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# Withdrawal/Redaction Sheet
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| DOCUMENT NO. AND TYPE | SUBJECT/TITLE | DATE | RESTRICTION |
|---|---|---|---|
| 001. paper | Trading Rights. (2 pages) | c. 1996 | P1/b(1) |
| 002. draft | Nondiscrimination: Draft Protocol Language. (1 page) | c. 1996 | P1/b(1) |
| 003. paper | Non-Paper on Value Added Services. (5 pages) | c. 1996 | P1/b(1) |
| 004. paper | Administration of Tariff-Rate Quotas. (6 pages) | 12/09/1996 | P1/b(1) |
| 005. paper | Regulation of Mark-ups for Imported Commodities (1 page) | 12/10/1996 | P1/b(1) |
| 006. paper | U.S. Suggestions on Annex 6 (3 pages) | c. 1996 | P1/b(1) |

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2010-1024-F
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**RESTRICTION CODES**

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P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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The United States-China Business Council

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# WTO Survey Results

*January 30, 1997*

Executive Summary

*Late last year, the US-China Business Council surveyed its member companies to identify priority issues in the ongoing negotiations with China regarding the PRC's WTO accession and to specify reasonable time frames for China to meet its WTO obligations. While the survey responses reveal a number of company-specific problems encountered both in penetrating and operating within the China market, a few key issues cut across industry sector lines and are perceived by the business community as negotiating priorities for US trade officials. These are:*

1. *Transparency of trade and investment policies*
2. *Permanent MFN trading status for China*
3. *Trading rights for foreign-invested enterprises (FIEs)*
4. *Technical standards and inspection requirements as a non-tariff barrier to trade*
5. *Trade-related investment measures (TRIMs)*
6. *Trade-related intellectual property rights (TRIPs)*

*Liberalization of China's service industries is another important concern of US firms targeting the China market. The most important and immediate needs to be addressed include the opening of the following sectors:*

1. *Distribution, wholesale, and retail*
2. *Maintenance and repair (after sales service)*
3. *Banking*
4. *Telecommunications*

*Overall, the US-China Business Council membership strongly supports China's WTO accession in the near term and is hopeful that an adequate protocol of accession can be concluded within the next 1-2 years. We would strongly urge that both US and PRC trade officials keep these issues in mind as we work toward completing the accession package.*

## Introduction

Member firms of the US-China Business Council strongly support China's accession to the World Trade Organization (WTO), provided a commercially viable protocol can be negotiated. China is the world's 10th largest trading nation and the United States' 5th largest trading partner. China attracts nearly $50 billion in foreign direct investment each year, second only to the United States, and will soon be the largest economy in the world. China is too big and too important to remain outside the WTO, unbounded by the rules of the world trading system. It is essential to bring China in with a protocol that maintains the integrity of that system, yet does not threaten China's own development objectives.

# China and the WTO:
## A Reference Guide

THE US-CHINA BUSINESS COUNCIL

# China and the WTO: A Reference Guide

Prepared by

The United States-China Business Council

*November 1996*

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**THE US-CHINA BUSINESS COUNCIL**



*Additional copies of this report are available to Council member companies for $25. Non-members may purchase this report for $75. Please direct your inquiries to the Publications Department, US-China Business Council, 1818 N Street, NW, Suite 200, Washington, DC 20036. Tel: 202/429-0340, Fax: 202/775-2476.*

*Founded in 1973, the US-China Business Council is the principal organization of American corporations engaged in trade and investment with the People's Republic of China. Its membership encompasses more than 300 businesses with facilities throughout the United States. The Council is headquartered in Washington, DC, and maintains offices in Beijing and Hong Kong.*

THE US-CHINA BUSINESS COUNCIL

# China and the WTO: A Reference Guide

## TABLE OF CONTENTS

# Introduction

For nearly a decade, China has sought to join the General Agreement on Tariffs and Trade (GATT); now it is negotiating to join the World Trade Organization (WTO), the successor to the GATT. The Council's member companies would like China to accede, provided Beijing shows a true commitment to opening the Chinese economy. Accession should create conditions for rapid expansion of mutually beneficial bilateral commercial relations, and will provide a *multilateral* forum for resolving trade disputes and negotiating further liberalization. China's WTO accession would also signal both to other nations and to China's more conservative domestic bureaucracies the government's commitment to the economic reform process.

However, China's economy presents unique challenges to the WTO. By many economic indicators, China's per capita income remains among the lowest in the world, yet China's economy in aggregate is one of the world's largest and fastest growing. Over the nearly 20-year reform period launched by Deng Xiaoping in 1978, China has liberalized its economy at a breakneck pace. Chinese policies toward foreign investment and trade remain highly restrictive, nevertheless. The legal and regulatory regime is relatively undeveloped, and the PRC government's willingness to compete fairly in a free international trading regime remains in question.

Negotiators have a choice of two basic approaches to resolving the conundrum of bringing into the club of free traders an economy as big, complex, and closed as China's. They may seek to negotiate each major aspect of China's WTO accession protocol so that contracting parties feel reasonably secure that China will meet all of the WTO requirements on a detailed and comprehensive series of schedules. This approach has its drawbacks, however, as the tough scrutiny by trading partners may fuel opposition within China to joining the WTO—and slow down the accession process just when China's trading partners most urgently need China to reform. Further, it may have the unintentional effect of weakening underlying WTO principles by using them as the starting point for negotiation.

A second and perhaps more practical approach may be to ask China to commit unequivocally to the principles of the WTO, concentrate the accession negotiations on a few "key" issues, and leave the balance to be worked out inside the WTO. In this case, the focus of negotiations must center on the fundamental WTO principles of non-discrimination and national treatment, on the schedule of tariff concessions, and on major issues that influence US commercial interests in China and/or political support for PRC accession (e.g., the Executive Branch, US Congress, and American public). PRC compliance would be monitored and enforced through the WTO dispute resolution process and/or additional safeguards (e.g., conditioning China's WTO membership upon adherence to WTO principles). This approach could help speed accession while giving the contracting parties reasonable assurances that China will comply with WTO requirements.

This reference guide is organized in two parts. Part I provides background information about the WTO, its membership, and accession procedures. Part II provides an introduction to the major China-WTO issues. We have attempted to describe WTO basic principles and specific obligations, including preferential terms extended to developing countries. We have added commentary on PRC conditions that are relevant to these provisions.

# PART I: THE WTO

## 1. The WTO:

The Marrakesh Agreement of July 1994 established the World Trade Organization on January 1, 1995, to administer the Uruguay Round Agreement of the General Agreement on Tariffs and Trade (GATT) and provide a framework for collective debate, negotiations, and adjudication of trade issues. The Marrakesh Agreement itself is a collection of agreements governing several aspects of trade in goods and services. The original GATT focused on the overall reduction in tariffs for traded goods. Subsequent agreements included in the WTO are designed to ensure further measures are not undertaken to undermine the liberalizing effect of tariff reductions and to begin to extend trade liberalization into the trade in services and foreign direct investment.

A series of multilateral trade agreements form the core of the WTO and are binding on all WTO Members. These include:

- Agreements on Trade in Goods
  - Agriculture
  - Sanitary and Phytosanitary Measures
  - Textiles and Clothing
  - Technical Barriers to Trade
  - Trade-Related Investment Measures
  - Anti-Dumping
  - Customs Valuation
  - Preshipment Inspection
  - Rules of Origin
  - Import Licensing Procedures
  - Subsidies and Countervailing Duties
  - Safeguards

- General Agreement on Trade in Services
- Agreement on Trade-Related Aspects of Intellectual Property Rights
- Dispute Settlement Understanding
- Trade Policy Review Mechanism

Four plurilateral trade agreements are also contained in the Agreement, but these are binding only on Members who voluntarily accept them. These include:

- Agreement on Trade in Civil Aircraft
- Agreement on Government Procurement
- International Dairy Agreement
- International Bovine Meat Agreement

## 2. Membership:

The following 124 governments are currently WTO Members:

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

The following 30 governments have requested to join the WTO and their applications are currently being considered by accession working parties:

Albania, Algeria, Armenia, Belarus, Bulgaria, Cambodia, Chinese Taipei, Croatia, Estonia, Georgia, Jordan, Kazakhstan, Kirgyz Republic, Latvia, Lithuania, Former Yugoslav Republic of Macedonia, Moldova, Nepal, Panama, People's Republic of China, Russian Federation, Saudi Arabia, Seychelles, Sudan, Sultanate of Oman, Tonga, Ukraine, Uzbekistan, Vanuatu, Vietnam

## 3. Accession Process:

Any State or separate customs territory exercising autonomy in the conduct of external commercial relations and other areas covered in the WTO may accede to the WTO.

In the first stage of accession, the applicant government must provide the WTO with a memorandum covering all aspects of its trade and economic policies having a bearing on WTO agreements. This memorandum becomes the basis for a working party to undertake a detailed examination of the accession request. The working party, which is a voluntary group of representatives from interested WTO

Members—generally major trading partners of the applicant country—drafts the basic terms of accession, i.e., what the applicant country must do and by when, including general policy liberalization commitments within set time periods.

In parallel to the working party, the applicant holds bilateral negotiations with interested Members to establish tariff and other concessions and commitments, which are then extended to all WTO Members, through Most Favored Nation (MFN) obligations. This bilateral process determines, among other things, the specific benefits gained by existing WTO Members in permitting the applicant to accede.

The results of these two parallel negotiating efforts are then combined in the working party's report, which is presented to the WTO General Council or the Ministerial Conference for adoption. If a two-thirds majority of WTO Members vote in favor, the applicant is free to sign its protocol of accession and join the organization, when necessary, after the protocol is ratified by its national parliament or legislature.

## 4. Status of China's Accession:

China was an original signatory to the GATT of 1947, but the Nationalist government on Taiwan withdrew China's membership in 1949. China formally applied to resume its status as a contracting party in 1986. The Working Party on China's accession was established in 1987 and has since met 20 times. When the WTO succeeded the GATT on January 1, 1995, China submitted a new application to accede to the WTO.

Limited progress has been made on China's terms of accession, which are contained in a formal protocol. The current working draft was tabled in the Working Party session held in December 1994, and several key sections remain incomplete and subject to negotiation.

In an attempt to guide the bilateral talks, the office of the US Trade Representative (USTR), the chief US agency responsible for negotiating WTO issues with China, provided China in December 1995 with a "road map" outlining in simple terms the full range of WTO commitments and basic issues that need to be resolved for China to accede to the WTO. The "road map" addresses fundamental WTO obligations that all Members are expected to uphold, such as national treatment, trading rights, transparency, and uniform application of laws and regulations, as well as specific market access concerns, including tariffs, non-tariff measures, industrial policies, investment policies, technical standards, and several others. At the Asia-Pacific Economic Cooperation (APEC) Ministerial meeting in Osaka in November 1995, the Chinese acknowledged that the "road map" would contribute to their accession bid, but have yet to present any public substantive response to USTR as to how Beijing either views or intends to meet these requirements.

To break the apparent stalemate in the accession process, Working Party Chairman Pierre-Louis Girard asked China to prepare a detailed accounting of the items to be included in six annexes to the protocol. These annexes, presented at the last Working Party meeting earlier this month, detail PRC plans to meet various WTO obligations and/or justifications for protracted or delayed phase-in schedules. The six annexes cover:

- A schedule for the phase-out of non-tariff measures
- A list of goods subject to State trading
- A list of goods subject to trading by specific "designated" trading companies
- A list of goods subject to price controls
- A list and rationale for all government trade-related subsidies and phase-out schedule for those prohibited under the WTO Agreement on Subsidies
- A list of goods subject to statutory inspection

Over the past few months, bilateral discussions have intensified with a series of meetings in Beijing, Washington, and again in Beijing. The Working Party is expected to meet again in February 1997, while bilateral talks may be held in the interim. The sheer frequency of exchanges is an encouraging sign that WTO accession talks are resuming in earnest. The activities over the next month or so should provide a strong indication whether or not this process will bear fruit in the year ahead.

## 5. Developed, Developing, and Least-Developed Country Status:

One of the objectives of the WTO is to ensure that all countries share in the benefits of international trade. To this end, "developing" and "least-developed" Members may be given transition periods to adjust to the WTO obligations. This is not to say, however, that least-developed and developing countries are indefinitely exempt from meeting WTO obligations, but rather that they must commit to meeting these obligations within a specified period of time.

The GATT interpretation of what qualifies as a developing country is less than clear cut, referring to the ability of the economy to "...only support low standards of living..." Despite its booming economy and strong track record for economic growth over the past 18 years, China remains a very poor country. For this reason, China maintains that it is a developing country, and will seek many of the exemptions and phase-in periods permitted developing countries. What China is labeled is less important that the specific conditions, phase-in periods, and special provisions that may be extended to China in its protocol of accession. All of these are subject to negotiation.

In the descriptions of WTO obligations that follow, we have highlighted special provisions that *may* be extended to developing countries—and thus, in theory, could apply to China—subject to negotiation. These provisions are in italics, and marked with this symbol ☞.

# PART II: WTO OBLIGATIONS

## 1. Transparency:

In order for companies, both foreign and domestic, to operate efficiently and effectively in a given market, they must have full access to information concerning the laws and regulations with which the host government expects them to comply. Companies also need adequate notice when these laws and regulations are subject to change. In trade terminology, this access is referred to as "transparency."

Many of the WTO agreements contain transparency provisions that require disclosure at the national level—through publication in official journals—or at the multilateral level, through formal notifications to the WTO. There is a basic understanding in the WTO that only those laws that are published and made known to other WTO Members should be enforced.

**Comment:** In China's case, its legal and regulatory system has become far more open and transparent in recent years, in part because of the 1992 market access agreements reached with USTR. For instance, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) now publishes new regulations in the *Gazette*. Substantial problems remain at the national and especially the sub-national level, however, and internal, or *neibu,* regulations continue to be enforced. Further, China has yet to agree to establish a system for public comment and advance notice before implementing trade-related laws, regulations, and other measures.

The State Council is now in the process of releasing a series of industrial plans for the electronics, machinery, construction, and water resources sectors, and other plans are in the pipeline, but individual ministries continue to develop and operate under guidelines that remain largely unpublished. While these guidelines may not necessarily have the force of law, they contain many provisions that govern the role of foreign investment and foreign goods in these key sectors (*see* discussion of investment policies, p.15). In this instance, industrial policies, in the form of internal guidelines, are becoming less transparent over time.

## 2. MFN and National Treatment:

The two foundation stones for the WTO which grant no special provisions for developing countries are *non-discrimination* and *national treatment.* All other agreements under the WTO are designed to protect these principles in the trade of goods, and certain agreements have begun to expand these rights into the areas of investment and trade in services.

According to Article I of the original GATT, the famous "Most Favored Nation" clause, Members are bound to provide to the products of other Members tariff treatment no less favorable than that accorded to the products of any other Member country. No country is to give special trading advantages to or discriminate against another (although certain preferences for developing countries are authorized, and common markets and free trade areas are permitted exceptions).

The GATT's Article III "national treatment" provisions require that once imported goods have entered a market, they must be treated no less favorably than equivalent domestically produced goods.

Several other WTO agreements contain important provisions relating to MFN and national treatment. The Trade-Related Aspects of Intellectual Property (TRIPs) agreement contains, with some exceptions, MFN and national treatment requirements relating to the provision of intellectual property protection by WTO members. The General Agreement on Trade in Services (GATS) requires Members to offer MFN treatment to services and service suppliers of other Members. It permits, subject to notification, exemptions to the MFN obligation covering specific measures for which WTO Members are unable to offer such treatment initially. National treatment is only an obligation in the GATS where Members explicitly undertake to accord it for particular services. Other WTO agreements with non-discrimination provisions include those on rules of origin, preshipment inspection, Trade-Related Investment Measures (TRIMs), and the application of sanitary and phytosanitary measures.

**Comment:** Under the Jackson-Vanik provisions (Title IV) of the US Trade Act of 1974, the United States can extend MFN to China only on a conditional basis, subject to annual review. For this reason, the United States has maintained the intention to invoke Article XXXV of the GATT—the non-application clause—if and when China accedes to the WTO and seeks to negotiate a separate agreement extending most of the WTO provisions on a bilateral basis. Under this non-application clause, the United States would not apply the WTO to China until such time as permanent MFN is extended to China.

Not surprisingly, China is much less eager to join the WTO under these circumstances. Chinese negotiators have maintained that China would be:

- Less likely to grant substantive concessions in the WTO negotiations;
- Less eager to join such a watered-down WTO; and
- Unwilling to apply their WTO concessions to the United States on a bilateral basis if the US invokes the non-application clause when China does accede

Most trade analysts now feel this is a tactical negotiating issue that must be resolved before China's accession is completed. China would prefer this matter to be resolved up front, while USTR would prefer to hold this issue in reserve to press for additional trade concessions. In either case, the Administration's ability to act is constrained by practical political considerations. To grant permanent and unconditional MFN to China will more than likely require either congressional action or concurrence. Thus, while permanent MFN and WTO are not explicitly linked under US law, they are "effectively" linked, and the Administration is expected to proceed on both tracks.

## a. Trading rights:

The ability to import and export goods directly is a national treatment issue. Any restrictions on trading rights are likely to discriminate against imported goods and thus violate national treatment requirements. A trading system which restricts trading rights or limits those rights to authorized trading companies is likely to impede market access because sufficient competition cannot be realized. Such a system also raises the cost of imports as foreign suppliers must work through intermediaries.

Foreign trading rights have been expanded in China over the past 18 years, yet the right to engage in foreign trade is still restricted to authorized PRC trading companies and foreign-invested enterprises (FIEs)—

but only for the FIEs' production inputs, and such rights are generally extended only for specified products. China has proposed to expand trading rights within the existing registration system, and to convert to an automatic registration system by some future date. China announced on October 1, 1996, new rules permitting joint-venture trading companies in Pudong and Shenzhen on an experimental basis. This liberalized system would still require establishing a business enterprise in China to trade.

The US-China Business Council proposed in an earlier position paper that trading rights should be granted automatically to foreign and domestic individuals and enterprises (*see* "WTO: Trading Rights," September 15, 1995). That is to say, a small manufacturer in St. Louis should have the right to sell its product directly to distributors and consumers in China, regardless of whether it has invested or set up any sort of enterprise in China.

The Council proposal contains four key recommendations:

- Trading rights should be progressively liberalized for Chinese foreign trade corporations so that by some specified date in the future, all such corporations shall be free to trade in all goods, except those specified in an annex to the protocol.
- China should phase out progressively the list of goods subject to "designated trading" (trading of certain goods which are limited to "designated" trading companies).
- Trading rights should be granted freely to any individual or enterprise and not used to restrict trade.
- Foreign companies, foreign individuals, and FIEs should be accorded treatment no less favorable than domestic enterprises.

The European Union has identified the liberalization of China's foreign trade monopoly, and extending those rights to individuals, both foreign and domestic, as one of the key remaining issues to be resolved.

The Chinese position may be strongly influenced by the parochial interests of its negotiating body, MOFTEC, which has supervisory responsibility and commercial interests in many of the leading foreign trade corporations that operate under the current managed trading system. Thus, it is likely that intervention from the State Council will be necessary to force movement in the PRC position.

## b. Wholesale, distribution, and retail rights:

China has also restricted foreign firms from investing in wholesale, distribution, and retail operations in China, albeit with some recent relaxation on a limited and experimental basis. Domestic manufacturers and their products face no such restrictions, and thus enjoy a distinct competitive advantage. The GATS requires national treatment only for those service sectors included in the Member's Schedule of Commitments and does not require national treatment in the areas of wholesale, distribution, and retail business. However, the Council hopes China would continue to liberalize the allowable scope of business for foreign-invested firms as this liberalization would provide wide-ranging benefits to China's economy. China's wholesale/distribution systems and retail industry are underdeveloped, inefficient, fragmented, and wasteful; hinder Chinese firms and FIEs from developing a business beyond a regional base; and discourage foreign investment.

Liberalization of this sector would:

- Allow technology transfer and know-how to disseminate to PRC distributors, resulting in more efficient national distribution networks;

- Result in greater efficiencies, lower costs, and better service to Chinese consumers through enhanced competition;

- Benefit Chinese and FIE manufacturers who can take advantage of these services to boost their sales and expand their market; and

- Encourage foreign direct investment in the interior; at present, experimental retailing, wholesaling, and distribution license have been limited to selected coastal cities and special economic zones.

To this end, in a series of recommendations to the US Department of Commerce in preparation for the US-China Joint Commission on Commerce and Trade discussions held in Washington, DC, September 26-27, 1996, the Council proposed that China:

- Allow foreigners to establish joint-venture or wholly foreign-owned distribution networks and retail trade entities;

- Allow foreign companies to establish branches or offices in China for the purpose of promoting, selling, and distributing the goods the company manufactures, regardless of whether the products are made domestically or outside China;

- Remove restrictions on the number of joint-venture retailing operations and locations permitted and allow wholly foreign-owned enterprises (WFOEs) to engage in retailing; and

- Remove restrictions on the proportion of imported goods that may be sold in foreign-invested retail establishments.

### c. Open tendering system for imports:

In January 1994, China introduced a tendering system for the import of 171 industrial and electronic products, including goods produced by US firms (cellular phones, pagers, trunked radios, telecom infrastructure systems, and others). Chinese importers must bid for import certificates under this system. Similar goods produced by domestic manufacturers are not subject to tendering, thereby violating WTO national treatment obligations.

## 3. Tariffs:

Under the Uruguay Round Agreement, developed country tariffs are to be reduced by an average of 40%, lowering the trade-weighted average tariff to 3.7% by 1999. Additional agreements were made on various categories of products. For instance, many of the major industrialized countries have agreed to "zero-for-zero" tariff commitments covering specified products in pharmaceuticals, construction equipment, steel, distilled spirits, furniture, medical equipment, farm machinery, beer, toys, and paper. They have further agreed to tariff harmonization for selected chemicals.

☞ *Tariff rates on industrial products in developing countries are to be cut 30% to a 6.3% weighted tariff rate by 1999, unless otherwise specified in the country's schedule.*

The Uruguay Round further attempted to reduce the amount of uncertainty surrounding future tariff levels by increasing the number of products subject to "bound" tariff rates, or rates that cannot be adjusted above the designated level without compensating affected parties. For developed countries, nearly all imports (99%) enter under bound rates, while for developing countries, 61% of imports by import value (73% of tariff lines) enter at bound rates.

**Comment:** On April 1, 1996, China reduced tariffs on almost 5,000 commodities in accordance with President Jiang Zemin's APEC promise last November to reduce China's average tariff by 33%. With this latest round of reductions, China's simple average tariff rate now stands at roughly 23%—down from 36% in 1995, though still above the 15% average rate for other developing countries. PRC Customs officials report that the trade-weighted average tariff is now about 17%. China has committed to reduce further the simple average tariff rate to 17% and to bind rates at 35% upon accession. However, China would like to create an exception list of products that would not be bound at 35%. This list would be composed of sensitive goods (i.e., autos and auto parts) that account for 10% of China's tariff lines currently subject to non-tariff barriers.

China's proposed tariff cuts are approaching the WTO targets set for developing countries, but the exception list may present substantial problems for American exporters in the "sensitive" categories. The magnitude of the tariff reductions is diminished when one factors in the 17% value-added tax (VAT) that theoretically is applied to most imports. The VAT was extended to capital equipment imported as a contribution to a direct investment project beginning April 1, 1996.

As a developing country, China has resisted efforts to comply with the zero-for-zero tariff commitments and tariff harmonization for selected textile and chemical products. The European Union has proposed that China adopt a tariff regime that, on average, does not exceed twice the OECD average tariff of about 5-6%.

China's relatively high tariffs, combined with its 17% VAT (which is calculated on top of the value of the good [F.O.B.] times the legal duty rate), promote smuggling and gray market imports. These practices deny Beijing rightful tax revenues and deter investment and technology transfers in high-tech, high value-added production in China. Tariff reductions will reduce the incentive to smuggle and will promote the competitiveness of domestic production in China.

## 4. Non-Tariff Measures:

A fundamental element of the WTO is the elimination of quotas and other non-tariff measures (NTMs), as these measures have a greater trade-distorting effect than tariffs. The WTO requires members to identify and schedule phase-outs for all WTO-inconsistent NTMs, including import licensing, tendering, quotas, and other measures used to control or limit imports. Temporary exemptions are permitted (i.e., safeguards and balance-of-payments measures), but additional WTO agreements specifically apply to trade barriers in the guise of technical standards and preshipment inspection policies.

The WTO Agreement on Technical Barriers to Trade establishes transparency and consultation requirements when developing technical standards to ensure that industrial standardization, safety, and environmental regulations are not used as a non-tariff barrier to trade.

☞ *Producers in developing countries may be granted a reasonable interval to come into compliance with the new standards (Article 12.8). No special conditions allow developing countries to impose new non-compliant technical barriers to trade.*

The WTO Agreement on Preshipment Inspection provides a framework of rights and obligations to ensure inspection requirements are not used as trade barriers. The Agreement includes provisions on national treatment, non-discrimination, and transparency (including procedures and criteria for inspection). Further, all information collected in the course of preshipment inspection should be treated as confidential, and procedures must be established to protect confidentiality and avoid conflicts of interest.

The Agreement on Import Licensing Procedures simplifies the process for obtaining an import license so that the procedures do not present an unfair barrier to trade. The Agreement includes provisions on neutral application and equitable administration of licensing procedures, transparency, time period for submitting applications, the allocation of foreign exchange for licensed imports, and the protection of confidential information. Two basic types of import licensing are outlined in the Agreement:

- Automatic import licensing—Approval is granted in all cases and there are no restrictive effects on imports. Such systems may be maintained as long as underlying administrative purposes cannot be achieved in a more appropriate way.

☞ *A developing country may delay application of automatic import licensing provisions by no more than two years (Article 2.2).*

- Non-automatic import licensing—To ensure transparency, the country should publicize information concerning administration of restrictions, licenses granted over the most recent period and, where practicable, import statistics of products concerned.

☞ *A developing country is not expected to undertake additional administrative or financial burdens to fulfill the statistical reporting requirement.*

**Comment:** In the 1992 bilateral market access memorandum of understanding negotiated with USTR, China committed to phase out over a five-year period a broad range of NTMs. Since then, China has reduced the number of goods subject to NTMs from 1,247 to 399, according to MOFTEC Assistant Minister Long Yongtu. However, new import bans and restrictions have been introduced in the automotive, electronics, machinery, chemical, and other industries:

- China has instituted an "automatic" registration system for certain designated products that were formerly covered by NTMs. For instance, China eliminated import quotas for steel products in 1994, but now requires import registration for these same products. Beijing maintains that this system is merely for statistical reporting, even though the process duplicates routine Customs procedures. This redundancy generates data *prior* to the shipment of the goods. The only reason to collect this information in advance is to maintain the capacity to restrict targeted imports.

- The Ministry of Machine-Building Industry is preparing regulations to impose new quantitative restrictions on the import of digital and heavy-duty machine tools "to protect the relevant mainland industry" (August 17, *Zhongguo Xinwen She* [China News Service], translation from FBIS-CHI-96-161). These restrictions appear to be part of a broader initiative to promote the development of China's machinery sector. The August 19, 1996, "Business Weekly" supplement to *China Daily* reported on "Three Major Campaigns" to be conducted through the Ninth Five-Year Plan (1996-2000) by the Ministry of Machine-Building Industry. Few details were revealed in the article, which called for the development of 1,000 famous brand products and 500 "star" enterprises, of which 100 would be internationally competitive large enterprises. Further, domestically made products would account for 80% of the domestic market.

- The Ministry of Internal Trade and the Ministry of Health are each working on regulations designed to "manage" foreign brand-name products and limit the number of consumer products and pharmaceuticals permitted to register brand names.

New safety and environmental registration requirements are also being applied to imports in a discriminatory manner. These were applied without advanced consultation and the entire system is relatively non-transparent.

- In May 1994, China announced new environmental control regulations for the import of chemical products. The inspection and registration requirements apply only to imports and not to domestic products—apparently in violation of WTO national treatment principles. In addition, registration fees are collected for products already previously imported and the registration may expire within a certain time period, regardless of the fact that the ingredients and structure of the chemical product remain unchanged. Such provisions impose an unnecessary barrier to trade.

New preshipment safety inspection and certification requirements are now being applied to a growing array of imported machinery and electronic products.

- In October 1995, China introduced quality and safety certification requirements for certain mechanical and electronics imports, and expanded the items subject to these requirements in October 1996. As the same inspection and certification requirements do not apply to domestic goods, the certification system thus discriminates against imports and is a violation of national treatment. The United States has asked China to provide a list of all products subject to statutory inspection and to demonstrate the requirements are not being used as a barrier to market access. Recent articles published in the PRC press prompt suspicion about the intent or purpose of the safety certification process. For instance, in "Analysis and Thoughts on China's 1995 Machinery and Electronic Imports," published in the May 30, 1996, *Jidian Ribao* (Machinery & Electronics Daily), Zheng Guowei calls for increased measures to tighten "macroeconomic control" of the import of machinery and electronic imports that are available from domestic sources, "...acting in line with international practice to use means such as tariffs, quotas, licenses, and technical quality standards *to prevent unchecked importing*" [emphasis added]. The article further calls for additional controls on the use of technology imports as a form of investment for FIEs.

These trade-deflecting practices draw suspicion toward China's legitimate efforts to promote product quality and safety.

## 5. Sanitary and Phytosanitary Measures:

The purpose of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures is to ensure that when Members exercise their sovereign right to protect food safety, plant, and animal health, they do so based on objective scientific data, while ensuring these rights are not used for protectionist purposes.

☞ *Developing countries may, upon request, extend the specified phase-in period for exceptions, taking into account their financial, development, and trade needs (Article 10.2). Except in urgent circumstances, producers in developing countries should be allowed a reasonable interval to come into compliance with new standards in importing countries.*

**Comment:** Chinese officials recently rejected several shipments of US wheat, claiming that the wheat was infected with tilletia controversa kuhn fungus (TCK smut). At least two shipments since June 1 have been rejected, despite the fact that TCK smut has never been found to endanger human health, and China has in the past accepted and treated such wheat after its arrival in China. In what appears to be a change in policy, Chinese officials have further announced they will no longer accept US wheat shipments unless they are guaranteed to be TCK-free. By enacting such a policy, Chinese officials threaten the sale of several million additional metric tons of US wheat over the next marketing year.

US poultry, fruit, and tobacco exports have also suffered as a result of China's sanitary and phytosanitary policies. However, expanded shipments of US-grown apples and cherries were permitted in late 1995.

The WTO does not allow developing countries to impose non-complying sanitary and phytosanitary standards that do not meet the objective scientific standard of the Agreement. The United States is pushing China to implement the Agreement fully without delay.

## 6. Agriculture:

A major outcome of the WTO Agreement on Agriculture was to convert non-tariff measures into tariffs ("tariffication") and bind commitments in the areas of market access, domestic support measures, and export subsidies over a six-year implementation period from 1995-2000.

☞ *Developing countries may be accorded additional flexibility to implement reduction commitments over a 10-year liberalization period (Article 15.2).*

### a. Market access:

All existing non-tariff measures must be converted into tariffs and combined with existing tariffs. Combined tariffs must be reduced, in six annual installments, by 36% overall from their 1986-88 base levels; each tariff line must be reduced by at least 15%.

☞ *Developing countries must average 24% reductions in combined tariffs, with 10% minimum/year over 10 years (WTO's Modalities for the Establishment of Specific Binding Commitments under the Reform Programme).*

### b. Domestic support:

The agreement requires commitments on all subsidies that favor domestic producers unless these supports have little or no trade-distorting effects. Direct payments provided under production-limiting programs must conform to certain criteria.

☞ *Developing countries are allowed an additional exception for specified policies that encourage agriculture or rural development as an integral part of a development program. These goods are not included in computing the total Aggregate Measurement of Support (AMS)—the sum of all domestic support provided in favor of producers (Article 6.2).*

Other supports for domestic producers must be reduced under the total AMS, except those policies that do not exceed 5% of the total value of production of a product or product sector.

☞ *For developing countries, the ceiling is raised to 10% (Article 6.4).*

### c. Export subsidies:

The value of export subsidies must be reduced by 36% over six years, in equal installments from 1986-90 levels. The volume of subsidized exports must be cut 21%, again over six years, in equal installments from the same base period.

☞ *Developing countries must reduce their export subsidies 24% and 14% by value and volume, respectively, over 10 years (Article 9.2). During the implementation period, the costs associated with marketing and transporting agricultural exports are exempt from this Agreement (Article 9.4).*

## d. Export prohibitions and restrictions:

New export prohibitions or restrictions on foodstuffs, along with their effects on Member importers, must be reported to the WTO.

☞ *For developing countries, this requirement does not apply unless the country is a net exporter of the specific food-stuff concerned (Article 12.2).*

## e. Special and differential treatment (Article 15):

Members may apply a "special treatment" clause to maintain import restrictions for up to six years under strictly defined conditions.

☞ *The time period is stretched to 10 years for developing countries.*

**Comment:** There are several contentious issues surrounding China's trade in agriculture, involving market access and State trading, tariff reductions, export subsidies, internal supports, and sanitary and phytosanitary measures:

- China has offered selective changes to its trading rights regime for seven agricultural commodities—wheat, corn, rice, vegetable oil, sugar, tobacco, and cotton—for which trading rights are currently restricted to monopoly State trading companies. State trading operations make it easy to implement quantitative restrictions. In the past, when countries with State trading monopolies joined the GATT, they were obliged to accept schedules mandating a specified annual increase in imports of each traded commodity. China is presently revising its system for trade in these agricultural commodities; non-State trading companies will be permitted to trade a portion of these goods under a tariff-rate quota (TRQ) system in which goods will be imported at low (yet unspecified) duty rates up to a given quota amount (also yet unspecified). The over-quota product would be subject to higher tariffs.

- Further tariff reductions for agricultural commodities are being sought by the United States and other major agricultural-product exporting countries such as Australia.

- China is proposing high bases for calculating the export subsidies that must be reduced and would like to maintain export subsidies for a long list of products.

- China has insisted that input and investment subsidies for specific commodities like cotton and wheat be exempt when calculating the AMS, thus making the calculation of AMS meaningless.

- The United States continues to face sanitary and phytosanitary barriers to poultry, wheat, fruit, tobacco, and livestock genetics exports to China.

## 7. Investment Policies:

The Agreement on Trade-Related Investment Measures (TRIMs) requires investment measures to be consistent with WTO provisions on national treatment (Article III, GATT 1994) and calls for the elimination of quantitative restrictions (Article XI, GATT 1994), unless there is a justifiable exception.

TRIMs explicitly listed in the Agreement as inconsistent with national treatment include:

- Local content requirements
- Import restrictions by volume or value of exports

TRIMs explicitly listed in the Agreement as imposing quantitative restrictions include:

- Restrictions on imported inputs based on amount of final product exported
- Import restrictions by restricting access to foreign exchange based on forex earnings
- Export restrictions either by volume or value

All TRIMs inconsistent with the Agreement must be identified and eliminated within a transition period of no more than two years.

☞ *Developing countries are allowed non-conforming TRIMs in accordance with GATT provisions on infant industry (Article XVIII:C) and balance-of-payment safeguard standards (Article XVIII:B) for up to five years. A further extension can be granted by the Council for Trade in Goods upon analysis of the Member's development, financial, and trade needs (Article 4).*

No TRIMs introduced less than 180 days prior to the entry into force of the WTO Agreement shall benefit from any transition period (Article 5.4).

**Comment:** Since 1949, China has been making industrial plans. During the reform period, these plans have increasingly been designed to direct the flow of foreign investment. In an effort to improve the transparency of the planning process, the State Council began publishing the industrial policies in spring 1994, starting with its industrial policy for the auto industry. In violation of TRIMs (and other WTO provisions), this policy contains discriminatory tax, subsidy, and resource and credit-allocation provisions; government approval stipulations and explicit limits on the number of joint-venture assembly projects; localization requirements; import restrictions, including bans on imports of SKD and CKD kits; export requirements; limits on foreign equity in vehicle projects; and a general prohibition on WFOEs in this sector.

Following the issue of the auto plan, the State Planning Commission (SPC), with two other ministries, issued the "Catalogue Guiding Foreign Investment in Industries" and related "Interim Provisions on Guiding the Direction of Foreign Investment," which establish a list of sectors in which foreign investment will be "encouraged," "restricted," or "prohibited." The Catalogue, which essentially makes public the planning policies that have long been in effect, does not contradict, at least directly, WTO principles.

The industrial plans are drafted by ministries in charge of specific industries, following consultation with local bureaus and companies subsumed under the ministry. The first draft is submitted to the SPC, which revises it and sends it back to the ministry. The SPC then organizes expert groups from other concerned ministries to review the second draft from the industrial ministry. After this stage of revision, the plan goes to the State Council for final authorization. Ministries develop more detailed guidelines to complement the plans but seldom make the guidelines public.

Following negative reaction from abroad to the auto plan, the SPC pledged that future industrial plans will not contain export requirements, localization requirements, or limits on foreign equity. But investors negotiating projects in several sectors frequently encounter the internal guidelines, whose regulatory power is unclear. As a result, some foreign investors see the industrial plans as Trojan horses built to look like a gift to WTO negotiators, but containing hidden, non-compatible restrictions on investment. While provisions of laws and regulations that are incompatible with TRIMs are being deleted, the PRC approval process forces some of these same provisions into foreign investment contracts.

Currently, four new industrial policies—for machinery, electronics, construction, and water resources—are awaiting final approval from the State Council. Currently under consideration at the working level are new industrial policies on individual housing, including the mortgage market; and telecommunications. In general, the plans emphasize the need for R&D, supported by government subsidies and tax incentives, and they enumerate industrial priorities. More detailed, internal guidance plans within industrial ministries tend to have the following characteristics:

- **Equity limits:** Industrial ministries select business sectors or companies that must be reserved for Chinese majority holdings. Examples include 77 "key" enterprises under the Ministry of Machine-Building Industry, electric power plants of 300 MW or more, steel mills, telecommunications projects, automobile tire plants, refrigeration equipment manufacturers, and photosensitive materials producers.

- **Export requirements:** In general, approving ministries require foreign investors to export in direct proportion to their equity stake, unless there are mitigating factors. Thus, if a foreign company takes a 30% equity stake, the joint venture must export 30% of its product. If the technology transferred is of a particularly advanced nature, the company works in an industry urgently needed by China, or if the foreign investors bring other sweeteners to the deal, the rule-of-thumb export requirement can be altered. The export requirements may be enforced through the permit system—import permits and permits to repatriate dividends, among others. Any of these permits can be denied based on a failure to meet the export or localization requirements in the venture's contract.

- **Localization requirements:** A timetable for localizing the components base may not be required, but foreign partners are frequently asked to commit to a localization schedule as a condition of project approval.

- **Industrial combination:** The industrial policies generally attempt to foster the formation of industrial groups by the strongest companies in a given industry. To achieve the formation of groups, the central government pledges "support" to companies with high production volumes, although what this support entails is not always clear.

In order to make the planning and approval process more transparent and create a guide to future dispute resolution, WTO negotiators are asking China to provide written information on its industrial policies, both internal and public.

China has indicated the intent to seek an infant industry exemption for TRIMs violations in the auto policy. Likewise, China has broadly hinted it intends to seek exemptions for any industrial policies introduced prior to the PRC's WTO accession. It is unlikely that China's planning authorities and trade negotiators consider the industrial ministries' internal guidance statements as formal industrial policies—and in violation of TRIMs—as these guidance plans do not necessarily have the force of law.

Infant industry exemptions have been granted only 13 times since the GATT's inception in 1947, and not once in the past 20 years. Without offering any specifics, the European Union has bluntly stated that China's industrial policies must be WTO compatible. Japan has raised specific concerns about China's auto industry policy. Any effort by Beijing to gain a derogation for any of China's priority sectors would require thorough justification and clear timetables, and would likely be subject to intense review and negotiation in the Working Party.

## 8. Intellectual Property Rights:

The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods (TRIPs) requires WTO Members to provide MFN, national treatment, and high levels of intellectual property rights (IPR) protection and enforcement. The protection extends to copyrights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and trade secrets.

The minimum standards of protection build upon existing international conventions negotiated under the World Intellectual Property Organization, including the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, and the Washington Treaty on Intellectual Property in Respect of Integrated Circuits.

Members must implement TRIPs within one year.

☞ *Developing countries must provide national treatment and MFN within one year, but have an additional four years to implement the remaining obligations of the agreement (Article 65.2).*

☞ *Developing countries may delay patent protection of product patents for an additional five years (for a total of nine years) for technologies not currently protected.*

**Comment:** China's IPR legal regime is relatively well advanced and meets most TRIPs requirements, in part due to three negotiated agreements with USTR in 1992, 1995, and 1996 with these notable exceptions:

### a. Deterrence:

One of the fundamental principles of TRIPs is that Member states must provide remedies and penalties that have a deterrent effect vis-à-vis third parties. Because of low fines, protectionism, and the paucity of criminal enforcement actions, China's current system—while adequate in many ways—falls short of the mark regarding deterrent capability.

Drafting of an amendment to the Trademark Law is under way, and a recent draft indicated that maximum fines might be increased tenfold, that is, from the current 50% of "illegal revenues" to 500%. This is a step in the right direction, though stronger deterrents are needed.

Specific measures proposed by American companies and industry groups such as the International Trademark Association in the past include:

- The issuance of new regulations that would impose much higher fines against complete counterfeits (as opposed to imitations) of products. This is necessary because most counterfeiters do not retain records indicating the complete scope of their prior production and sales, thereby making it impossible to calculate accurately "illegal revenues."

- The establishment of minimum fines and more precise standards for the calculation of fines in future legislation. The Chinese government is aware of the gravity of the problems caused by protectionism and local corruption, and the establishment of fixed standards for setting fines would help to eliminate the discretionary power of local officials that leads to such protectionism.

- The allocation of greater resources to criminal enforcement by Chinese prosecutors and criminal courts. TRIPs ostensibly requires the criminal handling of all counterfeiting cases, even where only one unit of infringing items is found. Under internal regulations, Chinese prosecutors are only required to investigate cases where infringing goods valued over $12,500 are found, and prosecutors throughout China acknowledge that only a very small portion of these cases are actually prosecuted.

- Taking steps to facilitate "private prosecutions" under the Criminal Procedure Code. In cases where local prosecutors are too busy or otherwise do not wish to prosecute infringers, private prosecutions can fill the gap. The threat of criminal convictions should, in turn, deter infringements and encourage settlements. Another proposal has called for accelerated reforms under which the public security bureaus (PSBs) would play a more active role in IPR enforcement. It is rumored that the PSBs will begin accepting complaints for criminal raids and detention of IPR infringers in 1997. The investigation and detention powers of existing administrative enforcement bodies are notoriously weak, while the strength of those of the PSBs are legendary.

## b. Access to judicial relief and preliminary injunctions:

TRIPs specifically requires that Members provide adequate access to injunctive relief. The current practices in China, as well as those proposed in draft legislation, fail to meet this standard:

- China's IPR legislation and enforcement systems are unusual in that they provide for enforcement through either judicial or "administrative" channels, including bodies such as the State Administrations for Industry and Commerce (SAIC), its local subordinate bodies, and the technical supervision bureaus. These administrative bodies have the power to impose fines and conduct limited investigations and seizures of infringing products. Although they share some of the powers and qualities of judicial organs, they are significantly weaker.

- China's Trademark Law gives the Trademark Review and Adjudication Board (TRAB), an administrative body under the SAIC, the power of final adjudication over all cases involving oppositions and cancellations of trademark registrations. Thus, if a pirate succeeds in registering another party's mark, the courts have no role in determining whether the registration was proper and should be canceled. Originally this system was devised in recognition of the fact that Chinese courts had little experience and limited abilities in handling complicated trademark issues. Arguably, however, the courts have grown increasingly capable of addressing such matters.

- The retention by the SAIC and the TRAB of the power to adjudicate opposition and cancellation actions has led to great injustices in cases where an infringer has succeeded in obtaining registration of the infringing mark. Chinese courts and other administrative bodies generally are unwilling to intervene in such cases, and the TRAB and Trademark Office generally require one to three years to resolve such cases. During this period, infringers are generally free to continue using their infringing marks.

- The Chinese government reportedly has argued that its existing administrative system provides analogous and functionally adequate IPR protection and, therefore, that the introduction of judicial appeals is unnecessary. This argument is unacceptable, particularly in light of the inability of existing administrative bodies to provide simple and reliable procedures for obtaining preliminary injunctions or other injunctive relief.

## 9. Textiles:

The WTO Agreement on Textiles and Clothing establishes rules for liberalizing trade in textiles and clothing over a ten-year period commencing January 1, 1995, and integrating the Multi Fiber Arrangement (MFA) into the rules of the WTO. Members may impose a "transitional safeguard" against import surges (of a specific product) that may cause serious damage or threat of serious damage to domestic producers.

**Comment:** If China joins the WTO in the near future, it should be included in the liberalizations now being implemented under the MFA. For this reason, the US textile industry is likely to seek to block China's accession and hold it to more restrictive bilateral textile agreements or to seek to include in any new bilateral textile agreement a provision postponing China's participation in the liberalization process and placing China on a delayed liberalization schedule. The current bilateral textile agreement expires December 31, 1996.

## 10. Rules of Origin:

The Agreement on Rules of Origins attempts to unify rules covering MFN, anti-dumping and countervailing duty actions, safeguard measures, and discriminatory restrictions to ensure they are not used to restrict or distort trade flows.

**Comment:** Effective July 1, 1996, the United States unilaterally revised its criteria for determining the country of origin of textile and apparel products. The origin of apparel goods is now based on where the goods are "assembled" rather than where the material is "cut" or where the "last substantial transformation" occurred. The origin of fabrics, home furnishings, and accessories is now where the fabric is knit or woven, regardless of any additional processing, such as printing, dyeing, finishing, cutting, or sewing. China ships a substantial quantity of raw fabrics to many countries around the world, and the fabric is then subject to these additional operations. Unless China's quotas for these products are adjusted upwards, the new rules of origin will drastically reduce China's textile and apparel exports, both globally and to the United States. US officials hope the new rules will reduce the amount of illegally transshipped goods, but a more likely result is that textile and apparel manufacturers will readjust their production patterns to find quota under the revised system.

## 11. Safeguards:

The Agreement on Safeguards establishes ground rules for imposing safeguard measures against import surges that threaten to cause "serious injury" to domestic industry.

☞ *Members cannot apply a safeguard against imports from developing countries if those imports total no more than 3% of total imports of that product, and provided developing countries with less than a 3% import share collectively account for less than 9% of total imports (Article XV.1).*

The maximum time limit for imposing safeguards is four years, with a possible four-year extension to "prevent serious injury."

☞ *For developing countries, the maximum limit for applying safeguards, including extension, is 10 years (Article 9.2).*

The same safeguard cannot be applied again for a period equal to the application period, and no less than two years, unless the application period was 180 days or less (in which case the ban on re-application is reduced to one year).

☞ *Developing countries may reimpose safeguards on the same products for a period of up to one-half the time they were in originally in place, provided the re-imposition is after at least two years (Article 9.2).*

☞ *Flexibility is provided for opening fewer sectors, liberalizing fewer types of transactions, and extending market access in line with the level of development and national policy objectives (Articles V.3 & XIX.2).*

☞ *Developing countries may condition access and use of public telecom networks and services necessary to strengthen domestic telecom infrastructure, service capacity, and to increase participation in international trade in telecom services (Annex on Telecom, Paragraph 5.8).*

**Comment:** The United States and other countries have sought to include in China's protocol a transitional product-specific safeguard mechanism, which would permit Members to regulate import levels of products that threaten "market disruption" or "serious injury." A key point of contention is the injury standard to be used to implement safeguard actions. China is pushing for the tougher injury standard. Similarly, the United States is seeking to include a "general safeguard" under which some or all WTO benefits would be suspended if China is found not to be implementing its commitments in the protocol. Finally, the United States and European Union are pushing for a provision that would make China's adherence to the protocol subject to a periodic review under a special "transitional review mechanism."

The European Union views the general safeguard and transitional review mechanism as key to developing an acceptable protocol, and, as a consequence, is willing to settle for a more flexible and less-comprehensive WTO protocol, provided these fall-back protections are retained in the agreement. China is strongly opposed to any general safeguard or a transitional review mechanism as a condition for WTO membership.

## 12. Services:

The General Agreement on Trade in Services (GATS) extends GATT rules for applying national treatment, market access, and MFN conditions to trade in services and establishes a framework for liberalization. It contains specific annexes on air transport and financial services. The scope of GATS is limited and countries have considerable flexibility in identifying which specific services will be obligated to meet MFN requirements.

To enhance transparency, each country must establish within two years a liaison office to provide information on laws, regulations, and guidelines that affect trade covered by specific commitments.

☞ *Developing countries have some flexibility in meeting the two-year deadline (Article XV.1).*

Subsidies for service industries may have trade-distorting effects so they are subject to negotiations and possible countervailing action.

☞ *Developing countries have some flexibility for subsidies "supporting development objectives" (Article XV.1).*

Countries may identify measures exempt from MFN treatment. For instance, the United States has exempted nine specific services, including land use, financial services, air and road transport, pipeline transport, and space transport. Exemptions must be identified and reviewed by the WTO's Council for Trade in

Services after five years. The Council has no authority to deny MFN derogations, but derogations should be completed within ten years, although this is a soft target and not enforceable.

**Comment:** The United States is seeking from China scheduled commitments to extend national treatment and market access to a host of service sectors. The highest priorities from the US perspective include financial, telecommunications, distribution (including wholesale and retail), audiovisual, maintenance and repair (including after-sales service), travel, and tourism services. In the financial services sector, the United States is seeking scheduled commitments from China to permit foreign banks to conduct local and foreign currency business for FIEs and domestic enterprises; securities business including underwriting and asset management; and A and B share trading on their own and customers' accounts. Further, the United States is seeking scheduled commitments to permit foreign companies to participate in the insurance and reinsurance businesses, through wholly foreign-owned companies, branches, mutual companies, and joint ventures.

## 13. Balance of Payments:

Under the GATT and WTO, countries may restrict imports to safeguard their balance of payments (BOP). The Understanding on the Balance-of-Payments Provisions clarifies the rights and procedures for countries to use BOP safeguards. Price-based import restrictions should be favored over quantitative restrictions as these are the least trade-disruptive. The Understanding also includes provisions for consulting with and notifying the WTO BOP Committee regarding all BOP safeguard measures. Further, countries invoking BOP safeguards must specify the products covered, the trade flows affected, justification for the criteria used to determine which product(s) will be subject to the safeguard, and a timetable for eliminating the measures.

☞ *Developing countries may hold "simplified consultation procedures" if pursuing liberalization efforts previously submitted to the Committee. No more than two successive consultations may be held (Paragraph 8).*

Significant changes in import measures taken for BOP reasons must be reported to the Secretariat within 30 days of announcement, and an annual report must be filed with the Secretariat regarding all changes in laws and regulations.

**Comment:** China has enjoyed BOP surpluses in recent years, buoyed by a combination of merchandise trade surpluses and strong net capital in-flows. As of November 1996, China's foreign exchange reserves totaled $98 billion and are expected to surpass $100 billion by the end of the year. However, as China's trade regime is liberalized, the BOP situation may deteriorate. For this reason, China will likely seek to retain recourse to BOP safeguard provisions. USTR wants China to specify that BOP safeguards will be applied to address "critical" BOP situations, and that these measures will be price-based (tariffs), scheduled to decline over time, and will not be used to protect a particular sector or industry.

## 14. Anti-Dumping:

The Agreement on Implementation of Article VI of GATT '94 provides rules for calculating dumping margins and conducting investigations to protect the interests of exporters against protectionist measures.

☞ *The special provisions for developing countries are focused on developed country actions. Members are urged to provide "special regard" to the "special situation" of developing countries when applying anti-dumping measures, and to explore constructive remedies before applying anti-dumping duties which affect "essential interests" of developing countries (Article 15).*

**Comment:** The chief area of dispute between the United States and China involves the methodology and procedures used in investigating anti-dumping actions against Chinese companies. China maintains it is no longer a "non-market economy" and believes each dumping case should be prosecuted on an enterprise-by-enterprise basis. Further, China insists the United States should cease using surrogate countries to estimate the costs of production.

## 15. Customs Valuation:

The WTO Agreement on Implementation of Article VII attempts to unify procedures for Customs valuation by laying out, in hierarchical order, the five methods for determining the Customs value of imported goods:

1. Transaction value of the good itself;
2. Transaction value of identical goods;
3. Transaction value of similar goods;
4. Deductive method; and
5. Computed method.

☞ *In a developing country, the importer may request to reverse the order of #4 and #5, but the request may be refused (Annex III.3).*

☞ *Developing countries not signatory to the Tokyo Round Agreement are granted a five-year grace period for general provisions (and may request an additional extension), and an additional three years for provisions relating to the computed value methodology (Article 20.1-2).*

Upon the request of the importer, countries reserve the right to value imports on the basis of unit price of post-import sale if goods undergo further processing in the country of import.

☞ *Developing countries may reserve the right to value imported goods on the basis of unit price of post-importation sale if goods undergo further processing in the country of importation without the request of the importer (Annex III.4).*

☞ *Developing countries may request to retain the right to value goods on the basis of officially established minimum values, if they are already using this basis (Annex III.2).*

**Comment:** China is pressing for the phase-in period provided to developing countries. The United States is pushing for immediate implementation of the agreement and, for now, has asked China to justify the request for a transition period. China further maintains a system of Customs value verification to combat rampant fraud and tariff duty evasion. The United States has raised concerns that the verification system could be used to control or limit imports.

## 16. Subsidies:

The WTO Agreement on Subsidies and Countervailing Measures strengthens GATT rules and expands the scope of prohibited subsidies. The Agreement is constructed to ensure that "specific" subsidies do not harm the interests of Members, and that countervailing measures do not unjustifiably impede trade; and to offer guidelines for providing relief to producers who are adversely affected by subsidies.

Subsidies are classified in three color categories:

- Red (prohibited): contingent on export performance, currency retention, or domestic content.

- Green (not subject to countervailing duties): not specific, or specific subsidies which are granted for basic or applied research, to disadvantaged regions, or to provide environmental assistance.

- Yellow (permitted, but may be subject to countervailing duties if there are trade effects): all other subsidies.

☞ *Developing countries have eight years to comply with the prohibition on subsidies contingent upon export performance (Article 27.2), and are exempt if designated a "least-developed country" by the United Nations or if per capita GNP is less than $1,000 per year and they are listed in Annex VII to the Agreement.*

☞ *Developing countries may continue to give agricultural subsidies for five years (Article 27.3).*

☞ *Developing countries must not increase the level of export subsidies, and must phase out these subsidies within a shorter period if the subsidy is inconsistent with development needs (Article 27.4).*

☞ *Developing countries must phase out within two years export subsidies for any product which has reached export competitiveness (Article 27.5), but have eight years if the country qualifies under the Annex VII provisions for least-developed countries.*

**Comment:** The Agreement recognizes that subsidies may play an important role in economic development programs for developing countries or economies in transition, and provides substantial phase-in periods for their removal. Nevertheless, subsidies are a contentious issue in general, and are likely to be particularly contentious with regard to China's protocol of accession. The Agreement defines a subsidy as a financial contribution or government income support that confers a benefit. Financial contributions may take the form of direct transfers of funds (grants, loans, equity infusions, and loan guarantees); fiscal incentives such as tax incentives; government provision of goods and services or government purchases; or private agents acting on the behalf of the government to provide any of these actions. However, the Agreement only applies to "specific subsidies": subsidies which apply to specific industries or sectors (and not geographical targets).

Beijing maintains that there are no subsidies in China, and that all financing of State-owned enterprises is now channeled through the banking system. But incomplete banking reforms have left the credit allocation system subject to substantial influence from the State and Party authorities at the local and provincial levels.

Elements contained in China's industrial policies, guidelines for foreign investment, and credit allocation programs appear to provide further subsidies in violation of this Agreement. For instance, the industrial policy for the auto industry provides targeted industries with preferential access to goods and services, further selects specific enterprises for favorable treatment, and offers debt forgiveness for loss-making enterprises. Perhaps more problematic is the entire banking and credit allocation system, which continues to be heavily influenced by the Party and State.

## 17. Government Procurement:

One of four non-binding plurilateral agreements in the WTO, the Agreement on Government Procurement lays out general rules and obligations to ensure non-discrimination and open competition for government contracts in goods and services. To date, nine Members (including the European Union as one signatory) have signed on to the Agreement. Annexes list named government entities that are subject to the Agreement, including central and local governments, public utilities, etc.

**Comment:** Because so much of commercial activity in China is conducted by governmental organizations, the United States, European Union, and other members of the Working Party have pressed China to join this Agreement. China has agreed to study the Agreement and consider joining at a later date.

## 18. Civil Aviation:

The plurilateral "Agreement on Trade in Civil Aircraft" provides internationally recognized disciplines on aircraft trade. Central to the agreement is the commitment by the signatories to bind tariffs on aircraft and aircraft components at a zero-duty rate. Among the agreement's other provisions are guidelines for government-mandated offset programs.

**Comment:** The United States, with the support of the US aircraft industry, has taken the position that all aircraft-producing countries that accede to the WTO must accept the obligations of this agreement. China is looking to develop an indigenous aircraft industry. It has signed a memorandum of understanding with a number of European aircraft manufacturers to co-produce a 100-passenger aircraft, and is working with virtually every US aircraft and engine manufacturer to develop civil aircraft components or parts. The European Union appears to support the US effort to press China to join this plurilateral agreement. To date, China has been reluctant to agree to this or any of the other "voluntary" plurilateral agreements.

# CONCLUSION

The WTO negotiations by nature are messy, complex operations which often entail substantial give and take among major trading partners. The size and transitional nature of China's existing economy and trade regime make this an even more difficult assignment. Nevertheless, it is a task worth undertaking as important benefits will accrue to the United States, China, and the WTO itself, if acceptable terms can be worked out for China to accede to the World Trade Organization.

The purpose of this report is not to generate a detailed laundry list of what needs to be addressed in China's protocol of accession, but rather to provide the business community with a reference guide that marries an understanding of the WTO with an understanding of how business and trade are actually conducted in China today. This reference can and should be used for companies to determine their own priority concerns in the WTO negotiations. We hope it proves useful in this task.

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| 001. paper | Trading Rights. (2 pages) | c. 1996 | P1/b(1) |

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WORKING PARTY ON CHINA'S STATUS \S A CONTRACTING PARTY

20 December 1994

## SUMMING UP BY THE CHAIRMAN

### Nineteenth Meeting

I would like to inform the Working Party that during the course of the last three weeks I have held intensive consultations with a number of delegations on the terms and conditions of China's status as a contracting party and of China's membership in the WTO. These consultations have taken place on the basis of a chairman's draft of a "Draft Protocol on China" and a "Draft Outline of the Report of the Working Party". For practical reasons, the Draft Protocol has been elaborated along the lines of a WTO protocol, without prejudice to the ultimate decision to be taken on whether this should be a GATT or a WTO protocol.

The consultations and negotiations of the past few days have permitted us to make what I consider to be very substantive progress. I think it fair to say that all delegations have manifested a clear desire to reach a balanced substantive agreement at the earliest possible date.

On the basis of these discussions, I am in a position to report to you on the following results to date:

(1) we have today a framework for a Draft Protocol on China and for an outline of a Report which to my understanding is accepted by all delegations that participated in the informal consultations;

(2) we have reached substantive agreement on a number of provisions, subject to legal and technical cleaning up. These areas of agreement cover in particular administration of the trade regime (uniform administration, special economic areas, transparency), special trade arrangements, state trading, import and export licensing, foreign exchange controls, price controls, taxes and charges levied on imports and exports, agriculture, and reservations by WTO Members. A number of other specific points in particular paragraphs have also been the

subject of substantive agreement although the sections themselves require further negotiation.

(3) points of central importance remain open, but I am encouraged that, based on the experience of the last several days, we can make progress on these points in a further round of consultations and negotiations.

With this in mind, it is my intention to hold another round of intensive consultations early in the new year, to be followed by a meeting of the Working Party in the course of the month of February.

In concluding, I would like to recall that, as I noted at the outset of this latest round, progress in the multilateral negotiation of a Draft Protocol on China is inextricably linked to progress in bilateral negotiations on market access, and vice-versa. There is thus a dual track of priority tasks for China and members of the Working Party as we enter the final stage of these negotiations. We must not lose sight of this critical interlinkage. And I hope we can all come back to Geneva in the New Year with renewed vigour and renewed commitment to bring the negotiations successfully to a close.

I would like to thank all delegations for their dedication and hard work which have allowed us to move that much closer to the completion of our mandate. We could all benefit from a little time to reflect. And I am sure we all deserve a little time for rest and recuperation. I take this opportunity to wish each and every one of you a happy and peaceful holiday season.

**WORKING PARTY ON CHINA'S STATUS AS A CONTRACTING PARTY**

**20 December 1994**

**To: Members of the Working Party and China**

I would like to make a number of points regarding the two papers attached to this cover note.

First, with respect to the Draft Protocol on China:

* For practical reasons this paper has been drafted in the form of a WTO Protocol. However, such drafting is without prejudice to the ultimate decision to be taken on whether this should be a GATT or a WTO protocol.

* Those provisions on which there is substantive agreement are reproduced in bold type. Those which have not yet been fully discussed or on which there is not yet agreement appear in normal type and in brackets.

* There has been discussion on some of the annexes but all of them will require further work.

* In line with Article II:2 of the WTO Agreement, reference in the Draft Protocol to the WTO Agreement incorporates reference to the Multilateral Trade Agreements in Annexes 1, 2 and 3 of the WTO Agreement as an integral part of that Agreement.

Second, with respect to the Draft Outline of the Report of the Working Party on China:

* Only those provisions which are preceded by a "xx" paragraph number have so far been the subject of discussion. These paragraphs, to the extent agreed, are intended as cross-referenced commitments that would form an integral part of the commitments in the Draft Protocol.

* Those "xx" paragraphs on which there is substantive agreement are reproduced in bold type; those which have not yet been fully discussed or on which there is not yet agreement appear in normal type and in brackets.

* Those items which are indented and in italics are first indications of possible points for inclusion in the Report. These will of course require further drafting.

P.L. Girard.

Pierre-Louis Girard
Chairman

20 December 1994

# DRAFT PROTOCOL ON CHINA

## Preamble

[The World Trade Organization (hereinafter referred to as the "WTO") and the People's Republic of China (hereinafter referred to as "China"),

Recalling that China was an original contracting party to the General Agreement on Tariffs and Trade (hereinafter referred to as the "GATT 1947"),

Taking note that China is a signatory to the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and has accepted the results of the Uruguay Round negotiations.

Considering that China is in a process of transition to a market-oriented economy,

Considering further that many features of China's economy are at present those of a developing country economy,

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

Agree as follows:]

## Part I - General Provisions

### 1. General

**1. China shall accede to the WTO pursuant to Article XII of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement") as of the date of entry into force of this Protocol pursuant to paragraph __.**

**2. The terms and conditions governing China's membership in the WTO shall be those as set out in this Protocol, including those in paragraph __ of the Report of the Working Party on China (document ______, dated ____________) (hereinafter jointly referred to as the "Protocol") and in the WTO Agreement.**

**3. Unless otherwise specifically provided in the Protocol, commitments shall be effective as of the date of entry into force of this Protocol.**

### 2. Administration of the Trade Regime

#### (A) Uniform Administration

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

**2. China shall ensure that the provisions of the WTO Agreement and this Protocol are applied uniformly throughout its entire customs territory, including at the sub-national level.**

**3. China shall administer in a uniform, impartial and reasonable manner all its laws, regulations, rules, decrees, directives, administrative guidance, policies and other measures (hereinafter referred to as "laws, regulations and other measures") pertaining to or affecting trade in goods, services, trade-related aspects of intellectual property rights (hereinafter referred to as "TRIPS") or the control of foreign exchange.**

**4. China's laws, regulations and other measures of government entities at the sub-national level shall conform to the obligations undertaken in this Protocol and the WTO Agreement.**

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

(B) Special Economic Areas

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

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

[3. In providing preferential arrangements for enterprises within such special economic areas, non-discrimination principles, and in particular national treatment, shall be fully observed.]

(C) **Transparency**

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

**2. China shall establish or designate an official journal dedicated to the publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange**[, and, after publication in such journal, shall provide a period for comment to the appropriate authorities before such measures are implemented]. **China shall publish this journal on a regular basis and make copies of all issues of this journal readily available to individuals and enterprises.**

**3. China shall establish or designate an enquiry point where, upon request of any individual or enterprise, all information relating to the measures required to be published under paragraph __ of this Protocol may be obtained. Replies to enquiries for information shall generally be provided within __ days after receipt of a request. In exceptional cases, replies may be provided within __ days after receipt of a request. Notice of the delay and the reasons therefor shall be provided in writing to the interested party. Replies shall be complete and shall represent the authoritative view of the Chinese government.**

4. **~~China shall provide~~ the WTO with the statistical data and information describing China's economy and trading system specified in Annex __ of this Protocol not less than once every two years, and thirty calendar days prior to a meeting of the Working Party provided for in paragraph __ of this Protocol.**

[(D) **Judicial Review**

1. **China shall establish or designate, and maintain, tribunals, contact points, and procedures for the prompt review of all disputes relating to the implementation of laws, regulations, judicial decisions and administrative rulings of general application** [referred to in Article X:1 of the GATT 1994, including those measures subject to review referred to in paragraphs ____ below. Notwithstanding Article X:3(c) of the GATT 1994, the tribunals shall be independent of the agencies entrusted with administrative enforcement of provisions contained in the WTO Agreement].

2. Measures subject to review shall include customs classification, charges, and valuation; taxes and tariffs applied to imports and exports; the availability and distribution of import and export licenses, permits or quotas; application of measures for safeguard or balance-of-payments purposes or to protect against unfair trade[; ~~and~~ other measures applied to protect the domestic market].

[3. Measures subject to review shall also include measures pertaining to or affecting the TRIPS Agreement and the General Agreement on Trade in Services (hereinafter referred to as "GATS"), including any measure affecting in any way the regulation, control or promotion of transportation services, insurance and insurance-related services, banking and other financial services, telecommunications services, distribution services, entertainment services, information processing services, construction and maintenance services, professional services, and retail sales services.]

4. Review procedures shall include the opportunity for appeal, without penalty, by individuals or enterprises affected by any measure subject to review. If the initial right of appeal is to an administrative body, there shall in all cases be the opportunity for appeal of the decision to a judicial body. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any right to further appeal.]

[3. **Nondiscrimination**

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

(a) **the procurement of inputs and goods** [and services] **necessary for production and the conditions under which their goods** [and services] **are produced, marketed or sold, throughout China** [and abroad]; **and**

(b) **the prices and availability of goods and services supplied by national and sub-national authorities in areas including transportation, energy, basic telecommunications, other utilities and factors of production.**]

4. ____Special Trade Arrangements[1]

1. **China shall notify and, by the end of 1995, eliminate or bring into conformity with the WTO Agreement all special trade arrangements, including barter trade arrangements, with third countries and separate customs territories.**

[5. **Trading Rights of Enterprises**

1. China shall not grant special or exclusive trading rights to enterprises other than to the designated enterprises for the goods specified in Annex __. China shall progressively phase out the goods affected, and shall ensure that by [x date], no more than __ goods shall be subject to trading or distribution by designated enterprises.

2. China shall progressively liberalize the trading rights of Chinese foreign trade corporations in such a way that, from [x date], all such entities shall be free to trade in all goods [and services] throughout the customs territory of China, except for those goods and services specified in Annex __.

3. China shall not limit trading rights of any individual or enterprise except for public policy purposes other than to restrict trade. Any limitation on trading rights shall be in accordance with objective and generally applicable criteria, shall be applied in a uniform manner and shall be published prior to its application.

4. Except as otherwise provided in this Protocol, foreign individuals and enterprises and foreign-funded enterprises shall be accorded treatment no less favourable than that accorded to other individuals and enterprises in respect of the allocation of trading rights.]

6. **State Trading**

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

2. **In accordance with the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, China shall provide full information on the pricing mechanisms of its state trading enterprises for exported goods, including domestic procurement prices, contract terms for delivery and financing terms and conditions.**

[7. **Non-Tariff Measures**

1. In implementing the provisions of Articles III and XI of the GATT 1994 and the Agreement on Agriculture, China shall eliminate and shall not introduce, re-introduce or apply non-tariff measures that cannot be justified under the provisions of the WTO Agreement, and shall implement the schedule for phased elimination of the measures contained in Annex __.

2. During the periods specified in Annex __, the protection afforded by the measures listed in that Annex shall not be increased or expanded in size, scope, or duration, nor will any new measures

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[1]Agreement on the coverage of this section is subject to satisfactory resolution of certain access issues.

be applied, unless in conformity with the provisions of the WTO Agreement. For non-tariff-measures that are applied after the date of entry into force of this Protocol consistent with specific obligations in the WTO Agreement or this Protocol, China shall allocate and otherwise administer such measures in strict conformity with the provisions of the GATT 1994, including Article XIII thereof, and the Agreement on Import Licensing Procedures, including notification requirements.

3. China shall ensure that the distribution of import licenses, quotas, tariff-rate quotas, or any other means of approval for importation or the right of importation by national and sub-national authorities shall not be conditioned on whether competing domestic suppliers of such products exist or on performance requirements of any kind, including local content or mixing requirements, the transfer of technology, the conduct of research and development, minimum export requirements, or on the nationality or nature of the enterprise.

4. Import and export prohibitions and restrictions, and licensing requirements affecting imports and exports shall only be imposed and enforced by the national authorities or by sub-national authorities with authorization from the national authorities. Such measures which are not imposed by the national authorities or by sub-national authorities with authorization from the national authorities, shall not be implemented or enforced.

5. China shall eliminate all special taxes and other charges on imports of goods and services which are related to the conditions under which export credit is granted.]

**8. Import and Export Licensing**

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

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

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

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

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

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

**- any changes to the list of goods and technologies whose import and export are restricted or prohibited;**

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

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

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

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

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

## 9. Foreign Exchange Controls

1. China shall not use foreign exchange controls or restrictions to regulate the level or composition of trade in good or services. China shall, by [x date], establish a unified foreign exchange market, remove all restrictions on access to this market and eliminate guidelines specifying the priority uses of foreign exchange.

2. China shall, by [x date], bring its foreign exchange regime into conformity with obligations under Article VIII of the IMF. Individual requests for foreign exchange for current account transactions shall not be subject to any form of approval, and the issuance of a letter of credit or a bank guarantee upon presentation of an invoice shall not be subject to any form of governmental restriction.

3. China shall not resort to laws, regulations or other measures, including requirements with respect to contractual terms, which have as their object or effect to influence foreign exchange earnings or expenditures.

## 10. Price Controls

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

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

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

[11. **Subsidies**

1. China shall notify the WTO of any subsidy within the meaning of Article 1 of the Agreement on Subsidies and Countervailing Measures (hereinafter referred to as the "SCM Agreement"), granted or maintained in its territory, organized by specific product, including those defined in Article 3 of the SCM Agreement. The information provided should be as specific as possible, following the requirements of the questionnaire on subsidies as noted in Article 25 of the SCM Agreement. [In addition to all information required pursuant to Article 25, China's notifications shall include the matters identified in Annex __.]

2. China shall phase out all subsidy programmes falling within the scope of Article 3 of the SCM Agreement and listed in Annex __ in accordance with the timetable contained therein.]

[12. **Balance of Payments Measures**

1. Notwithstanding the provision of Articles XII and XVIII(B) of the GATT 1994 and of the Understanding on Balance-of-Payments Provisions of the GATT 1994, China confirms that, should a critical balance-of-payments situation develop:

(a) measures taken for balance-of-payments purposes shall be understood to be temporary import surcharges, import deposit requirements or other equivalent price-based trade measures;

(b) such measures shall be notified to the General Council prior to or not later than at the time of their announcement together with a time schedule for their progressive removal and a programme of external and domestic policy measures to restore balance-of-payments equilibrium;

(c) such measures shall not provide import protection for specific sectors, industries or products.

2. No later than ... calendar days after the date of notification, the Balance-of-Payments Committee shall be convened to review China's action, including the programme of external and domestic policy measures to restore balance-of-payments equilibrium.

3. In derogation of paragraph 1(c) above and further to paragraph 4 of the Understanding on Balance-of-Payments Provisions of the GATT 1994, the Balance-of-Payments Committee may authorize China, in the case of certain "essential products", as defined in paragraph 4 of said Understanding, to exclude or limit the application across the board of surcharges, import deposit requirements or other equivalent price-based measures.

4. The Balance-of-Payments Committee shall review the operation of all measures taken under these provisions annually for the duration of their application, or when requested to do so by China or a WTO Member.]

**13. Taxes and Charges Levied on Imports and Exports**

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

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

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

4. **Foreign individuals and enterprises and foreign-funded enterprises shall, by [x date], be accorded treatment no less favourable than that accorded to other individuals and enterprises in respect of the provision of border tax adjustments.**

**14. Agriculture**

**China shall, as part of its notifications and related commitments on domestic support under the SCM Agreement, include fiscal and other transfers between or among government-owned enterprises in the agricultural sector (whether national or sub-national) and other enterprises that operate as state-trading enterprises in the agricultural sector. Such transfers which are export subsidies within the meaning of Article 9 of the Agreement on Agriculture shall be included in notification and related commitments under that Agreement.**

**[15. Standards and Technical Regulations**

1. **The list of** [import] **products subject to statutory inspection in China, together with the applicable technical regulations and standards, the objectives which they fulfil and their necessity to fulfil those objectives, are specified in Annex __ of this Protocol.**

[2. China's standards, technical regulations and conformity assessment procedures shall be based on relevant international standards, where they exist, except where use of different standards, technical regulations and conformity assessment procedures are justified to the TBT Committee pursuant to Article 2.4 of the TBT Agreement as necessary to fulfil: the legitimate objectives of national security; prevention of deceptive practices; or protection of human health or safety, animal or plant life or health, or the environment. Any such standards, technical regulations and conformity assessment procedures shall be administered so as not to create unnecessary barriers to trade. Government inspection agencies shall not apply to imported products compulsory standards which relate solely to fulfilling unspecified criteria of quality, quantity or weight, nor apply statutory inspection to products by reason of the volume of such imports.]

3. **China shall publish in the official journal complete commodity inspection criteria, whether formal or informal.**

[4. Government-mandated inspection agencies shall not inspect imported products for compliance with the terms of commercial contracts.]

5. **China may inspect imported products and/or require conformity assessment only upon justification that third-party testing or certification is not able to fulfil the legitimate objectives listed in the TBT Agreement.** [Pending the conclusion of a Mutual Recognition Agreement with the

WTO Member concerned. China shall not require inspection or retesting in respect of any product which has been tested or certified to meet relevant international standards by a widely recognized conformity assessment body.]

[6. China shall not maintain requirements which have the effect of acting as barriers to the operation of foreign and joint-venture commodity inspection agencies.]

7. **In implementing the TBT Agreement, China shall submit its Statement on Implementation and Administration of the Agreement (Article 15.2 of the TBT Agreement) in line with the relevant Decisions adopted by the Committee on Technical Barriers to Trade of the Tokyo Round Agreement on Technical Barriers to Trade (TBT/16/Rev.7).**

8. **Further to China's application of the provisions of the GATT 1994 and the TBT Agreement 1994, China shall**[, by [x date],] **eliminate the two-tiered system used for imports and domestic production, and otherwise consolidate the standards, technical regulations and conformity assessment procedures (e.g. testing, inspection, certification, quality system registration, laboratory accreditation) to ensure that the same measures applied to domestic production are applied to imports and in the same way.**]

[16. **Sanitary and Phytosanitary Measures**

**China shall notify to the WTO all laws regulations and other measures relating to its sanitary and phytosanitary measures, including product coverage and relevant international standards, guidelines and recommendations, within [x] days of the entry into force of this Protocol.**]

**17. Reservations by WTO Members**

**All prohibitions and quantitative restrictions maintained by WTO Members against imports from China in a manner inconsistent with the WTO Agreement are listed in Annex __ at the HS 8-digit level. All such prohibitions and quantitative restrictions shall be phased out in accordance with a mutually agreed timetable as specified in said Annex.**

[18. **Transitional Review Mechanism**

**1. Within two years from the date of entry into force of this Protocol and in alternate years thereafter, or at any other time at the specific request of China or another WTO Member, a Working Party shall be convened to review the implementation of the provisions of this Protocol and the WTO Agreement within the overall framework of China's progress in the reform of its economic and trade regime. Consultations undertaken in this Working Party between China and other WTO Members do not preclude bilateral consultations on the same or different issues. The Working Party shall have reference to the outline contained in Annex __ to this Protocol, and may make recommendations, as appropriate, to China or to the other WTO Members concerned.**

**2. At each such meeting, the Working Party shall consider, in light of its review of the implementation of the provisions of this Protocol and the WTO Agreement within the overall framework of China's progress in the reform of its economic and trade regime, whether and to what extent the transitional provisions provided for in paragraphs _______ of this Protocol should no longer apply.** [At such time as it is determined that none of these transitional provisions should continue to apply, the transitional safeguard and review provisions of this Protocol shall be terminated.]]

## [19. Transitional Safeguards Mechanism

### (A) Product-Specific Safeguard

1. If any product of Chinese origin is being imported into the territory of any WTO Member in such increased quantities or under such conditions (which may include conditions with respect to the level of prices) as to cause or threaten [market disruption] [serious injury] to domestic producers of like or directly competitive products, the WTO Member so affected may request consultations with China with a view to seeking a mutually satisfactory solution. Any such request shall be notified to the WTO.

2. If, in the course of these bilateral consultations, it is agreed that imports of Chinese origin are such a cause and that action is necessary, China shall take such action as shall prevent or remedy the [market disruption] [serious injury], and the WTO shall be notified thereof.

3. If consultations do not lead to an agreement between China and the WTO Member concerned within a reasonable period of time, the WTO Member affected shall be free, in respect of such products, to withdraw concessions or otherwise to limit imports to the extent necessary to prevent or remedy such [market disruption] [serious injury].

4. Under exceptional circumstances, where delay would result in damage to the domestic industry difficult to repair, the WTO Member so affected may take preventive or remedial action provisionally. In this case, notification of the measures taken to the WTO and a request for bilateral consultations shall be effected immediately thereafter.

5. If a WTO Member considers that an action taken under paragraph 2, 3 or 4 causes or threatens to cause [serious injury as the result of][significant] diversions of trade into its market, it may request consultations with China and/or the WTO Member concerned. Such consultations shall be held within __ days after the request is notified to the WTO Committee on Safeguards. If such consultations fail to lead to an agreement between China and the WTO Member or Members concerned, the requesting WTO Member shall be free, in respect of such product, to withdraw concessions or otherwise limit imports to the extent necessary to prevent or remedy such diversions. Such action shall be notified to the WTO Committee on Safeguards.

6. In cases where safeguard action is taken pursuant to this section, China may suspend the application of substantially equivalent concessions or other obligations to the trade of the WTO Member applying the safeguard measure.

### (B) General Safeguard

A WTO Member may request China or China may request another WTO Member to enter into consultations concerning developments in their trade in goods and services and the implementation of this Protocol. Any such request shall be notified to the WTO. Should such consultation not lead to a result satisfactory to the WTO Member or to China, either may suspend the application of concessions or other obligations under this Protocol or the WTO Agreement as it considers necessary and shall immediately notify the WTO of any such action. At the request of any WTO Member having an interest in the subject of the consultation or a subsequent suspension of concessions or obligations, the WTO General Council shall consult with China or the other WTO Member. Should such consultations not lead to an agreement between China and the other WTO Member, and should China or the other WTO Member continue to take action under this paragraph, China or the other WTO Member shall be free, while such action is taken, to suspend to an equivalent extent concessions or other obligations under this Protocol or the WTO Agreement as it may consider necessary.]

**[Price Comparability in Determining Subsidies and Dumping**

It is recognized that, in the case of imports of Chinese origin into a WTO Member, special difficulties may exist in determining price comparability for the purposes of paragraph 1 of Article VI of the GATT 1994. In such cases, the importing WTO Member may find it necessary to take into account the possibility that a strict comparison with domestic prices in China may not always be appropriate.]

## Part II - Schedules

1. The Schedules in Annexes ________ shall, upon the entry into force of this Protocol, become the Schedules of Concessions and Commitments to the GATT 1994 and the Schedule of Specific Commitments to the GATS relating to China, as foreseen in the WTO Agreement.

## Part III - Final Provisions

1. This Protocol shall be deposited with the Director-General of the WTO. It shall be open for acceptance, by signature or otherwise, by China until ________________.

2. This Protocol shall enter into force on the thirtieth day following the day upon which it shall have been accepted by China.

3. The Director-General shall promptly furnish a certified copy of this Protocol and a notification of China's acceptance thereof, pursuant to paragraph ___, to each WTO Member and to China.

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

Done at Geneva this xx day of (month) one thousand nine hundred and xxxxx, in a single copy, in the English, French and Spanish languages, except as otherwise specified with respect to the Schedule annexed hereto, each text being authentic.

**Annex___: List of trade and economic information to be provided to WTO Members**

I. Trade Data

a. Import and export statistics, by value and volume, by supplier country and importing region, at the HS 8-digit level;

b. Balance-of-payments data, which would include:

i. current account data
(1) on goods, for exports and imports
(2) on services, for exports and imports
(3) on investment, for income and payments
(4) on transfers, for inflows and outflows

ii. capital account data (long term and short term) for
(1) foreign direct investment
(2) portfolio flows
(3) other capital account transactions

iii. gold and official foreign exchange reserves [and foreign exchange reserves held by state-owned banks] data

iv. foreign [public and private] debt data;

c. Value of tariff revenues, non-tariff taxes, other border charges levied exclusively on imports, by relevant tariff line, [at the HS 8-digit level where possible];

d. [Value of commissions or other fees charged by foreign trade corporations, including state trading enterprises, levied exclusively on imports, by relevant tariff line, at the HS 8-digit level where possible];

e. [The shares of imports and exports accounted for by the trading activities of foreign trade corporations, of joint-ventures and foreign-invested enterprises, of state production enterprises, and of other companies, firms, enterprises and trading entities].

II. Economic Data

a. Basic data on the domestic economy, including gross domestic product, per capita GDP (also by province and major municipality), fixed investment, industrial and agricultural output, [consolidated government budget including revenues and expenditures], domestic debt outstanding, money supply [(M0, M1,M2)] and interest rates, and prices and inflation rates;

b. [Prices of major factor inputs (e.g., wages, energy, rent, capital costs, raw materials), for traded goods;]

c. Mandatory and guidance prices still in effect: the products, by HS-tariff line, [the services, by CPC number,] to which they are applied; and the criteria used for the selection of products [and services] and determinations of the price established;

d. [Information on the profits and losses accruing to the fifty foreign trade corporations with the largest volume of trade from their international trade operations];

e. Annual mandatory and guidance economic plans and similar information in the five-year plans;

f. Exchange rate information and operation of foreign exchange market in China.

III. Market Access Information

a. Most recent updated tariff rates for each tariff line [with appropriate ad valorem equivalent] applied to China's imports and exports;

b. Any criteria applied regarding access to trading rights, timetables for removal of any restrictions thereto, and the list of entities with rights to import and to export, presented by business category;

c. Any foreign exchange controls, criteria governing access to foreign exchange, justification for restrictions on access and timetables for their removal;

d. Updated lists of import and export products remaining under licensing restrictions, quotas, prohibitions, or other quantitative restriction, whether or not listed in Annex __ of this Protocol, the value and/or volumes covered, and the criteria applied for distribution of the licenses or quotas;

e. Import and export plans of whatever character of the central government and, if any, of provincial governments, and similar information in the five-year plans;

f. [Other information required by this Protocol].

IV. Economic Reforms

China shall report on any new price, [trade management], or other related economic reforms and developments since the last meeting of the Working Party provided for in paragraph __ of this Protocol with specific attention to be given to changes in the following areas:

a. Import and export quantitative restrictions;

b. Foreign exchange reform, restrictions on the supply of and demand for foreign exchange; and developments in the swap centres;

c. Traded goods affected by price controls and changes in how the controls are implemented;

d. [Trading rights of enterprises and products by designated enterprises;]

e. [Other information required by this Protocol.]

**Annex __: Products and Services subject to State Trading**

**Annex __: Non-Tariff Measures subject to Phased Elimination**

The following measures shall be subject to phased elimination as set forth in the accompanying schedule: *[This list would include restrictive licensing requirements, quotas, import prohibitions and other controls, mandatory import plans, tendering requirements, import substitution and export performance requirements, foreign exchange balancing requirements, and other measures which may have a trade restrictive effect.]*

**Annex __: Products and Services subject to Price Controls**

**Annex __: Notification and Phase-out of Subsidies**

**Annex __: Export Taxes and Charges**

**Annex __: Products subject to Statutory Inspection**

**Annex __: Restrictions maintained against China**

**Annex __: Outline of issues to be addressed in periodic consultations of the Working Party on Trade with China**

I. Development of China's trade with WTO Members and other trading partners, including volume direction, and composition of trade.

II. Progress in China's market-oriented economic reforms, including implementation of price, [trade management], and other economic reforms.

III. Implementation of the terms of China's Protocol and the WTO Agreement.

IV. Actions taken under the provisions of paragraph ___ of this Protocol.

V. Other measures taken and developments affecting trade between China and other WTO Members:

a. measures listed in Annex ___, China's compliance with the scheduled eliminations; the scope, nature, and justification for non-scheduled measures in place; and compliance with the provisions of the WTO Agreement on the administration of such measures still in place, e.g. with reference to Article XIII of the GATT 1994 and the Agreement on Import Licensing Procedures;

b. measures taken by China in a critical balance-of-payments situation;

c. measures relating to China's special economic areas;

d. other transitional arrangements provided for in this Protocol.

VI. China's imports and exports and other data provided by China, as listed in Annex ___.

**Annex __: Schedules of Concessions and Commitments to the GATT 1994**

**Annex __: Schedules of Specific Commitments to the GATS**

20 December 1994

DRAFT OUTLINE

## REPORT OF THE WORKING PARTY ON CHINA

1. At its meeting on 4 March 1987, the Council established a Working Party to examine the request of the Government of the People's Republic of China (hereinafter referred to as "China") (L/6017, submitted on 10 July 1986) for resumption of its status as a GATT contracting party, and to submit to the Council recommendations including a draft Protocol on the Status of China.

2. The Chinese authorities, while recalling that China had become an original GATT contracting party by accepting the Protocol of Provisional Application on 30 October 1947, declared that China was willing to negotiate new terms and conditions for the resumption of its contracting party status.

3. The Working Party on China's Status as a Contracting Party (hereinafter referred to as the "Working Party") met on ___ occasions between ________________ and ________________ under the Chairmanship of H.E. Mr. Pierre-Louis Girard (Switzerland). The terms of reference of the Working Party are set out in document L/6191.

4. The work of the GATT Working Party on China was not fully completed prior to the entry into force of the Marrakesh Agreement Establishing the WTO. Accordingly, on ____________, the WTO General Council decided to continue the work of the GATT Working Party as a WTO Working Party, and that this new Working Party would have the following terms of reference:

> "To examine the application of China, dated ______________, to accede to the Marrakesh Agreement Establishing the World Trade Organization and to submit to the General Council recommendations which might include a draft Protocol."

5. The Working Party had before it, to serve as a basis for its discussion, a Memorandum on China's Foreign Trade Regime (L/6125) and the questions submitted by GATT contracting parties on the foreign economic and trade regime of China, together with replies of the Chinese authorities thereto. In addition, the Government of China made available to the Working Party the following material:

[ ]

6. In numerous statements to the Working Party, China's representatives emphasized that the resumption of China's status as a contracting party and its membership in the WTO were a priority for their government and a critically important element in the process of economic reform towards a more market-oriented economy and opening to the outside world.

- *brief history of reforms since mid-1970s*

- *importance of rejoining the multilateral trading system: agreed rules and disciplines, stability, predictability, improved market access for China and trading partners*

7. China recalled that it had been a full participant in the Uruguay Round and had signed the Final Act accepting the results of these negotiations.

- *Members of the Working Party noted China's desire to be original WTO Member.*

- — *Members of the Working Party and China agreed that draft Protocol and bilateral market access negotiations should also cover commitments and concessions relating to WTO membership.*

<u>**Bilateral Market Access Negotiations**</u>

8. Many members of the Working Party expressed their interest in carrying out bilateral market access negotiations with China with respect to industrial and agricultural products and to initial commitments in services. Other members indicated that such negotiations were already under way or had essentially been completed. The Working Party invited members who had not yet done so to submit their request lists to China at an early date and to make every effort to conclude the market access negotiations as soon as possible. The Working Party took note of the Chinese statement that the concessions and commitments undertaken in the framework of its bilateral market access negotiations constituted China's contribution to the Uruguay Round market access negotiations.

- *recall specific policy statements made by China and members re bilateral market access negotiations*

- *concern expressed that tariff concessions have little value if offset by various NTMs.*

<u>**Foreign Trade Regime**</u>

9. The Working Party reviewed the foreign trade regime of China and the possible terms of a draft Protocol. The views expressed by members are summarized below in paragraphs ________.

**General**

- *significant progress towards a more market-oriented economy*

- *Members noted overall improvement in macro-regulation of economy.*

- *concern raised over continued presence of multiple and overlapping trade instruments which limited security and predictability of access to Chinese market, despite some streamlining of system.*

- *concern expressed over limited control by central government of trade measures taken at sub-national level.*

- *Members noted China's statement that central government has constitutional power to void all measures taken at sub-national level that are inconsistent with China's international obligations.*

- *concern expressed over discrepancies in statistics on trade volume/value. Members and China agreed to pursue this issue separately in an Informal Group of Experts on Export Statistics, chaired by Mr. Jean-Maurice Léger of the Secretariat. The Group of Experts submitted its report to the Chairman of the Working Party on 30 June 1994.*

- *China indicated that it intends to apply the GATT to the fullest extent not inconsistent with mandatory legislation in existence on the date of entry into force of the Protocol. Members raised concerns as to what China might consider to be "existing legislation". China was requested to submit an illustrative list of such legislation.*

- *Given the constitutional power of China's central government to ensure compliance with China's GATT obligations by both its national and sub-national authorities, and to override inconsistent* *measures at the sub-national level, members of the Working Party considered that very few, if any, Chinese laws could meet the criteria of existing mandatory legislation. The Working Party took note of the fact that under the GATT 1994 there would no possibility of exempting existing mandatory legislation.*

- *While recognizing that China's status was a special case, China indicated that it expected to avail itself of the rights of a developing country in the WTO. Members raised concerns that because of the significant size, rapid growth and transitional nature of the Chinese economy, China should not automatically receive all benefits of a developing country in the WTO. Some members considered that certain transitional arrangements available to developing country WTO Members should not be granted to China. It was agreed that China, notwithstanding the fact that many of the features of its economy are at present those of a developing country economy, should undertake to bring certain measures into conformity on a more expedited basis than would otherwise be required of a developing country WTO Member.*

[ ]

**Tariff Regime**

- *recognition of substantial reductions in tariff levels in many sectors*
- *recognition of increased bindings and bindings at lower levels*
- *concern expressed over continued high levels and lack of bindings in some sectors*

**Charges and Formalities in Connection with Importation and Exportation**

- *concern expressed over lack of uniformity of customs fees and charges administered by national and sub-national authorities. Agreed that China should undertake in Protocol to ensure conformity of such fees and charges with Articles II and VIII of the GATT 1994.*

**Application of the Trade Regime**

**a. Uniform Administration**

- *concern raised as to definition of China's customs territory and relations between that customs territory and the separate customs territories of Hong Kong, Macau and Chinese Taipei. Members of the Working Party and China agreed that China would, as a WTO Member, in accordance with GATT Article XXIV:1, maintain standard WTO relations with these other separate customs territories.*
- *Members raised concerns re uniformity of administration of trade regime, especially in regard to measures taken by sub-national authorities. China emphasized that its central government has full constitutional authority to ensure compliance with WTO obligations by both national and sub-national governmental authorities in China. It was agreed that a statement of China's commitment to ensure such compliance should be included in the Protocol.*
- *Members raised concerns over limited ability of central government to be sufficiently informed about non-uniform practices and to take necessary enforcement actions. It was agreed that China would establish a mechanism under which any person could bring to the attention of the central government cases of non-uniform application of the trade regime.*

### b. Special Economic Areas

**xx. China confirmed that it would provide information in its notifications describing how the special trade, tariff, and tax regulations applied are limited to the designated special economic areas, including information concerning their enforcement. The Working Party took note of this commitment.**

- *concern expressed over lack of detailed official information on special economic areas, in particular their names, geographic boundaries, and relevant laws, regulations and other measures relating thereto. China undertook to notify all such information to the WTO promptly and to update such information as necessary.*

- *China indicated that, pursuant to governmental policy, the geographic area of its special trade regimes continues to expand and the differences between these regimes and those of other parts of its customs territory continue to narrow. China noted that the long-term objective was to unify the application of its trade regime throughout the customs territory on principles of a market-oriented economy. Members expressed concern that products introduced from these special economic areas into other parts of China's customs territory should be subject to non-discriminatory treatment in the application of all taxes, import restrictions and customs and tariff charges which are normally applied to imports into these other parts of the customs territory. It was agreed that China should undertake to ensure such non-discriminatory treatment.*

**xx. China confirmed that it would strengthen the uniform enforcement of taxes, tariffs and non-tariff measures on trade between its special economic areas and the other parts of China's customs territory. China further confirmed that statistics on trade between China's special economic areas and the other parts of its customs territory would be maintained and improved, and would be notified to the WTO on a regular basis. The Working Party took note of these commitments.**

- *concern over uncertainty of regime in respect of differential treatment of minority autonomous regions and other areas of economic poverty within China. China indicated that the Chinese constitution obliges the central government to assist such areas.*

- *China responded to concern over differential treatment of minority autonomous regions and other areas of economic poverty by signalling its commitment to uniform administration of trade regime within each such area and prevention of smuggling.*

### c. Transparency

**xx. China confirmed that it would, to the maximum extent possible, make available to WTO Members translations into one or more of the official languages of the WTO all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange, [___ calendar days] before such measures are implemented or enforced. The Working Party took note of these commitments.**

**xx. China confirmed that publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange would include** [the period for comment,] **the effective date of these measures and the products and services affected by a particular measure**[, identified by appropriate tariff line and CPC classification if necessary]. **The Working Party took note of these commitments.**

**xx. China confirmed that it would apply on a most-favoured-nation basis all transparency commitments agreed bilaterally with other countries and separate customs territories. The Working Party took note of this commitment.**

**xx. China confirmed that it would publish in the official journal, by appropriate classification and by service where relevant, a list of all organizations, including those organizations delegated such authority from the national authorities, that are responsible for authorizing, approving or regulating services activities whether through grant of license or other approval. Procedures and the conditions for obtaining such licenses or approval would also be published. The Working Party took note of these commitments.**

**xx. China confirmed that none of the information required by the WTO or the Protocol to be disclosed shall be withheld as confidential information. The Working Party took note of this commitment.**

**xx. China confirmed that it would establish or designate an enquiry point where all information relating to the laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange, as well as the published texts, could be obtained. This information would include the names of national or sub-national authorities (including contact points) responsible for implementing a particular measure. The Working Party took note of these commitments.**

d. **Judicial Review**

- *Members expressed concern that China needed to improve its institutions and procedures for the prompt review of disputes over trade-related matters in China. Members also sought to expand the types of measures subject to review under Chinese domestic procedures; in particular they sought a commitment to cover measures related to services trade and intellectual property. China undertook to establish or designate necessary tribunals, contact points and procedures to ensure prompt review of all such matters. It was agreed that this commitment should be reflected in the Protocol.*

National Treatment and Non-discrimination

- *concerns raised over China's practice of conditioning certain actions upon the nationality of the entity concerned. Members in particular raised concerns over such practices in relation to the pricing and procurement of goods and services, and the distribution of import and export licenses. China agreed to a commitment in the Protocol not to condition such practices on the nationality of the entity concerned.*

Special Trade Arrangements

- *concerns were raised about China's special trade arrangements, including barter trade arrangements, with third countries and separate customs territories. It was agreed that China should undertake in the Protocol to eliminate or bring such arrangements into conformity with WTO obligations by no later than ___.*

Trading Rights of Enterprises

- *Members expressed concern that China's restrictions on the right of enterprises to engage in trade were among the most significant limitations on secure access to the Chinese market.*

——*Members ~~sought~~ progressive elimination of all such restrictions and objective and generally applicable criteria for the granting of trading rights pending the elimination of all such restrictions. China noted that it was in the process of liberalizing trading rights but that certain products would remain the exclusive domain of designated foreign trade corporations. China also noted that criteria for the granting of trading rights were set out in China's Foreign Trade Law. The Working Party decided that the issue of trading rights should be addressed specifically in the Protocol.*

**State Trading**

- *Members expressed concern that the activities of China's state trading enterprises were not sufficiently transparent and were not in accordance with WTO obligations. China indicated that its state trading enterprises have full management autonomy and responsibility for their own profits and losses. It was agreed that commitments with respect to the activities of state trading enterprises should be specifically addressed in the Protocol.*

[xx. China confirmed that it would not resort to either price pooling for the procurement of goods for export or targeted discriminatory export pricing. The Working Party took note of these commitments.]

**Non-Tariff Measures**

- *concern was raised as to the overlapping and cumulative impact of the large number of non-tariff measures in existence in China, both at the national and sub-national levels. China undertook to eliminate and not to introduce, re-introduce or apply non-tariff measures other than those specifically identified and subject to phased elimination in an Annex to the Protocol.*

- *Members raised concerns that non-tariff measures were being imposed by sub-national authorities in China on a non-transparent, discretionary and discriminatory basis. It was agreed that China should ensure that only those non-tariff measures imposed by the central government or by sub-national authorities with authorization from the central government would be implemented and enforced. China agreed to make such a commitment in the Protocol.*

**Import and Export Licensing**

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

- *concerns were expressed in relation to the use of import and export licensing as restrictive non-tariff measures. China indicated that the number of products subject to restrictive licensing was being reduced and that China would abide by its WTO obligations on licensing procedures. It was agreed that certain specific commitments on licensing should be set out in the Protocol.*

**Foreign Exchange Controls**

- *Members raised concerns in relation to China's use of foreign exchange controls to regulate the level and composition of trade in goods and services. China indicated that its system of foreign exchange controls was undergoing rapid change. Significant moves had been taken to reform, rationalize and liberalize the foreign exchange market. The practice of multiple* *exchange rates in swap centres had been abolished. China was moving towards a unified foreign exchange market and had removed many of the restrictions on the use of foreign exchange. It was agreed that the reform of China's system of foreign exchange controls should be addressed in the Protocol.*

**Price Controls**

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

- *concerns raised as to China's extensive use of price controls, especially in the agricultural sector. It was agreed that certain disciplines on China's system of state pricing should be included in the Protocol.*

**xx. China confirmed that price controls shall not be used for purposes of affording protection to domestic industries or services providers. The Working Party took note of this commitment.**

**Subsidies**

- *concerns raised as to the extent of China's use of export subsidies. China indicated that it had eliminated all direct export subsidies on industrial goods; it continued to maintain export subsidies on certain agricultural products. Members considered that China should phase out all export subsidies by a date to be agreed, and that a commitment to such a phase-out should be contained in the Protocol. Members also considered that China should notify all subsidies within the meaning of Article 1 of the WTO Agreement on Subsidies and Countervailing Measures.*

- *Members were concerned that governmental practice in China's special economic areas of granting preferential treatment to imported products and to joint venture production enterprises, conditional upon export or re-export of products manufactured or subject to additional processing in such areas, constituted export subsidization.*

**Balance-of-Payments Measures**

- *Members expressed concern that China should not make indiscriminate use of GATT Article XII or XVIII:B as justification for the imposition of quantitative restrictions or other, price-based measures on imports. China considered that it should have the right to make full use of Article XVIII:B to protect, as necessary, its balance-of-payments situation. The Working Party decided that certain additional disciplines should be imposed in connection with the invocation of Article XVIII:B, and that these disciplines should be included in the Protocol.*

**Taxes and Charges Levied on Imports and Exports**

- *concern expressed over discriminatory internal taxes and charges applied to imported goods and services, including taxes and charges applied by sub-national authorities. Agreed that China should ensure that all such internal taxes and charges would be in conformity with WTO national treatment and mfn obligations.*

- *concern raised over taxes and charges applied exclusively to exports. Agreed that such taxes and charges should be eliminated unless applied in conformity with GATT Article VIII or listed in an Annex to the Protocol.*

## Agricultural Policies

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

[xx Notwithstanding the fact that many of the features of China's economy are at present those of a developing country economy, China undertook not to invoke the provisions in Articles 6:2, 6:4(b), 9:4, 12:2 and 15, and Annex 5, Section B of the Agreement on Agriculture. The Working Party took note of these commitments.]

- *Members raised concerns in relation to China's intention to maintain certain quantitative import restrictions and restrictive licensing requirements in the agricultural sector. China indicated that it was willing to convert most quantitative restrictions on agricultural products to their tariff-based equivalents in conformity with the Agreement on Agriculture, but that for a very products it was necessary to maintain restrictive licensing over the longer term.*

- *concerns were raised in relation to administrative guidance provided at the national and sub-national level which could have the effect of influencing the quantity and composition of agricultural imports. It was agreed that reference to such measures should be made in the Protocol.*

- *concern was raised about the use of fiscal transfers and other forms of domestic subsidies to government-owned and -controlled entities in the agricultural sector. Members considered that China's notifications and related commitments for subsidies should include reference to such measures.*

## Sanitary and Phytosanitary Measures

- *Members considered that China should immediately notify all laws and regulations relating to its sanitary and phytosanitary measures, including all products covered by such mesures.*

- *specific concerns were raised in relation to the use of quarantine procedures as non-tariff barriers. China denied that its quarantine procedures were used as non-tariff measures.*

## Standards and Technical Regulations

[xx. Notwithstanding the fact that many of the features of China's economy are at present those of a developing country economy, China undertook not to invoke the provisions in Article 12 of the TBT Agreement 1994. The Working Party took note of this commitment.]

- *Members expressed concern over the complexity and lack of consistency of China's standards and inspection regime. Members noted that imported and domestic products were not inspected by the same governmental entities and that this situation could result in less favourable treatment for imports. Members also criticized government-mandated inspection for compliance with* *terms of commercial contracts. China indicated that it intended to comply fully with its WTO obligations concerning its standards, technical regulations and inspection regime.*

**xx. Further to China's application of the provisions of the GATT 1994 and the TBT Agreement, China confirmed that:**

**(a) internal mechanisms exist (e.g. policy guidelines, inter-agency committees) to inform and consult with, on an ongoing basis, government agencies and ministries (at national and sub-national levels), and private sector interests, of the rights and obligations under the GATT 1994 and the TBT Agreement 1994; and**

**(b) the recommended time to allow for comments on proposed standards, technical regulations, and conformity assessment procedures of sixty days (or forty-five days if no comments or request for extension of the time-limit have been received from other WTO Members within that time) is observed, and provision is made for giving due consideration to a time-limit beyond sixty days if requested by another Party to the TBT Agreement 1994.**

**The Working Party took note of these commitments.**

**Trade-Related Aspects of Intellectual Property Rights**

[xx. Notwithstanding the fact that many of the features of China's economy are at present those of a developing country economy, China undertook to apply the provisions of the Agreement on TRIPS within the ____-year period provided for in Article ____ of that Agreement, considering that in the field of intellectual property rights legislation had already been adopted in China. The Working Party took note of this commitment.]

**Trade-Related Investment Measures**

[xx. Notwithstanding the fact that many of the features of China's economy are at present those of a developing country economy, China undertook to notify and eliminate upon the date of entry into force of the WTO Agreement all trade-related investment measures inconsistent with the provisions of the Agreement on the Trade-Related Investment Measures. Such measures included, but were not limited to: requirements that foreign firms balance their foreign exchange for importation with foreign exchange receipts; requirements that firms meet specified export target levels in pursuance of such foreign exchange balancing requirements, including by contract; requirements for minimum export levels; local content requirements; and restrictions on the sale of "non-resultant products", i.e., products not produced in China. The Working Party took note of these commitments.]

**Services Regime**

- *concerns were expressed as to the lack of transparency in China's services regime. China undertook to improve this aspect of its trade regime. The Working Party took note of this commitment.*

**Trade in Civil Aircraft**

**Customs Valuation**

[xx. Notwithstanding the fact that many of the features of China's economy are at present those of a developing country economy, China undertook not to invoke the provisions in Article 20 of the Agreement on Implementation of Article VII of the GATT 1994. The Working Party took note of this commitment.]

**Government Procurement**

**Rules of Origin**

**Preshipment Inspection**

**Multilateral Steel Agreement**

**Non-Tariff Measures Maintained Against China**

- *China considered that WTO Members should eliminate all discriminatory non-tariff measures maintained against Chinese exports as of the date of entry into force of the Protocol. Certain members considered that such measures did not need to be phased out until after China's foreign trade regime fully conformed to WTO obligations. It was agreed that this matter should be regulated in the Protocol.*

- *It was agreed that the Trade Policy Review of China in the WTO should occur as regularly scheduled, notwithstanding the inclusion in the Protocol of a transitional review mechanism.*

**Transitional Review**

- *Members considered that it would be necessary to establish a transitional review mechanism to monitor China's compliance with the Protocol and the WTO Agreement within the overall framework of China's progress in the reform of its economic and foreign trade regimes. Members considered that the review should be held fairly frequently, e.g. every two years, and that a major review should be held, e.g., every six years. China did not in principle oppose such a review mechanism but considered that the review could be carried out as part of the regular Trade Policy Review to which China would be subject. Members considered that the TPRM was not well adapted to the type of specific review of compliance with Protocol terms that was seen as necessary over a transitional period in the case of China.*

**Transitional Safeguards**

- *Members considered that there was a need during a transitional period for a special safeguard mechanism to guard against imports from China in such increased quantities or under such conditions as to cause or threaten injury to domestic producers of like or directly competitive products. China opposed the creation of such a discriminatory safeguards provision and considered that the safeguards provisions of the GATT provided sufficient protection to the domestic industries of other WTO Members. The Working Party considered that the provision* *of a transitional safeguard would have to be carefully circumscribed to prevent abuse in its invocation.*

**[Price Comparability in Determining Subsidies and Dumping**

- *Members recognized that, in the case of imports of Chinese origin into a WTO Member, special difficulties may exist in determining price comparability for the purposes of paragraph 1 of Article VI of the GATT 1994. In such cases, the importing WTO Member may find it necessary to take into account the possibility that a strict comparison with domestic prices in China may not always be appropriate.*]

**Conclusions**

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

[xx. Having carried out the examination of the foreign trade regime of China and in the light of the explanations, assurances and commitments given by the Chinese representatives, the Working Party reached the conclusion that, subject to satisfactory conclusion of the relevant market access negotiations, China's membership in the WTO would be governed by the terms and conditions agreed by the Working Party. For this purpose, the Working Party has prepared the draft Decision and Protocol on China reproduced in the Appendix to this report. It is proposed that these texts be approved by the General Council when it adopts the report. When the market access negotiations between China and WTO Members in connection with this negotiation on China's WTO membership have been concluded, the resulting Schedules of China and any concessions granted by WTO Members as a result of negotiations with China are to be annexed to the Protocol. The Decision would then be submitted to a vote by WTO Members. Approval would require a two-thirds majority. When the Decision is adopted the Protocol on China would be open for acceptance and the Protocol would enter into force thirty days following its acceptance by China. ]