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**Working Party on the
Accession of China**

**REPORT OF THE WORKING PARTY
ON THE ACCESSION OF CHINA**

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I. INTRODUCTION

1. At its meeting on 4 March 1987, the Council established a Working Party to examine the request of the Government of the People's Republic of China ("China") (L/6017, submitted on 10 July 1986) for resumption of its status as a GATT contracting party, and to submit to the Council recommendations which may include a Protocol on the Status of China. In a communication dated 7 December 1995, the Government of China applied for accession to the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") pursuant to Article XII of the WTO Agreement. Following China's application and pursuant to the decision of the General Council on 31 January 1995, the existing Working Party on China's Status as a GATT 1947 Contracting Party was transformed into a WTO Accession Working Party, effective from 7 December 1995. The terms of reference and the membership of the Working Party are reproduced in document WT/ACC/CHN/2/Rev.11 and Corr.1.

2. The Working Party on China's Status as a Contracting Party met on 20 occasions between 1987 and 1995 under the Chairmanship of H.E. Mr. Pierre-Louis Girard (Switzerland). The Working Party on the Accession of China met on 22 March 1996, 1 November 1996, 6 March 1997, 23 May 1997, 1 August 1997, 5 December 1997, 8 April 1998, 24 July 1998, 21 March 2000, 23 June 2000, 27 July 2000, 28 September 2000, 9 November 2000, 8 December 2000, 17 January 2001, 4 July 2001, 20 July 2001 and 17 September 2001 under the same Chairman. At meetings held on 9 November 2000, 8 December 2000 and 17 January 2001, Mr. Paul-Henri Ravier, Deputy Director-General of the WTO, served as Acting Chairman.

1. Documentation Provided

3. The Working Party had before it, to serve as a basis for its discussion, a Memorandum on China's Foreign Trade Regime (L/6125) and questions posed by members of the Working Party on the foreign trade regime of China, together with replies of the Chinese authorities thereto. In addition, the Government of China made available to the Working Party a substantial amount of documentation, which is listed in document WT/ACC/CHN/23/Rev.1.

2. Introductory Statements

4. In statements to the GATT 1947 Working Party and subsequently to the Working Party on the Accession of China, the representative of China stated that China's consistent efforts to resume its status as a contracting party to GATT and accession to the WTO Agreement were in line with its objective of economic reform to establish a socialist market economy as well as its basic national policy of opening to the outside world. China's WTO accession would increase its economic growth and enhance its economic and trade relations with WTO Members.

5. Members of the Working Party welcomed China's accession to the WTO Agreement and considered that its accession would contribute to a strengthening of the multilateral trading system, enhancing the universality of the WTO, bringing mutual benefits to China and to the other Members of the WTO, and ensuring the steady development of the world economy.

6. The representative of China said that China had a territory of 9.6 million square kilometres and, at the end of 1998 a population of 1.25 billion. Since 1979, China had been progressively reforming its economic system, with the objective of establishing and improving the socialist market economy. The reform package introduced in 1994, covering the banking, finance, taxation, investment, foreign exchange ("forex") and foreign trade sectors, had brought about major breakthroughs in China's socialist market economy. State-owned enterprises had been reformed by a clear definition of property rights and responsibilities, a separation of government from enterprise, and scientific management. A modern enterprise system had been created for the state-owned sector, and the latter was gradually getting on the track of growth through independent operation, responsible

for its own profits and losses. A nation-wide unified and open market system had been developed. An improved macroeconomic regulatory system used indirect means and market forces to play a central role in economic management and the allocation of resources. A new tax and financial system was functioning effectively. Financial policy had been separated from commercial operations of the central bank, which now focussed on financial regulation and supervision. The exchange rate of the Chinese currency Renminbi (also "RMB") had been unified and remained stable. The Renminbi had been made convertible on current account. Further liberalization of pricing policy had resulted in the majority of consumer and producer products being subject to market prices. The market now played a much more significant role in boosting supply and meeting demand.

7. The representative of China further noted that as a result, in 1999, the Gross Domestic Product ("GDP") of China totaled RMB 8.2054 trillion yuan (approximately US\$ 990 billion). In 1998, the net per capita income for rural residents was RMB 2,160 yuan (approximately US\$ 260), and the per capita dispensable income for urban dwellers was RMB 5,425 yuan (approximately US\$ 655). In recent years, foreign trade had grown substantially. In 1999, total imports and exports of goods reached US\$ 360.65 billion, of which exports stood at US\$ 194.93 billion, and imports, US\$ 165.72 billion. Exports from China in 1998 accounted for 3.4 per cent of the world's total.

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

9. Some members of the Working Party indicated that because of the significant size, rapid growth and transitional nature of the Chinese economy, a pragmatic approach should be taken in determining China's need for recourse to transitional periods and other special provisions in the WTO Agreement available to developing country WTO Members. Each agreement and China's situation should be carefully considered and specifically addressed. In this regard it was stressed that this pragmatic approach would be tailored to fit the specific cases of China's accession in a few areas, which were reflected in the relevant provisions set forth in China's Protocol and Working Party Report. Noting the preceding statements, Members reiterated that all commitments taken by China in her accession process were solely those of China and would prejudice neither existing rights and obligations of Members under the WTO Agreement nor on-going and future WTO negotiations and any other process of accession. While noting the pragmatic approach taken in China's case in a few areas, Members also recognized the importance of differential and more favourable treatment for developing countries embodied in the WTO Agreement.

10. At the request of interested members of the Working Party, the representative of China agreed that China would undertake bilateral market access negotiations with respect to industrial and agricultural products, and initial commitments in services.

11. Some members of the Working Party stated that in addition to undertaking market access negotiations in goods and services, close attention should also be paid to China's multilateral commitments, in particular China's future obligations under the Multilateral Agreements on Trade in Goods and the General Agreement on Trade in Services ("GATS"). This was of vital importance to ensure that China would be able to take full benefit of WTO membership as quickly as possible, as well as to ensure that the value of any market access conditions undertaken were not adversely affected by inconsistent measures such as some types of non-tariff measures.

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

13. Some members of the Working Party expressed concern over discrepancies in statistical information supplied by the Government of China on trade volume/value. Members and China pursued this issue separately in an Informal Group of Experts on Export Statistics.

14. The Working Party reviewed the foreign trade regime of China. The discussions and commitments resulting therefrom are contained in paragraphs 15-342 below and in the Protocol of Accession ("Protocol"), including the annexes.

II. ECONOMIC POLICIES

1. Non-Discrimination (including national treatment)

15. Some members expressed concern regarding the application of the principle of non-discrimination in relation to foreign individuals and enterprises (whether wholly or partly foreign funded). Those members stated that China should enter a commitment to accord non-discriminatory treatment to all foreign individuals and enterprises and foreign-funded enterprises in respect of the procurement of inputs and goods and services necessary for production of goods and the conditions under which their goods were produced, marketed or sold, in the domestic market and for export. In addition, those members said that China should also enter a commitment to guarantee non-discriminatory treatment in respect of the prices and availability of goods and services supplied by national and sub-national authorities and public or state enterprises, in areas including transportation, energy, basic telecommunications, other utilities and factors of production.

16. Some members of the Working Party also raised concerns over China's practice of conditioning or imposing restrictions upon participation in the Chinese economy based upon the nationality of the entity concerned. Those members in particular raised concerns over such practices in relation to the pricing and procurement of goods and services, and the distribution of import and export licences. Members of the Working Party requested that China enter into a commitment not to condition such practices on the nationality of the entity concerned.

17. In response, the representative of China emphasized the importance of the commitments that the government was undertaking on non-discrimination. The representative of China noted, however, that any commitment to provide non-discriminatory treatment to Chinese enterprises, including foreign-funded enterprises, and foreign enterprises and individuals in China, would be subject to other provisions of the Protocol and, in particular, would not prejudice China's rights under the GATS, China's Schedule of Specific Commitments or commitments undertaken in relation to trade-related investment measures.

18. The representative of China further confirmed that China would provide the same treatment to Chinese enterprises, including foreign-funded enterprises, and foreign enterprises and individuals in China. China would eliminate dual pricing practices as well as differences in treatment accorded to goods produced for sale in China in comparison to those produced for export. The Working Party took note of these commitments.

19. The representative of China confirmed that, consistent with China's rights and obligations under the WTO Agreement and the Protocol, China would provide non-discriminatory treatment to all WTO Members, including Members of the WTO that were separate customs territories. The Working Party took note of this commitment.

20. Some members of the Working Party expressed concern about certain provisions of Chinese laws, regulations, administrative notices and other requirements which could, directly or indirectly, result in less favourable treatment of imported products in contravention of Article III of the General Agreement on Tariffs and Trade ("GATT 1994"). Such requirements included product registration and certification, internal taxation, price and profit controls and all distinct forms of licensing for

imports, and distribution or sale of imported goods. Even where such requirements existed in relation to domestically produced goods, those members reiterated that any de facto or de jure less favourable treatment of imported goods had to be eliminated in order to ensure full conformity with the principle of national treatment.

21. Some members of the Working Party drew China's attention to the variety of types of requirements which could contravene Article III of the GATT 1994. Specific reference was made to the procedures, charges and conditions for granting of business licences, whether to import, distribute, re-sell or retail goods of non-Chinese origin. Reference was also made to taxes and fiscal provisions whose impact depended, directly or indirectly, upon the Chinese or non-Chinese origin of the goods imported or traded. Those members drew the attention of China to its obligation to ensure that product testing and certification requirements, including procedures for in situ inspections, posed no greater burden – whether financial or practical - on goods of non-Chinese origin than on domestic goods. Those members underlined that conformity assessment procedures and standards, including safety and other compliance requirements, had to respect the terms of the WTO Agreement on Technical Barriers to Trade ("TBT Agreement") as well as Article III of the GATT 1994.

22. The representative of China confirmed that the full respect of all laws, regulations and administrative requirements with the principle of non-discrimination between domestically produced and imported products would be ensured and enforced by the date of China's accession unless otherwise provided in the Protocol or Report. The representative of China declared that, by accession, China would repeal and cease to apply all such existing laws, regulations and other measures whose effect was inconsistent with WTO rules on national treatment. This commitment was made in relation to final or interim laws, administrative measures, rules and notices, or any other form of stipulation or guideline. The Working Party took note of these commitments.

23. In particular, the representative of China confirmed that measures would be taken at national and sub-national level, including repeal or modification of legislation, to provide full GATT national treatment in respect of laws, regulations and other measures applying to internal sale, offering for sale, purchase, transportation, distribution or use of the following:

- After sales service (repair, maintenance and assistance), including any conditions applying to its provision, such as the MOFTEC third Decree of 6 September 1993, imposing mandatory licensing procedures for the supply of after-sales service on various imported products;
- Pharmaceutical products, including regulations, notices and measures which subjected imported pharmaceuticals to distinct procedures and formulas for pricing and classification, or which set limits on profit margins attainable and imports, or which created any other conditions regarding price or local content which could result in less favourable treatment of imported products;
- Cigarettes, including unification of the licensing requirements so that a single licence authorized the sale of all cigarettes, irrespective of their country of origin, and elimination of any other restrictions regarding points of sale for imported products, such as could be imposed by the China National Tobacco Corporation ("CNTC"). It was understood that in the case of cigarettes, China could avail itself of a transitional period of two years to fully unify the licensing requirements. Immediately upon accession, and during the two year transitional period, the number of retail outlets selling imported cigarettes would be substantially increased throughout the territory of China;
- Spirits, including requirements applied under China's "Administrative Measures on Imported Spirits in the Domestic Market", and other provisions which imposed distinct criteria and licensing for the distribution and sale of different categories of spirits, including unification of

the licensing requirements so that a single licence authorized the sale of all spirits irrespective of their country of origin;

- Chemicals, including registration procedures applicable to imported products, such as those applied under China's "Provisions on the Environmental Administration of Initial Imports of Chemical Products and Imports and Exports of Toxic Chemical Products";
- Boilers and pressure vessels, including certification and inspection procedures which had to be no less favourable than those applied to goods of Chinese origin, and fees applied by the relevant agencies or administrative bodies, which had to be equitable in relation to those chargeable for like products of domestic origin.

The representative of China stated that in the cases of pharmaceuticals, spirits and chemicals cited above, China would reserve the right to use a transitional period of one year from the date of accession in order to amend or repeal the relevant legislation. The Working Party took note of these commitments.

2. Monetary and Fiscal Policy

24. The representative of China stated that through the reform and opening up in the last two decades, China had established a fiscal management system which was compatible with the principles of a market economy. With respect to fiscal revenue, a taxation system with a value-added tax as the main element had been established since the taxation reform in 1994. With respect to fiscal expenditure, over recent years the government had, in line with the public fiscal requirement generally exercised by market economies, strengthened its adjustment of the structure of expenditure and given priority to public needs so as to ensure the normal operations of the government.

25. The representative of China further stated that in recent years, while pursuing proactive fiscal policy, China had implemented proper monetary policy and had taken a series of adjusting and reform measures which included lowering the interest rate for loans from financial institutions, improving the system of required deposit reserves and lowering the ratio of required reserves, positively increasing the input of base money and encouraging the commercial banks to expand their credit.

26. In respect of future fiscal policy, the representative of China noted that the Government of China would further improve its taxation system and would continue to improve the efficiency of fiscal expenditure through implementing reform measures such as sectoral budget, centralized payment by the national treasury and zero base budget, as well as improving management of fiscal expenditure. With respect to future monetary policy, the central bank would continue to pursue a prudent policy, maintain the stability of RMB, promote interest rate liberalization and establish a modern commercial banking system.

3. Foreign Exchange and Payments

27. Some members of the Working Party raised concerns about China's use of forex controls to regulate the level and composition of trade in goods and services. In response, the representative of China stated that China was now a member of the International Monetary Fund ("IMF") and that recently its system of forex had undergone rapid change. Significant moves had been taken to reform, rationalize and liberalize the forex market. The practice of multiple exchange rates in swap centres had been abolished. China had already unified its forex market and removed many of the restrictions on the use of forex.

28. Outlining the historical development of China's forex reform, the representative of China stated that the purpose of China's forex reform was to reduce administrative intervention and increase the role of market forces. From 1979, a forex retention system was applied in China, although forex

swap was gradually developing. In early 1994, official RMB exchange rates were unified with the market rates. The banking exchange system was adopted and a nationwide unified inter-bank forex market was established, with conditional convertibility of the Renminbi on current accounts. Since 1996, foreign invested enterprises ("FIEs") were also permitted into the banking exchange system, and the remaining exchange restrictions on current accounts were eliminated. On 1 December 1996, China had formally accepted the obligations of Article VIII of the IMF's Articles of Agreement, removing exchange restrictions on current account transactions. Accordingly, since then the Renminbi had been fully convertible on current accounts. It was confirmed by the IMF in its Staff Report on Article IV Consultations with China in 2000 that China had no existing forex restrictions for current account transactions.

29. The representative of China stated that the State Administration of Foreign Exchange ("SAFE") was under the auspices of the People's Bank of China ("PBC"), and was the administrative organ empowered to regulate forex. Its main functions were to monitor and advise on balance-of-payments and forex matters. SAFE was also required to draft appropriate regulations and monitor compliance. He further noted that domestic and foreign banks, and financial institutions could engage in forex business, with the approval of the PBC.

30. In response to requests from members of the Working Party for further information, the representative of China added that for forex payments under current accounts, domestic entities (including FIEs) could purchase forex at market exchange rates from designated banks or debit their forex accounts directly upon presentation of valid documents. For payments such as pre-payment, commission, etc., exceeding the proportion or limit, the entities could also purchase forex from the banks upon meeting the bona fide test administered by SAFE. Forex for personal use by individuals could be purchased directly from the banks upon presentation of valid documents (within a specified limit). For amounts exceeding the limit, individuals able to prove their need for additional forex could purchase it from the banks. He also noted that current account forex receipts owned by domestic entities had to be repatriated into China, some of which could be retained and some sold to the designated banks at market rates. A verification system for forex payment (imports) and forex receipt (exports) had also been adopted.

31. Concerning the exchange rate regime in particular, the representative of China noted that since the unification of exchange rates on 1 January 1994, China had adopted a single and managed floating exchange rate regime based on supply and demand. PBC published the reference rates of RMB against the US dollar, the HK dollar and Japanese yen based on the weighted average prices of forex transactions at the interbank forex market during the previous day's trading. The buying and selling rates of RMB against the US dollar on the inter-bank forex market could fluctuate within 0.3 per cent of the reference rate. For the HK dollar and Japanese yen, the permitted range was 1 per cent. Designated forex banks could deal with their clients at an agreed rate. Under such contracts the exchange rate of the US dollar was required to be within 0.15 per cent of the reference rate, whereas for the HK dollar and Japanese yen, the permitted range was 1 per cent. The exchange rates for other foreign currencies were based on the rates of RMB against the US dollar and cross-exchange rates of other foreign currency on the international market. The permitted margin between the buying and selling rate could not exceed 0.5 per cent.

32. The representative of China further noted that since 1 January 1994, designated forex banks had become major participants in forex transactions. On 1 April 1994, the China Foreign Exchange Trading System was set up in Shanghai and branches were opened in dozens of cities. The Foreign Exchange Trading System had adopted a system of membership, respective quotation, concentrated trading and forex market settlement. Designated forex banks dealt on the inter-bank market according to the turnover position limit on banking exchange stipulated by SAFE and covered the position on the market. Depending on its macro-economic objectives, the PBC could intervene in the forex open market in order to regulate market supply and demand, and maintain the stability of the RMB exchange rate.

33. The representative of China noted that since 1 July 1996, forex dealing of the FIEs was carried out through the banking exchange system. He further noted that to encourage foreign direct investment, China had granted national treatment to FIEs in exchange administration. Accordingly, FIEs were allowed to open and hold forex settlement accounts to retain receipts under current accounts, up to a maximum amount stipulated by SAFE. Receipts in excess of the maximum amount were required to be sold to designated forex banks. No restrictions were maintained on the payment and transfer of current transactions by FIEs, and FIEs could purchase forex from designated forex banks or debit their forex accounts for any payment under current transactions, upon the presentation of valid documents to the designated forex banks or SAFE for the bona fide test. FIEs could also open forex accounts to hold foreign-invested capital, and they could sell from these accounts upon the approval of SAFE. FIEs could also borrow forex directly from domestic and overseas banks, but were required to register with SAFE afterwards, and obtain approval by SAFE for debt repayment and services. FIEs could make payments from their forex accounts or in forex purchased from designated forex banks after liquidation, upon approval by SAFE according to law.

34. The representative of China further noted that the laws and regulations mentioned above were: Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture; Law of the People's Republic of China on Chinese-Foreign Contractual Joint Venture; Regulations on the Exchange System of the People's Republic of China; and Regulations on the Sale and Purchase of and Payment in Foreign Exchange.

35. The representative of China stated that China would implement its obligations with respect to forex matters in accordance with the provisions of the WTO Agreement and related declarations and decisions of the WTO that concerned the IMF. The representative further recalled China's acceptance of Article VIII of the IMF's Articles of Agreement, which provided that "no member shall, without the approval of the Fund, impose restrictions on the making of payments and transfers for current international transactions". He stated that, in accordance with these obligations, and unless otherwise provided for in the IMF's Articles of Agreement, China would not resort to any laws, regulations or other measures, including any requirements with respect to contractual terms, that would restrict the availability to any individual or enterprise of forex for current international transactions within its customs territory to an amount related to the forex inflows attributable to that individual or enterprise. The Working Party took note of these commitments.

36. In addition, the representative of China stated that China would provide information on exchange measures as required under Article VIII, Section 5 of the IMF's Articles of Agreement, and such other information on its exchange measures as was deemed necessary in the context of the transitional review mechanism. The Working Party took note of this commitment.

4. Balance-of-Payments Measures

37. Some members of the Working Party stated that China should apply balance-of-payments ("BOPs") measures only under the circumstances provided for in the WTO Agreement and not as a justification for imposition of restrictions on imports for other protectionist purposes. Those members stated that measures taken for BOPs reasons should have the least trade disruptive effect possible and should be limited to temporary import surcharges, import deposit requirements or other equivalent price-based trade measures, and those measures should not be used to provide import protection for specific sectors, industries or products.

38. Those members of the Working Party further stated that any such measures should be notified pursuant to the Understanding on the Balance-of-Payments Provisions of the GATT 1994 ("BOPs Understanding") to the General Council not later than the imposition of the measures, together with a time schedule for their elimination and a programme of external and domestic policy measures to be used to restore BOPs equilibrium. Those members also stated that following deposit of such a notification, the Committee on Balance-of-Payments Restrictions ("BOPs Committee") should meet

to examine the notification. It was noted that paragraph 4 of the BOPs Understanding would be available to China in the case of "essential products". Some members stated that the BOPs Committee should review the operation of any BOPs measures taken by China, if so requested by China or a WTO Member.

39. Some other members of the Working Party considered that, in respect of measures taken for BOP purposes, China should enjoy the same rights as those accorded to other developing country WTO Members, as provided in GATT Article XVIII:B and the BOPs Understanding.

40. In response, the representative of China stated that China considered that it should have the right to make full use of WTO BOPs provisions to protect, if necessary, its BOPs situation. He confirmed that China would fully comply with the provisions of the GATT 1994 and the BOPs Understanding. Further to such compliance, China would give preference to application of price-based measures as set forth in the BOPs Understanding. If China resorted to measures that were not price-based, it would transform such measures into price-based measures as soon as possible. Any measures taken would be maintained strictly in accordance with the GATT 1994 and the BOPs Understanding, and would not exceed what was necessary to address the particular BOPs situation. The representative of China also confirmed that measures taken for BOPs reasons would only be applied to control the general level of imports and not to protect specific sectors, industries or products, except as noted in paragraph 38. The Working Party took note of these commitments.

5. Investment Regime

41. The representative of China stated that since the inception of the reform and opening up policy in the late 1970's, China had carried out a series of reforms of its investment regime. The highly centralized investment administration under the planned economy had been progressively transformed into a new pattern of diversification of investors, multi-channelling of capital sources and diversification of investment modalities. The government encouraged foreign investment into the Chinese market and had uninterruptedly opened and expanded the scope for investment. At the same time, the Government of China also encouraged the development of the non-state-operated economy and was speeding up the opening of areas for non-state investment. With China's programme in the establishment of its market economy, the construction projects of various enterprises utilizing free capital and financed by the credit of the enterprise would be fully subject to the decision-making of the enterprise concerned and at their own risk. The commercial banks' credit activities to all kinds of investors would be based on their own evaluation and decision-making, and would be at their own risk. The business activities of intermediate investment agencies would be fully subject to the market and would provide service at the instruction of the investors. These agencies would break up their administrative relations with government agencies and the service activities financed by the government would also be subject to the terms and conditions agreed in the contracts concerned.

42. The representative of China further stated that China had promulgated investment guidelines and that the Government of China was in the process of revising and completing these guidelines. Responding to concerns raised by certain members of the Working Party, he confirmed that these investment guidelines and their implementation would be in full conformity with the WTO Agreement. The Working Party took note of this commitment.

6. State-Owned and State-Invested Enterprises

43. The representative of China stated that the state-owned enterprises of China basically operated in accordance with rules of market economy. The government would no longer directly administer the human, finance and material resources, and operational activities such as production, supply and marketing. The prices of commodities produced by state-owned enterprises were decided by the market and resources in operational areas were fundamentally allocated by the market. The state-owned banks had been commercialized and lending to state-owned enterprises took place

exclusively under market conditions. China was furthering its reform of state-owned enterprises and establishing a modern enterprise system.

44. In light of the role that state-owned and state-invested enterprises played in China's economy, some members of the Working Party expressed concerns about the continuing governmental influence and guidance of the decisions and activities of such enterprises relating to the purchase and sale of goods and services. Such purchases and sales should be based solely on commercial considerations, without any governmental influence or application of discriminatory measures. In addition, those members indicated the need for China to clarify its understanding of the types of activities that would not come within the scope of Article III:8(a) of GATT 1994. For example, any measure relating to state-owned and state-invested enterprises importing materials and machinery used in the assembly of goods, which were then exported or otherwise made available for commercial sale or use or for non-governmental purposes, would not be considered to be a measure relating to government procurement.

45. The representative of China emphasized the evolving nature of China's economy and the significant role of FIEs and the private sector in the economy. Given the increasing need and desirability of competing with private enterprises in the market, decisions by state-owned and state-invested enterprises had to be based on commercial considerations as provided in the WTO Agreement.

46. The representative of China further confirmed that China would ensure that all state-owned and state-invested enterprises would make purchases and sales based solely on commercial considerations, e.g., price, quality, marketability and availability, and that the enterprises of other WTO Members would have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions. In addition, the Government of China would not influence, directly or indirectly, commercial decisions on the part of state-owned or state-invested enterprises, including on the quantity, value or country of origin of any goods purchased or sold, except in a manner consistent with the WTO Agreement. The Working Party took note of these commitments.

47. The representative of China confirmed that, without prejudice to China's rights in future negotiations in the Government Procurement Agreement, all laws, regulations and measures relating to the procurement by state-owned and state-invested enterprises of goods and services for commercial sale, production of goods or supply of services for commercial sale, or for non-governmental purposes would not be considered to be laws, regulations and measures relating to government procurement. Thus, such purchases or sales would be subject to the provisions of Articles II, XVI and XVII of the GATS and Article III of the GATT 1994. The Working Party took note of this commitment.

48. Certain members of the Working Party expressed concern about laws, regulations and measures in China affecting the transfer of technology, in particular in the context of investment decisions. Moreover, these members expressed concern about measures conditioning the receipt of benefits, including investment approvals, upon technology transfer. In their view, the terms and conditions of technology transfer, particularly in the context of an investment, should be agreed between the parties to the investment without government interference. The government should not, for example, condition investment approval upon technology transfer.

49. The representative of China confirmed that China would only impose, apply or enforce laws, regulations or measures relating to the transfer of technology, production processes, or other proprietary knowledge to an individual or enterprise in its territory that were not inconsistent with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") and the Agreement on Trade-Related Investment Measures ("TRIMs Agreement"). He confirmed that the terms and conditions of technology transfer, production processes or other proprietary knowledge,

particularly in the context of an investment, would only require agreement between the parties to the investment. The Working Party took note of these commitments.

7. Pricing Policies

50. Some members of the Working Party noted that China had made extensive use of price controls, for example in the agricultural sector. Those members requested that China undertake specific commitments concerning its system of state pricing. In particular, those members stated that China should allow prices for traded goods and services in every sector to be determined by market forces, and multi-tier pricing practices for such goods and services should be eliminated. Those members noted, however, that China expected to maintain price controls on the goods and services listed in Annex 4 to the Protocol, and stated that any such controls should be maintained in a manner consistent with the WTO Agreement, in particular Article III of the GATT 1994 and Annex 2, paragraphs 3 and 4, of the Agreement on Agriculture. Those members noted that except in exceptional circumstances, and subject to notification to the WTO Secretariat, price controls should not be extended to goods or services beyond those listed in Annex 4, and China should make its best efforts to reduce and eliminate those controls. They also asked that China publish in the appropriate official journal the list of goods and services subject to state pricing and changes thereto.

51. Some members of the Working Party expressed the view that price controls and state pricing in China also encompassed "guidance pricing" and regulation of the range of profits that enterprises could enjoy. Such policies and practices would also be subject to China's commitments. In their view, price controls should be adopted only in extraordinary circumstances and should be removed as soon as the circumstances justifying their adoption were addressed.

52. The representative of China said that China currently applied a mechanism of market-based pricing under macro-economic adjustment. He noted that national treatment was applied in the areas of government pricing for all imported goods. There were presently three types of prices: government price, government guidance price and market-regulated price. The government price was set by price administration authorities and could not be changed without the approval of these authorities. Products and services subject to government pricing were those having a direct bearing on the national economy and the basic needs of the people's livelihood, including those products that were scarce in China.

53. The representative of China stated that when government prices or government guidance prices needed to be adjusted or reset, the agencies or operators concerned should apply or propose to the competent pricing authorities for that purpose. There was not a fixed time frame for the adjustment of government prices or government guidance prices. Competent agencies or operators could, in the light of market changes and according to relevant provisions of the Price Law, submit applications or proposals to the competent pricing authorities for pricing or adjustment of the original prices. The government pricing authorities would, in the light of such factors as market demand and supply, operational costs, effect on consumers as well as the quality of services, determine specific prices for the services concerned, or set guidance prices and floating ranges within which operators could determine specific prices. When setting prices for public utilities, important public welfare services and goods subject to natural monopolies and services which were of vital interest to the general public, government pricing authorities would hold public hearings and invite consumers, operators and other concerned parties to comment and debate on the necessity and impact of a price adjustment. The prices of important services were subject to the approval of the State Council. This mechanism had helped to significantly improve the rationality and transparency of government pricing. All enterprises, regardless of their nature and ownership, were free to participate in such hearings and voice their opinions and concerns which would be taken into consideration by the competent pricing authorities. Meanwhile, government pricing was product- or service-specific, regardless of the ownership of the enterprises concerned. All the enterprises and individuals enjoyed

the same treatment in terms of participating in the process of setting government prices and government guidance prices.

54. The representative of China added that the government guidance price mechanism was a more flexible form of pricing. The price administration authorities stipulated either a basic price or floating ranges. The floating range of guidance pricing was generally 5 per cent to 15 per cent. Enterprises could, within the limits of the guidance and taking into account the market situation, make their own decisions on prices. With market-regulated prices, enterprises were free to set prices in accordance with supply and demand to the extent permitted by generally applicable laws, regulations and policies concerning prices.

55. The representative of China stated that in formulating government prices and government guidance prices, the following criteria were taken into account: normal production costs, supply and demand situation, relevant government policies and prices of related products. When fixing prices of consumer goods, consideration was given to the limits of consumers' purchasing power. He noted that due to the continued reform of China's price system, the share of government prices had dropped substantially and that of market-regulated prices had increased; of social retailing products, the share of government prices was about 4 per cent, that of government guidance prices 1.2 per cent, and that of market-regulated prices 94.7 per cent. For agricultural products, the share of government prices was 9.1 per cent, government guidance prices 7.1 per cent, and market-regulated 83.3 per cent. For production inputs, the share of government prices was 9.6 per cent, that of government guidance prices 4.4 per cent, and market-regulated prices 86 per cent. The share of directly government-controlled prices had been much reduced. China's price system was becoming increasingly rationalized, creating a relatively fair marketplace for all enterprises to compete on an equal footing.

56. The representative of China recalled that Annex 4 of the Protocol contained a comprehensive listing of all products and services presently subject to government guidance pricing and government pricing. He stated that the services subject to price controls were listed in Annex 4 by their respective CPC codes.

57. Some members of the Working Party requested additional information on the specific activities subject to government pricing or government guidance pricing. In particular, those members requested information on professional services, educational services, and charges for settlement clearing and transmission services of banks. In response, the representative of China stated that "The Administrative Rules on Intermediate Services" promulgated in 1999 by six central government agencies led by the State Development and Planning Commission ("SDPC") dealt with government pricing on intermediate services such as inspection authentication, notarization and arbitration and services which were in limited supply due to their special requirements. For legal services, the Interim Regulation on Charges and Fees of Legal Services, jointly promulgated by the SDPC and the Ministry of Justice stipulated that for law firms practising Chinese law, charges and fees for the following activities were subject to the approval of the SDPC: (1) representing a client in a civil case, including an appeal; (2) representing a client in a case contesting an administrative agency's decision; (3) providing legal advice to criminal suspects, acting for a client in connection with an appeal or prosecution, applying for bail, representing a defendant or victim in a criminal case; and (4) representing a client in an arbitration. For foreign legal service providers engaged in activities such as those listed in China's GATS schedule, the foreign legal service providers would determine the appropriate charges and fees which would not be subject to government pricing or guidance pricing.

58. The representative of China noted that regulations also existed for the other services included in Annex 4. Government pricing and guidance pricing covered auditing services. For architectural services, advisory and pre-design architectural services and contract administration activities were subject to government pricing or government guidance pricing. For engineering services, advisory and consultative services, engineering design services for the construction of foundations and building

structures, design services for mechanical and electrical installations for buildings, construction of civil engineering works, and industrial processes and production were subject to government pricing or government guidance pricing. Primary, secondary and higher education services were subject to government pricing.

59. The representative of China further explained that charges for settlement, clearing and transmission services of banks referred to in Annex 4 related to the charges and fees collected by banks for the services provided to enterprises and individuals when the banks conducted currency payments and transmission and fund settlements by using clearance methods such as bills and notes, collections and acceptances. These mainly included commission charges of bills, cashier's cheques, cheques, remittances, entrusted collections of payment, and collections and acceptances of banks.

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

61. The representative of China confirmed that the official journal providing price information was the Pricing Monthly of the People's Republic of China, published in Beijing. It was a monthly magazine listing all products and services priced by the State. He further stated that China would continue to further its price reform, adjusting the catalogue subject to state pricing and further liberalize its pricing policies.

62. The representative of China further confirmed that price controls would not be used for purposes of affording protection to domestic industries or services providers. The Working Party took note of this commitment.

63. Some members of the Working Party expressed a concern that China could maintain prices below market-based ones in order to limit imports.

64. In response, the representative of China confirmed that China would apply its current price controls and any other price controls upon accession in a WTO-consistent fashion, and would take account of the interests of exporting WTO Members as provided for in Article III:9 of the GATT 1994. He also confirmed that price controls would not have the effect of limiting or otherwise impairing China's market-access commitments on goods and services. The Working Party took note of these commitments.

8. Competition Policy

65. The representative of China noted that the Government of China encouraged fair competition and was against acts of unfair competition of all kinds. The Law of the People's Republic of China on Combating Unfair Competition, promulgated on 2 September 1993 and implemented on 1 December 1993, was the basic law to maintain the order of competition in the market. In addition, the Price Law, the Law on Tendering and Bidding, the Criminal Law and other relevant laws also contained provisions on anti-monopoly and unfair competition. China was now formulating the Law on Anti-Monopoly.

III. FRAMEWORK FOR MAKING AND ENFORCING POLICIES

1. Structure and Powers of the Government

66. The representative of China informed members of the Working Party that in accordance with the Constitution and the Law on Legislation of the People's Republic of China, the National People's Congress was the highest organ of state power. Its permanent body was its Standing Committee. The National People's Congress and its Standing Committee exercised the legislative power of the State.

They had the power to formulate the Constitution and laws. The State Council, i.e., the Central People's Government of China, was the executive body of the highest organ of state power. The State Council, in accordance with the Constitution and relevant laws, was entrusted with the power to formulate administrative regulations. The ministries, commissions and other competent departments (collectively referred to as "departments") of the State Council could issue departmental rules within the jurisdiction of their respective departments and in accordance with the laws and administrative regulations. The provincial people's congresses and their standing committees could adopt local regulations. The provincial governments had the power to make local government rules. The National People's Congress and its Standing Committee had the power to annul the administrative regulations that contradicted the Constitution and laws as well as the local regulations that contradicted the Constitution, laws and administrative regulations. The State Council had the power to annul departmental rules and local government rules that were inconsistent with the Constitution, laws or administrative regulations. These features of the Chinese legal system would ensure an effective and uniform implementation of the obligations after China's accession.

67. The representative of China stated that China had been consistently performing its international treaty obligations in good faith. According to the Constitution and the Law on the Procedures of Conclusion of Treaties, the WTO Agreement fell within the category of "important international agreements" subject to the ratification by the Standing Committee of the National People's Congress. China would ensure that its laws and regulations pertaining to or affecting trade were in conformity with the WTO Agreement and with its commitments so as to fully perform its international obligations. For this purpose, China had commenced a plan to systematically revise its relevant domestic laws. Therefore, the WTO Agreement would be implemented by China in an effective and uniform manner through revising its existing domestic laws and enacting new ones fully in compliance with the WTO Agreement.

68. The representative of China confirmed that administrative regulations, departmental rules and other central government measures would be promulgated in a timely manner so that China's commitments would be fully implemented within the relevant time frames. If administrative regulations, departmental rules or other measures were not in place within such time frames, authorities would still honour China's obligations under the WTO Agreement and Protocol. The representative of China further confirmed that the central government would undertake in a timely manner to revise or annul administrative regulations or departmental rules if they were inconsistent with China's obligations under the WTO Agreement and Protocol. The Working Party took note of these commitments.

2. Authority of Sub-National Governments

69. Several members of the Working Party raised concerns about the continued presence of multiple trade instruments used by different levels of government within China. Those members considered that this situation resulted in a lessening of the security and predictability of access to the Chinese market. These Members raised specific concerns regarding the authority of sub-national governments in the areas of fiscal, financial and budgetary activities, specifically with respect to subsidies, taxation, trade policy and other issues covered by the WTO Agreement and the Protocol. In addition, some members expressed concerns about whether the central government could effectively ensure that trade-related measures introduced at the sub-national level would conform to China's commitments in the WTO Agreement and the Protocol.

70. The representative of China stated that sub-national governments had no autonomous authority over issues of trade policy to the extent that they were related to the WTO Agreement and the Protocol. The representative of China confirmed that China would in a timely manner annul local regulations, government rules and other local measures that were inconsistent with China's obligations. The representative of China further confirmed that the central government would ensure that China's laws, regulations and other measures, including those of local governments at the sub-

national level, conformed to China's obligations undertaken in the WTO Agreement and the Protocol. The Working Party took note of these commitments.

3. Uniform Administration of the Trade Regime

71. Some members of the Working Party stated that it should be made clear that China would apply the requirements of the WTO Agreement and its other accession commitments throughout China's entire customs territory, including border trade regions, minority autonomous areas, Special Economic Zones ("SEZs"), open coastal cities, economic and technical development zones and other special economic areas and at all levels of government.

72. Those members of the Working Party also raised concerns about whether China's central government would be sufficiently informed about non-uniform practices and would take necessary enforcement actions. Those members stated that China should establish a mechanism by which any concerned person could bring to the attention of the central government cases of non-uniform application of the trade regime and receive prompt and effective action to address situations in which non-uniform application was established.

73. The representative of China confirmed that the provisions of the WTO Agreement, including the Protocol, would be applied uniformly throughout its customs territory, including in SEZs and other areas where special regimes for tariffs, taxes and regulations were established and at all levels of government. The Working Party took note of this commitment.

74. In response to questions from certain members of the Working Party, the representative of China confirmed that laws, regulations and other measures included decrees, orders, directives, administrative guidance and provisional and interim measures. He stated that in China, local governments included provincial governments, including autonomous regions and municipalities directly under the central government, cities, counties and townships. The representative of China further stated that local regulations, rules and other measures were issued by local governments at the provincial, city and county levels acting within their respective constitutional powers and functions and applied at their corresponding local level. Townships were only authorized to implement measures. Special economic areas were also authorized to issue and implement local rules and regulations.

75. The representative of China further confirmed that the mechanism established pursuant to Section 2(A) of the Protocol would be operative upon accession. All individuals and entities could bring to the attention of central government authorities cases of non-uniform application of China's trade regime, including its commitments under the WTO Agreement and the Protocol. Such cases would be referred promptly to the responsible government agency, and when non-uniform application was established, the authorities would act promptly to address the situation utilizing the remedies available under China's laws, taking into consideration China's international obligations and the need to provide a meaningful remedy. The individual or entity notifying China's authorities would be informed promptly in writing of any decision and action taken. The Working Party took note of these commitments.

4. Judicial Review

76. Some members of the Working Party stated that China should designate independent tribunals, contact points, and procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of the GATT 1994, including administrative actions relating to import or export licences, non-tariff measures and tariff-rate quota administration, conformity assessment procedures and other measures. These members sought explicit confirmation that certain types of measures, such as decisions relating to standards and chemical registration, would be subject

to judicial review. Some members of the Working Party also stated that the administrative actions subject to review should also include any actions required to be reviewed under the relevant provisions of the TRIPS Agreement and the GATS. These members stated that such tribunals should be independent of the agencies entrusted with administrative enforcement of the matter and should not have any substantial interest in the outcome of the matter.

77. Those members of the Working Party stated that such review procedures should include the opportunity for appeal, without penalty, by individuals or enterprises affected by any administrative action subject to review. If an initial right of appeal were to an administrative body, there should be an opportunity to choose to make a further appeal to a judicial body. Any decision by any appellate body and the reasons therefore would be communicated in writing to the appellant, together with notification of any right to further appeal.

78. The representative of China confirmed that it would revise its relevant laws and regulations so that its relevant domestic laws and regulations would be consistent with the requirements of the WTO Agreement and the Protocol on procedures for judicial review of administrative actions. He further stated that the tribunals responsible for such reviews would be impartial and independent of the agency entrusted with administrative enforcement, and would not have any substantial interest in the outcome of the matter. The Working Party took note of these commitments.

79. In response to questions from certain members of the Working Party, the representative of China confirmed that administrative actions related to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of the GATT 1994, Article VI of the GATS and the relevant provisions of the TRIPS Agreement included those relating to the implementation of national treatment, conformity assessment, the regulation, control, supply or promotion of a service, including the grant or denial of a licence to provide a service and other matters, and that such administrative actions would be subject to the procedures established for prompt review under Section 2(D)(2) of the Protocol, and information on such procedures would be available through the enquiry point that China would establish upon accession. The Working Party took note of these commitments.

IV. POLICIES AFFECTING TRADE IN GOODS

A. TRADING RIGHTS

1. General

80. Some members of the Working Party noted that China was in the process of liberalizing the availability of the right to import and export goods from China, but that such rights were now only available to some Chinese enterprises (totalling 35,000). In addition, foreign-invested enterprises had the right to trade, although this was restricted to the importation for production purposes and exportation, according to the enterprises' scope of business. Those members stated their view that such restrictions were inconsistent with WTO requirements, including Articles XI and III of GATT 1994, and welcomed China's commitment to progressively liberalize the availability and scope of the right to trade so that within three years after accession all enterprises would have the right to import and export all goods (except for the share of products listed in Annex 2A to the Protocol reserved for importation and exportation by state trading enterprises) throughout the customs territory of China. Those members requested that China provide detailed information on the process and criteria that it would use to increase the number of enterprises with trading rights and the scope of products that enterprises could import and export during the transition period.

81. Some members of the Working Party also noted China's commitment to accord foreign enterprises and individuals, including those not invested or registered as enterprises in China, no less favorable treatment than that accorded enterprises in China with respect to the right to trade except as

otherwise provided for in the Protocol. Members of the Working Party requested that China provide detailed information regarding the process for such enterprises and individuals to obtain the right to import and export goods.

82. Some members of the Working Party expressed concerns that after the transition period any linkage between an enterprise's scope of business or business licence and the right to trade would constitute a restriction on the right to import and export. Those members noted that within three years after accession, China would have to permit all enterprises in China to trade in all goods throughout the customs territory of China (except as otherwise provided in the Protocol).

83. The representative of China confirmed that during the three years of transition, China would progressively liberalize the scope and availability of trading rights.

- (a) The representative of China confirmed that, upon accession, China would eliminate for both Chinese and foreign-invested enterprises any export performance, trade balancing, foreign exchange balancing and prior experience requirements, such as in importing and exporting, as criteria for obtaining or maintaining the right to import and export.
- (b) With respect to wholly Chinese-invested enterprises, the representative of China stated that although foreign-invested enterprises obtained limited trading rights based on their approved scope of business, wholly Chinese-invested enterprises were now required to apply for such rights and the relevant authorities applied a threshold in approving such applications. In order to accelerate this approval process and increase the availability of trading rights, the representative of China confirmed that China would reduce the minimum registered capital requirement (which applied only to wholly Chinese-invested enterprises) to obtain trading rights to RMB 5,000,000 for year one, RMB 3,000,000 for year two, RMB 1,000,000 for year three and would eliminate the examination and approval system at the end of the phase-in period for trading rights.
- (c) The representative of China also confirmed that during the phase-in period, China would progressively liberalize the scope and availability of trading rights for foreign-invested enterprises. Such enterprises would be granted new or additional trading rights based on the following schedule. Beginning one year after accession, joint-venture enterprises with minority share foreign-investment would be granted full rights to trade and beginning two years after accession majority share foreign-invested joint-ventures would be granted full rights to trade.
- (d) The representative of China also confirmed that within three years after accession, all enterprises in China would be granted the right to trade. Foreign-invested enterprises would not be required to establish in a particular form or as a separate entity to engage in importing and exporting nor would new business licence encompassing distribution be required to engage in importing and exporting.

The Working Party took note of these commitments.

84. (a) The representative of China reconfirmed that China would eliminate its system of examination and approval of trading rights within three years after accession. At that time, China would permit all enterprises in China and foreign enterprises and individuals, including sole proprietorships of other WTO Members, to export and import all goods (except for the share of products listed in Annex 2A to the Protocol reserved for importation and exportation by state trading enterprises) throughout the customs territory of China. Such right, however, did not permit importers to distribute goods within China. Providing distribution services would be done in accordance with China's Schedule of Specific Commitments under the GATS.

- (b) With respect to the grant of trading rights to foreign enterprises and individuals, including sole proprietorships of other WTO members, the representative of China confirmed that such rights would be granted in a non-discriminatory and non-discretionary way. He further confirmed that any requirements for obtaining trading rights would be for customs and fiscal purposes only and would not constitute a barrier to trade. The representative of China emphasized that foreign enterprises and individuals with trading rights had to comply with all WTO-consistent requirements related to importing and exporting, such as those concerning import licensing, TBT and SPS, but confirmed that requirements relating to minimum capital and prior experience would not apply.

The Working Party took note of these commitments.

2. Designated Trading

85. The representative of China stated that China would adjust and expand its list of enterprises under its designated trading regime annually during the transition period, leading up to full implementation of the commitment contained in Annex 2B. The current criteria for enterprises under the designated trading regime included registered capital, import and export volume and the import volume of products subject to designated trading in the previous year, bank credit rating and profits and losses.

86. Members of the Working Party noted China's commitment that it would phase out the limitation on the grant of trading rights for goods specified in Annex 2B of its Protocol within three years after accession. In responding to questions raised by some members of the Working Party, the representative of China confirmed that China would progressively liberalize the right to trade in such goods by increasing the number of designated entities permitted to import goods in each of the three years of the transition period specified in Annex 2B. The representative of China added that China would eliminate import and export volume as a criterion for obtaining the right to trade these products, reduce minimum capitalization requirements and extend the right to register as designated importing and exporting enterprises to enterprises that used such goods in the production of finished goods and enterprises that distributed such goods in China. At the end of three years, all enterprises in China and all foreign enterprises and individuals would be permitted to import and export such goods throughout the customs territory of China. During the transition period, none of the criteria applicable under the designated trading regime would constitute a quantitative restriction on imports or exports. The Working Party took note of these commitments.

B. IMPORT REGULATION

1. Ordinary Customs Duties

87. Members of the Working Party welcomed China's decision to bind tariffs for all products in its schedule on market access for goods. This action would increase the certainty and predictability of this aspect of China's trade regime. Members also noted the substantial unilateral tariff reductions made in many sectors by China in recent years.

88. The representative of China provided members of the Working Party with a copy of the Customs Import and Export Tariff of the People's Republic of China ("Customs Tariff") and related laws and regulations. He noted that the Customs Tariff of China was a charge imposed on imported goods. The purpose of levying tariffs was twofold: (a) to regulate imports so as to promote and support domestic production; and (b) to serve as an important source of revenue for the treasury of the central government. China's tariff policy was to promote economic reform and opening of the economy. The basic principles for establishing duty rates were as follows. Duty-free or low duty rates were applied to imported goods which were needed for the national economy and the people's livelihood but which were not produced sufficiently domestically. Import duty rates on raw materials

were generally lower than those on semi-manufactured or manufactured products. For parts or components of machinery, equipment and instruments which were not produced domestically, or at a sufficiently high standard, the import duty was lower than the duty on finished products. Higher duty rates were applied to products which were produced domestically or which were considered non-essential for the national economy and the people's livelihood. A higher duty was applied to imported products, the equivalent of which were produced domestically and the local manufacturer of which needed protection.

89. The representative of China said that China had adopted the Harmonized Commodity Description and Coding System ("HS") as from 1 January 1992 and joined the International Convention on the Harmonized Commodity Description and Coding System in the same year. There were 21 sections, 97 chapters and 7062 eight-digit tariff headings based on the six-digit HS'96 version in the Customs Tariff for the year 2000. Tariff rates were fixed by the State Council. Partial adjustment to the duty rates was subject to deliberation and final decision by the State Council Tariff Commission. The simple average of China's import duties in 2000 was 16.4 per cent. Among the 7062 tariff headings, tariff rates for 525 headings were below 5 per cent, 1488 were between 5 per cent (inclusive) and 10 per cent (exclusive), 2022 between 10 per cent (inclusive) and 15 per cent (inclusive) and 3027 were above 15 per cent. Information on tariff rates for specific products and import statistical data for recent years had been provided to the Working Party.

90. He also noted that currently there were two columns of import duty rates: general rates and preferential rates. The preferential rates applied to imports originating in countries and regions with which China had concluded reciprocal tariff agreements, whereas the general rates applied to imports from other sources.

91. The representative of China confirmed that for wood and paper products, the same rates of duty, including the rates applied under a preference programme, customs union or free-trade area, would be applied to all imports of wood and paper products. The Working Party took note of this commitment.

92. The representative of China confirmed that upon accession China would participate in the Information Technology Agreement ("ITA") and would eliminate tariffs on all information technology products as set out in China's schedule. Furthermore, upon accession, China would eliminate all other duties and charges for ITA products. The Working Party took note of these commitments.

93. Certain members of the Working Party expressed particular concerns about tariff treatment in the auto sector. In response to questions about the tariff treatment for kits for motor vehicles, the representative of China confirmed that China had no tariff lines for completely knocked-down kits for motor vehicles or semi-knocked down kits for motor vehicles. If China created such tariff lines, the tariff rates would be no more than 10 per cent. The Working Party took note of this commitment.

94. Without prejudice to its rights to participate in the WTO process, the representative of China confirmed China's commitment to support the tariff liberalization proposal outlined in WT/GC/W/138/Add.1 (22 April 1999) and that it would participate fully in any tariff liberalization initiative based on this proposal that WTO Members might accept for implementation.

95. China undertook bilateral market access negotiations on goods with members of the Working Party. The results of those negotiations were contained in the Schedule of Concessions and Commitments on Goods and formed Annex 8 to the Protocol.

2. Other Duties and Charges

96. The representative of China confirmed that China had agreed to bind at zero other duties and charges in its Schedule of Concessions and Commitments, pursuant to Article II:1(b) of the GATT 1994. The Working Party took note of this commitment.

3. Rules of Origin

97. Some members of the Working Party requested information about the adoption and application of rules of origin in China, whether in the context of free trade agreements or otherwise, and also requested China to confirm that its rules of origin for both preferential and non-preferential trade complied fully with the WTO Agreement on Rules of Origin.

98. The representative of China noted that the criteria for making the determination of substantial transformation was: (a) change in tariff classification of a four-digit tariff line in the Customs Tariff; or (b) the value-added component was 30 per cent or more in the total value of a new product.

99. He further noted that under current arrangements, and in accordance with the criteria outlined above, when an imported product was processed and manufactured in several countries, the country of origin of the product was determined to be the last country in which the product underwent substantial transformation. The rules of origin applied for statistical purposes were the same.

100. The representative of China stated that China's rules of origin for import and export were non-preferential rules of origin. Once the international harmonization of non-preferential rules of origin was concluded, China would fully adopt and apply the internationally harmonized non-preferential rules of origin. A mechanism that met the requirements of Articles 2(h) and 3(f), and Annex II, paragraph 3(d) of the Agreement, which required provision upon request of an assessment of the origin of an import or an export and outlined the terms under which it would be provided, would be established in China's legal framework by the date of accession. The Working Party took note of these commitments.

101. The representative of China further stated that China would not use the rules of origin as an instrument to pursue trade objectives directly or indirectly. He also confirmed that China would apply rules of origin equally for all purposes. The Working Party took note of these commitments.

102. The representative of China confirmed that from the date of accession, China would ensure that its laws, regulations and other measures relating to rules of origin would be in full conformity with the WTO Agreement on Rules of Origin and that it would implement such laws, regulations and other measures in full conformity with that Agreement. The Working Party took note of this commitment.

4. Fees and Charges for Services Rendered

103. Members of the Working Party noted that as a condition of accession, China should undertake a commitment to ensure conformity of customs fees and charges with Article VIII of the GATT 1994. The representative of China confirmed that China would comply with Article VIII of GATT 1994 in this regard. The Working Party took note of this commitment.

5. Application of Internal Taxes to Imports

104. Some members of the Working Party expressed concern that some internal taxes applied to imports, including a value-added tax ("VAT") were not administered in conformity with the requirements of the GATT 1994, particularly Article III. Those members of the Working Party noted that China appeared to permit the application of discriminatory internal taxes and charges to imported

goods and services, including taxes and charges applied by sub-national authorities. Those members requested that China reaffirm that all such internal taxes and charges would be in conformity with the requirements of the GATT 1994.

105. In response, the representative of China noted that there were three major types of taxes levied on products and services: (a) VAT levied on goods and services for processing, maintenance and assembling; (b) the Consumption Tax on some selected consumer products; and (c) the Business Tax on providing services, transferring intangible assets and selling real estate. Both the VAT and the Consumption Tax were applicable to entities importing goods. VAT and the Consumption Tax on imported goods were collected by General Customs Administration ("Customs") at the point of entry. He noted that VAT was reimbursed once goods were exported. Exported goods were exempted from the Consumption Tax.

106. He further noted that the State Council determined all policies concerning the levying of VAT and the Consumption Tax, adjustment of tax types and tax rates (tax value), as well as the tax exemption of VAT, the Consumption Tax and the Business Tax. The laws and regulations were interpreted and implemented by the Ministry of Finance and the State Administration of Taxation. VAT and the Consumption Tax were levied and administered by the State competent departments of taxation, while the Business Tax was collected and administered by the local competent departments of taxation.

107. The representative of China confirmed that from the date of accession, China would ensure that its laws, regulations and other measures relating to internal taxes and charges levied on imports would be in full conformity with its WTO obligations and that it would implement such laws, regulations and other measures in full conformity with those obligations. The Working Party took note of this commitment.

6. Tariff Exemptions

108. The representative of China stated that the tariff exemption policy of China was developed and implemented in accordance with the Customs Law of the People's Republic of China and the Regulations of the People's Republic of China on Import and Export Duties. The coverage of specific tariff reduction or exemption was provided for by the State Council. All the tariff reductions and exemptions were applied on an MFN basis.

109. The representative of China noted that in accordance with international practices and provisions of China's Customs Law, import duty reductions or exemptions were available for the following goods:

- (a) A consignment of goods, on which customs duties were estimated below RMB 10 yuan;
- (b) advertising articles and samples, which were of no commercial value;
- (c) goods and materials, which were rendered gratis by international organizations or foreign governments;
- (d) fuels, stores, beverages and provisions for use en route loaded by any means of transport, which were in transit across the border;
- (e) exported goods being replaced;
- (f) goods damaged prior to Customs release;

- (g) goods covered by international treaties providing for tariff reductions and exemptions which China had entered into or acceded to;
- (h) goods temporarily imported;
- (i) goods imported under inward processing programmes;
- (j) goods imported at zero cost for replacement purposes;
- (k) domestic- or foreign-funded projects encouraged by the government;
- (l) articles for scientific research, education and the disabled.

He noted that goods so imported were required to be put under Customs supervision and control. The Customs duty was required to be recovered if such goods were sold, transferred or used for other purposes during the time period of supervision and control.

110. Some members of the Working Party expressed concerns over the availability and application of tariff reductions and exemptions for a variety of enterprises and other entities, including state trading enterprises, state-owned enterprises, foreign-invested enterprises and not-for-profit entities. Similar concerns also existed for exemptions from application of other duties, taxes and charges. These members noted the negative effect such reductions or exemptions could have on revenues and predictability and certainty in application of tariff and other trade measures.

111. The representative of China confirmed that upon accession, China would adopt and apply tariff reductions and exemptions so as to ensure MFN treatment for imported goods. The Working Party took note of this commitment.

7. Tariff Rate Quotas

112. Several members of the Working Party expressed concern over the lack of transparency, uniformity and predictability of China's administration of its tariff rate quota ("TRQ") regime. Those members requested that China enter a commitment to administer TRQs in a simple, transparent, timely, predictable, uniform, non-discriminatory, and non-trade restrictive manner, and in a way that would not cause trade distortions. Those members asked that China ensure that its TRQ arrangements be no more administratively burdensome than absolutely necessary, and also expressed the hope that China would move as quickly as possible to a market-based TRQ allocation process.

113. Those members of the Working Party also raised concerns regarding the administration of China's TRQ system and the practices of state trading enterprises in relation to importing such products. These concerns included the current lack of transparent regulations for administering TRQs; use of administrative guidance; distortions introduced into the market due to allocations based on government determinations of sub-national supply and utilization rather than consumer preferences and end-user demand; failure to establish and publish annual TRQ quantities; trade-restrictive and non-competitive practices of state trading enterprises; and general uncertainty, inconsistency and discrimination in trade of bulk commodities. Those members expressed similar concerns about the operation of China's TRQ system for products subject to designated trading. Those members requested that China reduce tariffs for commodities subject to TRQs, enter into access commitments for these commodities, improve the administration of the TRQ regime, and ensure that trade would not be distorted by unjustified government regulation. Certain members of the Working Party also requested that a number of specified products be removed from China's TRQ system and that, upon import, these products be subject only to tariffs.

114. The representative of China noted that in 1996, for the first time, China published a list of import products subject to TRQs, together with the tariff rates applicable to imports both in and out of quota. Allocation of TRQ was based on historical performance and administration of the state trading regime, although China had also tried several other ways of administration, including import at applied tariff rates, first-come-first-served at the point of entry. China was trying to simplify the TRQ administration regime and procedures in a bid to facilitate use, enhance efficiency and implement further reform.

115. The representative of China further noted that, in undertaking market-oriented reform in the agricultural sector, China had made progress in freeing agricultural products from state pricing and in guiding farmers to adjust the structure of agricultural production based on the demands of the market. In connection with that reform process, in the bilateral negotiations with Members, China committed that, upon accession, it would eliminate TRQs on a number of products and subject these only to tariffs. The products concerned were barley, soybeans, rapeseed, peanut oil, sunflower seed oil, corn oil, and cottonseed oil. In addition, China would replace quantitative import restrictions on sugar, cotton and three types of fertilizers (DAP, NPK and urea) by TRQs. The Working Party took note of these commitments.

116. The representative of China stated that upon accession, China would ensure that TRQs were administered on a transparent, predictable, uniform, fair and non-discriminatory basis using clearly specified timeframes, administrative procedures and requirements that would provide effective import opportunities; that would reflect consumer preferences and end-user demand; and that would not inhibit the filling of each TRQ. China would apply TRQs fully in accordance with WTO rules and principles and with the provisions set out in China's Schedule of Concessions and Commitments on Goods. The Working Party took note of these commitments.

117. The representative of China confirmed that for the goods listed in Annex 2 of the Protocol that were subject to a TRQ, China would also apply the provisions of its Schedule relating to TRQ administration and related commitments in the Protocol, including the grant of trading rights to non-state trading entities to import the TRQ allocations set aside for importation by such entities. For products in Annex 2 of the Protocol that were subject to designated trading, the representative of China confirmed that China would ensure that additional enterprises granted trading rights in accordance with China's commitments to phase out designated trading would not be disadvantaged in the allocation of TRQ. The Working Party took note of these commitments.

118. Some members of the Working Party expressed the view that allocation decisions were based, in large part, on government-determined provincial supply and utilization rather than on commercial market criteria that reflected consumer preferences and end-user demand. Those members expressed concern that China's stated intention to allocate quota to sub-national authorities and to authorize those authorities to then allocate that quota to end-users in separate processes would add an unnecessary, burdensome step in the procedures and reduce the likelihood that quotas would be filled. Further, those members stated that China's stated intention with regards to TRQ procedures would not be consistent with China's commitments to uniform administration of its trade regime. Those members sought confirmation that China would not establish a separate process of allocation to sub-national authorities, as well as confirmation that all allocation and reallocation decisions would be made by a single, central authority in China.

119. The representative of China confirmed that the role of sub-national bodies would be limited to purely administrative operations, such as receiving applications from end-users and forwarding them to the central authority; receiving queries and transmitting these to the central authority; reporting on allocation and reallocation decisions made by the central authority and providing information regarding such allocations and reallocations upon request; checking the information in the applications to verify that it met the published criteria; notifying applicants of any deficiencies in their applications; and providing applicants with an opportunity to cure deficiencies in their

applications. After the central authority decided on allocations of quota to end-users, the sub-national bodies would issue TRQ certificates accordingly. The representative of China also confirmed that China would administer a consistent national allocation (and reallocation) policy for TRQs, that it would not establish a separate process of allocation to sub-national authorities and that decisions regarding all allocations and reallocations to end-users would be made by a single, central authority. The Working Party took note of these commitments.

120. The representative of China further confirmed that China would grant to any enterprise possessing the right to trade any product pursuant to Section 5 of the Protocol, the right to import goods in Annex 2A of the Protocol that were subject to a TRQ or to an agreed volume of imports by non-state trading enterprises. Such right to import would not extend to the quantity of goods specifically reserved for importation by state trading enterprises. Any enterprise possessing the right to trade pursuant to Section 5 of the Protocol would also have the right to import that portion of a TRQ reallocated to non-state trading enterprises pursuant to the agreed rules on TRQ administration. The representative of China also confirmed that for goods in Annex 2A of the Protocol subject to a TRQ, any enterprise granted the right to trade, pursuant to Section 5 of the Protocol, would be permitted to import such goods at the out-of-quota rate. The Working Party took note of these commitments.

8. Quantitative Import Restrictions, including Prohibitions and Quotas

121. In response to requests for information from members of the Working Party, the representative of China noted that China prohibited or restricted the importation of certain commodities, including weapons, ammunition and explosives, narcotic drugs, poisons, obscene materials and those foodstuffs, medicines, animals and plants which were inconsistent with China's technical regulations on food, medicines, animals and plants.

122. Some members of the Working Party noted that there were a large number of non-tariff measures in existence in China, both at the national and sub-national levels, which appeared to have a trade restrictive or trade distorting effect. Those members requested that China undertake a commitment to eliminate and not to introduce, re-introduce or apply non-tariff measures other than those specifically identified and subject to phased elimination in Annex 3 to the Protocol. The representative of China confirmed that China would not introduce, re-introduce or apply non-tariff measures other than listed in Annex 3 of the Protocol unless justified under the WTO Agreement. The Working Party took note of this commitment.

123. Some members of the Working Party also raised concerns that many non-tariff measures were imposed by sub-national authorities in China on a non-transparent, discretionary and discriminatory basis. Those members of the Working Party asked that China undertake a commitment to ensure that non-tariff measures would only be imposed by the central government or by sub-national authorities with clear authorization from the central government. Actions lacking authorization from the national authorities should not be implemented or enforced. The representative of China clarified that only the central government could issue regulations on non-tariff measures and that these measures would be implemented or enforced only by the central government or sub-national authorities with authorization from the central government. He further stated that sub-national authorities had no right to formulate non-tariff measures. The Working Party took note of these commitments.

124. Some members of the Working Party noted that China had provided a list of non-tariff measures in respect of which China was prepared to commence phased elimination, contained in Annex 3 of the Protocol. Those members stated that China should eliminate the measures listed in accordance with the schedule provided in Annex 3, during the periods specified in Annex 3. For measures subject to phased elimination, China should provide for growth in the quota over the relevant period specified in Annex 3. Those members also noted that the protection afforded by the

measures listed in Annex 3 should not be increased or expanded in size, scope, or duration, nor any new measures be applied, unless justified under the provisions of the WTO Agreement.

125. Those members of the Working Party noted that all non-tariff measures administered by China, whether or not referred to in Annex 3 of the Protocol, which were applied after China's accession, should be allocated and otherwise administered in strict conformity with the provisions of the WTO Agreement, including Article XIII of the GATT 1994 and the Agreement on Import Licensing Procedures, including notification requirements.

126. The representative of China stated that China had modified Annex 3 on the basis of the comments raised by certain members of the Working Party. He confirmed that only the machinery and electronic products listed in Annex 3 were subject to specific tendering requirements and that these requirements would be administered pursuant to Chapter III of the Regulation entitled "Interim Measures for Import Administration of Machinery and Electronics Products" (approved by the State Council on 22 September 1993 and promulgated in Order No. 1 by the State Economic and Trade Commission and Ministry of Foreign Trade and Economic Cooperation on 7 October 1993). He also confirmed that Annex 3 contained all of the products subject to quotas, licences and such tendering requirements in China and that, during the relevant phase-out period, China would implement the growth rates for quotas as indicated in Annex 3. The Working Party took note of these commitments.

127. Some members of the Working Party requested information on how China would implement the quota and licensing requirements for products listed in Annex 3, in particular the procedures and criteria for grant of quota allocations and licensing during the phase-out period for these restrictions. Those members expressed concerns about requirements for obtaining a licence or quota allocation which often required approvals from various authorities within an organization as well as approval from both the central and sub-national level. Those members sought a transparent, streamlined system that would issue quota allocations and licences through a simple, consolidated approval process that would ensure full use of the quota and its equitable distribution among importers. Those members also requested information on how China would establish the value of imports for those products whose quota was established in terms of value of imports. The representative of China confirmed that the administration of quotas and import licences would be consistent with the WTO Agreement, including Article XIII of the GATT 1994 and the Agreement on Import Licensing Procedures. The allocation of quotas and issuance of import licences would go through a simple and transparent procedure, so as to ensure the full utilization of quota. He further stated that the establishment of value of imports would be based on the information collected by the Customs authorities and provisions of the WTO Customs Valuation Agreement. For quota quantities specified in terms of value, China would determine the value of any shipment based on the c.i.f. ship value listed on the bill of lading. The Working Party took note of these commitments.

128. The representative of China confirmed that the products currently covered under the HS categories listed in Annex 3 as of the date of accession were the only products that would be subject to these quotas during the agreed phase-out periods. Any non-tariff measures covering additional products would need to be justified under the WTO Agreement. Further, the representative of China stated that for products listed in Annex 3 as being subject to quota and licensing requirements, any entity that will possess the right to trade in the quota year, including enterprises possessing trading rights to import such products or inputs for production purposes under a particular quota category, could apply for a quota allocation and licence to import products listed in Annex 3. The Working Party took note of these commitments.

129. The representative of China further confirmed that for products listed in Annex 3, China's system for quota allocation and licensing would ensure that those entities with quota allocations would also receive any necessary import licence. This system would conform to WTO rules, including the WTO Agreement on Import Licensing Procedures, and would be transparent, timely, responsive to market conditions and would minimize the burden on trade. Applications for a quota

allocation would need to be submitted to only one organization, at one level (central or sub-national) for approval. The relevant organization would then issue an import licence based on the quota allocation, in most cases within 3 working days and, in exceptional cases, within a maximum of 10 working days after a request for the licence. A licence would be issued for the full amount of the quota and would be valid for the calendar year issued. Such licence would be extended once, upon request, for up to 3 months, if the request was made before 15 December of the current quota year. Imports occurring under an extended licence would be counted against the relevant quota amount for the year in which the allocation took place. The representative of China confirmed that the relevant organization for issuing quota allocations and licences, amount of quota, including the growth in quota provided for in Annex 3, the eight-digit tariff codes and full descriptions of all products covered by each quota and procedures for application for a quota allocation and licence, including the beginning and end date of the application period and any other relevant procedures or criteria, would be published in the official journal referred to in Section 2(C)(2) of the Protocol at least 21 days prior to the beginning of the application period. Such application period would be from 1-31 August. Quotas would be allocated to applicants no later than 60 days after closure of the application period. The Working Party took note of these commitments.

130. The representative of China stated that China would allocate quotas in accordance with the following criteria and procedures which would be published in advance and would be applied in conformity with WTO requirements, including the Agreement on Import Licensing Procedures. In applying these criteria, China would consider the need to allow for equitable participation by producers from WTO Members and take into account the need to maximize the potential for quota fill.

(a) (i) If the relevant quota quantity exceeded total requests for quota allocations, all requests would be approved.

(ii) In other cases, the criteria for allocation would be as follows:

Historical performance of applicants where relevant (in cases in which average imports over the 3-year period immediately prior to the year of China's accession, for which data was available, amounted to less than 75 per cent of the relevant quota, it would be necessary to take into account other criteria *inter alia* as set forth below);

– Production or processing capacity, in the case of intermediate products and raw materials;

– Experience and ability in producing, importing, marketing, or servicing in international markets, in the case of finished products or products destined for wholesale or retail distribution;

(b) (i) In cases in which average imports over the 3-year period immediately prior to the year of China's accession, for which data was available, exceeded 75 per cent of the relevant quota, applicants that had not previously been allocated quota would be allocated 10 per cent of the total quota in the first year and the majority of any quota growth in any subsequent year.

(ii) In other cases :

– In the first year, 25 per cent of the total quota would be allocated to applicants that had not previously been allocated quota; however, an applicant that had imported under a quota on the relevant products in the year prior to China's accession would not receive a decrease in the absolute amount of its quota allocation;

- In the second year, for the amount of the quota growth as well as an amount equivalent to the amount of any quota that had not been filled in the previous year, China would give priority consideration to requests from enterprises with foreign ownership equal to or less than 50 per cent;
 - In the third and fourth year, if relevant, for the amount of the quota growth as well as an amount equivalent to the amount of any quota that had not been filled in the previous year, China would give priority consideration to requests from enterprises with foreign ownership greater than 50 per cent.
- (c) In all cases, a quota-holder receiving an initial allocation that had fully utilized or contracted for its quota allocation would, upon application, receive an allocation in the following year for a quantity no less than the quantity imported in the previous year. A quota-holder that did not import its full allocation would receive a proportional reduction in its quota allocation in the subsequent year unless the quantity was returned for reallocation by 1 September.

The Working Party took note of these commitments.

131. The representative of China confirmed that all commercial terms of trade, including product specifications, product mix, pricing, and packaging, would be at the sole discretion of the quota holder, so long as the products are within the relevant quota category. Allocations would be valid for any article or mixture of articles subject to the same quota as specified in Annex 3 of the Protocol. Allocations would be valid for a period of one calendar year from the opening of the quota import period. However, if the holder of a quota allocation had not contracted for import of the total quantity allocated to the holder by 1 September, the holder was to immediately return the unused portion of the allocation to the relevant authority which would reallocate the quota immediately, if unfilled requests were pending, or otherwise within 10 days after receipt of a request for an allocation. The relevant organization would publish notice of the availability of additional allocations after collecting any unused quotas returned by the quota holders. Licences for goods imported under reallocated quota would be extended once, upon request, for up to 3 months, if the request was made before 15 December of the current quota year. Imports occurring under an extended licence would be counted against the relevant quota amount for the year in which the re-allocation took place. The Working Party took note of these commitments.

9. Import Licensing

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

133. In response to requests for additional information about its system of import licensing, the representative of China said that the import licensing system was administered without discrimination among countries or regions. In 1984, the State Council had promulgated the "Interim Regulations on Licensing System for Import Commodities", and MOFTEC and Customs had issued "Detailed Rules for the Implementation of the Interim Regulations on Licensing System for Import Commodities". The Interim Regulations were uniformly implemented throughout China. In 1999, of the total import value of US\$ 165.7 billion, imports subject to licensing represented 8.45 per cent, covering US\$ 14 billion. MOFTEC determined which products should be subject to import licensing according to the relevant provisions of the "Foreign Trade Law".

134. The representative of China further stated that in 1993, China had applied import restrictions to 53 product categories. By 1999, the number had been reduced to 35. Products covered were (1)

Processed oil; (2) Wool; (3) Polyester fibre; (4) Acrylic fibres; (5) Polyester fillet; (6) Natural rubber; (7) Vehicles tyres; (8) Sodium cyanide; (9) Sugar; (10) Fertilizer; (11) Tobacco and its products; (12) Acetate tow; (13) Cotton; (14) Motor vehicles and their key parts; (15) Motorcycles and their engines and chassises; (16) Colour television sets and TV kinescope; (17) Radios, tape recorders and their main parts; (18) Refrigerators and their compressor; (19) Washing machines; (20) Recording equipment and its key parts; (21) Cameras and their bodies (without lenses); (22) Watches; (23) Air conditioners and their compressor; (24) Audio and video tape duplication equipment; (25) Crane lorries and their chassises; (26) Electronic microscopes; (27) Open-end spinning machines; (28) Electronic colour scanners; (29) Grain; (30) Vegetable oil; (31) Wine; (32) Colour sensitive material; (33) Chemical under supervision and control that were used for chemical weapon; (34) Chemicals used to produce narcotics; and (35) Laser disc production facilities. He also noted that in 1999, there were 13 commodity categories which were imported by the foreign trade companies designated by MOFTEC. These categories were as follows: (1) Processed oil; (2) Fertilizer; (3) Tobacco; (4) Vegetable oil; (5) Grain; (6) Natural rubber; (7) Wool; (8) Acrylic fibers; (9) Sugar; (10) Cotton; (11) Crude oil; (12) Steel; and (13) Plywood.

135. Concerning the granting and administration of import licences, the representative of China said that the examination and approval of the licence took two to three working days. Applications for import licences could be submitted to the Quota and Licence Administrative Bureau of MOFTEC, or Special Commissioner Offices in 16 provinces, or Commissions of Foreign Economic Relations and Trade of various provinces, autonomous regions, and municipalities directly under the central government and those with independent budgetary status. Licensing agencies authorized by MOFTEC could issue import licences on the basis of import documents submitted by the applicants, approved by the competent departments. A licence could not be bought, sold or transferred, and was valid for one calendar year. Import licences could be extended once for up to three months.

136. Some members of the Working Party expressed concern that China's Provisional Procedures for the Administration of Automatic Registration for the Import of Special Commodities (13 August 1994), in particular the criteria for approval of registration, would act as a restraint on imports. The representative of China emphasized that the purpose of the registration system was only to gather statistical information. He confirmed that China would bring its automatic licensing system into conformity with Article 2 of the Agreement on Import Licensing Procedures upon accession. The Working Party took note of this commitment.

137. Some members of the Working Party noted that enterprises and individuals seeking to import products subject to tariff quota administration requirements had to go through extensive procedures to receive a quota allocation and that the quota certificate would indicate whether the subject good was to be imported through a state trading enterprise or a non-state trading enterprise and would be valid for a certain period of time. Moreover, the entity importing the good would need trading rights. In the light of these multiple requirements, a quota allocation certificate should satisfy any import licensing requirement that might apply.

138. The representative of China confirmed that China would not require a separate import licence approval for goods subject to a TRQ allocation requirement but would provide any necessary import licence in the procedure that granted a quota allocation. The Working Party took note of this commitment.

10. Customs Valuation

139. Some members of the Working Party expressed concern regarding the methods used by China to determine the customs value of goods, in particular regarding the practice of using minimum or reference prices for certain goods, which would be inconsistent with the Agreement on Implementation of Article VII of the GATT 1994 ("Customs Valuation Agreement"). Other WTO-consistent means were available to Members doubting the veracity of declared transaction values.

140. In response, the representative of China stated that China had ceased to use and would not reintroduce minimum or reference prices as a means to determine customs value. The Working Party took note of this commitment.

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

142. The representative of China recalled that the overwhelming majority of China's customs duties were *ad valorem* duties. The customs value of imported goods was assessed according to the c.i.f. price based on the transaction value, as defined in the Customs Valuation Agreement. If the transaction value of imported goods could not be determined, the customs value was determined based on other means provided for in the Customs Valuation Agreement. He also noted that the Customs Law provided for appeal procedures. In the event of a dispute over calculation of duty paid or payable with the Customs, the dissatisfied importer could apply to Customs for a reconsideration of the case. If the appeal was rejected the importer could sue at the People's Court.

143. The representative of China confirmed that, upon accession, China would apply fully the Customs Valuation Agreement, including the customs valuation methodologies set forth in Articles 1 through 8 of the Agreement. In addition, China would apply the provisions of the Decision on the Treatment of Interest Charges in Customs Value of Imported Goods, and the Decision on the Valuation of Carrier Media Bearing Software for Data Processing Equipment, adopted by the WTO Committee on Customs Valuation (G/VAL/5), as soon as practicable, but in any event no later than two years from the date of accession. The Working Party took note of these commitments.

11. Other Customs Formalities

144. The representative of China said that China joined the International Convention on the Simplification and Harmonisation of Customs Procedures in 1988 and on 15 June 2000 signed the Protocol on the Amendment of the International Convention on the Simplification and Harmonisation of Customs Procedures. The Customs authorities of China had only adopted such customs formalities as declaration, examination, levying of duties and release which were consistent with international practices.

12. Preshipment Inspection

145. The representative of China stated that, currently, there were trade and commerce inspection agencies (including joint-venture agencies) engaged in preshipment inspection. He further stated that China would comply with the Agreement on Preshipment Inspection, and would regulate the existing trade and commerce inspection agencies and permit the qualified agencies to be engaged in preshipment inspection in line with the government mandate or the terms and conditions of commercial contracts. The Working Party took note of this commitment.

146. Some members of the Working Party requested information on whether China used the services of a private preshipment inspection entity. The representative of China confirmed that China would ensure that, upon accession, any laws and regulations relating to preshipment inspection by any inspection agency, including private entities, would be consistent with relevant WTO agreements, in particular, the Agreement on Preshipment Inspection and the Customs Valuation Agreement. Moreover, any fees charged in connection with such preshipment inspection would be commensurate with the service provided, in conformity with Article VIII:1 of the GATT 1994. The Working Party took note of these commitments.

13. Anti-Dumping, Countervailing Duties

147. Some members of the Working Party raised concerns that the current investigations by the Chinese authority would be judged to be inconsistent with the Agreement on Implementation of Article VI of GATT 1994 ("Anti-Dumping Agreement") if China were a Member of the WTO today. In certain cases, the basis for calculating dumping margins for a preliminary affirmative determination was not disclosed to interested parties. Furthermore, the determination of injury and causation did not appear to have been made on an objective examination of sufficient evidence. In the views of these members, bringing the Chinese anti-dumping rules into compliance with the WTO Agreement on its face was not sufficient. WTO-consistency had to be secured substantively as well.

148. In response, the representative of China stated that China promulgated regulations and procedures on anti-dumping and countervailing duties in 1997 with reference to the Anti-Dumping Agreement and Agreement on Subsidies and Countervailing Measures. He committed to revising China's current regulations and procedures prior to its accession in order to fully implement China's obligations under the Anti-Dumping and SCM Agreements. The Working Party took note of this commitment.

149. Members of the Working Party and the representative of China agreed that the term "national law" in subparagraph (d) of Section 15 of the Protocol, should be interpreted to cover not only laws but also decrees, regulations and administrative rules.

150. Several members of the Working Party noted that China was continuing the process of transition towards a full market economy. Those members noted that under those circumstances, in the case of imports of Chinese origin into a WTO Member, special difficulties could exist in determining cost and price comparability in the context of anti-dumping investigations and countervailing duty investigations. Those members stated that in such cases, the importing WTO Member might find it necessary to take into account the possibility that a strict comparison with domestic costs and prices in China might not always be appropriate.

151. The representative of China expressed concern with regard to past measures taken by certain WTO Members which had treated China as a non-market economy and imposed anti-dumping duties on Chinese companies without identifying or publishing the criteria used, without giving Chinese companies sufficient opportunity to present evidence and defend their interests in a fair manner, and without explaining the rationale underlying their determinations, including with respect to the method of price comparison in the determinations. In response to these concerns, members of the Working Party confirmed that in implementing subparagraph (a)(ii) of Section 15 of the Protocol, WTO Members would comply with the following:

- (a) When determining price comparability in a particular case in a manner not based on a strict comparison with domestic prices or costs in China, the importing WTO Member should ensure that it had established and published in advance (1) the criteria that it used for determining whether market economy conditions prevailed in the industry or company producing the like product and (2) the methodology that it used in determining price comparability. With regard to importing WTO Members other than those that had an established practice of applying a methodology that included, inter alia, guidelines that the investigating authorities should normally utilize, to the extent possible, and where necessary cooperation was received, the prices or costs in one or more market economy countries that were significant producers of comparable merchandise and that either were at a level of economic development comparable to that of China or were otherwise an appropriate source for the prices or costs to be utilized in light of the nature of the industry under investigation, they should make best efforts to ensure that their methodology for determining price comparability included provisions similar to those described above.

- (b) The importing WTO Member should ensure that it had notified its market-economy criteria and its methodology for determining price comparability to the Committee on Anti-Dumping Practices before they were applied.
- (c) The process of investigation should be transparent and sufficient opportunities should be given to Chinese producers or exporters to make comments, especially comments on the application of the methodology for determining price comparability in a particular case.
- (d) The importing WTO Member should give notice of information which it required and provide Chinese producers and exporters ample opportunity to present evidence in writing in a particular case.
- (e) The importing WTO Member should provide Chinese producers and exporters a full opportunity for the defence of their interests in a particular case.
- (f) The importing WTO Member should provide a sufficiently detailed reasoning of its preliminary and final determinations in a particular case.

152. The representative of China stated that determinations made by China during investigations initiated pursuant to applications made before accession should be free from challenge under the Anti-Dumping Agreement by the Members of the WTO. He further confirmed that, notwithstanding Article 18.3 of the Anti-Dumping Agreement,

- (a) China would apply the provisions of the Anti-Dumping Agreement to:
 - (i) proceedings under Article 9.3, including the calculation of margins of dumping, in connection with anti-dumping measures adopted before accession ("existing measures"); and
 - (ii) reviews of existing measures initiated under Articles 9.5, 11.2, and 11.3 pursuant to requests made following accession. Any review of an existing measure under Article 11.3 would be initiated no later than five years from the date of its imposition.
- (b) China would also provide the type of judicial review described in Article 13 of the Anti-Dumping Agreement with regard to proceedings under Article 9.3 and reviews under Articles 9.5, 11.2, and 11.3.

The Working Party took note of these commitments.

153. The representative of China noted that pursuant to the provisions of "Regulation on Anti-dumping and Countervailing Measures of the People's Republic of China", there were four Chinese government bodies responsible for anti-dumping and countervailing duty investigations. Their identities and responsibilities were as follows:

- (a) Ministry of Foreign Trade and Economic Cooperation ("MOFTEC")

Receiving anti-dumping and countervailing petitions; Conducting investigations on foreign subsidies and on dumping and dumping margins and issuing relevant preliminary determination decisions and notices; Negotiating with foreign interested parties on "Price Undertaking" if necessary; Providing proposal on imposition of definitive anti-dumping or countervailing duties or proposals on duty refund, etc. There was an Anti-dumping Division established under the Department of Treaties and Law of MOFTEC, with responsibility to handle anti-dumping and countervailing investigations on alleged imports.

(b) State Economics and Trade Commission ("SETC")

Responsible for the investigation of injury caused to the domestic industry by the dumped or subsidized imports, the extent of such injury and making injury findings. There was a non-permanent decision and policy-making body in SETC, named the Injury Investigation and Determination Committee ("IIDC"), which was composed of six commissioners from the relevant departments of SETC. There was a permanent executive office in charge of the investigation of injury to the industry and submitting its findings to the IIDC for approval.

(c) General Customs Administration ("Customs")

Coordinating anti-dumping investigations with MOFTEC; enforcing anti-dumping measures such as collecting cash deposits and dumping duties, enforcing countervailing measures by collecting countervailing duties, and monitoring implementation.

(d) Tariff Commission of the State Council ("TCSC")

Making final decisions on whether or not to levy the anti-dumping or countervailing duties based on the suggestions by MOFTEC with regard to imposing anti-dumping or countervailing duties and reimbursing excess amount of duties, respectively.

14. Safeguards

154. The representative of China stated that upon accession, China would implement its Regulation on Safeguard by which the future safeguard measures would be regulated. The contents of this new regulation would be fully consistent with the Agreement on Safeguards. China was in the process of drafting safeguard legislation in accordance with Article 29 of the Foreign Trade Law and the Agreement on Safeguards. The Working Party took note of this commitment.

C. EXPORT REGULATIONS

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

155. Some members of the Working Party raised concerns over taxes and charges applied exclusively to exports. In their view, such taxes and charges should be eliminated unless applied in conformity with GATT Article VIII or listed in Annex 6 to the Protocol.

156. The representative of China noted that the majority of products were free of export duty, although 84 items, including tungsten ore, ferrosilicon and some aluminum products, were subject to export duties. He noted that the customs value of exported goods was the F.O.B. price of the goods.

2. Export Licensing and Export Restrictions

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

158. The representative of China said that China applied its export licence system to certain agricultural products, resource products and chemicals. China's export licencing system was administered in accordance with the "Interim Procedures for the Export Licencing System". In 1992, there were 143 categories of products subject to export licencing which accounted for 48.3 per cent of the total value of the China's exports, but by 1999, the total number of products subject to export

licensing had been reduced to 58 categories and 73 items with an export value of US\$ 18.5 billion, taking up only 9.5 per cent of total exports. Export licences for these products were issued according to the stipulated commodity scope respectively by the Administrative Bureau of Quota and Licence ("ABQL"), the Special Commissioner Offices ("SCO") located in 16 provinces and the Commissions of Foreign Economic Relations and Trade ("COFTEC") of various provinces, autonomous regions, municipalities directly under the central government and those with independent budgetary status. The main criteria used in determining whether a product was subject to export licensing, as set down in the Foreign Trade Law, were: (1) maintenance of national security or public interests; (2) protection against shortage of supply in the domestic market or exhaustion of natural resources; (3) limited market capacity of importing countries or regions; or (4) obligations stipulated in international treaties. Export licensing was also used for statistical purposes.

159. He further noted that an application for an export licence had to be submitted to the licence issuing institutions authorized by MOFTEC, together with documents approving the export by the competent departments, and other relevant materials (such as the Export Qualification Certificate for the enterprises, export contract and so on). The procedures were the same for all export destinations. A decision on the request for an export licence normally took three working days. Licences were valid for six months and could be extended once. FIEs engaged in exporting products were required to obtain export licences if the products to be exported were subject to the licensing requirement. If the products were not subject to licensing, customs clearance would be given after examination by Customs on the basis of export contracts and other relevant documents.

160. Certain members of the Working Party noted the conditions in the GATT 1994 in regard to non-automatic licensing and export restrictions. They pointed out that export prohibitions, restrictions and non-automatic licensing could only temporarily be applied under Article XI of the GATT 1994 to prevent or relieve critical shortages of foodstuffs or other products essential to an exporting WTO Member. Article XX of the GATT 1994 also allowed for restrictive export measures, but only if such measures were made effective in conjunction with restrictions on domestic production or consumption. These members noted that some of the criteria of the Foreign Trade Law referred to above did not at present meet the specific conditions laid down in Articles XI and XX of the GATT 1994.

161. Members of the Working Party welcomed the steady reduction in the number of products subject to export licensing in China. Certain members reiterated their request for the submission of a complete list of restrictions presently applied. These members expressed concern that the remaining number was still high, covering about ten per cent of export trade, and requested that they be either reduced further or eliminated by the date of accession in order to achieve full compatibility with GATT requirements. Some members expressed particular concern about export restrictions on raw materials or intermediate products that could be subject to further processing, such as tungsten ore concentrates, rare earths and other metals.

162. The representative of China confirmed that China would abide by WTO rules in respect of non-automatic export licensing and export restrictions. The Foreign Trade Law would also be brought into conformity with GATT requirements. Moreover, export restrictions and licensing would only be applied, after the date of accession, in those cases where this was justified by GATT provisions. The Working Party took note of these commitments.

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

164. Some members of the Working Party expressed concern about China's restrictions on exports of silk. Certain other members expressed concern about export restrictions on other goods, in particular raw materials or intermediate products that could be subject to further processing, such as tungsten ore concentrates, rare earths and other metals. Members of the Working Party urged China

to ensure that any such restrictions that were imposed or maintained complied with the terms of the WTO Agreement and the Protocol.

165. The representative of China confirmed that upon accession, remaining non-automatic restrictions on exports would be notified to the WTO annually and would be eliminated unless they could be justified under the WTO Agreement or the Protocol. The Working Party took note of this commitment.

3. Export Subsidies

166. Some members of the Working Party noted that China had provided a list of prohibited subsidies falling within the scope of Article 3 of the SCM Agreement and a timetable for their elimination, in Annex 5B of the Protocol. Those members considered this list to be incomplete.

167. The representative of China confirmed, as provided in Section 10.3 of the Protocol, that it would eliminate all export subsidies, within the meaning of Article 3.1(a) of the SCM Agreement, by the time of accession. To this end, China would, by accession, cease to maintain all pre-existing export subsidy programmes and, upon accession, make no further payments or disbursements, nor forego revenue or confer any other benefit, under such programmes. This commitment covered subsidies granted at all levels of government which were contingent, in law or in fact, upon an obligation to export. The Working Party took note of this commitment.

168. On the same basis, the representative of China confirmed that China would eliminate, upon accession, all subsidies contingent upon the use of domestic over imported goods, within the meaning of Article 3.1(b) of the SCM Agreement. The Working Party took note of this commitment.

D. INTERNAL POLICIES AFFECTING FOREIGN TRADE IN GOODS

1. Taxes and Charges Levied on Imports and Exports

169. Some members of the Working Party expressed concern about the application of the VAT and additional charges levied by sub-national governments on imports. Non-discriminatory application of the VAT and other internal taxes was deemed essential.

170. The representative of China confirmed that upon accession, China would ensure that its laws and regulations relating to all fees, charges or taxes levied on imports and exports would be in full conformity with its WTO obligations, including Articles I, III:2 and 4, and XI:1 of the GATT 1994, and that it would also implement such laws and regulations in full conformity with these obligations. The Working Party took note of this commitment.

2. Industrial Policy, including Subsidies

171. Some members of the Working Party expressed concern that the special features of China's economy, in its present state of reform, still created the potential for a certain level of trade-distorting subsidization; this could have an impact not only on access to China's domestic market, but also on the performance of Chinese exports in the markets of other WTO Members, and should be subject to effective SCM Agreement disciplines. In view of this, some members felt that it would be inappropriate for China to benefit from certain provisions of Article 27. The representative of China, in turn, considered that certain provisions of this Article should be available to China, and informed the Working Party of the efforts being undertaken, as part of its ongoing reform process, to reduce the availability of certain types of subsidies. China was committed to implementing the SCM Agreement in a manner that was fair and equitable to China and to other WTO Members. In line with this approach, the representative of China stated his intention to reserve the right to benefit from the provisions of Articles 27.10, 27.11, 27.12 and 27.15 of the SCM Agreement, while confirming that

China would not seek to invoke Articles 27.8, 27.9 and 27.13 of the SCM Agreement. The Working Party took note of these commitments.

172. Some members of the Working Party, in view of the special characteristics of China's economy, sought to clarify that when state-owned enterprises (including banks) provided financial contributions, they were doing so as government actors within the scope of Article 1.1(a) of the SCM Agreement. The representative of China noted, however, that such financial contributions would not necessarily give rise to a benefit within the meaning of Article 1.1(b) of the SCM Agreement. He pointed out that China's objective was that state-owned enterprises, including banks, should be run on a commercial basis and be responsible for their own profits and losses. The Working Party took note of this commitment.

173. Some members of the Working Party, while understanding the difficulties involved in gathering information, raised concerns over the comprehensiveness of the subsidy notification which China had provided in Annexes 5A and 5B to the Protocol, as last modified on 31 May 2000. Some members of the Working Party explained that, as an illustration of the above, certain types of subsidies did not appear in Annexes 5A and 5B. Those members of the Working Party first identified state support through the banking system, notably government-owned banks, in the form of policy loans, the automatic roll-over of unpaid principal and interest, forgiven and non-performing loans, and the selective use of below-market interest rates. Some members also referred to unreported tax subsidies, investment subsidies and subsidies provided by sub-national governments, some of which favoured exporting firms. Other members mentioned subsidies granted to the telecommunications, footwear, coal and shipbuilding sectors. The representative of China explained that, in common with many other Members, China had experienced difficulty in obtaining accurate data about all types of subsidies. He also indicated that China was attempting to reduce the availability of certain types of subsidies, in particular by reforming its tax system and making government-owned banks operate on a commercial basis. The representative of China stated that China would progressively work towards a full notification of subsidies, as contemplated by Article 25 of the SCM Agreement. The Working Party took note of this commitment.

174. Some members of the Working Party also raised concerns regarding the subsidies that China provided in connection with SEZs and other special economic areas. Some of these appeared to be contingent upon export performance or on the use of domestic goods. The representative of China noted that the main purpose of such subsidies was to promote regional development and foreign investment. He confirmed that China would, upon accession, eliminate any such subsidies which were inconsistent with the SCM Agreement. The Working Party took note of this commitment.

175. Some members of the Working Party requested information from China on the Steel Import Substitution Programme, which appeared to provide export subsidies to the big four steel groups in China. In response, the representative of China clarified that China did not collect VAT on imported and domestically produced steel used as raw material for the processing trade. Such a policy, in his view, was consistent with WTO rules and the practices of many WTO Members, and thus should not be considered as subsidies.

176. Some members of the Working Party requested information from China on the "China High-Tech Product Export Catalogue", which set forth central government export policies for the telecommunications, computer software, aviation and aerospace, lasers, pharmaceuticals, medical equipment, new materials and energy industries. In response, the representative of China clarified that products listed in the Catalogue would enjoy full VAT rebate treatment, while other exported products would only be given partial VAT rebate treatment. Such a policy, in his view, was consistent with Article XVI of the GATT 1994 and relevant Annexes of the SCM Agreement. He further confirmed that the VAT rebates were applied only to exported products and not to domestically consumed products.

3. Technical Barriers to Trade

177. The representative of China stated that China had set up a TBT notification authority and two enquiry points which had been notified to the TBT Committee. Upon accession, notices of adopted and proposed technical regulations, standards and conformity assessment procedures would be published. The names of the publications where this information could be found would be included in China's Statement of Implementation and Administration under Article 15.2 of the TBT Agreement, which would be submitted upon accession. The Working Party took note of this commitment.

178. The representative of China stated that, further to China's implementation of WTO provisions, internal mechanisms would exist, upon accession, to inform and consult with, on an ongoing basis, government agencies and ministries (at national and sub-national levels), and private sector interests on the rights and obligations under the GATT 1994 and the TBT Agreement. Concerning questions from some members of the Working Party on the opportunity for public consultation and comment on proposed standards and technical regulations, the representative of China confirmed that, upon accession, China's procedures would clearly indicate that such opportunity existed and that comments would be given due consideration regardless of origin. The representative of China also confirmed that, upon accession, China would have in place minimum timeframes for allowing public comment on proposed technical regulations, standards and conformity assessment procedures as set out in the TBT Agreement and relevant decisions and recommendations adopted by the TBT Committee. The Working Party took note of these commitments.

179. Several members of the Working Party requested information on the extent to which international standards were used as the basis for existing Chinese standards, details on China's plans for using international standards as the basis for new standards, and details on China's plans for reviewing existing standards so as to harmonize them with relevant international standards.

180. In response, the representative of China stated that, as a full member of, for example, ISO, IEC and ITU, China actively participated in the development of relevant international standards. With China's efforts in restructuring government agencies, China would, not later than four months after accession, notify acceptance of the Code of Good Practice. The representative of China stated that for government standardizing bodies, a clear policy existed to periodically review existing standards, *inter alia*, to harmonize them with relevant international standards where appropriate. Furthermore, China would speed up its process of revising the current voluntary national, local and sectoral standards so as to harmonize them with international standards. The Working Party took note of these commitments.

181. Some members of the Working Party expressed concern that China's use of the terms "technical regulations" and "standards" was not always consistent with the definitions found in the TBT Agreement, e.g., China sometimes used the word "standards" to refer to mandatory requirements that fell within the definition of "technical regulations". These members noted that China had developed a number of different types of measures, referred to as "standards", at levels other than the central government, in particular, regional, sectoral, and enterprise levels.

182. In response, the representative of China stated that China, in its notifications under the TBT Agreement, including its notifications under Article 15.2 and in publications referenced therein, and in modifications of existing measures, would use the terms "technical regulations" and "standards" according to their meanings under the TBT Agreement. The Working Party took note of these commitments.

183. Some members of the Working Party also expressed concern that China did not use relevant and available international standards as the basis for some of its existing technical regulations. Several members asked for information on the extent to which international standards were used as the basis for existing technical regulations, details on China's plans for using international standards

as the basis for new technical regulations, and details on China's plans for reviewing existing technical regulations so as to harmonize standards referenced in them with international standards or their relevant parts.

184. In response, the representative of China stated that since 1980, China had taken the active adoption of international standards as the basis for technical regulations as a basic policy of accelerating industrial modernization and promoting economic growth. The representative of China confirmed that this policy also required technical regulations to be reviewed every five years, *inter alia*, to ensure that international standards were used in accordance with Article 2.4 of the Agreement. He also confirmed that China would provide this policy as part of its notification under Article 15.2 of the Agreement. He noted that as a result of China's efforts in the past 20 years, the use of international standards as the basis for technical regulations had increased from 12 per cent to 40 per cent. China had begun formulating a standardization development programme in a bid to meet the challenges of the 21st century and the requirements provided for in the TBT Agreement, and had undertaken to further increase the use of international standards as the basis for technical regulations by 10 per cent in five years. The representative of China also confirmed that China would make publicly available procedures to implement Article 2.7 of the Agreement. The Working Party took note of these commitments.

185. Bearing in mind the relevant provisions of the TBT Agreement, some members of the Working Party asked China to identify local government bodies, directly below the central government level, and non-governmental organizations, that were authorized to adopt technical regulations or conformity assessment procedures. The representative of China replied that China would provide a list of relevant local governmental and non-governmental bodies, upon accession, as part of its notification under Article 15.2 of the TBT Agreement. The Working Party took note of this commitment.

186. With respect to conformity assessment procedures, several members of the Working Party asked for information about the extent to which international guides and recommendations were used as the basis for existing conformity assessment procedures, details on China's plans for using such guides and recommendations as the basis for new conformity assessment procedures, and details on China's plans for reviewing existing conformity assessment procedures so as to harmonize them with relevant international guides and recommendations.

187. In response, the representative of China stated that China played a full part in the preparation by appropriate international standardizing bodies of guides and recommendations for conformity assessment procedures, e.g., as a full member of ISO CASCO. He stated that it was difficult to quantify the extent to which such guides and recommendations were used as the basis for existing conformity assessment procedures. He confirmed that China would use relevant guides or recommendations issued by international standardizing bodies as the basis for new conformity assessment procedures in accordance with Article 5.4 of the TBT Agreement. The representative of China also stated that existing conformity assessment procedures were reviewed concurrently with and under the same policy as related technical regulations, *inter alia*, to ensure the use of relevant international guides or recommendations in accordance with Article 5.4 of the TBT Agreement. He also confirmed that, upon accession, China would ensure that the same conformity assessment procedures were applied to both imported and domestic products. The Working Party took note of these commitments.

188. Some members of the Working Party expressed concerns about the complexity and inconsistency of China's conformity assessment regime with TBT Agreement requirements. In particular, those members noted that conformity assessment on imported and domestic products was not performed by the same governmental entities and that this situation could result in less favourable treatment for imports. In response, the representative of China stated that the Chinese government had already decided to merge CIQ-SA and CSBTS into the State General Administration of the

People's Republic of China for Quality Supervision and Inspection and Quarantine ("AQSIQ"), under its policy of development of market economy and further reform and opening up in China. The representative of China confirmed that the AQSIQ was responsible for all policies and procedures related to conformity assessment in China. He further stated that other government ministries and agencies developed conformity assessment policies and procedures but that these had to be authorized by AQSIQ before they could be enacted.

189. Some members of the Working Party expressed concern about the consistency of the Law of the People's Republic of China on Import-Export Commodity Inspection ("the Law"), and the Regulations for the Implementation of that Law ("the Implementing Regulations"), with the TBT Agreement. In particular, provisions for technical regulations and conformity assessment procedures did not adequately address fundamental obligations such as transparency, non-discrimination, national treatment, and the avoidance of unnecessary barriers to trade.

190. Some members of the Working Party expressed concern about a conformity assessment procedure known as Statutory Inspection, which was described, *inter alia*, in Articles 4, 5, and 6 of the Law and Articles 4, 5, and 9 of the Implementing Regulations. They stated that it was inconsistent with the principle of national treatment and constituted an unnecessary obstacle to international trade. Members of the Working Party agreed that WT/ACC/CHN/31 and WT/ACC/CHN/32, lists of products subject to Statutory Inspection, did not prejudge the legal status, nature or effects of notified technical regulations and standards under the WTO Agreement. The representative of China stated that China would bring the Law and Implementing Regulations, as well as other relevant legislation and regulations, into conformity with the TBT Agreement by the date of accession. The Working Party took note of this commitment.

191. Some members of the Working Party expressed concern about a conformity assessment procedure, and the application thereof, known as the Safety Licence System for Import Commodities ("the System"), which was described in Article 22 of the Law and Article 38 of the Implementing Regulations. They stated that it was inconsistent with the principle of national treatment and constituted an unnecessary obstacle to international trade (e.g., due to the frequent plant inspections required). In response, the representative of China confirmed that, for technical regulations and conformity assessment procedures related to goods currently subject to the Safety Licence System for Import Commodities, relevant legislation and regulations would be brought into full conformity with the TBT Agreement by the date of accession. The Working Party took note of this commitment.

192. Responding to the concerns of members of the Working Party, the representative of China confirmed that to eliminate unnecessary barriers to trade, China would not maintain multiple or duplicative conformity assessment procedures, nor would it impose requirements exclusively on imported products. The Working Party took note of this commitment.

193. Some members of the Working Party expressed concern with respect to the confidentiality of information in connection with conformity assessment procedures undertaken by China. In response, the representative of China confirmed that China would fully implement the obligations of Article 5.2.4 of the TBT Agreement in this regard. The Working Party took note of this commitment.

194. Some members of the Working Party expressed concern about China's practice of not accepting the results of conformity assessment by bodies in other WTO Members. In this regard, those members noted the obligation of unilateral acceptance of the results of conformity assessment as described in Article 6.1 of the TBT Agreement. The representative of China responded that products certified by bodies recognized by China would require no additional conformity assessment procedures in China, except for random sampling of said products. Furthermore, where random sampling was undertaken and China's test results differed from the test results of competent bodies in other WTO Members, the representative of China confirmed that China would act in accordance with international guidelines and recommendations, where these existed, or would provide a process of

review with the objective of resolving such differences. Some members of the Working Party requested China to make public and update on an ongoing basis information on conformity assessment bodies that were recognized by China. The representative of China confirmed that China would provide this information. The Working Party took note of these commitments.

195. Concerning foreign and joint-venture conformity assessment bodies, certain members of the Working Party noted that China should not maintain requirements which had the effect of acting as barriers to their operation, unless otherwise specified in China's Schedule of Specific Commitments. The representative of China replied that China would not maintain such requirements. Some members also observed that all foreign or joint venture conformity assessment bodies that met China's requirements should be eligible for accreditation and accorded national treatment. The representative of China confirmed that the accreditation requirements would be transparent and provide national treatment to foreign conformity assessment bodies. The Working Party took note of these commitments.

196. Some members of the Working Party raised specific concerns regarding such matters as (a) registration of initial imports of chemical products, (b) procedures to obtain and apply "CCIB" safety mark and the "Great Wall" mark, (c) automobiles and parts, and (d) the safety and quality licence system for boilers and pressure vessels. In response, the representative of China stated that China would implement the following measures prior to accession, unless otherwise indicated:

(a) Registration of Initial Imports of Chemical Products

- Enact and implement, within one year after its accession, a new law and relevant regulations regarding assessment and control of chemicals for the protection of the environment, in which complete national treatment and full consistency with international practices would be ensured.
- Ensure that chemicals listed in the "inventory chemicals" annexed to the above new law and its regulations would be exempted from a registration obligation and that a unified assessment procedure would be established for domestic and imported products under the new law and its regulations.

(b) CCIB Safety Mark and the "Great Wall" Mark

- Unify the existing certification marks, i.e., the "CCIB" mark and the "Great Wall" mark into a new certification mark. For like imported and domestic goods, all bodies and agencies would issue the same mark and charge the same fee.
- Accept testing reports for products subject to the International Electrotechnical Commission's System for Conformity Testing to Standards for Safety of Electrical Equipment ("IECEE CB Scheme") to which China was a party, and simplify the procedures for obtaining the new, unified certification mark
- Shorten the time period needed for importers to obtain both marks regarding the same products, to no more than three months.

(c) Automobiles and Parts

- Unify its laws, regulations and standards applied to domestic and imported automobiles and parts.
- Formulate, publish and implement laws and regulations, standards and implementing regulations to establish a transparent system under which all the laws and regulations

would be applied so as to accord imported products treatment no less favourable than that accorded to like products of national origin.

(d) Safety and Quality Licence System for Boilers and Pressure Vessels

- Accord imported products treatment no less favourable than that accorded to products of national origin, including fees imposed for conformity assessment and the effective period of factory certification.
- Adopt international standards as the basis for technical regulations and exempt imported products from inspection where like domestic products were not subject to such inspection.

The Working Party took note of these commitments.

197. The representative of China confirmed that, except as otherwise specified in the Protocol, China would apply all obligations under the TBT Agreement from the date of accession. The Working Party took note of this commitment.

4. Sanitary and Phytosanitary Measures

198. Some Members of the Working Party expressed concerns in relation to the use by China of sanitary and phytosanitary ("SPS") procedures as non-tariff barriers and raised specific instances where they considered that China's measures were not consistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures ("SPS Agreement"). Members sought assurances that China would only use SPS measures to the extent necessary to protect human, animal or plant life or health, and that such measures would be based fully on scientific principles.

199. The representative of China stated that pursuant to the provisions of the SPS Agreement, China applied SPS measures only to the extent necessary to protect the life and health of human beings, animals and plants. He also noted that most of China's SPS measures were based on international standards, guidelines and recommendations. China would not apply SPS measures in a manner which would act as a disguised restriction on trade. In accordance with the SPS Agreement, China would ensure that SPS measures would not be maintained without sufficient scientific evidence. The Working Party took note of these commitments.

200. Members of the Working Party expressed the view that China should comply with the SPS Agreement from the date of China's accession and should ensure conformity with the SPS Agreement of all its laws, regulations, decrees, requirements and procedures relating to SPS measures. In response, the representative of China confirmed that China would fully comply with the SPS Agreement and would ensure the conformity with the SPS Agreement of all of its laws, regulations, decrees, requirements and procedures relating to SPS measures from the date of accession. The Working Party took note of these commitments.

201. Members of the Working Party noted that China's notification of laws, regulations and other SPS measures, referred to in the Protocol, was provided in document WT/ACC/CHN/33. Members of the Working Party agreed that this notification did not prejudice the legal status under the WTO Agreement of the nature or effects of the notified laws, regulations and other SPS measures.

202. The representative of China said that China had set up an SPS notification authority and an SPS enquiry point which would be notified to the SPS Committee. SPS measures, including those relating to inspection, had been published in publications such as the MOFTEC Gazette. Information could also be gathered from the SPS notification authority or from China's SPS enquiry point.

5. Trade-Related Investment Measures

203. The representative of China confirmed that upon accession, as set forth in the Protocol, China would comply fully with the TRIMs Agreement, without recourse to Article 5 thereof, and would eliminate foreign-exchange balancing and trade balancing requirements, local content requirements and export performance requirements. Chinese authorities would not enforce the terms of contracts containing such requirements. The allocation, permission or rights for importation and investment would not be conditional upon performance requirements set by national or sub-national authorities, or subject to secondary conditions covering, for example, the conduct of research, the provision of offsets or other forms of industrial compensation including specified types or volumes of business opportunities, the use of local inputs or the transfer of technology. Permission to invest, import licences, quotas and tariff rate quotas would be granted without regard to the existence of competing Chinese domestic suppliers. Consistent with its obligations under the WTO Agreement and the Protocol, the freedom of contract of enterprises would be respected by China. The Working Party took note of this commitment.

204. In the context of discussions on the government's Industrial Policy for the Automotive Sector, the representative of China confirmed that this policy would be amended to ensure compatibility with WTO rules and principles. The Working Party took note of this commitment.

205. The representative of China added that amendments would be made to ensure that all measures applicable to motor vehicle producers restricting the categories, types or models of vehicle permitted for production, would gradually be lifted. Such measures would be completely removed two years after accession, thus ensuring that motor vehicle producers would be free to choose the categories, types and models they produced. However, it was understood that category authorizations by the government could continue to distinguish between trucks and buses, light commercial vehicles, and passenger cars (including multi-purpose vehicles and sport utility vehicles). The Working Party took note of this commitment.

206. The representative of China confirmed that China also agreed to raise the limit within which investments in motor vehicle manufacturing could be approved at provincial government level only, from the current level of US\$30 million, to US\$60 million one year after accession, US\$90 million two years after accession, and US\$150 million four years after accession. The Working Party took note of this commitment.

207. With respect to the manufacture of motor vehicle engines, the representative of China also confirmed that China agreed to remove the 50 per cent foreign equity limit for joint-ventures upon accession. The Working Party took note of this commitment.

6. State Trading Entities

208. Some members of the Working Party expressed concern that the activities of China's state trading enterprises were not sufficiently transparent and were not in accordance with WTO obligations. The representative of China indicated, however, that China's state trading enterprises had full management autonomy and responsibility for their own profits and losses and that China had undertaken broad and significant commitments to improve the transparency of state trading enterprises' operation and the measures relating to such operation.

209. The same members of the Working Party also stated that China should ensure that the import purchasing practices and procedures of state trading enterprises were fully transparent, and in compliance with the requirements of the WTO Agreement. They considered that China should also refrain from taking any measure to influence or direct state trading enterprises as to the quantity, value, or country of origin of goods purchased or sold, except in accordance with the requirements of the WTO Agreement. Those members also stated that as part of China's notification under the

GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, China should also notify information on state trading, including, in the case of state trading of exported goods, domestic procurement prices, contract terms for delivery and financing terms and conditions.

210. In response, the representative of China stated that its state trading enterprises had full management autonomy and responsibility for their own profits and losses. However, some members of the Working Party again stated that China should undertake a commitment to ensure that all state trading enterprises complied with the requirements of the WTO Agreement. The representative of China noted that a list of products subject to state trading had been provided in Annex 2A of the Protocol. He also confirmed that information on state trading enterprises, as required by the Protocol, would be supplied, consistent with the requirements of paragraph 333 of this Report. The Working Party took note of this commitment.

211. Members of the Working Party took note of the specific arrangements that would apply for fertilizers and crude and processed oil. A key feature of those arrangements related to the annual allocation of import quantities. The differences in the regimes that would apply to those products were noted, in particular in regard to the obligation on state enterprises trading in fertilizers to carry over to the next year any unused import quantities.

212. Some members of the Working Party requested assurances that, for oil products, quantities reserved for non-state traders would be allocated in such a manner that they would be fully utilized. In this respect, the representative of China confirmed that imports allocated to non-state traders of crude and processed oil, as specified in Annex 2A of the Protocol, would be carried over to the next year if they were not fully utilized. In addition, the representative of China agreed that China would publish, on a quarterly basis, the requests for imports that had been made by non-state traders, as well as the licences granted, and would supply information relevant to such traders upon request. The Working Party took note of these commitments.

213. Some members of the Working Party noted that prior to accession, some enterprises in China were permitted to import goods for their production purposes, including those goods included in Annex 2A. The representative of China confirmed that, notwithstanding Section 5, paragraph 1, of the Protocol, non-state trading enterprises, including private enterprises, would still be permitted to import such goods for production purposes and that national treatment would be provided to such imports. The Working Party took note of these commitments.

214. Some members of the Working Party expressed concerns about supplies of raw materials in the textiles sector, and particularly in regard to supplies of silk, in the light of China's position as the major world supplier of silk, currently subject to state trading rights concerning exports.

215. In this regard, the representative of China confirmed that China would progressively abolish the system of state trading in respect of silk by measures increasing and extending trading rights, with the result that China would remove completely the silk products set out in numbers 10 and 11 of Annex 2A2 to the Protocol (list of products subject to state trading on exports) and grant the right to trade in such products to all individuals and enterprises no later than 1 January 2005. Pending the implementation of this right, China undertook not to introduce any changes of a more restrictive nature to the existing structures in place for the supply of silk. The representative of China further confirmed that access to supplies of raw materials in the textiles sector would remain at conditions no less favorable than for domestic users, and gave his assurance that access to supplies of raw materials as enjoyed under existing arrangements would not be adversely affected following China's accession. The Working Party took note of these commitments.

216. Members of the Working Party noted that domestic prices for most agricultural commodities in China were higher than world prices, and this differential allowed China's state trading enterprises to import at low prices and then mark up the price when selling the product to wholesalers and

end-users. Some members expressed concern that this practice could become more widespread when access opportunities were created under TRQs. Those members were particularly concerned that mark-ups could be used to reduce the competitiveness of imported products and limit the range of qualities and grades available to end-users in China. The representative of China stated that currently state trading enterprises did not mark up imported products; instead, they only charged a nominal transaction fee. Consequently, China's practice was consistent with WTO obligations, did not result in any trade-distorting effect, and that under China's law limits existed on the fees that could be charged by state trading enterprises.

217. The representative of China stated that China would ensure that no price increase in respect to imports, in particular by state trading enterprises, would result in protection beyond that allowed in its Schedule of Concessions and Commitments on Goods or that was not otherwise justified under WTO rules. The Working Party took note of this commitment.

7. Special Economic Areas

218. Members of the Working Party noted that there was insufficient information available concerning special economic areas within China's customs territory, including border trade regions and minority autonomous areas, SEZs, open coastal cities, economic and technical development zones and other areas where special regimes for tariffs, taxes and regulations had been established (collectively referred to as "special economic areas"), in particular their names, geographic boundaries, and relevant laws, regulations and other measures relating thereto.

219. In response, the representative of China stated that since 1979 China had established a number of special economic areas where more open policies were applied. They included five SEZs, 14 open coastal cities, six open cities along the Yangtze River, 21 provincial capital cities and 13 inland boundary cities. Those special economic areas enjoyed greater flexibility in utilizing foreign capital, introducing foreign technology and conducting economic cooperation overseas. At present, foreign investors were entitled to certain preferential treatment.

220. The representative of China further stated that FIEs located in SEZs or the Economic and Technical Development Zones of open coastal cities were entitled to a corporate income tax rate of 15 per cent (the normal income tax was 33 per cent). Profits remitted abroad by foreign investors were exempted from income tax. The preferential income tax rate of 15 per cent was applicable to technology-intensive or knowledge-intensive items or projects with foreign investment of over US\$30 million, as well as enterprises that operated in the fields of energy, transport and port construction.

221. The representative of China noted that throughout the customs territory of China, a socialist market economy system was applied. In 1999, the foreign trade volume of SEZs accounted for nearly one fifth of the nation's total. The national laws and regulations on taxation were applicable to SEZs in a uniform manner.

222. In response to further requests for information, the representative of China indicated that there was no plan to establish any new SEZs. The special preferential tariff policies applied to SEZs had been eliminated. With the development of China's economic reform and opening up, China would implement its tariff policy uniformly throughout its customs territory. Members of the Working Party expressed concern that imported products introduced from these special economic areas into other parts of China's customs territory should be subject to the same treatment in the application of all taxes, import restrictions and customs duties and other charges as that normally applied to imports into the other parts of China's customs territory. The representative of China stated that China would undertake to ensure such non-discriminatory treatment. The Working Party took note of this commitment.

223. Some members of the Working Party also raised concerns as to whether the assistance provided to minority autonomous regions and other areas of economic poverty was consistent with WTO requirements. In response, the representative of China confirmed that China had a clear commitment to uniform administration of the trade regime within each such area and that, upon accession, China would ensure that such assistance would be implemented consistent with WTO obligations. The Working Party took note of this commitment.

224. Some members of the Working Party requested that China take steps to ensure that all products imported into the other parts of the customs territory of China from special economic areas would be subject to the same normal customs duties and charges as any other product imported into the customs territory of China. In particular, those members requested that China undertake a commitment to apply all taxes, charges and measures affecting imports, including import restrictions and customs and tariff charges, that were normally applied to imports into the other parts of China's customs territory to all imported products, including physically incorporated components, entering China's customs territory from the special economic areas.

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

226. Some members of the Working Party requested that China notify the WTO of all the relevant laws, regulations and other measures relating to its special economic areas. They asked that the notification list and identify all those special economic areas. Those members also requested that China notify the WTO promptly, but in any case within 60 days, of any additions or modifications to its special economic areas, including notification of the laws, regulations and other measures relating thereto.

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

228. In response to concerns raised by some members of the Working Party, the representative of China confirmed that any preferential arrangements provided to foreign invested enterprises located within the special economic areas would be provided on a non-discriminatory basis. The Working Party took note of this commitment.

8. Transit

229. The representative of China stated that the current regulation of transit in China, the Regulations of the Customs of the People's Republic of China on the Supervision and Administration of Transit Goods, was consistent with Article V of the GATT 1994.

9. Agricultural Policies

230. The representative of China stated that since China was a country with a vast agricultural base, as well as a vast population, agricultural security and food security in particular, was an issue of supreme importance. China based its policies on domestic agricultural supply, especially on balanced supply and demand of grains. Meanwhile, China actively sought international resources as a necessary supplement.

231. While noting this statement, some members of the Working Party expressed concerns about China's linkage of import policies for agriculture, including TRQ allocations, to domestic production policy and the sub-national supply and utilization situation. Those members requested that China undertake an appropriate commitment to eliminate these practices. In response, the representative of China confirmed that China would base import policies for agriculture on commercial considerations only. The Working Party took note of this commitment.

232. Some members of the Working Party expressed further concerns 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. Those members considered reform of these practices toward full WTO consistency as an essential element of China's accession. To ensure effective market access opportunities were created for imported products, some members requested assurances from China that agricultural and trade policies would not discriminate in a WTO inconsistent manner against imported products. Consistent with China's commitment to uniform administration, the representative of China confirmed that, by the date of accession, China would not maintain, resort or revert to guidance plans or administrative guidance at the national or sub-national level that regulate the quantity, quality or treatment of imports, or constitute import substitution practices or other non-tariff measures, including those maintained through state trading enterprises at the national or sub-national level. The Working Party took note of this commitment.

233. Some members of the Working Party expressed concern that large stocks in China of grain and cotton had been procured at relatively high prices by state-trading enterprises or other state-affiliated, state-run, or state-controlled entities and noted that exports of these or other government-purchased products at prices lower than the comparable price charged for the like product to buyers in the domestic market could be challenged as an export subsidy or as inconsistent with other WTO obligations. These members requested that China ensure that all entities, including state trading enterprises and any other state-affiliated, state-run, or state-controlled entity at the national or sub-national level operated in accordance with China's WTO obligations, including those on export subsidies. In response, the representative of China confirmed that all entities in China would operate in accordance with China's WTO obligations, including those on export subsidies. Further, the representative of China stated that national and sub-national authorities would not provide fund transfers or other benefits to any entities in China that would be inconsistent with its WTO obligations, including to offset losses accrued through exports. The Working Party took note of these commitments.

234. The representative of China confirmed that by the date of accession, China would not maintain or introduce any export subsidies on agricultural products. The Working Party took note of this commitment.

235. In implementing Article 6.2 and 6.4 of the Agreement on Agriculture, the representative of China confirmed that while China could provide support through government measures of the types described in Article 6.2, the amount of such support would be included in China's calculation of its Aggregate Measurement of Support ("AMS"). He noted that China's Total AMS Commitment Level was set forth in Part IV, Section I of China's Schedule. The representative of China further confirmed that China would have recourse to a *de minimis* exemption for product-specific support equivalent to 8.5 per cent of the total value of production of a basic agricultural product during the relevant year. The representative of China confirmed that China would have recourse to a *de minimis* exemption for non-product-specific support of 8.5 per cent of the value of China's total agricultural production during the relevant year. Accordingly, these percentages would constitute China's *de minimis* exemption under Article 6.4 of the Agreement on Agriculture. The Working Party took note of these commitments.

236. China's concessions on agricultural tariffs, and commitments on domestic support and on export subsidies for agricultural products were contained in the Schedule of Concessions and Commitments on Goods annexed to the Protocol as Annex 8.

237. Some members of the Working Party noted that the domestic support tables of China in WT/ACC/CHN/38/Rev.3 showed China's base total AMS as zero in DS:4. They also noted that product specific support was negative in DS:5.

238. Some members of the Working Party noted that although WT/ACC/CHN/38/Rev.3 did provide a basis for supporting the commitments in China's Schedule, this document still contained issues which required further methodological clarification relating to policy classification. The representative of China confirmed that this clarification would be addressed in the context of China's notification obligations under the Agreement on Agriculture. The Working Party took note of this commitment.

10. Trade in Civil Aircraft

239. In response to questions from members of the Working Party, the representative of China indicated that China was not in a position to commit to joining the Agreement on Trade in Civil Aircraft at the present stage.

240. The representative of China confirmed that China would not impose any provisions of offsets or other forms of industrial compensation when purchasing civil aircraft, including specified types or volumes of business opportunities. The Working Party took note of this commitment.

11. Textiles

241. Some members of the Working Party proposed and the representative of China accepted that the quantitative restrictions maintained by WTO Members on imports of textiles and apparel products originating in China that were in force on the date prior to the date of China's accession should be notified to the Textiles Monitoring Body ("TMB") as being the base levels for the purpose of application of Articles 2 and 3 of the WTO Agreement on Textiles and Clothing ("ATC"). For such WTO Members, the phrase "day prior to the date of entry into force of the WTO Agreement", contained in Article 2.1 of the ATC, should be deemed to refer to the day prior to the date of China's accession. To these base levels, the increase in growth rates provided for in Articles 2.13 and 2.14 of the ATC should be applied, as appropriate, from the date of China's accession. The Working Party took note of these commitments.

242. The representative of China agreed that the following provisions would apply to trade in textiles and clothing products until 31 December 2008 and be part of the terms and conditions for China's accession:

- (a) In the event that a WTO Member believed that imports of Chinese origin of textiles and apparel products covered by the ATC as of the date the WTO Agreement entered into force, were, due to market disruption, threatening to impede the orderly development of trade in these products, such Member could request consultations with China with a view to easing or avoiding such market disruption. The Member requesting consultations would provide China, at the time of the request, with a detailed factual statement of reasons and justifications for its request for consultations with current data which, in the view of the requesting Member, showed: (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption;

- (b) Consultations would be held within 30 days of receipt of the request. Every effort would be made to reach agreement on a mutually satisfactory solution within 90 days of the receipt of such request, unless extended by mutual agreement;
- (c) Upon receipt of the request for consultations, China agreed to hold its shipments to the requesting Member of textile or textile products in the category or categories subject to these consultations to a level no greater than 7.5 per cent (6 per cent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request for consultations was made;
- (d) If no mutually satisfactory solution were reached during the 90-day consultation period, consultations would continue and the Member requesting consultations could continue the limits under subparagraph (c) for textiles or textile products in the category or categories subject to these consultations;
- (e) The term of any restraint limit established under subparagraph (d) would be effective for the period beginning on the date of the request for consultations and ending on 31 December of the year in which consultations were requested, or where three or fewer months remained in the year at the time of the request for consultations, for the period ending 12 months after the request for consultations;
- (f) No action taken under this provision would remain in effect beyond one year, without reapplication, unless otherwise agreed between the Member concerned and China; and
- (g) Measures could not be applied to the same product at the same time under this provision and the provisions of Section 16 of the Protocol.

The Working Party took note of these commitments.

12. Measures Maintained Against China

243. The representative of China stated that WTO Members should eliminate all discriminatory non-tariff measures maintained against Chinese exports from the date of China's accession. In response, some members of the Working Party stated that, in their view, such measures did not need to be phased out until such time as China's foreign trade regime fully conformed to WTO obligations.

244. In light of the above, it was agreed that any prohibitions, quantitative restrictions or other measures maintained against imports from China in a manner inconsistent with the WTO Agreement would be listed in Annex 7 to the Protocol. It was further agreed that all such measures would be phased out or otherwise dealt with in accordance with mutually agreed terms and timetables as specified in said annex.

13. Transitional Safeguards

245. With respect to implementation of the product-specific safeguard, the representative of China expressed particular concern that WTO Members provide due process and use objective criteria in determining the existence of market disruption or trade diversion, because WTO Members did not have wide experience in implementing the provisions of Section 16 of the Protocol. He stated that with respect to trade diversion, WTO Members needed to apply objective criteria to determine whether an action by China or another WTO Member under the product-specific safeguard to prevent or remedy market disruption caused or threatened to cause significant diversion of trade. Such criteria should include the actual or imminent increase in market share or volume of imports from China, the nature or extent of the action taken by China or the other WTO Member and other similar criteria. In

addition, WTO Members should provide an opportunity for importers, exporters and all interested parties to submit their views on the matter.

246. Members of the Working Party noted that the Protocol included specific requirements that WTO Members needed to follow in connection with an action under that Section. Members of the Working Party confirmed that in implementing the provisions on market disruption, WTO Members would comply with those provisions and the following:

- (a) An action to address market disruption would be taken only after an investigation by the competent authorities of the importing WTO Member pursuant to procedures previously established and made available to the public;
- (b) The competent authority of the importing Member would publish notice of the commencement of any investigation under the product-specific safeguard provisions of the Protocol and would, within a reasonable time thereafter, hold a public hearing or provide other appropriate means for the purpose of permitting interested parties to present evidence and their views as to the appropriateness of whether or not to take a measure and to respond to the presentations of other parties;
- (c) In determining whether market disruption existed, including the causal link between imports which were increasing rapidly, either absolutely or relatively, and any material injury or threat of material injury to the domestic industry, the competent authorities would consider objective factors, including (1) the volume of imports of the product which was the subject of the investigation; (2) the effect of imports of such product on prices in the importing WTO Member's market for the like or directly competitive products; (3) the effect of imports of such product on the domestic industry producing like or directly competitive products;
- (d) The competent authorities would publish any measure proposed to be taken and provide the opportunity, including a public hearing, if requested, or provide other appropriate means, for importers, exporters and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest;
- (e) The competent authority would promptly publish notice of the decision to apply a measure, including an explanation of the basis for the decision and the scope and duration of the measure;
- (f) The period of application of the measure could be extended, provided that the competent authorities of the importing WTO Member had determined that action continued to be necessary to prevent or remedy market disruption. The competent authorities of the importing WTO Member would publish notice of the commencement of any proceeding to consider whether to extend the duration of an action and would, within a reasonable time thereafter, hold a public hearing or provide other appropriate means for the purpose of permitting all interested parties to have an opportunity to present evidence or their views and to respond to the presentations of other parties;
- (g) Except for good cause, no investigation under Section 16 of the Protocol on the same subject matter could be initiated less than one year after the completion of a previous investigation; and
- (h) A WTO Member would apply a measure only for such period of time as was necessary to prevent or remedy market disruption.

247. Trade diversion referred to an increase in imports from China of a product into a WTO Member as the result of an action by China or other WTO Members pursuant to paragraphs 2, 3 or 7

of Section 16 of the Protocol. Members of the Working Party also noted that the Protocol required a determination that any trade diversion was significant and that the action taken to address market disruption had caused or threatened to cause the diversion.

248. Members of the Working Party agreed that objective criteria had to be applied in determining whether actions to prevent or remedy market disruption caused or threatened to cause significant diversion of trade. Among the factors to be examined were:

- (a) the actual or imminent increase in market share of imports from China in the importing WTO Member;
- (b) the nature or extent of the action taken or proposed by China or other WTO Members;
- (c) the actual or imminent increase in the volume of imports from China due to the action taken or proposed;
- (d) conditions of demand and supply in the importing WTO Member's market for the products at issue; and
- (e) the extent of exports from China to the WTO Member(s) applying a measure pursuant to paragraphs 2, 3 or 7 of Section 16 of the Protocol and to the importing WTO Member.

249. A measure taken to address significant diversions of trade would be terminated not later than 30 days after the expiration of the action taken by the WTO Member or Members involved against imports from China.

250. If the WTO Member or Members taking an action to address market disruption notified the WTO Committee on Safeguards of any modification of an action, the competent authorities of the WTO Member addressing trade diversion would determine whether a significant diversion of trade continued to exist and determine whether to modify, withdraw or keep in place the action taken.

V. TRADE-RELATED INTELLECTUAL PROPERTY REGIME

A. GENERAL

1. Overview

251. The representative of China stated that China had made the protection of intellectual property rights ("IPRs") an essential component of its reform and opening-up policy and socialist legal construction. The formulation of laws and regulations in this field could be traced back to the late 1970s. Since then, China had joined relevant international conventions and had actively participated in the activities sponsored by relevant international organizations. It had intensified its exchanges and cooperation with countries throughout the world in the field of IPR protection. As a result, notwithstanding the initial stage of its development, China's IPR protection system aimed at achieving world dimension and world standards. Lists of administrative rules concerning intellectual property rights currently in force in China were presented below in Table A. The status of ongoing reforms and other relevant information was presented in Table B in the following paragraph. Other laws, regulations and measures relating to the implementation of the TRIPS Agreement had been or would be notified to the WTO and would be made available upon request.

Table A: The Administrative Rules of China Concerning Intellectual Property Rights

The following three parts were the administrative rules regarding protection of intellectual property right, which were still in force in China. As an important part of China's IPR legal system, these rules had a great effect on IPR protection, enforcing the IPR law, etc.

Part I List of Administrative Rules Regarding Protection of Patent Right

Part II List of Administrative Rules Regarding Protection of Trademark

Part III List of Administrative Rules Regarding Protection of Copyright

Part I List of Administrative Rules Regarding Protection of Patent Right

- (i) Methods on the Showing the Identification of Right of Priority to Applicant made by Patent Office of China (1 March 1988)
- (ii) Opinions of the Patent Office of China concerning the Implementation of the Regulations on Patent Commissioning (19 April 1991)
- (iii) Explanation of the Patent Office of China on Certain Matters Relating to the Commissioning Involving Foreign Interests (16 November 1987)
- (iv) Decree of Patent Office of China (No.26) (20 November 1989)
- (v) Decree of Patent Office of China (No.27) (21 December 1989)
- (vi) Decree of Patent Office of China (No.31) (14 March 1991)
- (vii) Procedures for Administrative Reconsideration of Patent Office of the People's Republic of China (for Trial Implementation) (21 December 1992)
- (viii) Methods of Handling the Patent Disputes by the Administrative Authorities for Patent Affairs (4 December 1989)

Part II List of Administrative Rules Regarding Protection of Trademark

- (i) Circular on the Commodities Demanded to Use Registered Trademark made by the State Administration for Industry and Commerce (14 January 1988)
- (ii) Circular on the Prohibition from Registering the Other Person's Trademark Abroad without Being Authorized made by State Administration for Industry and Commerce and the Ministry of Foreign Economy and Trade (19 November 1990)
- (iii) Interim Provisions on Claims for Priority in Applying for Registration of Trademarks made by State Administration for Industry and Commerce (15 March 1983)
- (iv) Methods of the Application International Registration of Trademark of Madrid made by the State Administration for Industry and Commerce (2 March 1989)

- (v) Circular on the Stopping Using the Literal of "Xiang Bin" or "Champagne" in Varieties of Commodities of Alcohol made by the State Administration for Industry and Commerce (26 October 1989)
- (vi) Circular on Printing and distributing " the Rules regarding the Question of Using Trademark in Can Food for Export" (15 October 1991)
- (vii) Provisions on the Control over the Surrogate of Trademark
- (viii) Provisions on the Registration of and the Control over the Collective Trademark and Certified Trademark (issued on 30 December 1994, revised on 3 December 1998)
- (ix) Provisions on the Control over the Printing of Trademark (issued on 5 September 1996, revised on 3 December 1998)

Part III List of Administrative Rules Regarding Protection of Copyright

- (i) Opinions of the National Copyright Administration on Questions Relating to Reprinting the Programs in Advance in Broadcast and Television (12 December 1987)
- (ii) Circular of the National Copyright Administration of Printing and Distribution "Report Relating to Appropriate Handling the Copyright Question in the Process of Culture Communication with Taiwan" and "Interim Provisions Relating to the Copyright Question of Pressing the Works Written by Taiwan Compatriots" (8 February 1988)
- (iii) Circular of National Copyright Administration regarding the Points for Attention of Transferring Copyright to Taiwan's Press Person (26 December 1987)
- (iv) Opinions of National Copyright Administration on Matters Relating to Local Work on Copyright Management (May 1988)
- (v) Circular of the National Copyright Administration concerning Procedures of Examining and Verifying the Copyright Trading Contract Between the Mainland and Hong Kong, Macao and Taiwan (2 November 1988)
- (vi) Opinions on Certain Matters of the National Copyright Administration concerning Handling Copyright Cases (27 December 1988)
- (vii) Circular of the National Copyright Administration concerning the Standard of Paying Author's Remuneration When the Press Reprint and Extract the Published Works at Present (27 August 1991)
- (viii) Interim Provisions of the Standard of Paying Author's Remuneration When the Press Reprint and Extract the Published Works with the Consent by Law (1 August 1993)
- (ix) Interim Provisions of the Standard of Paying Author's Remuneration When Perform the Published Works with the Consent by Law (1 August 1993)
- (x) Interim Provisions of the Standard of Paying Author's Remuneration When Record the Published Works with the Consent by Law (1 August 1993)

- (xi) Direction of the Chinese Center of Receiving and Transmitting Author's Remuneration concerning Receiving and Transmitting Remuneration About the Press Extract the Published Works
- (xii) Circular of the National Copyright Administration concerning Enforcing "the Memorandum of Understanding between the Government of the People's Republic of China and the Government of the United States of America on the Protection of Intellectual Property" (29 February 1992)
- (xiii) Urgent Circular concerning Strengthening Administration of Reproducing Compact Discs and Laser Discs (12 April 1994)
- (xiv) Circular of Enforcing "Urgent Circular concerning Strengthening Administration of Reproducing Compact Discs and Laser Discs" (12 May 1994)
- (xv) Cooperate Circular of the Ministry of Judicial and National Copyright Administration concerning Bringing Notary Office into Play in Dealing with the Infringing Copyright Cases (29 August 1994)
- (xvi) Measures of the Registration of Copyright of Computer Software (4 June 1992)
- (xvii) Guide to Classified Coding of Software in Computer Software's Registration
- (xviii) The Item and Standard of Registration Expenses of Computer Software (18 April 1992)

252. The representative of China stated that for accession to the WTO Agreement and compliance with the TRIPS Agreement, further amendments had been made to the Patent Law. The amendments to the Copyright Law and the Trademark Law, as well as relevant implementing rules covering different areas of the TRIPS Agreement, would also be accomplished upon China's accession. The representative of China stated that laws adopted by the National People's Congress and administrative regulations, including implementing rules, issued by the State Council were applied and enforced by the people's courts. The Working Party took note of these commitments.

Table B: Revision of China's IPR Laws in Conformity with the TRIPS Agreement

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| <p>The People's Republic of China had conducted an intensive work programme to examine and revise the IPR laws, administrative regulations and department rules relating to the implementation of the WTO Agreement and China's accession commitments. A list of China's IPR laws, administrative regulations and department rules to be revised and abolished was hereby notified to the Working Party. Part I of the list contained eight laws and regulations. Part II of the list contained four department rules to be revised or abolished for the same reason. This list included the names of laws, regulations and department rules, reasons for revision or abolishment, and dates of implementation.</p> | |
| <p><u>Part I Laws and Administrative Regulations</u></p> | |
| <p>Laws and Regulations</p> | <p>Date of Implementation</p> |
| <p>1. Copyright Law of the People's Republic of China</p> | <p>Upon accession</p> |
| <p>2. Regulations for the Implementation of the Copyright Law of the People's Republic of China</p> | <p>Upon accession</p> |
| <p>3. Regulations for the Protection of Computer Software</p> | <p>Upon accession</p> |
| <p>4. Trademark Law of the People's Republic of China</p> | <p>Upon accession</p> |
| <p>5. Detailed Rules for the Implementation of the Trademark Law of the People's Republic of China</p> | <p>Upon accession</p> |
| <p>6. Regulations of the People's Republic of China on the Protection of New Varieties of Plants</p> | <p>Effective as of 1 October 1997</p> |
| <p>7. Law of the People's Republic of China Against Unfair Competition</p> | <p>Effective as of 1 December 1993</p> |
| <p>8. Regulations on the Implementation of the Integrated Circuit Layout Design</p> | <p>To be effective as of 10 October 2001</p> |
| <p><u>Part II Department Rules</u></p> | |
| <p>Department Rules</p> | <p>Date of Implementation</p> |
| <p>1. Interim Rules on the Administration of Patents in Agriculture, Animal Husbandry and Fisheries</p> | <p>To be abolished upon accession</p> |
| <p>2. Notice on the Interim Regulation on the Protection of Copyright of Books and Magazines</p> | <p>To be abolished upon accession</p> |
| <p>3. Notice on the Issuance of the "Detailed Rules of Interim Regulations on the Protection of Copyright of Books and Magazines", "Publication Intention Contracts" and "Publication Contracts"</p> | <p>To be abolished upon accession</p> |
| <p>4. Interpretation of Article 15(4) of the "Interim Regulation on the Protection Copyright of Books and Magazines"</p> | <p>To be abolished upon accession</p> |

2. Responsible agencies for policy formulation and implementation

253. The representative of China stated that, at present, different agencies were responsible for IPR policy formulation and implementation. The State Intellectual Property Office ("SIPO") was responsible for patent approval; the Trademarks Office under the State Administration for Industry

and Commerce ("SAIC") was responsible for trademarks registration; the Copyright Office was responsible for copyright policy making; SAIC was responsible for anti-unfair competition, including the protection of trade secrets; the State Drug Administration ("SDA") was responsible for administrative protection of pharmaceuticals; the General Customs Administration was responsible for border measures; the Ministry of Agriculture and the State Administration of Forestry were responsible for protection of plant varieties; the Ministry of Information Industry was responsible for the protection of layout designs of integrated circuits; and the State General Administration of the People's Republic of China for Quality Supervision and Inspection and Quarantine and SAIC were responsible for combating counterfeiting activities. Other agencies like the agency for press and publications, the people's courts and police were also involved in the protection of IPR in China.

3. Participation in international intellectual property agreements

254. The representative of China stated that China became a member of the World Intellectual Property Organization in 1980. In 1985, China became a member of the Paris Convention for the Protection of Industrial Property. China was one of the first countries that signed the Treaty on Intellectual Property in Respect of Integrated Circuits, the negotiation of which was concluded in 1989. In 1989, China became a member of the Madrid Agreement Concerning the International Registration of Marks and in 1992, China became a member of the Berne Convention for the Protection of Literary and Artistic Works. In 1993, China became a member of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. In 1994, China became a member of the Patent Cooperation Treaty and a member of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. In 1995, China became a member of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure and applied for membership in the Protocols of the Madrid Agreement Concerning the International Registration of Marks. In 1996, China became a member of the Locarno Agreement on Establishing an International Classification for Industrial Designs; and in 1997, China became a member of the Strasbourg Agreement Concerning the International Patent Classification. Besides the above efforts, China participated in the TRIPS negotiations during the Uruguay Round and initialled the Final Act.

4. Application of national and MFN treatment to foreign nationals

255. Some members of the Working Party expressed concern that certain provisions of China's copyright and trademark laws, as well as China's Rules on Banning the Infringement of Business Secrets (23 November 1995) did not provide national treatment to foreign right-holders. The Rules on Banning Infringements of Business Secrets, for example, defined the "owner" of a trade secret as a "citizen, corporation, and other organization" and did not explicitly provide protection for foreign individuals or organizations. Some members of the Working Party further stated that national treatment should be fully applied, so that copyright enforcement action by local copyright bureaux involving foreign right-holders, would no longer require clearance by the National Copyright Administration in Beijing.

256. The representative of China responded that China's IPR laws provided that any foreigner would be treated in accordance with any agreement concluded between the foreign country and China, or in accordance with any international treaty to which both countries were party, or on the basis of the principle of reciprocity. The representative of China further confirmed that China would modify relevant laws, regulations and other measures so as to ensure national and MFN treatment to foreign right-holders regarding all intellectual property rights across the board in compliance with the TRIPS Agreement. This would include adjustments of the clearance requirement mentioned in the previous paragraph to ensure national treatment. The Working Party took note of these commitments.

B. SUBSTANTIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

1. Copyright protection

257. The representative of China stated that the Copyright Law, which was promulgated in 1990, established the basic copyright protection system in China together with the Implementing Rules of the Copyright Law (30 May 1991), the Provisions on the Implementation of the International Copyright Treaty (25 September 1992) and other related laws and regulations. In principle, this system was in compliance with the international IPR treaties and practices. For the protection of copyright and neighbouring rights, not only civil and criminal liabilities but also administrative liabilities, were provided for in this system. Hence the infringing activities could be curbed in a timely and effective manner and the legitimate rights of the right-holders could be protected.

258. Some members of the Working Party expressed concerns about the consistency of China's current law on the protection of copyright and related rights with the TRIPS Agreement. In particular, members noted the need to clarify the rights of performers and producers to bring them into conformity with the requirements of Article 14 of the TRIPS Agreement. In addition, improvements were needed with respect to enforcement of copyright to provide expressly for provisional measures to preserve evidence, including documentary evidence and for remedies sufficient to deter further infringements.

259. The representative of China responded that, realizing that there were some existing differences between China's copyright laws and the TRIPS Agreement, the amendment to the Copyright Law had been accelerated. The proposed amendments would clarify the payment system by broadcasting organizations which use the recording products and also include the following provisions: rental rights in respect of computer programs and movies, mechanical performance rights, rights of communication to the public and related protection measures, protection of database compilations, provisional measures, increasing the legitimate compensation amount and strengthening the measures against infringing activities. China's copyright regime including Regulations for the Implementation of the Copyright Law and the Provisions on the Implementation of the International Copyright Treaty would be amended so as to ensure full consistency with China's obligations under the TRIPS Agreement. The Working Party took note of these commitments.

2. Trademarks, including service marks

260. The representative of China stated that the Trademark Law, its implementing rules and other relevant laws, administrative regulations and department rules constituted the existing trademark legal system in China. The objective of these laws was to provide protection to right-holders in line with the international conventions and prevailing practices regarding intellectual property rights, which was embodied both in the regulations on the substance and procedures for trademark registration and in the protection of trademark exclusive rights. In order to protect the trademark owner's exclusive rights, China's Trademark Law contained not only civil and criminal liabilities but also provided for administrative punishment of trademark infringers. This "double-track system" for the protection of exclusive rights in trademarks could prevent trademark infringements in a timely and effective manner and protect the legitimate rights and interests of these exclusive rights. In recent years, China's judicial and administrative bodies had stepped up their efforts to protect trademark exclusive rights within their respective authority. They had settled a large number of cases that were influential, domestically and abroad, which provided adequate protection to the legitimate rights and interests of both Chinese and foreign holders of exclusive rights in trademarks, and received a positive response from domestic and foreign right-holders.

261. Some members of the Working Party reiterated their concerns about whether certain provisions of China's trademark law provided national treatment to foreign owners of trademarks.

They noted that China's law required foreign owners of trademarks to use designated trademark agents, while Chinese nationals were permitted to file directly with China's Trademark Office. Members also noted that China's trademark law did not consider certain signs as eligible for protection as required under the TRIPS Agreement. These included names, letters, numerals and colours capable of distinguishing goods and services. In addition, if registrability of a trademark depends on use, China's trademark law should provide that a non-distinctive mark could qualify for registration when it has acquired distinctiveness based on use. Members also noted that it was not clear under China's law that actual use of a mark was not required before a party could file to register a mark.

262. Some members of the Working Party also raised concerns about the protection of well-known trademarks in China, in particular those not registered in China. China's laws and regulations did not specifically state the criteria for determining whether a mark was well-known and therefore members could not determine if it conformed to the requirements of Article 16 of the TRIPS Agreement. Moreover, while China had provided protection to "well-known trademarks" owned by nationals, such protection had, as yet, not been granted to the well-known trademarks of foreigners. Members also noted that certain provisions of China's trademark law needed to be extended to unregistered well-known trademarks.

263. The representative of China stated that with the development of China's market economy and the further implementation of the TRIPS Agreement, China's legislative and law enforcement bodies had also realized that the existing trademark law fell somewhat short of fulfilling the requirements of the TRIPS Agreement and the Paris Convention in a few aspects and were therefore preparing to amend the existing trademark law to fully meet the requirements of the TRIPS Agreement. Modifications would mainly be made to the following aspects: to include the trademark registration of three-dimensional symbols, combinations of colours, alphabets and figures; to add the content of collective trademark and certification trademark (including geographical indications); to introduce official symbol protection; to protect well-known trademarks; to include priority rights; to modify the existing trademark right confirmation system and offer interested parties the opportunity for judicial review concerning the confirmation of trademark rights; to crack down on all serious infringements; and to improve the system for providing damages for trademark infringement. The Working Party took note of these commitments.

3. Geographical indications, including appellations of origin

264. The representative of China stated that the relevant rules of the SAIC and the State General Administration of the People's Republic of China for Quality Supervision and Inspection and Quarantine partly provided protection for geographical indications, including appellations of origin, and that the amendments to the trademark law would have a specific provision on the protection of geographical indications.

265. Members of the Working Party took note of the progress achieved on providing protection for geographical indications and reiterated the importance of China's legislation complying with the obligations under the TRIPS Agreement (Articles 22, 23 and 24). The representative of China shared this assessment and reiterated China's intention to fully comply with relevant articles in the TRIPS Agreement on geographical indications. The Working Party took note of this commitment.

4. Industrial designs

266. Some members of the Working Party noted that the industrial design provisions of China's patent law appeared to implement substantial portions of the TRIPS Agreement requirements relating to industrial designs. One notable exception was the area of textile designs. These members noted that designs of WTO Members could be protected under China's Provisions on the Implementation of

the International Copyright Treaty as works of applied art. Members urged China to incorporate this protection into its law and to provide such protection to domestic textile designs.

5. Patents

267. The representative of China stated that in preparation for its accession, China revised its patent law in 1992 for the first time. China had taken measures to enhance consistency with the TRIPS Agreement in terms of major provisions and protection standards. In order to increase the awareness of the general public on IPR protection, and patent protection in particular, to be consistent with the TRIPS Agreement, and to build up a sound social environment for the promotion and commercialization of inventions, the National People's Congress approved the second revision of the Patent Law on 25 August 2000. The revised patent law, which would take effect on 1 July 2001, included the following elements: (1) patent owners would have the right to prevent others from offering for sale the patented product without their consent (Article 11); (2) for utility model and design applications or patents, the final decision on re-examination and invalidation would be made by the people's courts other than for inventions that were patented prior to the amendment (Articles 41 and 46); (3) patent owners could, before instituting legal proceedings, request the people's court to take provisional measures such as to order the suspension of infringing acts and to provide property preservation (Article 61); and (4) conditions for granting a compulsory licence would be further clarified and made consistent with the TRIPS Agreement.

268. The representative of China further stated that since its establishment, SIPO had paid great attention to strengthening its contacts and coordination with relevant departments and ministries in the field of IPR law enforcement, especially in the areas of settling inter-agency problems and resolving key cases. At the same time, SIPO had taken appropriate measures to improve the performance of local patent authorities in law enforcement. For example, in June 1999, SIPO convened a nationwide working conference, which was attended by representatives from local patent administrative authorities. The participants summarized their law enforcement practices over the previous two years and also exchanged information on their experiences in their local legislative work with a view to intensifying patent protection. The conference also called for the introduction of important patent cases reporting and recording system.

269. The representative of China stated that so far as the range of patent protection and protection for new plant varieties were concerned, China had already met the requirements of Article 27 of the TRIPS Agreement. When amending the Patent Law in 1992, China modified Article 25 therein with reference to the relevant stipulations in the draft of the TRIPS Agreement and expanded the coverage of patent protection to food, beverages, flavourings, pharmaceuticals and materials obtained by chemical methods. The scope of patent exclusions would be limited to "scientific discoveries, rules and methods of intellectual activities, diagnostic and therapeutic methods for the treatment of diseases, animals and plant varieties, as well as materials obtained by the change of nucleus".

270. He further stated that Article 5 of China's Patent Law stipulated that inventions that violate laws of China or social morality or prejudice public interest would not be entitled to patent right. While literally there was a difference between Article 5 of China's Patent Law and the TRIPS Agreement, in practice, during the review of patent applications, the interpretation of "violating laws of China" had been restricted to "if laws of China prohibit the sale of a certain patented product, or prohibit the sale of products manufactured by a patented method, the granting of patent right cannot be denied to this product invention or this invention of product manufacturing method by relying on Article 5 of the Patent Law". Hence, in essence, he concluded that there was no difference between Article 5 of the Patent Law as applied and the TRIPS Agreement. Nonetheless, China would amend the Implementing Rules of the Patent Law to ensure that this provision would be implemented in full compliance with Article 27.2 of the TRIPS Agreement, which stipulated that: "Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life

or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law". The Working Party took note of this commitment.

271. Regarding Article 28 of the TRIPS Agreement (rights conferred), the representative of China stated that China's patent law had fully complied with the requirements of the TRIPS Agreement for the following reasons. First, in the 1992 amendment to the Patent Law, Article 11 was modified as follows: "any entity or individual is, without prior licensing from the patentee, prohibited from making, using or selling patented products or patented processes, or using or selling products directly obtained by the patented processes for the purpose of production and operation". It was also prohibited for any entity or individual to import patented products or products directly obtained by patented processes for the purpose of production and operation. This modification expanded the scope of patentees' right, namely the new content of "the right to prohibit import" and "the effect of patented processes is extended to products directly obtained by patented processes". Second, in 2000, when the second amendment was made to the Patent Law, Article 11 was once again modified. A new stipulation was introduced granting patentees the right to prohibit others from offering for sale the patented products or products directly obtained by patented processes without the consent of patentees. Therefore, so far as "the right of patentees" is concerned, China's Patent Law had fully accommodated the requirements of the TRIPS Agreement.

272. Further to the 1992 amendment, the representative of China stated that China's Patent Law provided for compulsory licences based on reasonable terms, for public interest and for dependent patents. With regard to the conditions of compulsory licences for dependent patents, the Patent Law provided that the latter invention should be technically more advanced than the earlier one. The TRIPS Agreement provides that "the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent" (Article 31(l)(i)). Since the provisions of the TRIPS Agreement were more transparent and easier to operate, the relevant expressions contained in the TRIPS Agreement were adopted in the new revision. In addition, the following restrictive conditions for granting compulsory licences contained in the Implementing Rules of the Patent Law of 1992 had been moved into the Patent Law in order to make it more authoritative: the decision of SIPO on the granting of a compulsory licence for exploitation would be limited in terms of its scope and duration; when the circumstances which led to such compulsory licence ceased to exist and were unlikely to recur, SIPO, upon the request of the patentee, could terminate the compulsory licence after examination; were incorporated into the Law (former Article 68 of the Implementing Rules of the Patent Law of 1992 had now been moved into Article 52 of the revised Patent Law).

273. The representative of China stated that following the 1992 amendment, the regulations on compulsory licensing in China's Patent Law and its implementing rules, as a whole, had fulfilled the requirements of the TRIPS Agreement. However, some wording and expressions in the Chinese regulations were still not identical to the TRIPS Agreement and these regulations still needed improvement in respect of the administrative legal proceedings concerning compulsory licensing. Therefore, in the second amendment to the Patent Law in 2000, the corresponding amendments and modifications to the stipulations on compulsory licensing were mainly made in the following two points: (1) Article 53 of the Patent Law was modified from "a patented invention or utility model is technically more advanced than the inventions or utility models which have obtained patent right earlier" into "a later invention or utility model is an important technical progress with striking economic significance as compared to the earlier invention or utility model"; and (2) having been subject to appropriate adjustments, the regulations on the time, scope and termination of compulsory licensing enforcement in Article 68 of the Implementing Rules of the Patent Law of 1992 were integrated into Article 52 of the amended Patent Law. Following the above-mentioned amendments, China's Patent Law had regulations on compulsory licensing with clearer structure and improved content. In the representative of China's view, these regulations were fully consistent with the TRIPS

Agreement. He also added that up to now China had not issued any compulsory licences for patent enforcement.

274. Some members of the Working Party noted the improvements in the provisions regarding compulsory licensing for patents that the representative of China cited. Some members however, requested clarification of the subject matter that would be subject to compulsory licensing under the Patent Law.

275. In response, the representative of China agreed that still not all the requirements of Article 31 of the TRIPS Agreement had been incorporated into Chinese law, and that the Implementing Rules of the Patent Law would therefore be modified so as to ensure that: (1) use without authorization of the right-holder would only be permitted if, prior to such use, the proposed user had made efforts to obtain authorization from the right-holder on reasonable commercial terms and conditions, on the understanding that this requirement could be waived in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use and subject to the other provisions of subparagraph (b) of Article 31; (2) the right-holder would be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization (Article 31(h)); (3) any such use would be authorized predominantly for the supply of the domestic market (Article 31(f)); and (4) in the case of semi-conductor technology, the scope and duration of such use would only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive (Article 31(c)). The Working Party took note of these commitments.

276. Regarding Article 32 of the TRIPS Agreement (revocation/forfeiture), the representative of China stated that in light of Articles 41 and 46 of the amended Patent Law, patent applicants or patentees of inventions, as well as applicable utility models and designs, could institute legal proceedings in the people's court if they were not satisfied with the review or nullity decisions made by the Patent Review Board. This modification enabled China's Patent Law to be fully consistent with TRIPS regarding administrative decisions which were subject to judicial review.

277. On the duration of patent right protection, the representative of China stated that as early as 1992 when China made an initial amendment to the Patent Law, Article 45 (later converted into Article 42 after the second amendment) was modified as: "the duration of inventions patent right is 20 years and the duration of patent right for applicable utility model and designs is 10 years, counted as of the date of application". Therefore, China's Patent Law had for a long time accorded with Articles 26 and 33 of the TRIPS Agreement concerning the duration of patent rights.

278. Regarding Article 34 of the TRIPS Agreement (process patents: burden of proof), the representative of China stated that China's Patent Law was modified in 1992 and 2000, and was now in full conformity with the TRIPS Agreement. The amended paragraph 2 of Article 57 reads: "when any infringement dispute relates to a process patent for the manufacture of a new product, any entity or individual manufacturing the identical product shall furnish proof to the effect that a different process is used in the manufacture of its or his product".

6. Plant variety protection

279. The representative of China confirmed that China was a party to the 1978 text of the Universal Convention on the Protection of Plant Varieties ("UPOV"). In March 1997, the State Council formulated and promulgated the Regulation on the Protection of New Plant Varieties, thus offering protection for new plant varieties in a *sui generis* form consistent with the requirements of the TRIPS Agreement. A unit or an individual that had accomplished the breeding enjoyed an exclusive right in their right-granted variety. No unit or individual could, without permission from the owner of the variety rights (referred to as "the variety rights owner"), produce or market for commercial purposes the propagation material of the rights-granted variety, or repeatedly use for

commercial purposes the propagation material of the rights-granted variety in the production of the propagation material of another variety. The conditions of non-voluntary licensing were set out in the regulation. The period of protection of variety rights, from the date of grant of the rights, would be 20 years for vines, forest trees, fruit trees and ornamental trees and 15 years for other plants.

7. Layout designs of integrated circuits

280. The representative of China stated that China was one of the first countries to sign the Treaty on Intellectual Property in Respect of Integrated Circuits in 1989. The specific Regulation on the Protection of Layout Designs of Integrated Circuits, which would implement China's obligations under Section 6, Part II of the TRIPS Agreement, was issued in April 2001 and would be effective on 1 October 2001.

281. The representative of China stated that China was strengthening the protection of the layout designs to support the rapid development of the integrated circuit industry. The regulations provided protection to layout-designs, according to which the following acts if performed without authorization of the right-holder were unlawful: importing, selling or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design was incorporated, or an article incorporating such an integrated circuit only in so far as it continued to contain an unlawfully reproduced layout-design. The exception clause and non-voluntary licensing clause were in conformity with Article 37 of TRIPS. The term of protection was 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurred. In addition, the protection to the layout-design of integrated circuits was in accordance with Article 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits.

8. Requirements on undisclosed information, including trade secrets and test data

282. Some members of the Working Party expressed concern about China's protection against unfair commercial use and disclosure of undisclosed test and other data submitted to authorities in China to obtain marketing approval for pharmaceuticals and agricultural chemicals. They noted that China's laws appeared to prohibit the release of information by government officials but did not include provisions regarding the prevention of unfair commercial use, as required under Article 39.3 of the TRIPS Agreement. Some members requested that China specifically provide in its law and regulations that it would protect against unfair commercial use of undisclosed test or other data submitted in support of applications for marketing approval of pharmaceutical or of agricultural chemical products which utilize new chemical entities, by providing that no person other than the person that submitted such data may, without the permission of the person initially submitting the data, rely on such data in support of an application for product approval for a period of at least six years from the date on which marketing approval to the person that submitted the data had been granted.

283. The representative of China stated that Article 10 of the Anti-unfair Competition Law provided that a business operator must not infringe upon trade secrets. Under the same Article, obtaining, using or disclosing another's trade secrets by a third party who clearly knew or ought to have known that the case fell under the unlawful acts listed in the preceding paragraph was deemed infringement upon trade secrets. Trade secrets referred to any technology information or business operation information which was unknown to the public, could bring about economic benefits to the obligee, had practical utility and about which the obligee had adopted secret-keeping measures. He also stated that Article 219 of the Criminal Law had similar definitions on trade secrets.

284. The representative of China further confirmed that China would, in compliance with Article 39.3 of the TRIPS Agreement, provide effective protection against unfair commercial use of undisclosed test or other data submitted to authorities in China as required in support of applications

for marketing approval of pharmaceutical or of agricultural chemical products which utilized new chemical entities, except where the disclosure of such data was necessary to protect the public, or where steps were taken to ensure that the data are protected against unfair commercial use. This protection would include introduction and enactment of laws and regulations to make sure that no person, other than the person who submitted such data, could, without the permission of the person who submitted the data, rely on such data in support of an application for product approval for a period of at least six years from the date on which China granted marketing approval to the person submitting the data. During this period, any second applicant for market authorization would only be granted market authorization if he submits his own data. This protection of data would be available to all pharmaceutical and agricultural products which utilize new chemical entities, irrespective of whether they were patent-protected or not. The Working Party took note of these commitments.

C. MEASURES TO CONTROL ABUSE OF INTELLECTUAL PROPERTY RIGHTS

285. The representative of China stated that there were provisions relating to compulsory licences in the Patent Law to prevent abuse of patent right. He also stated that the Trademark Law provided that the trademark registrant may, by concluding a trademark licensing contract, authorize another person to use its registered trademark. The licensor would supervise the quality of the goods on which the licensee used the licensor's registered trademark and the licensee would guarantee the quality of the goods on which the registered trademark was to be used.

286. Some members of the Working Party expressed some concerns as to the compatibility of China's rules on control of anti-competitive licensing practices or conditions with the corresponding obligations under Article 40 of the TRIPS Agreement. The representative of China stated in response that China's legislation would comply with these obligations, notably as to the request for consultations with other Members. He stated that these rules would apply across the board to all intellectual property rights. The Working Party took note of this commitment.

D. ENFORCEMENT

1. General

287. Some members of the Working Party expressed concern that there was a continued need for additional enforcement efforts by the Government of China. They also said that China should strengthen the legislative framework for the enforcement of intellectual property rights for all right-holders. The representative of China stated that where an infringement of intellectual property rights was found in China, the person concerned could bring a lawsuit to a court. Since 1992, special IPR courts have been set up in major cities such as Beijing and Shanghai on the basis of their specialized collegial panels. According to China's legislation, individuals and enterprises would be held responsible for all their IPR infringing activities and subject to civil and/or criminal liabilities. Where any person violated the IPR of another person and the circumstances were serious, the person directly responsible would be prosecuted for his criminal liability by applying relevant provisions of the Criminal Law. If found guilty, the person directly responsible could be sentenced to a fixed-term imprisonment of no more than seven years or be subject to detention or a fine.

288. Some members of the Working Party further urged China to ensure the vigorous application by Chinese authorities of the enforcement legislation in order to considerably reduce the existing high levels of copyright piracy and trademark counterfeiting. Action should include the closure of manufacturing facilities as well as markets and retail shops that had been the object of administrative convictions for infringing activities. The representative of China stated that the measures for cracking down on intellectual property piracy were always severe in China. In judicial aspects, courts at all levels were continuously paying attention to the trial of IPR cases. As for administration aspects, the administrative authorities at all levels were putting emphasis on strengthening anti-piracy work. In addition, the administrative authorities were also enhancing the legal publication and education of the

general public in a bid to ensure that the legal environment of China would be able to meet the requirements for enforcing the TRIPS Agreement. The Working Party took note of these commitments.

2. Civil judicial procedures and remedies

289. Some members of the Working Party expressed concern about certain practices relating to the filing of civil judicial actions that made it difficult for intellectual property right-holders to pursue their rights in China's courts. China's system of basing filing fees on the amount of damages requested makes large-scale infringement actions unnecessarily costly. Those members also expressed concern regarding the calculation of damages based on the infringer's profits. This, combined with China's rules on establishing the level of profits which require evidence of actual sale and which disregard inventory and past activity, often resulted in damage amounts inadequate to compensate for the injury that the right-holder has suffered.

290. The representative of China stated that Article 118 of the General Principles of the Civil Law provided that if the rights of authorship (copyrights), patent rights, rights of exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or juridical persons were infringed upon by such means as plagiarism, alteration or imitation, they had the right to demand that the infringement be stopped, its ill effects be eliminated and the damages be compensated for. He further stated that the Trademark Law, the Patent Law and the Copyright Law had similar provisions.

291. The representative of China further confirmed that, Articles 42 and 43 of the TRIPS Agreement would be effectively implemented under the judicial rules of civil procedure. The Working Party took note of this commitment.

292. The representative of China confirmed that the relevant implementing rules would be amended to ensure full compliance with Articles 45 and 46 of the TRIPS Agreement, to the effect that damages paid by the infringer to the right-holder would be adequate to compensate for the injury suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity. The Working Party took note of this commitment.

3. Provisional measures

293. Members of the Working Party noted that the TRIPS Agreement required that judicial authorities have the authority to order prompt and effective provisional measures to (1) prevent an infringement of intellectual property from occurring, in particular to prevent the distribution or sale of infringing goods, and (2) to preserve the evidence of alleged infringement.

294. The representative of China stated that in China's Civil Procedure Law there were provisions on property preservation, but as yet no explicit stipulations had been provided to authorize the people's court to take measures for the prevention of infringements prior to formal institution of a lawsuit by a party involved. In order to enhance the deterrent power of law against infringements and to guarantee that the legitimate rights and interests of patentees would not suffer from irreparable harm as well as to comply with the TRIPS Agreement, China, when amending the Patent Law for the second time in 2000, introduced Article 61 to regulate provisional measures, which provided as follows: "where a patentee or any interested party who can provide any reasonable evidence that his right is being infringed or that such infringement is imminent, and any delay in stopping the acts is likely to cause irreparable harm to his or its legitimate rights and interests, he or it may, before instituting legal proceedings, request the people's court to order the suspension of related acts and to provide property preservation".

295. Some Members of the Working Party expressed concern that Article 61 of the Patent Law did not fully incorporate all requirements of Article 44 of the TRIPS Agreement, and that it was still unclear whether holders of intellectual property rights other than patents could rely on a similar procedure.

296. The representative of China stated that Article 61 of the Patent Law would be implemented in a way fully consistent with Article 50.1-4 of the TRIPS Agreement. He also stated that "reasonable evidence" in Article 61 of the Patent Law would be, through implementing rules, clarified to mean "any reasonably available evidence in order to satisfy with sufficient degree of certainty that the applicant is the right-holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse". The Working Party took note of this commitment.

4. Administrative procedures and remedies

297. Members of the Working Party noted that most IPR enforcement in China was done through administrative actions. In this connection, some members expressed concern about the inadequate levels of administrative sanctions in China which, when coupled with the high threshold for initiating criminal prosecutions, made IPR enforcement in China difficult. Administrative sanctions generally amounted to small fines and the loss of infringing inventory. Members also stressed the need for administrative authorities to refer more cases, including those involving repeat offenders and willful piracy and counterfeiting, to the appropriate authorities for initiation of criminal actions.

298. The representative of China said that the Trademark Law provided that in the event of any infringement of the right to the exclusive use of a registered trademark, the infringed right-holder could request the administrative department for industry and commerce at or above the county level for disposition. The relevant administrative department for industry and commerce had the power to order the infringer to stop the infringing act immediately and to compensate the infringed right-holder for its or his losses. SAIC and its local agencies above the county level could also impose a fine upon the infringer. The Patent Law provided that the patentee and interested party could request the administrative authority for patent affairs to handle the infringing act. The administrative authority could order the infringer to stop the infringing act immediately and mediate on damages at the request of the parties concerned. The Copyright Law provided that the copyright administration department could subject anyone who committed acts of infringement to such administrative penalties as confiscation of unlawful income from the act or imposition of a fine.

299. The representative of China stated that most IPR enforcement actions in China resulted in administrative measures to address the infringement. He noted ongoing efforts to strengthen the sanctions that were available to administrative authorities and the increased attention given to enforcement of IPRs. The representative of China confirmed that the government would continue to enhance its enforcement efforts, including through the application of more effective administrative sanctions. Relevant agencies, including the State Administration for Industry and Commerce, the State General Administration of the People's Republic of China for Quality Supervision and Inspection and Quarantine and the Copyright Office, now had the authority to confiscate equipment used for making counterfeit and pirated products and other evidence of infringement. These relevant agencies would be encouraged to exercise their authority to seize and preserve evidence of infringement such as inventory and documents. Administrative authorities would have the authority to impose sufficient sanctions to prevent or deter further infringement and would be encouraged to exercise that authority. Appropriate cases, including those involving repeat offenders and willful piracy and counterfeiting, would be referred to relevant authorities for prosecution under the criminal law provisions. The Working Party took note of these commitments.

5. Special border measures

300. The representative of China stated that on 5 July 1995 the State Council of the People's Republic of China had issued special legislation in respect of border measures for enforcement of intellectual property rights – the Regulations of the People's Republic of China Governing Customs Protection of Intellectual Property Rights – which came into effect on 1 October of the same year. According to this legislation, China's Customs offices must take measures to intercept importation or exportation of goods that were proved to be infringing the rights of trademarks, patents or copyrights legally protected in China. China's Customs offices were granted authority to investigate any suspected shipment and confiscate the goods in case infringement was proved.

301. Some members of the Working Party expressed concerns as to the compatibility of existing border measures with obligations under Articles 51 to 60 of the TRIPS Agreement; particularly the provisions on suspension of release into free circulation by customs authorities (Article 51), rules on evidence for initiating this procedure (Article 52), requirements on the security needed to protect the defendant (Article 53), rules on notice of the suspension (Article 54) and its duration (Article 55), rules on indemnification of the importer in case of wrongful detention (Article 56) and opportunity for the right-holder to have the goods detained inspected (Article 57). Moreover some expressed their concern as to compatibility of rules on actions ex-officio by competent authorities and the conditions attached (Article 58), as well as to the remedies provided against infringing goods (Article 59) and the quantities subject to the *de minimis* rules (Article 60).

302. In response, the representative of China stated that China would provide holders of intellectual property rights with procedures related to border measures that complied fully with the relevant provisions of the TRIPS Agreement (Articles 51 to 60). The Working Party took note of this commitment.

6. Criminal procedures

303. The representative of China stated that Articles 213 to 220 of the Criminal Law (Crimes of Infringing on Intellectual Property Rights) provided that whoever seriously infringes the right-holders' rights of registered trademarks, patents, copyrights or trade secrets would be sentenced to fixed-term imprisonment and would also be fined.

304. Some members of the Working Party expressed concerns that criminal procedures could not be used effectively to address piracy and counterfeiting. In particular, the monetary thresholds for bringing a criminal action, as currently applied, were very high and seldom met. Those thresholds should be lowered so as to permit effective action that would deter future piracy and counterfeiting. In response, the representative of China stated that China's administrative authority would recommend that the judicial authority make necessary adjustments to lower the thresholds so as to address these concerns. The Working Party took note of this commitment.

305. Noting the advanced state of protection for intellectual property rights in China, the representative of China confirmed that upon accession China would fully apply the provisions of the TRIPS Agreement. The Working Party took note of this commitment.

VI. POLICIES AFFECTING TRADE IN SERVICES

1. Licensing

306. Some members of the Working Party welcomed the broad-ranging and comprehensive commitments that China was undertaking to increase transparency and to provide information to governments and service providers on any matter relating to the GATS including China's Schedule of Specific Commitments. These members nonetheless expressed concerns regarding the lack of

transparency in China's current services regime, in particular with respect to obtaining, extending, renewing, denying and terminating licences and other approvals required to provide services in China's market and appeals of such actions (hereafter referred to as "China's licensing procedures and conditions"). To be consistent with the provisions of the WTO Agreement, including the Protocol and China's Schedule of Specific Commitments, members of the Working Party noted that China's licensing procedures and conditions should not in themselves act as a barrier to market access and should not be more trade restrictive than necessary. Those members also expressed the view that upon its accession, China should publish (1) a list of authorities responsible for authorizing, approving or regulating those service sectors in which China made specific commitments and (2) China's licensing procedures and conditions.

307. The representative of China confirmed that paragraph 332 regarding publication of a list of all organizations that were responsible for authorizing, approving or regulating service activities for each service sector, including those organizations delegated such authority from the central government authorities, would apply. The representative of China also confirmed that China would publish in the official journal all of China's licensing procedures and conditions upon accession. The Working Party took note of these commitments.

308. The representative of China also confirmed that upon accession China would ensure that China's licensing procedures and conditions would not act as barriers to market access and would not be more trade restrictive than necessary. In accordance with China's commitments under the WTO Agreement, the Protocol and its Schedule of Specific Commitments, the representative of China confirmed that for those services included in China's Schedule of Specific Commitments, China would ensure that:

- (a) China's licensing procedures and conditions were published prior to becoming effective;
- (b) In that publication, China would specify reasonable time frames for review and decision by all relevant authorities in China's licensing procedures and conditions;
- (c) Applicants would be able to request licensing without individual invitation;
- (d) Any fees charged, which were not deemed to include fees determined through auction or a tendering process, would be commensurate with the administrative cost of processing an application;
- (e) The competent authorities of China would, after receipt of an application, inform the applicant whether the application was considered complete under China's domestic laws and regulations and in the case of incomplete applications, identify the additional information that was required to complete the application and provide the opportunity to cure deficiencies;
- (f) Decisions would be taken promptly on all applications;
- (g) If an application was terminated or denied, the applicant would be informed in writing and without delay the reasons for such action. The applicant would have the possibility of resubmitting, at its discretion, a new application that addressed the reasons for termination or denial;
- (h) If an application was approved, the applicant would be informed in writing and without delay. The licence or approval would enable the applicant to start the commercial operations upon registration of the company with SAIC for fiscal and other similar administrative purposes. This registration would be completed within 2 months of the submission of a complete file, as required by public SAIC regulations, and in accordance with China's Schedule of Specific Commitments;

- (i) Where China required an examination to licence professionals, such examinations would be scheduled at reasonable intervals.

The Working Party took note of these commitments.

309. Some members of the Working Party also expressed concern about maintaining the independence of regulators from those they regulated. The representative of China confirmed that for the services included in China's Schedule of Specific Commitments, relevant regulatory authorities would be separate from, and not accountable to, any service suppliers they regulated, except for courier and railway transportation services. For these excepted sectors, China would comply with other relevant provisions of the WTO Agreement and the Protocol. The Working Party took note of these commitments.

310. The representative of China stated that China would consult with WTO Members and develop regulations, consistent with China's Schedule of Specific Commitments and its obligations under GATS, on sales away from a fixed location. The Working Party took note of this commitment.

311. Some members of the Working Party noted that the World Code of Conduct provided a strong ethical basis for regulating sales away from a fixed location.

312. In response to questions from members of the Working Party regarding certain terms in China's Schedule of Specific Commitments, the representative of China confirmed the following:

- (a) A "master policy" was a policy that provided blanket coverage for the same legal person's property and liabilities located in different places. A master policy could only be issued by the business department of an insurer's head office or that of its authorized province-level branch offices. Other branches were not allowed to issue master policies.

- (i) For master policy business with the state key construction projects as its subject-matter insured.

If investors on the state key construction projects (i.e., projects that were so listed and annually announced by the State Development and Planning Commission) met either of the following requirements, they could purchase a master policy from insurers that were located in the same place as the investors' legal persons were located.

1. The investment on the subject-matter insured were all from China (including the reinvestment from the foreign-invested enterprises in China) and the sum of investment of the investor accounted for over 15 per cent of the total investment.
2. The investment was partially from abroad, and partially from China (including the reinvestment from the foreign-invested enterprises in China) and the sum of investment of the Chinese investor accounted for over 15 per cent of the total domestic investment.

For those projects that drew all investment from abroad, every insurer could provide coverage in the form of a master policy.

- (ii) A Master policy covering different subject-matters insured of the same legal person.

For those subject-matters insured located in different places and owned by the same legal person (excluding financial, railway, and post and telecommunications industries and enterprises), a master policy could be issued on the basis of either of the following conditions.

1. For the sake of payment of the premium tax, insurance companies incorporated where the legal person or accounting unit of the insurance applicant was located, were allowed to issue a master policy.
 2. If over 50 per cent of the insurance amount of the subject-matter insured was from a larger or medium sized city, then insurers in that city were allowed to issue a master policy, no matter whether the insurance applicant's legal person or accounting unit was located in the city.
- (b) Large scale commercial risk meant an insurance risk written on any large scale commercial enterprise if, upon accession, the aggregate annual premium exceeded 800 thousand RMB and the investment was more than 200 million RMB; one year after accession, if the aggregate annual premium exceeded 600 thousand RMB and the investment was more than 180 million RMB; two years after accession, if the aggregate annual premium exceeded 400 thousand RMB and the investment was more than 150 million RMB.
- (c) Statutory insurance in China's Schedule of Specific Commitments were limited to the following specific categories, and no additional lines or products would be added: third party auto liability insurance, and driver and operator liability for buses and other commercial vehicles.
- (d) The representative of China confirmed that any changes to the definition of master policy and large scale commercial risk would be consistent with China's Specific Schedule of Commitments and obligations under GATS so as to progressively liberalize access to this services sector.

The Working Party took note of these commitments.

313. Members of the Working Party welcomed China's commitment to permit internal branching for insurance firms consistent with the phase-out of geographic restrictions. Some members noted that China had scheduled certain qualifications as limitations under GATS Articles XVI and XVII that foreign insurers had to meet to apply for a licence to provide services in China. These qualifications related to a minimum period of establishment in a WTO member, total assets and maintenance of a representative office in China. These qualifications should not apply to those foreign insurance companies established in China seeking authorisation to establish a branch or sub-branch. The representative of China confirmed that the qualifications for foreign insurers applying for a licence to enter China's market would not apply to foreign insurers already established in China that were seeking authorization to establish branches or sub-branches. He also confirmed that a branch and a sub-branch were an extension of the parent enterprise and not a separate legal entity and that China would permit internal branching accordingly on that basis, and in compliance with China's Schedule of Specific Commitments, including provisions on MFN treatment. The Working Party took note of these commitments.

2. Choice of Partner

314. Some members of the Working Party expressed concern regarding the existing practice of imposing conditions on the Chinese companies that were allowed to partner with foreign service suppliers. These members indicated that this could amount to *de facto* quotas, as the number of potential partners meeting those conditions might be limited. The representative of China confirmed that a foreign service supplier would be able to partner with any Chinese entity of its choice, including outside the sector of operation of the joint venture, as long as the Chinese partner was legally established in China. The joint venture as such should meet the prudential and specific sectoral requirements, on the same basis as those for domestic enterprises and which must be publicly available. The Working Party took note of these commitments.

3. Modification of the Equity Interest

315. The representative of China confirmed that the Chinese and foreign partners in an established joint venture would be able to discuss the modification of their respective equity participation levels in the joint venture and implement such modification if agreement was reached by both sides and also approved by the authorities. The representative of China confirmed that such an agreement would be approved if consistent with the relevant equity commitments in China's Schedule of Specific Commitments. The Working Party took note of this commitment.

4. Prior Experience Requirement for Establishment in Insurance Sector

316. The representative of China confirmed that the merging, division, restructuring or other change of legal form of an insurance company would not impact the prior experience requirements included in China's Schedule of Specific Commitments if the new entity continued to supply insurance services. The Working Party took note of this commitment.

5. Inspection Services

317. In response to questions from members of the Working Party, the representative of China confirmed that China would not maintain requirements which had the effect of acting as barriers to the operation of foreign and joint-venture commodity inspection agencies, unless otherwise specified in China's Schedule of Specific Commitments. The Working Party took note of this commitment.

6. Market Research

318. Some members of the Working Party expressed concern regarding market research activities. In response to questions from members in this respect, the representative of China confirmed that, upon accession, China would remove the prior approval requirement for market research services, defined as investigation services designed to secure information on the prospects and performance of an organization's products in the market, including market analysis (of the size and other characteristics of a market) and analysis of consumer attitudes and preferences. Market research firms registered in China, which were engaged in such services, would only be required to file the survey plan and the questionnaire form on record in the statistical agencies of government at or above the provincial level. The Working Party took note of these commitments.

7. Legal Services

319. In response to questions from members of the Working Party, the representative of China clarified that "Chinese national registered lawyers", as indicated in China's Schedule of Specific Commitments, were those Chinese nationals who had obtained a lawyer's certificate and were holding a Chinese practising permit and were registered to practice in a Chinese law firm.

8. Minority Shareholder Rights

320. With respect to its Schedule of Specific Commitments, the representative of China confirmed that, while China had limited its market access commitments in some sectors to permit foreigners to hold only a minority equity interest, a minority shareholder could enforce rights in the investment under China's laws, regulations and measures. Moreover, WTO Members would have recourse to WTO dispute settlement to ensure implementation of all commitments in China's GATS schedule. The Working Party took note of these commitments.

9. Schedule of Specific Commitments

321. China's Schedule of Specific Commitments, reproduced in Annex 9 to the Protocol, contained the market access commitments of China in respect of Services.

VII. OTHER ISSUES

1. Notifications

322. Members of the Working Party requested that China submit the notifications required in the Protocol and Report to the WTO body with a mandate covering the subject of the notification. The representative of China confirmed that China would submit its notifications to these bodies, consistent with Section 18.1 and Annex 1A of the Protocol. The Working Party took note of this commitment.

2. Special Trade Arrangements

323. Some members of the Working Party raised specific concerns in relation to some of China's special trade arrangements, including barter trade arrangements, with third countries and separate customs territories, which those members considered not to be in conformity with WTO requirements. In response, the representative of China recalled the commitment undertaken by China in Section 4 of the Protocol.

3. Transparency

324. Some members of the Working Party expressed concern about the lack of transparency regarding the laws, regulations and other measures that applied to matters covered in the WTO Agreement and the Protocol. In particular, some members noted the difficulty in finding and obtaining copies of regulations and other measures undertaken by various ministries as well as those taken by provincial and other local authorities. Transparency of regulations and other measures, particularly of sub-national authorities, was essential since these authorities often provided the details on how the more general laws, regulations and other measures of the central government would be implemented and often differed among various jurisdictions. Those members emphasized the need to receive such information in a timely fashion so that governments and traders could be prepared to comply with such provisions and could exercise their rights in respect of implementation and enforcement of such measures. The same members emphasized the importance of such pre-publication to enhancing secure, predictable trading relations. Those members noted the development of the Internet and other means to ensure that information from all government bodies at all levels could be assembled in one place and made readily available. The creation and maintenance of a single, authoritative journal and enquiry point would greatly facilitate dissemination of information and help promote compliance.

325. In response, the representative of China noted that the Government of China regularly issued publications providing information on China's foreign trade system, such as the: "Almanac of Foreign Economic Relations and Trade" and "The Bulletin of MOFTEC" published by MOFTEC; "Statistical Yearbook of China", published by the State Statistical Bureau; "China's Customs Statistics (Quarterly)", edited and published by the Customs. China's laws and regulations of the State Council relating to foreign trade were all published, as were rules issued by departments. Such laws, regulations and rules were available in the "Gazette of the State Council", the "Collection of the Laws and Regulations of the People's Republic of China" and the "MOFTEC Gazette". The administrative regulations and directives relating to foreign trade were also published on MOFTEC's official website (<http://www.moftec.gov.cn>) and in periodicals.

326. He further noted that there were no forex restrictions affecting import or export. Information on forex measures was published by the SAFE and was available on SAFE's website (<http://www.safe.gov.cn>) and via the news media.

327. The representative of China noted that information concerning the administration of imports and exports would be published in the "International Business" newspaper and the "MOFTEC Gazette".

328. He also noted that information on China's customs laws and regulations, import and export duty rates, and customs procedures was published in the "Gazette of the State Council" and in the press media, and was available upon request. The procedures concerning application of duty rates, customs value and duty determination, drawback and duty recovery, as well as the procedures concerning duty exemptions and reduction, were also published. Customs also published monthly customs statistics, calculated according to country of origin and final destination, on the basis of eight-digit HS levels.

329. The representative of China noted that any bilateral trade agreements concluded between China and its trading partners, and protocols on the exchange of goods negotiated under them were published in "The Treaty Series of the PRC". He also noted that the "Directory of China's Foreign Economic Relations and Trade Enterprises" and "China's Foreign Trade Corporations and Organizations" were two publications which identified foreign trade corporations and other enterprises in China engaged in foreign trade.

330. The representative of China stated that the full listing of official journals was as follows: Gazette of the Standing Committee of the National People's Congress of the People's Republic of China; Gazette of the State Council of the People's Republic of China; Collection of the Laws of the People's Republic of China; Collection of the Laws and Regulations of the People's Republic of China; Gazette of MOFTEC of the People's Republic of China; Proclamation of the People's Bank of the People's Republic of China; and Proclamation of the Ministry of Finance of the People's Republic of China.

331. The representative of China confirmed that publication of all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex would include the effective date of these measures. It would also include the products and services affected by a particular measure, identified by appropriate tariff line and CPC classification. The Working Party took note of these commitments.

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

333. The representative of China confirmed that none of the information required by the WTO Agreement or the Protocol to be disclosed would be withheld as confidential information except for those reasons identified in Section 2(C) of the Protocol or unless it would demonstrably prejudice the legitimate commercial interests of particular enterprises, public or private. The Working Party took note of this commitment.

334. The representative of China confirmed that China would make available to WTO Members translations into one or more of the official languages of the WTO all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex, and to the maximum extent possible would make these laws, regulations and other measures available before

they were implemented or enforced, but in no case later than 90 days after they were implemented or enforced. The Working Party took note of these commitments.

335. Members of the Working Party also requested that China set up an enquiry point where information relating to all laws, regulations, judicial decisions and administrative rulings of general application and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex could be obtained.

336. The representative of China confirmed that China would establish or designate one or more enquiry points where all information relating to the laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPS or the control of forex, as well as the published texts, could be obtained and would notify the WTO of any enquiry point and its responsibility. The 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.

4. Government Procurement

337. The representative of China stated that in order to promote China's government procurement regime, the Ministry of Finance promulgated the Interim Regulations on Government Procurement in April 1998. The Interim Regulations were stipulated in line with the spirit of the WTO Agreement on Government Procurement ("GPA") and on the basis of the relevant provisions of the United Nations Model Law on Procurement of Goods, Construction and Services while making reference to the laws and regulations of some WTO Members on government procurement. The policy and procedures regarding government procurement provided for therein were consistent with international practice. China stuck to the fundamental principles of being open, fair, equitable, efficient and in the public interest when carrying out government procurement. At present, China was formulating its Government Procurement Law.

338. Some members of the Working Party stated that China should become a Party to the GPA and that prior to its accession to the GPA, China should conduct all government procurement in a transparent and non-discriminatory manner. Those members noted that China's public entities engaged exclusively in commercial activities would not be conducting government procurement and thus laws, regulations and other measures regulating these entities' procurement practices would be fully subject to WTO requirements.

339. The representative of China stated that China intended to become a Party to the GPA and that until such time, all government entities at the central and sub-national level, as well as any of its public entities other than those engaged in exclusively commercial activities, would conduct their procurement in a transparent manner, and provide all foreign suppliers with equal opportunity to participate in that procurement pursuant to the principle of MFN treatment, i.e., if a procurement was opened to foreign suppliers, all foreign suppliers would be provided with equal opportunity to participate in that procurement (e.g., through the bidding process). Such entities' procurements would be subject only to laws, regulations, judicial decisions, administrative rulings of general application, and procedures (including standard contract clauses) which had been published and made available to the public. The Working Party took note of these commitments.

340. Noting China's intention to become a Party to the GPA, some members of the Working Party stated that China should, upon accession, become an observer to the GPA, and should initiate negotiations for membership in the Agreement by tabling an Appendix 1 offer within two years of accession.

341. The representative of China responded that China would become an observer to the GPA upon accession to the WTO Agreement and initiate negotiations for membership in the GPA by tabling an Appendix 1 offer as soon as possible. The Working Party took note of these commitments.

VIII. CONCLUSIONS

342. 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 18-19, 22-23, 35-36, 40, 42, 46-47, 49, 60, 62, 64, 68, 70, 73, 75, 78-79, 83-84, 86, 91-93, 96, 100-103, 107, 111, 115-117, 119-120, 122-123, 126-132, 136, 138, 140, 143, 145, 146, 148, 152, 154, 157, 162, 165, 167-168, 170-174, 177-178, 180, 182, 184-185, 187, 190-197, 199-200, 203-207, 210, 212-213, 215, 217, 222-223, 225, 227-228, 231-235, 238, 240-242, 252, 256, 259, 263, 265, 270, 275, 284, 286, 288, 291, 292, 296, 299, 302, 304-305, 307-310, 312-318, 320, 322, 331-334, 336, 339 and 341 of this Report and noted that these commitments are incorporated in paragraph 1.2 of the Protocol.

343. Having carried out the examination of the foreign trade regime of China and in the light of the explanations, commitments and concessions made by China, the Working Party reached the conclusion that China should be invited to accede to the Marrakesh Agreement Establishing the WTO under the provisions of Article XII. For this purpose, the Working Party prepared the Draft Decision and Protocol reproduced in the Appendix to this Report, and took note of China's Schedule of Concessions and Commitments on Goods (document WT/ACC/CHN49/Add.1) and China's Schedule of Specific Commitments on Services (document WT/ACC/CHN/49/Add.2) that were annexed to the Protocol. It was proposed that these texts be adopted by the General Council when it adopted the Report. When the Draft Decision was adopted, the Protocol would be open for acceptance by China which would become a WTO Member 30 days after it accepted the said Protocol. The Working Party agreed, therefore, that it had completed its work concerning the negotiations for the accession of China to the WTO Agreement.