Case Number: 2010-1024-F

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RESTRICTION CODES

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

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

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

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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0526

FACSIMILE COVER SHEET

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Office of GATT Affairs (Section 11)
Executive Office of the President
Washington, D.C. 20506

Date December 9, 1994 No. of Pages 25

TO: THE TPSC SUBCOMMITTEE ON GATT AFFAIRS/CHINA AND THE GATT

NAME:	AGENCY	PHONE #	FAX #
Chris Beede	State EB/BTA/ODC	647-1432	647-1537
John Ellis	State EAP/CM	647-6796	647-6820
William Plummer	State EB/STA	647-5838	647-6540
Todd Kushner	State EB/OFP	647-3424	647-1894
Daniel Gardner	Commerce IEP/GATT	482-3681	482-5939
Cheryl McQueen	Commerce:IEP/OPH	482-4681/2522	482-1576
Albert Hsu	Commerce IA	482-4412	482-0947
Jim Wallace	Treasury OASIA/ITT	622-2110	622-1731
Lawrence Dwight	Treasury OASIA/ITE	622-1710	622-0349
Jason Hafemeister	USDA ITP/MTPAD	720-2748	720-1139
Robert Curtis	USDA ITP/AAEE	720-1327	690-1093
Tenny Fiekowsky	Labor Int. Aff.	219-6548	219-5071
Dan Leahy	USITC Ex/L	205-3141	205-2139
Lael Brainard	NEC/CEA	395-5104	395-6853
Nancy Schwartz	OMB/Int.Econ	395-3720	395-5770
Michael Punke	NSC/Int.Econ	456-9291	456-9290

0526

0527

FROM: Cecilia Leahy Klein, Chairman
PHONE: 202-395-9437/3063 **FAX #:** 202-395-5674/3911
FOR PROBLEMS WITH TRANSMISSION, PLEASE CALL 395-6843

SUBJECT: PRC AND THE GATT/WTO:

Attached for your review and comment are papers related to China's GATT accession that were distributed today in Geneva. These include: (1) a cover letter from Chairman Girard; (2) a draft protocol; and (3) a draft outline of the WP report. These documents will be discussed at an informal meeting in Geneva Tuesday morning. Your comments and suggestions should be given to Chris Beede (647-1537) or Richard Meier (395-6843) no later than 1pm, Monday, December 12, and should address specific points that should be added, deleted, or revised in the protocol and WP report as well as your views as to their usefulness as negotiating documents. Thank you for your cooperation.

@PJL RDYMSG DISPLAY = ""
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/

WORKING PARTY ON CHINA'S STATUS AS A CONTRACTING PARTY

9 December 1994

To:Participants invited to the Informal Consultation of 9 December 1994

I would wish to make a number of points regarding the current state of play in the Working Party.

First, the papers that I am putting on the table for your considerations today are (1) an instrument in protocol format which I submit to delegations as the basic negotiating instrument for the final phase in the negotiations of a draft protocol on China, and (2) a draft outline of the Report of the Working Party. The paper in protocol format should be read in conjunction with the draft outline of the Report in view of cross-referenced commitments contained in the latter. I would note that the protocol paper has been drafted in the format of a WTO protocol. For this reason, it can be expected that the "general" and "final" provision will be subject to further study and refinements.

Second, I would note with respect to our informal consultations and the non-papers of this past July, the textiles and clothing issue did not figure as a separate element in the proposals submitted at that time. In view of the lack of any proposal in this area, I have not directly dealt with it in the paper that I am presenting to you today. Nonetheless, it is clear to me that we will need to address aspects of this issue in connection with the drafting of the protocol. In particular, we will need to deal with the question of the applicability to China of Article 2 of the WTO Agreement on Textiles and Clothing.

Third, I want to emphasize once again the absolutely fundamental linkage between the finalizing of a draft protocol on China and the completion of bilateral negotiations on market access. Neither one of these negotiations can have any hope of progress without concurrent progress in the other. It is my firm conviction that, at this critical stage, all sides need to redouble their commitment to the resolution of outstanding issues and to demonstrate negotiating flexibility in concrete terms. Political commitment and negotiating flexibility constitute the irreducible requirements to our achieving substantive agreement on both the multilateral and the bilateral fronts within a reasonable timeframe. [signed] Pierre-Louis Girard, Chairman

2

9 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, as rectified, amended or modified by the terms of legal instruments which have entered into force before the date of the entry into force of the WTO Agreement.

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, minority autonomous areas, Special Economic Zones, open coastal cities, economic and technical development zones and similar areas, and other areas where special regimes for tariffs, taxes and regulations have been established (hereinafter 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 by government entities below the national level.

3. China shall administer in a uniform, impartial and reasonable manner all its laws, including the Foreign Trade Law, decrees, regulations, decisions, rulings and guidance pertaining to or affecting trade in goods and services, trade-related aspects of intellectual property rights (hereinafter referred to as "TRIPS") and the control of foreign exchange.

4. China's laws, regulations, decisions, and rulings mandated by government entities below the national level shall conform to the obligations undertaken in this Protocol and the WTO Agreement.

5. China shall establish a mechanism under which domestic and foreign persons can bring to the attention of the central government cases of non-uniform application of the trade regime.

(B) Special Economic Areas

1. China shall notify to the WTO all the relevant laws and regulations 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, and shall make available copies of laws and regulations relating thereto.

2. China shall progressively adjust its economic and trade policies for goods and services, TRIPS and the control of foreign exchange throughout its customs territory, with a view to narrowing the differences between the policies in the special economic areas and those in other parts of China's customs territory and to unifying the application of its trade regime throughout its customs territory based on principles of a market-oriented economy. 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, 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

4

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, rules, decrees, administrative guidance, policies and other measures pertaining to or affecting trade in goods and services, TRIPS and the control of foreign exchange that are published and readily available to other WTO Members and foreign traders shall be enforced. In addition, China shall make available to WTO Members, upon request, all laws, regulations, rules, decrees, administrative guidance, policies and other measures pertaining to or affecting trade in goods and services, TRIPS and the control of foreign exchange, ___ calendar days before such measures are implemented or enforced.

2. In implementing Article X of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as the "GATT 1994"), China may withhold from disclosure or publication the types of information listed in Annex __.

3. China shall establish or designate an official journal dedicated to the publication of all laws, regulations, rules, decrees, administrative guidance, policies and other measures pertaining to or affecting trade in goods and services, TRIPS and the control of foreign exchange, and shall provide a period of ___ calendar days for comment to the appropriate authorities after publication in this journal 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 Chinese and foreign nationals.

4. China shall establish or designate enquiry points at the central and sub-national levels where, upon request of any domestic or foreign individual or entity, 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, both at the central and local levels.

5. 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

5

1. China shall establish or designate, and maintain, tribunals, contact points, and procedures for the prompt review of all disputes relating to, inter alia, 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 entities 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. National Treatment and Nondiscrimination

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

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

(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;

(c) the distribution of import and export licenses and quotas;

(d) the allocation of trading rights; and

(e) the provision of border tax adjustments.

4. Special Trade Arrangements

China shall, by [x date], 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 products specified in Annex __. China shall progressively phase out the products affected, and shall ensure that by [x date], no more than __ products 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 products and services throughout the customs territory of China, except for those products and services specified in Annex __.

3. China shall not limit trading rights of any person 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.

6. State Trading

1. China shall ensure that import purchasing procedures of state trading enterprises are fully transparent, and in compliance with the GATT 1994, 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, except in accordance with the GATT 1994.

2. Upon request of any WTO Member, 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 of exported goods, and

financing terms and conditions.

3. China shall not establish a price pooling mechanism for procuring goods for export nor shall it operate targeted discriminatory export pricing practices.

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, including those listed in Annex __ of this Protocol, that cannot be justified under the provisions of the WTO Agreement, except as provided for in the schedule for phased elimination of such measures contained in said 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 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 central government or by sub-national authorities with authorization from the central government. Such measures which are not imposed by the central government or by sub-national authorities with authorization from the central government, 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 central government, 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.

9.Foreign Exchange Controls

1. China shall not use foreign exchange controls or restrictions to regulate the level or composition of trade in goods 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 a letter of credit or a bank guarantee shall be issued automatically upon presentation of an invoice.

3. China shall eliminate all guidance and enhancement systems, contracts and measures which have as their object or effect to influence foreign exchange earnings.

10.Price Controls

1. China shall, subject to paragraph 2 below, establish market pricing for traded goods and services and inputs in every sector, and multi-tier pricing practices for such goods and services shall be eliminated.

2. The products 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 products 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 products 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 subsidies 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 the application of any customs fees or charges administered by national or sub-national authorities shall be in conformity with Articles II and VIII of the GATT

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1994.

2. China shall apply its internal taxes, including the value-added tax, in a non-discriminatory manner to domestic and imported goods and services. China shall also ensure that all taxes and tariff surcharges applied exclusively to imports by its sub-national authorities are eliminated or otherwise brought into conformity with Articles I, II, III and VIII of 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.

14.Agriculture

China shall, as part of its notifications and related commitments for domestic subsidies and export subsidies under the SCM Agreement, include fiscal or 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. Domestic support measures in favour of agricultural producers conforming to the provisions of Annex 2 of the Agreement on Agriculture shall not be included in such notification and related commitments.

15.Standards and Technical Regulations

1. The list of 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, except where use of different standards can be justified, and shall be administered so as not to create unnecessary barriers to trade. Further to Article 2.8 of the Agreement on Technical Barriers to Trade 1994 (hereinafter referred to as the "TBT Agreement 1994"), 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 Agreement on TBT Agreement 1994. China shall exempt from inspection any product which has been tested or certified by a conformity assessment body which is deemed to be competent through an internationally recognized accreditation or alternative system to meet in whole or major part relevant international standards.

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

7. In implementing the TBT Agreement 1994, China shall submit its Statement on Implementation and Administration of the Agreement (Article 15.2 of the TBT Agreement 1994) in line with the relevant Decisions adopted by the GATT 1947 Committee 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 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 and regulations 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

WTO Members shall notify, at the HS 8-digit level, all prohibitions or quantitative restrictions maintained against imports from China in a manner inconsistent with Articles XI and XIII of the GATT 1994. All such restrictions, as specified in Annex ___ of this Protocol, which are not immediately brought into conformity with the GATT 1994, shall be phased out [within __ years from the date of entry into force of this Protocol] [according to a mutually agreed timetable].

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.

3. The Trade Policy Review of China in the WTO shall occur as regularly scheduled, notwithstanding this transitional review mechanism.

19. Transitional Safeguards Mechanism

14

(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 Committee on Safeguards.

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 Committee on Safeguards 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 Committee on Safeguards 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 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

1. 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

15

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.

[20.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.]

16

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.

18

Annex __: Confidential Information

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, according to Harmonized System code tariff lines;

b. Balance of Payments data, including invisible (e.g., services), capital account, gold and foreign exchange reserves, and foreign debt;

c. Value of tariff revenues, non-tariff taxes, other border charges, and the commissions or other fees charged by foreign trade corporations, including state trading enterprises, levied exclusively on imports, by relevant tariff line;

d. The shares of imports and of 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, firm, 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, and money supply;

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, to which they are applied; and the criteria applied to the selection of products 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, to the maximum extent possible, 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 levels applied to China's imports and exports;

b. Any criteria applied to restrict access to foreign exchange and trading rights, the list of entities remaining under restriction, the justification for the restrictions, and the timetable for their removal;

c. 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;

d. Annual mandatory and/or guidance import and export plans of the state and provinces (and, to the maximum extent possible, similar information in the five-year plans);

e. 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. 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

China's notification of subsidies shall include the following matters:

(a) the enterprise(s) and industry(ies) benefiting from a subsidy and the actual use of the subsidy over the last five-year period;

(b) specific information regarding the following types of government programmes:

- price equalization schemes (i.e., programmes providing to exporters the difference between the export price and domestic price for a product);
- customs duty drawback schemes rebating more than the actual amount of customs duties paid on imported components incorporated into an exported product;
- wastage allowances for exports greater than permitted for like domestic products;
- preferential transport rates for exports;
- export promotion expenses that directly benefit exporters but are not charged to them; and
- any differential exchange rates;

(c) statistics, by commodity group, showing the proportion of exported production that is subsidized.

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 creation of a market-based economy, including implementation of price, trade management, and other

2/

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 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

9 December 1994

D R A F T   O UT L I N E

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.

Bilateral Market Access Negotiations

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.

Foreign Trade Regime

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 indicated 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 relevant enforcement measures. 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 indicated 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 indicated 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 indicated 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, rules, decrees, administrative guidance, policies and other measures pertaining to or affecting trade in goods and services, TRIPS and the control of foreign exchange, ___ calendar days before such measures are implemented or enforced. The Working Party took note of these commitments.

xx. China indicated that it would ensure that publication of all laws, regulations, rules, decrees, administrative guidance, policies and other measures pertaining to or affecting trade in goods and services, TRIPS and 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 classification. The Working Party took note of these commitments.

xx. China undertook to 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 indicated 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 central government, that are responsible for authorizing, approving or regulating services activities whether through grant of licence or other approval. Procedures and the conditions for obtaining such licences or approval would also be published. The Working Party took note of these commitments.

xx. China undertook to establish or designate enquiry points where all information relating to the laws, regulations, rules, decrees, administrative guidance, policies and other measures pertaining to or affecting trade in goods and services, TRIPS, and the control of foreign exchange, as well as the published texts, can 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.

xx. China indicated that one enquiry point would be established for the central government. At the sub-national level, one enquiry point would be established for each of the so-called first level administrative divisions, including provinces, autonomous regions and municipalities. 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.

29

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 every six months. 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 indicated that it would publish in the official journal the list of products 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.

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

31

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 "Similar border measures", as specified in footnote 1 of Article 4:2 of the Agreement on Agriculture, shall be understood to include guidance plans and administrative guidance at the national or sub-national level that regulate the quantity of imports, import controls, import substitution practices, and other non-tariff trade measures maintained through state trading enterprises at the national or sub-national level.

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, in particular for rubber and cotton. 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 1994, China shall provide information to demonstrate its compliance with specific commitments to:

(i) 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;

(ii) ensure that 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

(iii) ensure that 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.

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

xx. China indicated that it would continue to participate in the process of revising the Agreement on Trade in Civil Aircraft to be contained in Annex 4 of the WTO Agreement, with a view to adhering to the revised Agreement once it entered into force. The Working Party took note of these commitments.

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

xx. China indicated that it would continue to participate in negotiations of the expanded Agreement on Government Procurement

("GPA") with a view to adhering to that Agreement when it entered into force. As the result of GPA accession negotiations, China undertook to apply the provisions of the GPA as regards the award of supplies, works and services contracts by: central government entities; sub-central government entities, including major municipalities and special economic areas; and State-owned or -controlled entities, including those operating in the power generation, construction, ports, airports, water, urban transport, telecommunications and agro-business sectors. The Working Party took note of these commitments.

Rules of Origin

Preshipment Inspection

Multilateral Steel Agreement

xx. China indicated that it would continue to participate in negotiations on a Multilateral Steel Agreement, with a view to adhering to such an Agreement when it entered into force. The Working Party took note of these commitments.

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.

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.

35

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.

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.

Embassy of the United States of America

Please circulate to China Interagency. Thanks.

FAX MESSAGE

Total Sheets (Counting cover): 17

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

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

DATE: April 15, 1996

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

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

Regards,

Chris

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

CHAPTER 14: REGIONAL INTEGRATION

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

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

PART III

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

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

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

China

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

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

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

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

(1) Quantitative Restrictions: Along with import quotas still remaining, several substitutive measures for previous restrictions on import and export are likely to amount to quantitative restrictions.

(2) National Treatment Issue (discrimination against imported products and others): The restrictions on foreign trading by Chinese enterprises risk violating the GATT Article III, the requirement for national treatment on goods, by posing additional layers of transaction and costs onto imported products.

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

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

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

PART III (Appendix)

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

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

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

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

(Unit: $1 billion)

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

Source: Ministry of Finance, Trade Statistics

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

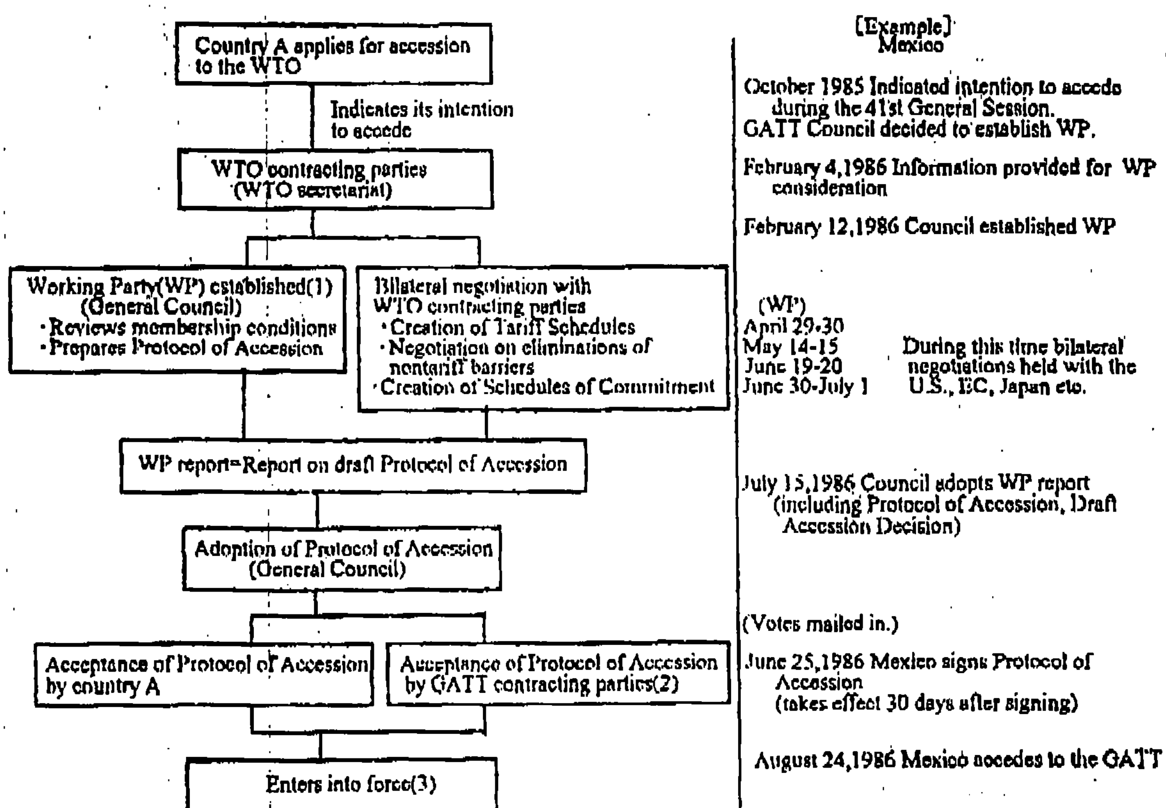
2. EU members are regarded as the single "EU" entity.

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

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

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

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



Notes:

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

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

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

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

Section 1. China's accession to the WTO

1. History

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

2. Significance of the Accession to the WTO

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

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

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

3. Areas to be rectified when acceding to the WTO

[Quantitative Restrictions on Exports and Imports]

(1) Quantitative Restrictions on Exports and Imports.

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

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

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

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

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

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

(i) The alleged purposes of this system, which are to improve the product quality and to prevent the dumping of exports should have been accomplished through establishing full-fledged quality and price testing systems, not to levy financial charges. It was particularly so for those joint ventures for which quality and price have never been at issue.

(ii) The measure necessarily leading to export cost increases was at odds with another policy of export requirement that obligates those joint ventures to export not less than 70% of their production.

(iii) The measures seriously risked damaging the viability of the joint ventures, thus also

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

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

[National Treatment (discrimination against imports)]

(1) Foreign trading rights

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

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

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

Similar discrimination between imports and domestic products regarding competitive conditions at the distribution stage may also happen in the case where domestic manufacturers are allowed to establish their own sales subsidiaries or branches, while foreign manufacturers are not allowed to establish similar bases within China. Problems of discrimination relating to investment in the distribution sector are not easy to remedy within the GATT/WTO framework, ... require members to grant national treatment in the area of establishment of commercial wholesale and retail bases by foreign companies. In fact, members will normally be required to grant national treatment in the areas of services only in those sectors indicated in the members' Schedule of Commitments. Furthermore, the establishment of wholesale and retail bases may also involve whether national treatment is required in the area of investment and in the treatment of natural persons.

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

(2) Discrimination in Standards and Certification

(a) Registration of Initial Imports of Chemical Products

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

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

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

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

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

(b) The Great-Wall Mark

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

(c) Dual standards and certification programs

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

(3) Open tender system for import

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

(4) Preferential Treatment and Discrimination for Foreign Enterprises

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

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

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

(a) Export Requirements

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

(b) Foreign Exchange

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

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

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

(c) Dual Rates Pricing

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

(d) Taxation (refund of VAT)

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

[Industry Policy]

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

The basic concept of the policy is to consolidate companies in the sector, thus to achieve economies of scale, and to enable the industry to increase its share in the domestic market as well as to improve its international competitiveness. Existing policies and programs are being reviewed and reformulated to this end. We would note that every country has the right to accede accession to the WTO, it must pursue its policy in conformity with the WTO Agreement and the obligations thereof. Unfortunately, the policy as it now stands contains WTO-inconsistent measures (listed below.) Although China has expressed its intentions to respect the related Agreements and to eliminate those measures that are not consistent with them, concrete commitments regarding each inconsistent measure will be needed upon China's accession to the WTO.

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

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

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

[Market access of goods and service]

(1) High Tariffs

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

(2) Trade in Services

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

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

[Other Issues]

(1) New Foreign Investment Program

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

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

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

Section 2. Taiwan's Accession to the WTO

1. History

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

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

2. Significance of Accession to the WTO

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