not been specified, foreign investors must agree to a volume target or some export indication in order to win approval; 2) Equity caps are not mandated by Chinese law, but have been adopted by as a matter of policy by several industrial ministries. In particular, the MIE tends to disfavor majority foreign ownership.

U.S.-China Business Council: Generally, approving ministries require exports in proportion to equity stake, unless mitigating factors are involved such as provision of advanced technology, involvement in industry urgently needed by China. Requirements may be enforced through the permit system, that is, import permits and permits to repatriate dividends. MEI and MMI have said that a localization schedule will remain a condition of project approval in their two sectors.

From Embassy/Consulate reporting, 1Q/95:

Beijing: Many, but not all companies believed that TRIMS were a significant concern to ongoing operations and consideration of new investment. They agreed that they would prefer a firm commitment to phase out TRIMS to continuation of the current uncertain situation, even under a staged time frame of 5-7 years. Local content and export requirements vary according to firm and locale, with joint venture high tech firms not under as much pressure as others but still under considerable uncertainty about whether and when contracted requirements will be enforced. Another concern is the inconsistency of application of TRIMS, within industries and geographic locations. TRIMS generally are a lower priority than currency

-7-

convertibility, rights to establish sales and service operations, and engage in trade. One company said it did not want to include foreign exchange balancing or export performance requirements in its contract but believed it had to do so in order to get approval. It had not met either requirement and had not faced great pressure to do so. Procedures to enforce quotas, foreign exchange balancing, and local content are not formal -- officials periodically inquire what the company is doing to increase exports and localize production. Guangzhou: Firms interviewed all had signed some form of export performance requirement agreement, ranging from 20-50 percent. Only one firm was satisfying its requirement. None had faced significant pressure because of non-performance. One company had a joint venture agreement which committed it to "undertake to maintain a positive balance of payments." None of the companies had a local content commitment. Companies had agreed to introduce production technology as part of their joint venture investment. None had a specific R&D requirement.

Shenyang: Eight companies surveyed. One company had foreign exchange balancing requirement in its contract. Two companies had export requirements which they were not held to. One company had a localization requirement (40 percent). Two companies had a technology transfer requirement. No companies had R&D requirement. Three firms had import restrictions enforced through an import business license, one had an import restriction enforced by its contract.

Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001c. talking points	China's Non-Paper on TRQ Administration. (1 page)	01/22/1997	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Economic Council
Lael Brainard
OA/Box Number: CF 1192

FOLDER TITLE:

China -- WTO 1996 [1]

2010-1024-F
vz1785

RESTRICTION CODES

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SCHEDULE OF MEETINGS FOR USTR-LED WTO NEGOTIATIONS, JANUARY
27-FEBRUARY 1
922

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PAGE 01 BEIJIN 02213 170850Z
ACTION EB-00

INFO	LOG-00	ACDA-10	ACDE-00	AID-00	CEA-01	CIAE-00	CTME-00
	OASY-00	DINT-00	DODE-00	ITCE-00	DOTE-00	SRPP-00	EAP-01
	EXME-00	E-00	FBIE-00	UTED-00	FRB-00	H-01	TEDE-00
	INR-00	IO-00	ITC-01	LAB-01	L-01	ADS-00	NSAE-00
	NSCE-00	OIC-02	OMB-01	OPIC-01	PA-00	PRS-00	CIO-00
	SP-00	SSO-00	SS-00	STR-00	TRSE-00	USIE-00	SA-01
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USDOC WASHDC
USMISSION GENEVA
AMCONSUL SHANGHAI
AMCONSUL HONG KONG
AMCONSUL GUANGZHOU

UNCLAS BEIJING 002213

STATE FOR EAP/CM FOR LEVINE, HONNOLD AND DIGIOVANNA
STATE FOR EB/TPP/BTA/ODC AND E FOR KUBISKIE
USTR FOR SANDS/LEHR/MCGIFFERT/CHENG
USDA FOR MTPAD/GWIGGIN AND HAFEMESITER/ITP/SHEIKH
USDOC FOR 4420/ITA/IEP/EAP/CEA/DFOREST
USDOC FOR 6800/ITA/TD/OTEA/ITS/HWEST
GENEVA PASS TO TAGLIANI

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PAGE 02 BEIJIN 02213 170850Z

E.O. 12958: N/A
TAGS: ETRD, WTR0, USTR, CH
SUBJECT: SCHEDULE OF MEETINGS FOR USTR-LED WTO
NEGOTIATIONS, JANUARY 27-FEBRUARY 1

REF A: STATE 8757 B: SECSTATE 09588

1. GIVEN THE VARIOUS PROGRAMS TO BE ARRANGED REF B, THE EMBASSY HAS SET UP THE FOLLOWING CONTROL OFFICERS FOR THE JANUARY 28-FEBRUARY 1 MEETINGS:

FOR DEBORAH LEHR (JANUARY 28): KATHY PEPPER (OFFICE: 6532-3831, EXT. 430; HOME: 6532-3110; FAX: 6532-6422).

FOR CATHERINE FIELD (JANUARY 28 AND 29): PATRICK CHOW (OFFICE: 6532-3831, EXT. 424; HOME: 6532-1244; FAX: 6532-6422). EMBASSY WILL TRY TO FIND A SUITABLE INTERPRETER. PLEASE ENSURE THAT FISCAL DATA INCLUDES SPECIFIC APPROVAL FOR EMBASSY TO HIRE AN INTERPRETER TO ACCOMPANY FIELD ON HER CALLS.

FOR LEE SANDS/LEHR (JANUARY 29): NANCY JOHNSTON (OFFICE: 6532-3831, EXT. 430; HOME: 6532-4270; FAX: 6532-6422).

FOR WTO BILATERAL CONSULTATIONS (JANUARY 30-FEBRUARY 1): CHRIS BEEDE (OFFICE: 6532-3831, EXT. 421; HOME: 6532-3069; FAX: 6532-6422).

2. RE SANDS/LEHR INTEREST IN VISITING A STATE TRADING COMPANY, EMBASSY SUGGESTS THE CHINA NONFERROUS METALS
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PAGE 03 BEIJIN 02213 170850Z
CORPORATION. EMBOFFS WILL MEET WITH THE CORPORATION ON MONDAY JANUARY 20 AND DISCUSS POSSIBLE MEETING ON THE 29TH. ANOTHER POSSIBILITY WOULD BE CHINATEX, THE STATE TRADING COMPANY FOR COTTON IMPORTS. (CHINA HAS RECENTLY STATED THAT THERE WILL BE NO MORE IMPORTS UNTIL HIGH PRICE DOMESTIC COTTON STOCKS ARE REDUCED.)

3. ON LEHR'S SCHEDULE, ASIDE FROM TELECOM AND DISTRIBUTION ISSUES, ARE THERE OTHER SERVICES-RELATED CONCERNS THAT SHE WISHES TO PURSUE? WE NOTICE THAT SANDS WISHES TO SEE CHEN YUAN ON INSURANCE; DOES LEHR WANT TO DO INSURANCE AS WELL?

4. ALSO WE WOULD APPRECIATE PRIORITIZATION OF MEETINGS FOR DELEGATION ON THE 29TH. A FULL DAY WOULD HAVE YU XIAOSONG, SUN ZHENYU, THE STATE TRADING COMPANY VISIT, AND CHEN YUAN. IF WE ADD ANOTHER CALL, WHO WOULD SANDS/LEHR SUGGEST AS THE HIGHEST PRIORITY: IPR MEETING WITH STATE COUNCIL GROUP, CA8S, WU JINGLIAN, COUDERT BROTHERS? SPECIFICALLY, ON IPR, WILL FIELD COVER WITH JIA MINGRU ALL OF THE ISSUES WHICH SANDS/LEHR WOULD WANT TO GO OVER?

5. EXTERNAL CHIEF HAS BEEN UNABLE TO SPEAK WITH JIN LIGANG ABOUT JANUARY 28 DINNER. JIN IS OUT OF THE OFFICE UNTIL THE 22ND.

6. FINALLY, EMBASSY HAS FAXED REF A DETAILED AGENDA PROPOSAL TO MOFTEC TO THE ATTENTION OF YI XIAOZHUN, WHOSE OFFICE HAS ACKNOWLEDGED RECEIPT. WE WILL FOLLOW-UP NEXT WEEK WITH YI TO GET A PRELIMINARY REACTION TO THE
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PAGE 04 BEIJIN 02213 170850Z
PROPOSED AGENDA.

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ACTION EB-00

INFO	LOG-00	ACDA-10	ACOE-00	AID-00	AIT-03	CEA-01	CIAE-00
	CTME-00	OASY-00	DINT-00	DODE-00	ITCE-00	DOIE-00	ANHR-01
	SRPP-00	EAP-01	EXME-00	E-00	FBIE-00	UTED-00	FRB-00
	H-01	TEDE-00	INR-00	IO-00	ITC-01	JUSE-00	LAB-01
	L-01	ADS-00	NSAE-00	NSCE-00	OIC-02	OMB-01	OPIC-01
	PA-00	PRS-00	CIO-00	SP-00	SSO-00	SS-00	STR-00
	TRSE-00	USIE-00	SA-01	DRL-09	G-00	/034W	

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 FM AMEMBASSY BEIJING
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 INFO AMCONSUL SHANGHAI
 AMCONSUL HONG KONG
 USMISSION GENEVA
 USDOC WASHDC
 USDA FAS WASHDC 2313
 AMCONSUL SHENYANG

UNCLAS SECTION 01 OF 02 BEIJING 002840

STATE FOR EAP/CM, EB, E
 STATE PASS USTR FOR SANDS/LEHR/CHENG/MCGIFFERT/FIELD
 USDOC FOR 4121/ITA/MAC/OMA/KHUFFMAN
 USDOC FOR 4420/ITA/IEP/EAP/CEA/DFOREST
 USDOC FOR 6800/ITA/TD/OTEA/ITS/HWEST
 USDA FAS FOR MTPAD/GWIGGIN, ITP/SHEIKH
 GENEVA FOR USTR/SELF AND TAGLIANI

E.O. 12958: N/A

TAGS: ETRD, WTRD, USTR, CH

SUBJECT: NOTIONAL SCHEDULE FOR USTR MEETINGS IN BEIJING,
 JANUARY 28-FEBRUARY 1

BEIJING 01 OF 02 2840

1. (U) FOLLOWING ARE NOTIONAL SCHEDULES FOR AUSTR
 SANDS, DAUSTR LEHR AND SENIOR COUNSEL FIELD:

FOR SANDS/LEHR

JANUARY 28

1530 - SANDS ARRIVAL IN BEIJING

1700 - MEETING WITH DCM MCCAHERILL

29 JANUARY

0900 - MEETING WITH WU JINGLIAN, STATE COUNCIL'S
 DEVELOPMENT RESEARCH CENTRE

1030 - MEETING WITH CHEN YUAN, PBOC (TENTATIVE)

1200 - LUNCH DISCUSSION WITH ASSISTANT PRESIDENT AND
 SALES MANAGER OF THE EXPORT DEPARTMENT OF CHINA NATIONAL
 NONFERROUS METALS IMPORT AND EXPORT CORP. THESE STATE
 TRADING COMPANY REPS SPEAK EXCELLENT ENGLISH, WORKED IN
 THE COMPANY'S U.S. OFFICE, AND ARE WELL FAMILIAR WITH THE
 CONCEPT OF A "WORKING" LUNCHEON. SEE SEPTEL FOR
 INFORMATION ON CNMCI'S BUSINESS OPERATIONS.

1400 - MEETING WITH SUN ZHENYU, MOFTEC (TENTATIVE). JIN
 LIGANG TOLD US TODAY THAT SUN'S SCHEDULE IS VERY FLUID
 BUT APPARENTLY YI XIAOZHUN IS WORKING ON TRYING TO
 CONFIRM THE APPOINTMENT.

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1530 - MEETING WITH YU XIAOSONG, SETC (TENTATIVE - YU WILL BE OUT OF THE CITY AND MAY NOT RETURN IN TIME)

1700 - MEETING WITH MEMBERS OF THE WORKING GROUP ON IPR OF THE SSTC.

2000 - DRINKS WITH TIM STRATFORD AND DISCUSSION OF CONTRACT APPROVAL PROCESS (ALSO SEE EMBASSY SEPTCL).

FOR DAUSTR LEHR

JANUARY 27

1800 - ARRIVAL

JANUARY 28

0900 - MEETING AT THE MEI.

1030 - POSSIBLE FOLLOW-ON MEETING WITH MEI LEADING GROUP ON TELECOMMUNICATIONS.

1200 - LUNCHEON WITH U.S. FIRMS ON DISTRIBUTION ISSUES ARRANGED BY THE U.S.-CHINA BUSINESS COUNCIL.

1400 - MEETING WITH UNICOM.

1530 - MEETING WITH MINISTRY OF INTERNAL TRADE DISTRIBUTION COMPANY (TENTATIVE).

1700 - MEETING WITH DCM MCCAILL.

FOR SENIOR COUNSEL FIELD

JANUARY 28

MEETINGS WITH JIA MINGRU OF SSTC, 1400-1730. JIA'S STAFF IS CURRENTLY LOOKING AT HIS SCHEDULE FOR THAT MORNING TO SEE WHETHER ADDITIONAL MEETING TIME CAN BE ALLOCATED. JIA HAS ASKED FOR SPECIFIC TOPICS CONCERNING AUDIO-VISUAL AND CUSTOMS REGULATIONS, ETC., THAT MS. FIELD WOULD LIKE TO DISCUSS.

2. IF AUSTR SANDS WANTS TO DO A PRESS BACKGROUNDER, PLEASE ADVISE ON TIMING AND GROUND RULES. DOES SANDS WISH TO OPEN THE BRIEFING TO THE ENTIRE PRESS COMMUNITY IN BEIJING OR JUST THE AMERICAN CONTINGENT? IF YU XIAOSONG MEETING FALLS THROUGH, THEN THAT TIME SLOT COULD BE USED FOR MEETING WITH THE PRESS. EMBASSY PRESS

BEIJING 02 OF 02 2840

SECTION NOTES CONTINUING AND GREAT INTEREST IN WTO AND IPR ISSUES IN PRESS COMMUNITY HERE AND BELIEVES THAT A PRESS BACKGROUNDER WOULD BE VERY HELPFUL IN EXPLAINING U.S. POLICY.

3. PLEASE ADVISE ON POSSIBLE MEETING WITH JOHN HOLDEN OF CARGILL.

4. ECON EXTERNAL CHIEF SPOKE WITH MOFTEC AMERICAS DIRECTOR JIN LIGANG RE SUN ZHENYU/MCENTEE DINNER ON THE 28TH AND WAS INFORMED THAT FORMER UNDERSECRETARY MCENTEE HAS REQUESTED A CHANGE IN TIME. SHE MAY WISH TO DO A LUNCHEON INSTEAD. EMBASSY WILL ADVISE WHEN IT HAS MORE INFORMATION.

SASSER

No answer
Still considering
Depends on results

No answer

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CHINA/WTO: CHINA TO DISCUSS ALL U.S. QUESTIONS, AGREES TO SOME
SCHEDULE
REVISIONS
330

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PAGE 01 BEIJIN 02860 00 OF 02 231032Z
ACTION EB-00

INFO	LOG-00	ACDA-10	ACDE-00	AID-00	AIT-03	CEA-01	CIAE-00
	CTME-00	OASY-00	DINT-00	DODE-00	ITCE-00	DOTE-00	SRPP-00
	EAP-01	EXME-00	E-00	FBIE-00	UTED-00	FRB-00	H-01
	TEDE-00	INR-00	IO-00	ITC-01	JUSE-00	LAB-01	L-01
	ADS-00	NSAE-00	NSCE-00	OIC-02	OMB-01	OPIC-01	PA-00
	PRS-00	CIO-00	SP-00	SSO-00	SS-00	STR-00	TRSE-00
	USIE-00	SA-01	DRL-09	G-00	/033W		

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USMISSION GENEVA

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STATE FOR EAP/CM, EB/TPP/BTA/ODC, E
STATE PASS USTR FOR SANDS/LEHR, FIELD, MCGIFFERT
USDOC FOR 4121/ITA/MAC/OMA/KHUFFMAN
USDOC FOR 4420/ITA/IEP/EAP/CEA/DFOREST
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GENEVA FOR USTR/SELF AND TAGLIANI
HONG KONG FOR MARCIEL AND AUSTR SANDS

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PAGE 02 BEIJIN 02860 00 OF 02 231032Z
TAGS: ETRD, WTRO, EAGR, USTR, CH
SUBJECT: CHINA/WTO: CHINA TO DISCUSS ALL U.S. QUESTIONS,
AGREES TO SOME SCHEDULE REVISIONS

REF: A) STATE 11541; B) STATE 08757

1. THIS CABLE RESPONDS TO THE ACTION REQUESTS RAISED IN PARAS 2-7 OF REF A; RESPONSES ARE PRESENTED IN THE SAME ORDER AS RAISED. REF A WAS TRANSMITTED TO POST AFTER THE CHINESE WTO ACCESSION NEGOTIATING DELEGATION HAD MOVED EN MASSE TO SUBURBAN CHANGPING COUNTY FOR NEGOTIATIONS WITH JAPAN. ECONOFF FORWARDED REFTTEL CONTENTS TO MOFTEC OFFICIALS THERE ON THE AFTERNOON OF JANUARY 22. MOFTEC REPLIES REPEATED BELOW WERE TELEPHONED TO THE EMBASSY FROM CHANGPING EARLY ON JANUARY 23. FYI: MOFTEC OFFICIALS NOTED THAT THEIR JANUARY 22 WTO ACCESSION BILATERAL NEGOTIATIONS WITH JAPAN LASTED UNTIL MIDNIGHT, BUT DID NOT FURTHER CHARACTERIZE THOSE DISCUSSIONS. END FYI.

2. U.S. QUESTIONS ACCEPTED/MOFTEC'S SUBSTANTIVE RESPONSE: MOFTEC WILL DISCUSS ALL QUESTIONS ON THE U.S.-PROPOSED SUBSTANTIVE AGENDA. MOFTEC'S PRELIMINARY AGENDA DATED JANUARY 20 REPRESENTS THEIR ATTEMPT TO SCHEDULE DISCUSSION OF ALL THE ISSUES RAISED IN THE U.S.-PROPOSED AGENDA. MOFTEC HAS NO FURTHER COMMENTS ON THE U.S. DETAILED AGENDA AS OF THIS MORNING.

3. STARTING TIME CHANGED: MOFTEC AGREES TO STARTING EACH DAY'S DISCUSSION AT 9:30 A.M. VICE 9:00 AS REQUESTED BY USTR.

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4. LUNCH OR DINNER: MOFTEC PLEADS A PRACTICAL DIFFICULTY IN RESCHEDULING THE FIRST DAY'S LUNCH TO DINNER: CHINESE DELEGATION MEMBERS DO NOT WISH TO STAY LATE FOR A DINNER. ASSISTANT MINISTER LONG YONGTU, HEAD OF THE CHINESE NEGOTIATING DELEGATION, PREFERS TO HOST A LUNCH RATHER THAN A DINNER. MOFTEC LUNCHEON INVITATION REMAINS OUTSTANDING; ECONOFF REITERATED UNCERTAINTY ABOUT USDEL'S ABILITY TO ACCEPT MOFTEC'S OFFER FOR THAT DAY. MOFTEC STAFFER EXPLAINED THAT LONG'S INVITATION IS FOR LUNCH WITHIN THE MOFTEC COMPLEX SO AS TO SAVE TIME FOR BOTH DELEGATIONS. EMBASSY NOTES THAT MOFTEC'S PRELIMINARY AGENDA ONLY ALLOWS FOR ONE AND ONE-HALF HOURS FOR LUNCH REGARDLESS OF WHERE THE USDEL CHOOSES TO EAT.

5. JANUARY 31 AND AGRICULTURAL DISCUSSIONS: MOFTEC AGREES TO SHIFT AGRICULTURAL ISSUE DISCUSSIONS PROPOSED BY CHINA FOR SATURDAY, FEBRUARY 1 TO FRIDAY, JANUARY 31 AS REQUESTED BY THE U.S. SIDE.

6. JANUARY 31: TRIP TO SETC IS INCONVENIENT FOR CONDUCT

OF NEGOTIATIONS: MOFTEC STAFFER RELAYED THE FOLLOWING POINTS ABOUT GOING TO THE STATE ECONOMIC AND TRADE COMMISSION TO CALL ON XU BINGJIN ON THE AFTERNOON OF JANUARY 31: XU'S OFFICE IS NOT LOCATED AT THE SETC. IF USDEL MEMBERS WISH TO HOLD A SEPARATE MEETING WITH XU AND OTHERS, CONDUCTING THE MEETING AT MOFTEC (IF A ROOM IS AVAILABLE) OR AT CHINA CUSTOMS (ABOUT FIVE MINUTES DRIVE AWAY) MAKES MORE SENSE TO THE CHINESE DELEGATION, SOME MEMBERS OF WHICH WOULD PARTICIPATE IN ANY SIDE MEETING WITH XU. STICKING TO MOFTEC, OR GOING DOWN THE STREET TO
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CUSTOMS, WOULD BE MUCH MORE CONVENIENT FOR CONDUCT OF THE NEGOTIATIONS. XU IS HIMSELF A MEMBER OF THE CHINESE DELEGATION THIS TIME.

6. WU YI MEETING: ASSISTANT MINISTER LONG YONGTU WILL TRY TO ARRANGE THE MEETING WITH MOFTEC MINISTER WU YI ON SATURDAY, FEBRUARY 1, AS REQUESTED. HE AND HIS STAFF CANNOT TODAY PROMISE THAT THE MEETING WILL OCCUR AS REQUESTED, NOR WILL THEY BE ABLE TO CONFIRM THE MEETING BEFORE RETURNING FROM CHANGPING THIS WEEKEND.

7. NO WASHINGTON MEETING, AT LEAST IN MID-FEBRUARY: ACCORDING TO MOFTEC WTO AFFAIRS STAFFER, ASSIS
TANT

MINISTER LONG BELIEVES IT IS NOT POSSIBLE TO ACCEPT THE U.S. INVITATION TO MEET IN WASHINGTON DURING THE WEEK OF FEBRUARY 17. FEBRUARY 17 IS MOFTEC'S FIRST DAY BACK TO WORK AFTER THE LUNAR NEW YEAR HOLIDAYS; MOST OFFICIALS WILL BE AWAY FROM THEIR OFFICES FOR 8 DAYS OR MORE DURING THAT PERIOD. CHINESE DELEGATION MEMBERS WOULD HAVE FIVE OR FEWER WORKDAYS TO PROCESS CHINESE GOVERNMENT EXIT FORMALITIES AND TO GET U.S. VISAS BETWEEN THE UPCOMING BEIJING BILATERAL AND THE DATE USTR PROPOSES FOR TALKS IN WASHINGTON. MANY DELEGATION MEMBERS WILL PROBABLY BE LEAVING BEIJING EARLIER THAN THE SCHEDULED HOLIDAYS,

FURTHER REDUCING TIME TO PREPARE FOR THE PROPOSED TALKS IN WASHINGTON. LONG SUGGESTS THAT THE TWO SIDES DISCUSS THE TIMING AND SITE OF THE NEXT BILATERAL DURING THE NEXT MULTILATERAL MEETING IN GENEVA. ECONOFF TOLD MOFTEC

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Lael Brainard
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FOLDER TITLE:

China -- WTO 1996 [1]

2010-1024-F
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RESTRICTION CODES

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P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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Embassy of the United States of America
Please circulate to China
Interagency. Thank.

FAX MESSAGETotal Sheets (Counting cover): 17

TO: AUSTR Dorothy Dwoskin
Office of WTO Affairs
Office of the United States Trade Representative
FAX: 202-395-5674
TEL: 202-395-3063

FROM: Chris Beede
Office of Economic Affairs
Embassy of the United States of America
Beijing, China
FAX: 86-10-532-6422
TEL: 86-10-532-3831 ext. 421

DATE: April 15, 1996

MESSAGE: FYI: Japan's Industrial Structure Council on China's WTO
Accession

Hope this may be of some interest for your own upcoming meetings
and more generally for the team in Washington.

Regards,

Chris

Attachment: Excerpts from "1996 Report on the WTO Consistency of
Trade Policies by Major Trading Policies," published by the
Industrial Structure Council of Japan.

CHAPTER 14: REGIONAL INTEGRATION

Many members of the WTO are signatories to regional trade agreements that seek to eliminate tariffs and other barriers to trade within a certain region. These agreements usually take the form of a customs union, a free trade agreement, or an interim agreement. Article XXIV of the GATT exempts these agreements from the most-favored-nation principle of GATT Article I if they meet certain conditions. The GATT "Enabling Clause" provides less stringent conditions for regional trade agreements among developing countries. This chapter details the WTO rules for the formation of regional trade agreements.

A regional trade agreement, however, is in violation of the above rules of the GATT if it raises barriers to countries outside of the agreement. In this regard, we note that NAFTA's rules of origin for certain products are likely to be more restrictive than those of the U.S.-Canada FTA. Regarding the European Union, we note that the enlargement of European Union (participation of Austria, Sweden and Finland) effective of January 1, 1995 has caused an automatic tariff increase on certain products as well as automatic application of EU anti-dumping measures in the three new countries. In addition, GATT only permits those regional arrangements that are clear exceptions to the most-favored-nation treatment provided that duties and other trade restrictive measures will be eliminated "with respect to substantially all the trade" between the constituent countries (GATT Article XXIV:8). In this regard, the so called "Europe Agreements" between EU and east Europe countries such as Hungary, Poland, and the Czech and Slovak Republics seems problematic in the sense that there is substantial uncertainty as to whether such economic unification as required by the Article will actually happen. This uncertainty represents a clear contrast with firm and steady expansion of duty free imports from EU to these countries.

PART III

I. ISSUES REGARDING ACCESSION OF CHINA, TAIWAN, AND RUSSIA TO THE WTO

Since China and Chinese Taipei (Taiwan) are Japan's third and fifth largest trading partners, and are applicants for accession to the GATT/WTO, it is appropriate for this report to discuss their trade policies and measures. In addition, as Russia also became an applicant for accession

to the WTO, we include a brief discussion of its trade policies.

Prompt accession to the WTO of China and Taiwan is very important because; (1) Their accession will promote expansion of global trade through further liberalizing their current trade regimes; and (2) The accession also gives both the applicants and the rest of the world a common set of rules as well as a common forum for multilateral dispute settlement. Based on these thoughts, we firmly support the early accession of both China and Taiwan. In addition, the accession of Russia will also contribute to its economic development as well as to strengthening of the multilateral trading system.

China

China has tried to convert its previous planned economy into a "socialist market economy." We admit that much have been accomplished in this course. There are, however, still some aspects that have not yet been brought into line with market economy principles. There are also strong criticism by foreign companies that sudden changes in its trade regime and lack of uniform administration have often been seen in China, which substantially have damaged China's credibility. The WTO rules are based on market economy principles and consist of ideas of pro-competition and of non-discrimination. They also require WTO members to secure transparency and predictability for enterprises by way of "rule of law" and its uniform administration. Aiming at this direction would certainly contribute to sound development of the Chinese economy. Should China fail to accede to the WTO in contrast, it will seriously damage the credibility of the Chinese economy. Trade and investment from the rest of the world that are essential for its further development will also suffer. In this regard, China should continue its effort to bring its economic regime in line with WTO rules.

The accession negotiation for China, which is the first time for GATT/WTO to examine WTO consistency of those ex-planned economies, also bears significant importance as a milestone towards eventual integration of the global economy. Keeping China outside the WTO, which no longer prevents it from playing a major role in real global trade, has become more costly for the multilateral trading system. It is therefore necessary for both sides to conclude this negotiation in an earliest timing and on appropriate terms.

In this report, we highlighted the following areas that we think necessary for China to rectify as matters of principles of the WTO. Besides how long transitional period China needs to implement each commitment, it is necessary that China makes clear its conviction to adhere to the

WTO rules by concretely illustrating the picture of the goal of each issue. On the other hand, however, we would also welcome the improvements made at APEC Osaka meeting held last November in which we consider China confirmed its sincere willingness to engage in multilateral trading system.

- (1) Quantitative Restrictions: Along with import quotas still remaining, several substitutive measures for previous restrictions on import and export are likely to amount to quantitative restrictions.
- (2) National Treatment Issue (discrimination against imported products and others): The restrictions on foreign trading by Chinese enterprises risk violating the GATT Article III, the requirement for national treatment on goods, by posing additional layers of transaction and costs onto imported products.

Discriminations also exist in the area of standards and certifications such as the so-called "Great -Wall mark" and import registration requirement for chemical products (TBT related issues). These discriminations are mainly caused by China's two-tier regulation regime in which domestic goods and imported goods are administered by different organs.

China recently makes open that it will gradually "adjust" the current preferable treatments for foreign invested enterprises in order to equalize the competitive conditions between them and Chinese state enterprises. Besides whether and to what extent the current WTO rules deal with national treatment on persons and enterprises, China should voluntarily eliminate those discriminations against foreign invested enterprises such as export requirement as long as it intends to eliminate the discriminations against Chinese state enterprises based on the consideration that discrimination is undesirable. Because "non discrimination" and "mutual benefit" are the key elements underlying the multilateral trading system.

- (3) Industrial Policy: no one can deny the right of a country to pursue its industrial policy though, it must do so within the limit of the WTO rules. China should make clear that it will not choose WTO violative measures to pursue its industrial policies. In addition, we sincerely hope that China, based on the above consideration, will also voluntarily abolish those discriminations against foreign invested enterprises.

PART III (Appendix)**I. ISSUES REGARDING ACCESSION OF CHINA, TAIWAN and RUSSIA TO THE WTO**

Both the People's Republic of China (hereinafter "China") and Chinese Taipei (hereinafter "Taiwan") are among Japan's ten largest trading partners but neither are currently members of the WTO. Since China and Taiwan have both applied for accession to the WTO and their trade policies and measures are currently being reviewed in the course of the negotiation, we have also reviewed them in this Report as we do for other trading partners in the WTO and have taken the opportunity to point out areas that will need to be rectified when acceding to the WTO.

Japan's economic relations with both China and Taiwan are extremely close. Both are extremely important to our economy from a trade and investment perspective. According to 1995 trade statistics, China and Taiwan were Japan's third and fifth largest trading partners respectively when the European Union was considered as a single entity (See Figure 3-1-1). It will therefore be extremely important for Japan that China and Taiwan accede to the WTO. First, their accession will set the stage for further expansion in trade and investment through such means as lowering their tariff barriers or bringing existing problematic trading systems in line with international rules. Second, it will also mean that, in the event of future trade problems or disputes, the both sides will obtain a common set of rules and standards as well as a common forum in which solutions are sought.

<Figure 3-1-1> Value of Japanese Trade with China and Taiwan

(Unit: \$1 billion)

	Value of trade with China	Value of trade with Taiwan
1989	19.6(6th)	24.4(5th)
1990	18.1(7th)	23.9(5th)
1991	22.8(6th)	27.7(5th)
1992	30.5(4th)	28.9(6th)
1993	37.8(3rd)	31.8(4th)
1994	46.2(3rd)	34.5(5th)
1995	57.9(3rd)	43.3(5th)

Source: Ministry of Finance, Trade Statistics

Note: 1. In parentheses are the taking as one of Japan's trading partners.

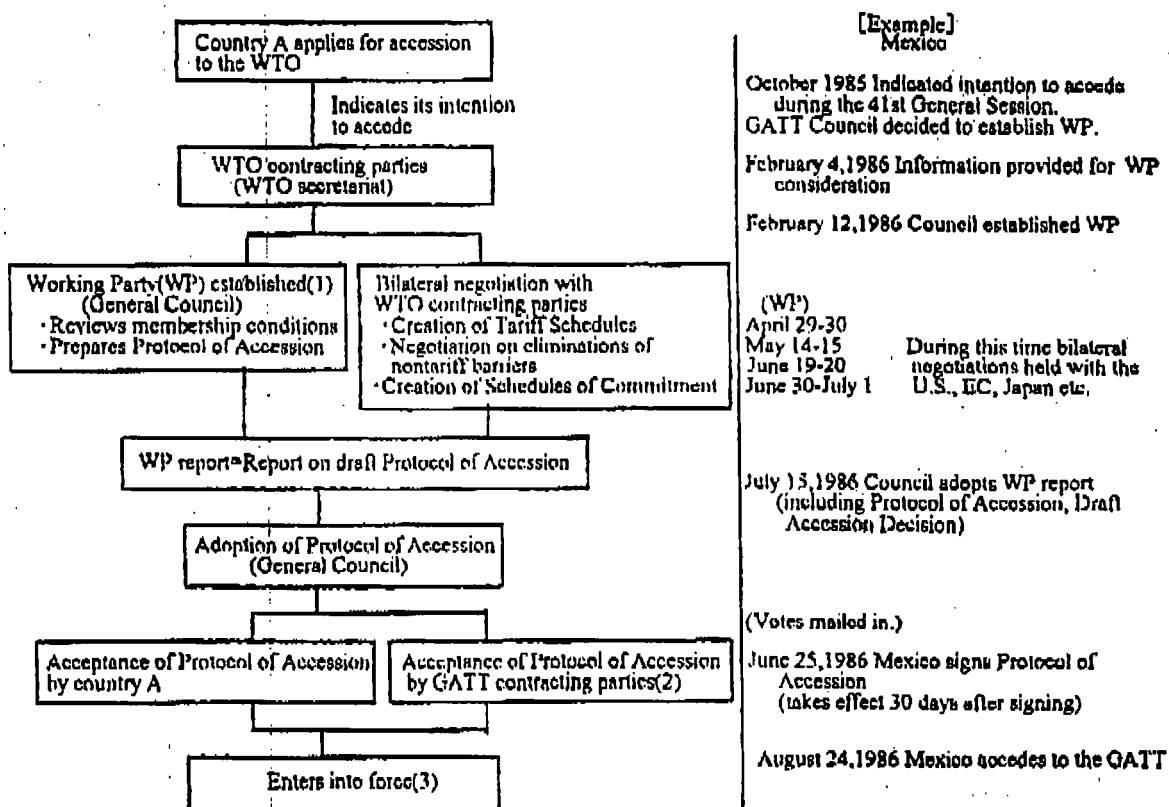
2. EU members are regarded as the single "EU" entity.

Based on the above consideration, Japan has supported early accession to the WTO for both China and Taiwan. However, the accession negotiations for China and Taiwan have not yet been concluded.

In July 1995, a working party began the accession process for Russia as well. Accession to the WTO will contribute to Russia's own economic development as well as strengthening the multilateral free trading system. But before Russia accedes, it will be necessary for it to establish domestic systems in a form that conforms to the WTO Agreement. Because of this, we have added a review of the issues surrounding Russia's economic and trading systems to this year's Report.

Refer to Figures 3-1-2. and 3-1-3 which provide an outline of procedures for accession to the WTO and a list of countries that have applied for accession to the WTO as of January 1996.

<Figure 3-1-2> Flow Chart of Accession to the GATT Procedures



Notes:

1. The WP reviews the trade system (including tariff system) of Country A in order to consider the country's terms of accession. It then creates a Protocol of Accession.
2. Approval must be given either in a general meeting of the accession by mailed-in ballots. At least 2/3 of those voting and half of all contracting parties must approve.
3. Normally, accession enters into effect on the 30th day after signing and approval (noted in the protocol).

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<Figure 3-1-3> List of Countries or Region that had Applied for Accession to the
GATT/WTO (As of January 1995)

Date of Application	Country or Region
Prior to 1990	Algeria(1987), Bulgaria(1986), China(1986), Nepal(1990) Taiwan(1990)
1991	Mongolia, Panama
1992	Albania
1993	Armenia, Belarus, Croatia, Latvia, Moldva, Russia, Saudi Arabia, Ukraine
1994	Cambodia, Estonia, Jordan, Lithuania, Macedonia, Sudan, Uzbekistan
1995	Vietnam, Seychelles, Vanuatu, Tonga
1996	Kazakhstan, Kyrgyz

Note: In parentheses are the year of applying for the accession to GATT or WTO.

Section 1. China's accession to the WTO

1. History

In 1986, China formally applied to accede to the GATT in the form of a "resumption of its status as a contracting party." A Working Party was established in the next year, 1987 to discuss this accession issue and has, to date, met nineteen times. The Working Party was suspended after the Tian'anmen Square incident in 1989, which was reconvened in 1992. Negotiations continued after the WTO took effect, and in December 1995, China submitted a new application for accession to the WTO.

2. Significance of the Accession to the WTO

China has tried to convert its previous planned economy into a "socialist market economy." There are, however, still some aspects that have not yet been brought into line with market economy principles. There are also strong criticism by foreign companies that sudden changes in its trade regime and lack of uniform administration have often been seen in China, which substantially have damaged China's credibility. The WTO rules are based on market economy principles and consist of ideas of pro-competition and of non-discrimination. They also require WTO members to secure transparency and predictability for enterprises by

way of "rule of law" and its uniform administration. Aiming at this direction would certainly contribute to sound development of the Chinese economy. Should China fail to accede to the WTO in contrast, it will seriously damage the credibility of the Chinese economy. Trade and investment from the rest of the world that are essential for its further development will also suffer. In this regard, China should continue its effort to bring its economic regime in line with WTO rules.

Chinese accession to the WTO, followed by implementation of its commitments for lowering the tariff rates, elimination of trade restrictions, enhancing transparency and uniformity of trade regime and so on, would also benefit the global economy significantly. Further, considering that there is currently no means for both WTO members and China to resolve trade disputes between them other than to try to do so bilaterally, the accession will mean that both sides will obtain a common set of multilateral rules and standards as well as common fora in which solutions are sought multilaterally, which is another notable benefit.

The accession will also promote further integration of the global economy. While a rapid integration between western economies and ex-planned economies has been occurring on a *de-facto* basis. Multilateral trade norms, however, have not yet succeeded in integrating those ex-planned economies. Thus, the accession negotiation for China, which is the first time for GATT/WTO to examine WTO consistency of those economies, bears significant importance as a milestone towards eventual integration of the global economy. Keeping China outside the WTO, which no longer prevents it from playing a major role in real global trade, has become more costly for the multilateral trading system. It is necessary for both sides to conclude this negotiation in an earliest timing and on appropriate terms.

3. Areas to be rectified when acceding to the WTO

[Quantitative Restrictions on Exports and Imports]

(1) Quantitative Restrictions on Exports and Imports.

Since 1993, China has been eliminating its quantitative restrictions such as quotas, import licensing requirements and open tender requirements. These moves have brought the 1,247 items (HS 8-digit level) initially restricted down to 448 (According to Chinese explanations, restrictions were lifted on another 367 items last June.) The accession negotiations need to discuss time tables (grace periods) for the elimination of remaining restrictions. Since these import restrictions are inconsistent with GATT XI, China should provide a clear time table for their complete elimination. The negotiations also need to discuss whether and how an exceptional import restriction can be permitted for the purpose of establishing a particular infant industry.

(2) Measures Having the Effect of Import/Export Restrictions

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(a) Interim Regulations for Automatic Registration for the Import of Designated Commodities

There have been introduced substitutional measures for items for which previous import/export restrictions had been lifted. For example, the "import registration" system was introduced for products, including steel products, for which import quotas were abolished in 1994. Under this system, only companies that meet certain conditions, such as sufficient financial reserves, are approved to register their imports. China justifies the Interim Regulations as necessary for ensuring that those imports are associated with real demand for the commodities as well as sufficient funding, thus preventing confusion arising from the elimination of previous restrictions. The system has the potential, however, to turn into a quantitative restriction on imports depending on how the authorities determine what constitutes "real demand." The scope of the system was expanded from the initial nine items in 1994 to twenty as of this writing.

(b) (Interim) Regulations on Tender for Export Product Quota

In the area of exports, China introduced the "(Interim) Regulations on Tender for Export Product Quota" in February 1994 that are used to allocate export quotas for certain products through tendering. So far, these Regulations cover 24 items, including magnesium, fluorite, licorice products, and cement, all of which were previously subject to export quota control. Bids are made within aggregate amounts determined by the MOFTEC, however, the procedures used to determine them are unclear and through controlling export applications, this system could easily turn into a quantitative restriction on exports in violation of GATT Article XI. China explains it has no intention to use these measures to impose quantitative restrictions. We would note, however, that from the view point of the economic principle of supply and demand, the fact those bidders pay money for quota allocation suggests that the total amount of quota to be bid on is less than that of "real" total demand. In other words, if the amounts allocated reflect exactly the total export demand with no restriction, then the price paid for, which represents their scarcity, would be close to zero. That is, the export application would have little or no economic value.

For Japan, cement is particularly a big issue because the system had serious impact on its joint ventures with China. The Government of Japan requested the government of China to suspend the regulation for cement by pointing out the following.

- (i) The alleged purposes of this system, which are to improve the product quality and to prevent the dumping of exports should have been accomplished through establishing full-fledged quality and price testing systems, not to levy financial charges. It was particularly so for those joint ventures for which quality and price have never been at issue.
- (ii) The measure necessarily leading to export cost increases was at odds with another policy of export requirement that obligates those joint ventures to export not less than 70% of their production.
- (iii) The measures seriously risked damaging the viability of the joint ventures, thus also risked unemployment.

(iv) Since this system is employed as a "test," it ought to be abandoned if it is found that no problems exist.

As a result, cement was exempted from the system beginning 1996, however, the number of items subject to the tender expanded from 19 to 27.

[National Treatment (discrimination against imports)]

(1) Foreign trading rights

A vestige of the previous planned economy still exists in the limitation on "foreign trading rights" of Chinese companies in which only certain companies that have obtained "foreign trading rights" can engage in export and import businesses. This limitation is likely to impede market access for foreign products even if tariffs are reduced, because sufficient competition at the import stage can not still be realized. It will also increase the distribution costs of imported products by adding needless layers of transactions, thus lead to worsening the problem of inflation.

Here, the discriminatory aspect of the system is in question, while domestic wholesalers and retailers can purchase domestic products directly from domestic manufacturers, they must purchase like imported products only from companies with foreign trading rights. Regulations with similar effect in other countries have been disputed in past GATT panels several times, for instance in the area of alcoholic beverage distribution, and have been found to be in violation of the obligation (under GATT III:4) to provide national treatment for the sale of imports (see, for example, the 1988 Canada panel on imported alcoholic beverages and the 1992 USA panel on imported alcoholic beverages and beers).

China has announced its intention to maintain the current permit system for the time being and to gradually expand the number of companies engaging in import and export businesses through it, and over the medium term, to convert it into an "automatic registration system." While we recognize the difficulties for immediate transformation of the distribution structure, we would note the need for full elimination during an appropriate transitional period of the restrictions on the right to engage in foreign trade. We also advocate immediate lifting of the restrictions on imports, if any, of production machinery and equipment by manufacturers, personal imports by consumers, and other imports that are not conducted as a concurrent "business," which issue can be dealt with separately from who can engage in "trading business."

Similar discrimination between imports and domestic products regarding competitive conditions at the distribution stage may also happen in the case where domestic manufacturers are allowed to establish their own sales subsidiaries or branches, while foreign manufacturers are not allowed to establish similar bases within China. Problems of discrimination relating to investment in the distribution sector are not easy to remedy within the GATT/WTO framework, since the GATT the Agreement on Services does not strictly require members to grant

national treatment in the area of establishment of commercial wholesale and retail bases by foreign companies. In fact, members will normally be required to grant national treatment in the areas of services only in those sectors indicated in the members' Schedule of Commitments. Furthermore, the establishment of wholesale and retail bases may also involve whether national treatment is required in the area of investment and in the treatment of natural persons.

China does not permit foreign entry into wholesale and retail service sectors except for certain "experimental" cases. However, it is moving in the direction of liberalizing foreign trading rights for foreign companies in conjunction with the liberalization for domestic companies. This is appropriate from the point of view of equalizing competitive conditions for imports and domestic goods. Among the Initial Actions put forward by China at the Osaka APEC meetings (held in November 1995) was a program to designate Shanghai and other cities to set up Sino-foreign joint ventures engaging in foreign trade on a pilot basis. The liberalization itself was already announced, however, its implementation period was made clear from the indefinite "WTO entry of China" previously offered to definite timing of "in 1996." We look forward to seeing further accelerated and expanded liberalization plans.

(2) Discrimination in Standards and Certification

(a) Registration of Initial Imports of Chemical Products

The "Environmental Control Regulations for Initial Imports of Chemical Products and Imports and Exports of Toxic Chemical Products" that took force in May 1994 were allegedly enacted to protect the environment and control safety. However, they require registration only for imported products, and not for domestic products, which is a clear violation of the GATT III obligation to provide national treatment. In addition, some of the methods of implementation are not consistent with international practices under the equivalent environmental regulations of other countries and risk violating the Agreement on Technical Barriers to Trade Articles II:2 and V:1 ("unnecessary obstacles to international trade").

(i) Under these registration provisions, registration fees are collected even for general chemical products which already have a track record of previous imports.

(ii) Registration fees are collected from every company importing the same products.

(iii) A registration is to expire within a certain time period (Notwithstanding that the ingredients and structure of the chemical product remain the same.)

The laws will need to be brought into line with international rules at an early date so that these regulations no longer discriminate between domestic and foreign products nor serve as restrictions to trade.

(b) The Great-Wall Mark

A mandatory quality certification program for consumer electronics (the so-called "Great-Wall Mark") introduced in 1994 overlaps both in terms of product items and scope

with existing safety inspection regulations applicable to imports. The fact that domestic like products were not subject to the import inspection was therefore discriminatory against imports. The announcement made in October 1995 that the scope of the import inspections would be expanded to cover more product further increased the overlap. In response to international criticism, China announced at the end of 1995 that imported products would be able to obtain both marks with a single application. The fact that China officially published this change in a more voluntary and transparent manner as compared to the past is encouraging, since the Chinese decision making process had long been a source of frustration in that regard. However, the outcome of the improvements will need to be verified and monitored to ensure that the discrimination has indeed been alleviated, in terms of inspection costs, time, and burden.

(c) Dual standards and certification programs

In China, different authorities or institutions are in charge of product inspections depending on whether the product is domestic or imported. Although China maintains that the regime is non-discriminatory because common standards are used, applying common standards alone is not enough, there must also be common procedures for the certification. In other words, it is difficult to wipe out suspicion that imported products are more rigorously inspected and thus discriminated against in the certification procedures when there is not a single authority inspecting both imports and domestic goods. While such reforms of administrative structures may not be easy, we hope that China will undertake active efforts in this regard, especially given the peculiarity of the dual certification system from international perspectives.

(3) Open tender system for import

Since January 1994, China has introduced an open tender system for 171 items of industrial and electrical machinery. The system requires importers to obtain import certificates which are allocated based on the results of the bidding. Under the system, however, anyone who wishes to import those designated items must apply under an open tender, in which not only suppliers of imported products but also those of domestic products are able to participate. Considering that only purchasers of imported products are required to make such tenders, while those of like domestic products are not required to do so, this system has a major impact on the competitive conditions for the sale of imports and domestic products and is highly likely to be in contravention of GATT Article III. China explains that this is a transitional system and the number of items subject to it will be gradually reduced. We look for its full elimination at the earliest possible date.

(4) Preferential Treatment and Discrimination for Foreign Enterprises

In the course of its "reform and opening," China has provided many generous incentives

tariffs. This has attracted a huge amount of direct investments by those foreign companies and promoted the development and modernization of the Chinese economy. On the part of Chinese state enterprises, however, tougher competition with those foreign invested enterprises, followed by rigorous requirements for higher production efficiency have recently caused serious difficulties as well as unemployment problems. Given the above situation, China has begun withdrawing or reducing those incentives in the name of "realizing national treatment" or "equalizing competitive conditions" between domestic and foreign enterprises. However, it is inappropriate to focus solely on the preferential measures for foreign funded enterprises, since they are also discriminated against (vis a vis state enterprises) in many other aspects.

Giving preferential treatment to imports, foreigners and foreign enterprises itself does not violate the principle of national treatment, which only states that the treatment must be "no less favorable" than accorded to domestic goods and people, nor is there any inconsistency in eliminating such preferential measures. This is therefore an issue that is outside the WTO rules. But if China becomes more sensitive about "discrimination" and is to "equalize competitive conditions" in favor of its state enterprises, then it should also voluntarily eliminate discriminations against foreign companies, aside from whether such discrimination violates the current WTO rules. This is especially true, because "non-discrimination" and "mutual benefit" are the key elements underlying the multilateral trading system that China wishes to enter.

The following are examples of laws and practices that discriminate against foreign invested enterprises which are still in effect still remaining. Although China is already taking steps to remedy some of them, we urge it to further establish a clearly stated policy principle that China will also eliminate these discriminatory practices in a simultaneous manner as it does for preferential treatment.

(a) Export Requirements

Approvals for foreign companies to invest and establish their production facilities in China are given on the condition that the enterprise export more than certain percentage of their production (so-called "export requirement".) These export requirements prevent foreign companies are thus prevented from selling their products freely in the Chinese domestic market. It is reported that these restrictions are being gradually relaxed. However, this is an example of discriminatory treatment only against foreign companies that has a profound effect on foreign companies. Accordingly, we hope that China will relax and eventually eliminate these restrictions.

(b) Foreign Exchange

Foreign invested enterprises must earn foreign currency necessary for their operations such as imports through their exports (so-called "foreign exchange balancing requirement".) Should they have surpluses or shortfalls, they may trade with other foreign enterprises at "Swap

Chinese companies were under more severe foreign exchange restrictions, this system might have been considered preferential treatment for foreign companies. But with the establishment of an interbank market in April 1994, Chinese domestic companies have become free to trade foreign currency with authorized foreign exchange banks so long as it is for trade settlement. The system has thus turned into a discriminatory practice against foreign companies.

In response to the above concern voiced by many countries, China has recently announced "Initial Actions" at the Osaka APEC meetings (held in November 1995,) including an effort in 1996 to "incorporate the foreign exchange transactions of foreign-invested enterprises in the interbank market banking system of foreign exchange procurement and sale in 1996." Considering the above spirit of the multilateral trading system, we find it laudable and, we are looking for the earliest possible implementation.

(c) Dual Rates Pricing

Prices for air travel, rail travel, and other utility services are set differently for foreigners as compared to Chinese nationals. This has long been a source of dissatisfaction among foreigners in China. Although it is reported that the discrimination has been reduced in recent years, a fundamental solution has not yet been found.

(d) Taxation (refund of VAT)

The 1994 tax reforms introduced a value-added tax system (at a rate of 17% for most items.) Internationally, it is common practice to refund VAT paid when exporting products that use taxed parts, and China initially announced its intention to make refunds in line with this practice. Beginning August 1994, however, it decided to suspend some of the refunds and lower the rates for others. It is regrettable for China to reverse its publicly announced intentions and to adopt policies widely departing from international practice. However, even more problematic is that while domestic companies are given refunds, foreign invested enterprises established prior to the end of 1993 are not. This also amounts to clear discrimination. While China has maintained that, in exchange for refusing the refunds, it will make a compensatory adjustment to minimize the negative impact, such discrimination never the less should be remedied as early as possible.

[Industry Policy]

In July 1994, China announced its "Automotive Industrial Policy," which is designed to establish the industry as a "pillar" of the Chinese economy by the year 2010.

The basic concept of the policy is to consolidate companies in the sector, thus to achieve economies of scale, and to enable the industry to increase its share in the domestic market as well as to improve its international competitiveness. Existing policies and programs are being reviewed and reformulated to this end. We would note that every country has the right to

... we would also note that in as much as China wishes to

accede accession to the WTO, it must pursue its policy in conformity with the WTO Agreement and the obligations thereof. Unfortunately, the policy as it now stands contains WTO-inconsistent measures (listed below.) Although China has expressed its intentions to respect the related Agreements and to eliminate those measures that are not consistent with them, concrete commitments regarding each inconsistent measure will be needed upon China's accession to the WTO.

Areas of the automotive policy that we consider problematic in terms of the WTO include:

- Preference given to domestic products in selecting parts (Article 31):
possible violation of GATT Article III (national treatment)
- State Council approval for annual automobile import volumes and types (Article 38):
violation of GATT Article XI (quantitative restrictions on imports)
- Preferential treatment such as granting of loans depending on export ratios (Article 41):
violation of the Subsidies Agreement (Article III ban on export subsidies)
- Preferential tariff rates depending on local content rates (Article 44):
violation of the TRIMs Agreement (Article II:1 ban on local content requirements).

There are also such issues as export requirement, as previously noted. We would like to urge China to bring those measures in line with the spirit of the multilateral trading system, such as "mutual benefit" or "non-discrimination," even if those issues are not within the current WTO rules.

[Market access of goods and service]

(1) High Tariffs

The magnitude of the tariff reductions proposed by China to date is generally substantial, however, since tariff rates started off extremely high, there are some product categories for which the rates of reduction are still inadequate. But aside from the negotiation in the WTO, China has recently announced voluntary tariff reductions on over 4,000 tariff lines in which each tariff rate would be cut by more than 30%. This was announced as a part of the "Initial Actions" at the Osaka APEC meetings (held in November 1995,) and was greeted positively by the rest of the world. One should note that this was made not for the sake of the accession negotiation but for the acceleration of the APEC and that the reduction was made not in terms of bound rates, which is the objective of the accession negotiation, but in terms of applied rates. Nonetheless, the fact that China's tariff rates are to be reduced widely in scope and substantially in depth in such a voluntary manner is quite encouraging for the WTO accession negotiation.

(2) Trade in Services

Liberalization of each of the service sectors is in accordance with the GATT

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on Trade in Services, subject to negotiations on Schedules of Specific Commitments. As is also the case in the tariff negotiations, China's service negotiations have not yet been concluded. In the case of financial services, foreign banks are currently allowed to open branches in 13 cities on an "experimental" basis for now. According to the press reports, China is considering adding another 10 cities, including Beijing, and allowing foreign banks to handle Renminbi (Chinese local currency.) Since the mere liberalization offer "on experimental bases" can not be regarded as "Commitments" in the sense of the General Agreement on Trade in Services, China should double its effort.

There are also strict restrictions on the entry of foreign enterprises into domestic distribution sectors. To date, approvals have been given only for a limited number of big cities on a experimental basis. According to the "Initial Actions" at the Osaka APEC meetings, however, China intends to expand the establishment of Sino-foreign joint venture retail businesses both in terms of cities and the number of joint ventures approved per city. We would also welcome further accelerated and expanded liberalization in this sector.

(Other Issues)

(1) New Foreign Investment Program

The new guidelines on foreign investments announced in June 1995 contain designations of sectors for which foreign investment is to be "encouraged, restricted, and entirely banned." China explains that the guidelines were introduced because of excess concentration of foreign investments in specific regions and industry sectors, which resulted in such "market failures" as oversupply and infrastructure shortage. The guidelines on the investment approval, which had existed inside the Government as classified information, were then disclosed for the sake of supplementing market mechanisms and contributing to greater transparency. We would welcome the transparency, however, there is widespread concern among other countries that the change in the status of some sectors (electronics for example,) from "encouraged or unrestricted" to "restricted" may lead to the detrimental effects on companies that have already invested in China. One could agree that it is sometimes necessary for a country to make investment adjustment based on macroscopic (sector-horizontal) or regional consideration. However, it would be unfortunate if China withdrew an approval for a foreign direct investment or negatively modified its conditions, which it had approved previously and thus had led the investor to make an investment based on certain expectation, so this would go against the spirit of "standstill and rollback" underlying the multilateral trading system and impair the "predictability" that is of utmost importance in investment decisions. Since it risks largely damaging the credibility of China as a market for investment, we urge it to act prudently on this issue.

(2) Protection for intellectual property rights

China's intellectual property right laws meet in a large part with the requirements set out in the TRIPS Agreement, but do not provide sufficient protection for well-known trademarks, nor are there any laws regarding protection of integrated circuit designs. We look forward to enhancements of legal and administrative frameworks as well as more rigorous enforcement in these areas. There have been a large number of intellectual property rights infringement cases in China, including many counterfeits of Japanese products. We will need to monitor events closely to ensure appropriate enforcement.

In addition, there is a bilateral agreement between the United States and China whose objectives is to counter infringement of intellectual property rights including confiscation of counterfeit products and closure of associated production facilities. Regarding this agreement, which was made under the US Special 301 procedure, the United States has continued to argue that China does not live up to the agreement defends its record. We think China should strictly adhere to its commitments, so long as it agreed with it and also should disclose the record of its implementation to the public in a more detailed and open manner. We also think the United States should reconsider whether such a forcible method of negotiation under the threat of unilateral sanction is appropriate and effective.

Section 2. Taiwan's Accession to the WTO

1. History

In January 1990, Taiwan submitted a formal application to accede to the GATT as the government administering the "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu" under GATT Article XXXIII. In September 1992, the GATT Council decided to establish a Working Party on the accession of Taiwan. Accession negotiations have continued since the WTO took effect, and in December 1995, Taiwan filed a new application for admission to the WTO.

The Working Party's first meeting was held in November 1992. It has met a total of seven times. At the seventh meeting on December 21, 1994, the Working Party agreed to begin the negotiation on the terms and conditions of the "Protocols of Accession" for Taiwan based on the results of a detailed factual review of Taiwan's trade laws and administration.

2. Significance of Accession to the WTO

As is the case with China, Taiwan is also one of Japan's most important trading partners. In 1995, the total value of trade between Japan and Taiwan was \$433 billion, ranking it fifth among Japan's trading partners. If the accession negotiations result in reducing tariffs, elimination of regional discrimination and the quantitative restrictions, it will result in an