

**Trade Policy Review Body
12 and 14 June 2012**

Original: English/Spanish
anglais/español
inglés/español

TRADE POLICY REVIEW

CHINA

Record of the Meeting

Addendum

Chairperson: H.E. Mr. Eduardo Muñoz Gómez (Colombia)

This document contains the advance written questions, and replies provided by China.¹

**Organe d'examen des politiques commerciales
12 et 14 juin 2012**

EXAMEN DES POLITIQUES COMMERCIALES

CHINE

Compte rendu de la réunion

Addendum

Président: S.E. M. Eduardo Muñoz Gómez (Colombie)

Le présent document contient les questions écrites communiquées à l'avance et les réponses fournies par la Chine.¹

**Órgano de Examen de las Políticas Comerciales
12 y 14 de junio de 2012**

EXAMEN DE LAS POLÍTICAS COMERCIALES

CHINA

Acta de la reunión

Addendum

Presidente: Excmo. Sr. Eduardo Muñoz Gómez (Colombia)

En el presente documento figuran las preguntas presentadas anticipadamente por escrito, junto con las respuestas facilitadas por China.¹

¹ In English and Spanish only./En anglais et espagnol seulement./En inglés y español solamente.

REPLIES PROVIDED BY CHINA TO WRITTEN QUESTIONS

ARGENTINA

Informe de la Secretaría (doc. WT/TPR/S/264)

I. ENTORNO ECONÓMICO

1) Principales resultados económicos

En el párrafo 9 el informe indica que el tipo de cambio del renminbi (RMB) se basa en la oferta y la demanda del mercado y se ajusta en referencia a una cesta de monedas y que, según las autoridades, en 2010 se emprendió una reforma del mecanismo con miras a lograr una mayor flexibilidad del tipo de cambio.

1. Podría el gobierno de China explicar cómo está compuesta la canasta de monedas y cómo funciona el mecanismo de ajuste que se le realiza al RMB? Cuáles son las reformas que se emprendieron en 2010?

Answer: China has started to implement manageable floating exchange rate policy based on market supply and demand, and by reference to currency basket for adjustment since 21 July 2005. China continued to advance reform on the formation mechanism for RMB exchange rate in June 2010. In order to promote the basic balance of international payments, safeguard the stability of macro-economy and financial market, more efforts should be devoted to the key tasks of the reform ranging from making adjustment on the basis of market supply and demand and by reference to currency basket, to carrying out dynamic management on and adjustment to fluctuation of RMB exchange rate in light of promulgated exchange floating width in exchange market, and to ensuring RMB exchange rate anchored to a reasonable and balanced level.

2) Políticas estructurales

El párrafo 13 indica que China ha puesto en marcha un programa denominado Duodécimo Plan Quinquenal (2011-2015), con el objetivo de reformar la economía para transformarla en una economía más impulsada por el crecimiento de la demanda interna.

2. Podría el gobierno de China detallar cuáles son específicamente las medidas que se establecen en el marco de este plan?

Answer: China is confronted with an outstanding problem for economic and social development, that is too much dependent on investment and export for growth and domestic demand. To this end, the 12th Five-year Plan proposes to establish a long-term domestic expansion mechanism and promote the transformation of economic growth driven by consumption, investment and export. With regard to policy orientation and working priority, the Plan further makes clear that many efforts will be made to establish a long-term domestic expansion mechanism of consumer demand on one hand and adjust and optimize investment structure on the other hand.

II. REGIMEN DE POLÍTICA COMERCIAL: MARCO Y OBJETIVOS

1) Marco institucional y jurídico

En el párrafo 13, el informe menciona que, todos los proyectos de reglamentos administrativos y normas departamentales relacionados con el comercio entran en vigor 30 días después de su promulgación, pero que no obstante existen excepciones.

3. *Podría el gobierno de China especificar cuáles son estas excepciones?*

Answer: According to the Protocol on the accession of China, those laws, regulations and other measures involving national security, specific measures setting foreign exchange rates or monetary policy and other measures the publication of which would impede law enforcement are the exceptional cases.

2) Desarrollo y administración de las políticas comerciales

ii) Objetivos de la política comercial

En el párrafo 22 el informe indica que el objetivo global de la política comercial de China es acelerar su apertura al mundo con miras a introducir tecnología y conocimientos técnicos extranjeros, desarrollar el comercio exterior y promover un sólido desarrollo económico. En este contexto, las autoridades tienen la intención de alcanzar este objetivo mediante medidas de facilitación de la importación.

4. *Podría el gobierno de China detallar qué tipo de medidas piensa tomar para facilitar las importaciones?*

Answer: China will make the following efforts to further improve the facilitation of trade:

1. Strengthen the cooperation with the customs of various countries in mutual recognition of supervision, mutual assistance in law-enforcement and mutual information exchange and reduce unnecessary repeated supervision and inspection to facilitate enterprises and goods to enter the market of each other;
2. Further push forward the construction of broad customs clearance ports, give full play to the role of E-ports, deepen the contact and collaboration with the inspection departments of the ports and national governmental authorities and improve the customs clearance efficiency.
3. Further establish a closer partnership with the business sector, implement the idea of from enterprises to goods, strengthen legal compliance management and provide clearance convenience to enterprises that have good credit standing.
4. Promote a reform of classified clearance and non-paper customs clearance, implement a 7×24 appointment clearance system at ports and customs of regions subject to special supervision, implement advance declaration, collective declaration, inspection and release by guarantee and other clearance convenience, optimize the processing flows of the customs, and simplify the supervision and clearance formalities.
5. Actively facilitate the domestic sale of processing trade products and promote the construction of a domestic sale trading platform.

4) Régimen de inversión extranjera

i) Evolución reciente de la política de inversión extranjera directa

En el párrafo 40 se menciona que, en la revisión de la Guía para las industrias con inversión extranjera (versión de 2011), que entró en vigor el 30 de enero de 2012, se añadieron 44 subsectores y proyectos a la categoría "alentada", mientras que 41 subsectores y proyectos fueron retirados de dicha categoría. También se eliminó el límite máximo a la participación extranjera en el capital con respecto a 11 subsectores de las categorías "alentada" y "restringida". Asimismo, de acuerdo al párrafo 45 los proyectos de inversión extranjera se clasifican en 4 categorías: alentadas, permitidas, restringidas y prohibidas.

5. *Podría el gobierno de China explicar cuáles son los criterios que se utilizan para clasificar un proyecto de inversión en alguna de las 4 categorías? Cuáles son los subsectores y proyectos que*

se agregaron y retiraron de la categoría alentada? Cuáles son los 11 subsectores respecto de los cuáles se eliminó el límite máximo a la participación extranjera en el capital?

Answer: According to the Provisions on Guiding the Orientation of Foreign Investment, foreign investment projects are classified into four categories: encouraged, permitted, restricted and prohibited projects. Foreign investment projects belonging to encouraged, restricted and prohibited categories are listed in the Catalogue for the Guidance of Foreign Investment Industries. Those do not belong to the above three categories are permitted foreign investment projects which are not to be listed in the Catalogue for the Guidance of Foreign Investment Industries.

Foreign investment projects under one of following circumstances are listed as encouraged foreign investment projects: projects for new agricultural technology and comprehensive agricultural development and for industrial construction in energy, transportation and key raw materials; projects of new high technology, advanced applicable technology which can improve performance of products, save energy and raw materials, and increase tech-economic efficiency of enterprise or produce new equipment or new materials that meet the demands of the market but the domestic production capacity is deficient; projects that meet the demands of the market, and can promote the quality of products, enter into emerging markets or improve the international competitiveness of the products; projects adopting new technology and equipment for conservation of energy and raw materials, comprehensive utilization of resources and renewable resources, and for prevention of environment pollution; and projects that can make full use of the man power and resource advantages in the mid-west regions and are in accordance with the states industrial policies.

Foreign investment projects under one of following circumstances are listed as restricted foreign investment projects: projects of backward technology; projects that go against resource conservation and improvement in ecological environment; projects for exploiting or mining resources under protective exploitation stipulated by the state; and projects involving industries to be gradually opened up by the state.

Those foreign investment projects under one of following circumstances are listed as prohibited foreign investment projects: projects that endanger the safety of the state or damage social and public interests; projects that pollute or damage the environment, destroy natural resources or impair the health of human being; projects that occupy large amounts of land, unfavorable to the protection and development of land resources; projects that endanger the safety of military facility and its performance; and projects that utilize the unique craftsmanship or technology of the country to make products.

En el párrafo 41, el informe indica que, desde 2010, China ha alentado a las empresas extranjeras que forman parte de empresas conjuntas con compañías chinas o institutos de investigación a que participen en proyectos financiados en el marco del "programa nacional de desarrollo tecnológico" y el "programa de creación de capacidad de innovación", que son programas de subvenciones administrados por la Comisión Nacional de Desarrollo y Reforma (NDRC) con el objetivo de promover la innovación.

6. *Podría el gobierno de China brindar más detalles acerca de los alcances y el funcionamiento de estos dos programas?*

Answer: "National technology development programme" and the innovation capacity-building program in China would belong to general science and technology input and detailed requirements may vary among different concrete projects under the program. They would be available through media and websites including the official website of the Ministry of Science and Technology.

iii) Procedimiento de examen y aprobación

En el párrafo 57 el informe menciona que el Consejo de Estado presta apoyo a las empresas con inversión extranjera para su cotización en bolsa y/o para emitir obligaciones de sociedades en el mercado chino, y que también sigue "orientando" a las instituciones financieras para que aumenten sus créditos a las empresas con inversión extranjera.

7. *Podría el gobierno de China indicar en qué consisten estas medidas de apoyo a las empresas con inversión extranjera?*

Answer: In recent years, the Chinese Government has adopted a series of measures to deepen the reform on foreign investment administration system and promote investment facilitation. For example, the Chinese Government delegated most matters concerning the establishment and modification of foreign-invested enterprises to local commercial authorities to greatly improve administration efficiency. The Chinese Government has safeguarded the legitimate rights and interests of Chinese and foreign investors and foreign-invested enterprises, intensified efforts in IPR protection, concerned and solved investors complaints and made great efforts to foster an open and transparent legal and policy environment, a high-efficiency and convenient administrative environment and a market environment in favor of fair competition for foreign investors.

III. POLITICAS Y PRACTICAS COMERCIALES POR MEDIDAS.

1) MEDIDAS QUE AFECTAN DIRECTAMENTE LAS IMPORTACIONES

i) Procedimientos aduaneros, valoración en aduana y normas de origen

a) Procedimientos aduaneros

En el párrafo 1, el informe indica que, antes de realizar una declaración aduanera tanto las personas físicas como las personas jurídicas y otras organizaciones tienen que registrarse como "operadores de comercio exterior" en el Ministerio de Comercio (MOFCOM) y en la Administración de Aduanas.

8. *Podría el gobierno de China indicar cuáles son los requisitos que deben cumplir estos operadores para registrarse como tales?*

Answer: Rules for Registration of Foreign Trade Operators (MOFCOM Decree No. 14 of 2004) was enacted and came into force on 1 July 2004 as required by the revised Foreign Trade Law of the People's Republic of China of 2004 to implement the accession commitment to liberalize trading right within 3 years after WTO accession. The registration of foreign trade operators serves the purpose of statistics and information collection and facilitation of customs procedures, and there involves no approval procedures. For information required in the registration process, please refer to the Rules for Registration of Foreign Trade Operators, of which a full text English translation was provided to the WTO Council for Trade in Goods when the Council had its annual China transitional review in November 2004.

b) Inspección previa a la expedición

En el párrafo 10, el informe menciona que China aplica prescripciones en materia de inspección previa a la expedición, según el Reglamento de aplicación de la Ley sobre inspección de mercancías de importación y de exportación revisado, pero que todavía no se han notificado a la OMC.

9. *Podría el gobierno de China informar si se encuentra en proceso de notificar estas prescripciones?*

Answer: The Measures for the Inspection, Quarantine, Supervision and Administration of Imported Solid Waste That Can Be Used as Raw Materials was notified to WTO/TBT Commission on

19 June 2009 numbered G/TBR/N/CHN/649. With regard to the pre-shipment inspection involved in the topics under discussion proposed by Malaysia, pre-shipment inspection on imported used mechanical and electrical products is carried out in accordance with Article 22 of the Regulations for the Implementation of the Commodity Inspection Law of the People's Republic of China, and different used mechanical and electrical products to be imported are judged in accordance with mandatory requirements provided in the relevant Chinese national product standards.

d) Normas de origen

En el párrafo 16 se afirma que en 2010, China comprobó en el extranjero 1.229 certificados de origen expedidos en el marco de acuerdos de libre comercio. Los resultados mostraron que 8 de esos certificados eran falsos; correspondan principalmente a productos de la pesca.

10. *Podría el gobierno de China explicar cuál es el procedimiento para comprobar los certificados de origen expedidos en el marco de los acuerdos de libre comercio?*

Answer: China Customs has examined preference certificate of origin in strict accordance with relevant preferential trade agreements. According to the agreements, an importer shall submit to China Customs the Preference Certificate of Origin issued by authorized agencies of relevant agreement members when he declares entry of goods inward. Where a customs officer deems the certificate of origin during the examination is problematical, such as the stamp of the authorized agency (or signature of visa officer) on the certificate of origin doesn't agree with the filing materials provided to China Customs by the agreement member or the format of the certificate of origin is inconsistent with the agreements, China Customs will start country of origin inspection procedures in accordance with the agreements. Usually, China Customs sends to the designated contact person of the agreement member by email the certificate of origin to be examined (problematical). Under special circumstances, such as the contact person is unavailable, China Customs posts the relevant inspection letter in writing to the commercial counsellors office of the embassy of the agreement member in China for delivery.

ii) Aranceles

b) Tipos arancelarios NMF
Tipos arancelarios NMF aplicados

En el párrafo 25 se afirma, entre otras cosas que en 2011 se aplicaban tipos no *ad valorem* a 52 líneas arancelarias: 44 estaban sujetas a tipos específicos; 5 a tipos *ad valorem* si el precio era inferior o igual a determinada cantidad, o a tipos compuestos si el precio era superior; y 3 a tipos alternativos (tipos *ad valorem* o específicos, si éstos eran inferiores).

11. *Podría el gobierno de China detallar cuáles son las líneas arancelarias a las que aplica tipos no ad valorem?Cuál es el criterio para determinar la aplicación de tipos no ad valorem?*

Answer: Since China's WTO accession, China has always been adopting the specific duty (equivalent to *ad valorem* rate) converted in strict accordance with the *ad valorem* rate committed by China for WTO accession and re-calculating the rate of specific duty each year so that the actual rate will not exceed the bound rate committed by China. The conversion is conducted mainly based on the average import price in recent years (the last four years) provided by the Customs, and, with respect to some categories, the influence of such factors is eliminated as no import records in a certain year or large fluctuation in the import price in a certain year.

c) Tipos distintos de los tipos NMF

En el párrafo 28 el informe indica que China se propone eliminar los aranceles del 97 % de sus líneas arancelarias (al nivel de 8 dígitos del SA) para las importaciones procedentes de 36 Pases Menos Adelantados con los que mantiene relaciones diplomáticas.

12. *Podría el gobierno de China indicar cuáles son las posiciones arancelarias incluidas dentro de ese 97%, los países beneficiarios y el plazo en el que se efectivizar la medida?*

Answer: China plans to offer zero tariff treatment on 97% tariff lines from least developed countries (LDC) that have diplomatic ties with China under the South-South Cooperation Framework. Since July 2010, China has offered zero tariff treatment to 60% tariff lines from LDCs and will gradually extend to 97%. Right now, Authorities in concern are studying the list of the 3% that are in exception.

d) Contingentes arancelarios

En el párrafo 31 el informe indica que, al año 2011, China aplicaba contingentes arancelarios al trigo, maíz, arroz, azúcar, lana, lana peinada, algodón y abonos químicos.

13. *Podría el gobierno de China explicar cómo es el proceso de asignación de los contingentes para estos productos?*

Answer: Please refer to Provisional Measures for the Administration of Import Tariff Quotas of Agriculture Products for specific procedures of allocation.

e) Exenciones y reducciones arancelarias

En el párrafo 32, nota al pie 24, el informe indica que China aplica exenciones y reducciones arancelarias a las mercancías importadas por empresas seleccionadas, conforme a lo establecido por determinadas políticas.

14. *Podría el gobierno de China indicar los criterios que se utilizan para aplicar estas reducciones o exenciones? Qué se entiende por empresas seleccionadas y los requisitos que debe cumplir una empresa para ser categorizada como tal? Cuáles son las políticas a las que se refiere la nota mencionada?*

Answer: Please refer to our subsidy notification G/SCM/CHN/155 and G/SCM/CHN/186 for detailed information, e.g. item 83.

En el párrafo 33 el informe menciona que, con el fin de reducir el consumo de energía y proteger el medio ambiente, el Gobierno de China puede no conceder trato preferencial a determinadas mercancías en régimen de tráfico de perfeccionamiento.

15. *Podría el gobierno de China explicar cuáles son las mercaderías que pueden excluirse del régimen de trato de perfeccionamiento y en qué casos se ha negado el trato preferencial?*

Answer: China has started to implement commodity classification management for processing trade in 1999. To this day, MOFCOM has worked with the General Administration of Customs to successively release 11 Catalogues of Prohibited Commodities for Processing Trade involving 1,803 with a 10-digit HS code. Products listed in the Catalogues are mainly those with high energy consumption, high pollution and high resource consumption during the production as well as difficult customs inspection. No corresponding processing trade business is allowed for the commodities listed in the Catalogues and the prohibition forms include import embargo, export embargo and

import and export embargo. Specific commodities include certain endangered animals, minerals, chemicals, paper products, steel products, etc. Please refer to the [2009] No. 37 Public Announcement and [2010] No. 63 Public Announcements of the MOFCOM and the General Administration of Customs for the Catalogues.

En el párrafo 34 se indica que algunas importaciones, tales como las destinadas a las zonas de elaboración para la exportación, pueden ser objeto de reducciones o exenciones del Impuesto al Valor Agregado (IVA).

16. Podría el gobierno de China indicar cuáles son las importaciones que son objeto de reducción o exención del IVA? En qué casos corresponde la reducción y en qué casos la excepción?

Answer: On one hand, according to Article 15 of the Provisional Regulations of the People's Republic of China on Value-added Tax, following items shall be exempt from VAT: (1) importation of instruments and equipment directly used in scientific research, experiment and education; (2) importation of materials and equipment from foreign governments and international organizations as assistance free of charge; and (3) Articles imported directly by organizations for the disabled for special use by the disabled. On the other hand, import VAT is exempted for following import commodities entering special custom supervision areas from an overseas region: (1) Necessary materials for the basic construction of production plants and storage facilities in the areas as well as necessary equipment and machine for the construction projects of production infrastructures in the areas; (2) Necessary machine, equipment, models and maintenance spare parts for the production of enterprises in the areas; and (3) Office supplies in reasonable quantity to be used by enterprises and administrative organizations in the areas.

v) Comercio de Estado

En el párrafo 46, el informe indica que la mayoría de los productos que son objeto de comercio de Estado (cereales azúcar, algodón, abonos químicos, tabaco y aceite crudo y elaborado de petróleo) también están sujetos a contingentes arancelarios.

17. Podría el gobierno de China indicar cuáles son los productos sujetos a contingentes as como también la metodología a través de la cual se asignan los mismos?

Answer: Detailed information can be referred in Provisional Measures for the Administration of Import Tariff Quotas of Agriculture Products.

vi) Medidas comerciales especiales

Medidas compensatorias

En el párrafo 70, se indica que el Reglamento sobre medidas compensatorias contempla un "examen acelerado" en el caso de un exportador que no haya sido objeto de investigación.

18. Podría el gobierno de China explicar en qué consiste este procedimiento?

Answer: No Quick Review procedure is provided in the Chinese Anti-subsidy Regulations. With regard to some issues not provided in existing anti-subsidy regulations and rules, China will handle these problems in accordance with the actual situation of individual cases and by reference to anti-dumping investigation rules and will ensure the investigation conforms to the Chinese Anti-subsidy Regulations and WTOs Agreements on Subsidies and Countervailing Measures.

viii) Normas y otras prescripciones técnicas

a) Normas y reglamentos técnicos

En el párrafo 85 se explica que en China, hay cuatro niveles de normas: normas nacionales, comerciales, locales y empresariales.

19. Podría el gobierno de China explicar el procedimiento para el establecimiento de normas comerciales?Cuál es el procedimiento para dar publicidad a estas normas comerciales?

Answer: Trade standards are formulated mainly in line with the formulation procedure of national standards.

Sigue el párrafo 85 explicando que a falta de normas nacionales, comerciales o locales para determinados productos, las empresas que fabrican esos productos pueden formular sus propias normas como base para organizar la producción. Cuando existen normas nacionales, comerciales o locales, se alienta a las empresas a formular y aplicar normas empresariales que sean más rigurosas que las normas correspondientes.

20. Podría el gobierno de China informar si las normas empresariales son voluntarias u obligatorias?

Answer: Enterprise standards are voluntary.

b) Certificación de productos

En el párrafo 93 se afirma que la AQSIQ y la CNCA trabajan con los departamentos competentes del Consejo de Estado para elaborar y ajustar el catálogo de productos a los cuales se exige una certificación. Además, la CNCA se ocupa de formular y publicar reglamentos sobre la aplicación de la certificación obligatoria de productos.

21. Podría el gobierno de China explicar cuáles son los criterios para determinar la exigencia de certificación para un producto?

Answer: The standards upon which certification is carried out is stipulated in the implementation rules for that particular product.

En el párrafo 94, el informe indica que, de conformidad con el Reglamento sobre certificación y acreditación, los productos enumerados en el Catálogo para la Certificación Obligatoria de productos no se pueden vender ni importar en China a menos que tengan la Certificación Obligatoria para China (CCC).

22. Podría el gobierno de China proporcionar la lista de productos sujetos a la certificación CCC o indicar el sitio web en donde esta publicada?

Answer: The Catalogue for 3C certification is published jointly by AQSIQ and CNCA, and public notices can be found at the following websites: www.aqsiq.gov.cn, and www.caca.gov.cn

c) Medidas sanitarias y fitosanitarias

En el párrafo 106 se explica que para hacer frente a los problemas derivados de la falsificación y alteración de certificados sanitarios y fitosanitarios y facilitar el comercio de productos agropecuarios y alimenticios, la AQSIQ introdujo en 2010 el sistema de inspección y cuarentena E-cert de China (China E-cert). En el marco de este sistema, se exige a todos los exportadores que se inscriban en el

registro en línea de la AQSIQ y que obtengan la autorización de este organismo a través de la embajada de su país en China. Los certificados sanitarios y fitosanitarios de importación para cada envío deben quedar registrados en el sistema.

23. *Podría el gobierno de China informar cuáles son los plazos para el otorgamiento de la autorización para exportar? Cómo es el procedimiento para el registro y para obtener la autorización?*

Answer: In order to facilitate the health growth of trade, especially the trade of agricultural and food product, as well as prevent fake inspection and quarantine certificate, China initiated the Inspection and Quarantine E-cert System.

Any country's government can access to China's Inspection and Quarantine E-cert System (<http://ecert.eciq.cn>) and apply for registration. After that, the country's embassy in China has to contact AQSIQ for approval. Any country's government can has the system to check and review the texts of certificates which are signed by China's inspection and quarantine organs within one year after AQSIQs approval.

The system is also a platform of certificate information exchange, automatic bilateral exchange and online checking connecting Chinese and foreign agencies. We have established official inspection and quarantine E-cert checking mechanism with the government of New Zealand, Australia, Netherlands and many other countries.

ix) Financiación relacionada con las importaciones

En el párrafo 131 el informe indica que el Banco de Exportación e Importación de China (Banco EXIM), ofrece créditos a la importación a los importadores en China.

24. *Podría el gobierno de China indicar en qué consisten estos créditos (tasas, montos, plazos, etc.) as como también los requisitos para acceder a los mismos?*

Answer: Any importer approved by and registered at a Chinese industrial and commercial administration authority or a competent agency can apply to the Export-Import Bank of China for import credit. The conditions for import credit are that the applicant has good financial and operational status, are able to pay back principal and interest and can provide corresponding guarantee and that the amount of import credit generally exceeds a certain proportion of the amount of the business contract.

The Export-Import Bank of China comprehensively examines and approves the amount and length of the loan in accordance with the cash flow of the import project, the borrowers needs to import goods and other factors, and determines loan interest rate in comprehensive accordance with cost of capital, quoted market price, clients credit rating, project risks and other factors. The loan interest rate of RMB import credit is determined in accordance with relevant regulations of the Peoples Bank of China and the loan interest rate of exchange import credit is determined in accordance with LIBOR + interest margin.

2) MEDIDAS QUE AFECTAN DIRECTAMENTE A LAS EXPORTACIONES

iii) Impuestos a la exportación

En los párrafos 139 y 141 se indica que China aplica impuestos a la exportación que pueden estar sujetos a tipos legales y tipos provisionales, as como también impuestos especiales a las exportaciones. Además, se indica que los tipos provisionales pueden ser ms elevados que los tipos

legales e incluso un producto puede estar sujeto a ambos tipos de derechos, en cuyo caso se aplican los tipos provisionales.

25. *Podría el gobierno de China explicar los criterios que se utilizan para determinar cuando un producto está sujeto a derechos legales o provisionales? Por qué los derechos provisionales son más altos que los legales?Cuál es el plazo en el que se aplican? Cada cuanto tiempo se actualizan? Podría el gobierno de China explicar en qué consisten los impuestos especiales a la exportación y a qué productos se aplican?*

Answer: Interim tariff rates are more favorable tariff rates that are implemented upon certain imported important raw materials for industrial and agricultural production and key components of mechanical and electrical products (but only confine to the imported goods from countries and regions that have signed reciprocal agreement on tariffs with China) and upon some of exported resource products on the basis of the beneficial import tariff rates and export tariff rates specified in Customs Tariff of Import and Export. These tariff rates are generally set annually, and are subject to restoration to statutory tariff rates at any time based on needs. Interim import tariff rates are the temporary tariff set in order to reduce the cost of inputs of industrial import, while interim export tariff rates are the temporary adjustments to the export tariff in order to protect exhaustible resources.

iv) Desgravación de impuestos a la exportación

En el párrafo 143, el informe menciona que es posible desgravar el IVA respecto de las exportaciones, y que China ajusta las tasas de desgravación en el marco de sus políticas industriales para controlar, restringir o "gestionar" de otro modo la exportación de determinados productos.

26. *Podría el gobierno de China indicar cómo funciona este mecanismo de desgravación, a qué productos se aplican y con qué criterios?*

Answer: Export rebate is a common practice of countries levying VAT and is not aimed at managing the export of certain products. Export rebate is specially operated by tax authorities. The commodities for export rebate and rebate rates are made available on the website of the State Administration of Taxation.

vi) Prohibiciones, restricciones y régimen de licencias de exportación

a) Prohibiciones de exportación

En el párrafo 146 el informe menciona que China mantiene prohibiciones generales de exportación sobre de un total de 45 partidas al nivel de 8 dígitos del SA.

27. *Argentina agradecería conocer el listado de productos sujetos a esta medida*

Answer: Products subject to export prohibitions in China have been notified to the WTO as part of China's QR notification submitted to the market access committee.

viii) Financiación, seguros y garantías de las exportaciones

En los párrafos 154 a 161 el informe describe en líneas generales las actividades de financiamiento a las exportaciones realizadas por el Banco EXIM, mencionando que existen créditos tanto para los vendedores radicados en China como para los compradores de otros países. Sin embargo no aclara más detalles al respecto.

28. *Podría el gobierno de China indicar específicamente cuáles son los programas de créditos otorga este Banco, as como también sectores beneficiados, tasas, montos y plazos? Cuáles son los requisitos que deben cumplir las empresas para acceder a estos créditos?*

Answer: The Export-Import Bank of China develops annual comprehensive credit plan based on financing capability, operation capacity, external financing demand and the specific conditions stated in the regulation policies instead of setting differentiated annual credits for specific industries and specific interest rate level, amount and term.

3) **MEDIDAS QUE AFECTAN A LA PRODUCCION Y EL COMERCIO**

i) **Tributación e incentivos fiscales**

b) **Tributación indirecta**

Impuesto sobre el consumo

El párrafo 175 indica que China aplica un "impuesto sobre el consumo", que grava determinados productos de producción nacional as como las importaciones de los mismos.

29. *Podría el gobierno de China detallar cuáles son los productos que están sujetos al impuesto al consumo, as como también la alícuota y la base sobre la cual se aplica?*

Answer: According to the Provisional Regulations on Consumption Tax, all entities and individuals engaged in the production, subcontracting for processing or the importation of consumer goods prescribed by these Regulations within the territory of the People's Republic of China and other units and individuals engaged in the sale of consumer goods provided by the State Council are taxpayers of Consumption Tax and shall pay Consumption Tax in accordance with these Regulations. The computation of tax payable for Consumption Tax shall follow the rate on value, the amount on volume method, or the combination of both. The formulas for computing the tax payable are as follows: the tax payable computed under the rate on value method = sales amount x tax rate; the tax payable computed under the amount on volume method = sales volume x tax amount per unit; and the tax payable computed under the combination method = sales amount x tax rate + sales volume x tax amount per unit. Please refer to the Taxable Items Scope of Charge Tax Unit Tax Rate/Amount attached to the Provisional Regulations on Consumption Tax for the applicable scope of consumption tax.

Impuesto sobre las actividades comerciales

El párrafo 177 indica que 1 de enero de 2012 China inició una reforma experimental para recaudar el IVA en lugar del impuesto sobre las ventas en algunas ramas de producción en Shanghai.

30. *Podría el gobierno de China especificar en qué consiste esta reforma y por cuanto tiempo se aplicar?*

Answer: Please refer to the Measures for the Implementation of the Pilot Practice of Levying Value Added Tax in Lieu of Business Tax on the Transportation Industry and Some Modern Service Industries, the Provisions on Relevant Matters concerning the Pilot Practice of Levying Value Added Tax in Lieu of Business Tax on the Transportation Industry and Some Modern Service Industries, the Provisions on the Transitional Policies for the Pilot Practice of Levying Value Added Tax in Lieu of Business Tax on the Transportation Industry and Some Modern Service Industries and other documents for details of the pilot practices.

c) Tributación directa

Impuesto sobre la renta de las sociedades

En el párrafo 179 el informe indica que las empresas con inversión extranjera establecidas antes del 16 de marzo de 2007 (cuando se aprobó la nueva Ley del impuesto sobre la renta de las sociedades) y sujetas a un tipo del impuesto sobre la renta del 15% quedaron sujetas a un tipo del 18% en 2008, del 20% en 2009, del 22% en 2010 y del 24% en 2011, y estarán sujetas al tipo legal del 25% en 2012.

31. *Podría el gobierno de China explicar cuáles son las razones por las cuáles se ha incrementado este impuesto?*

Answer: Unifying tax system for Chinese-funded and foreign-funded enterprises, applying one tax law to enterprises of different natures and types and granting equal tax treatments to different economic entities help foster a tax environment in favor of fair competition among enterprises of all types and contribute to improve the quality and level of foreign investment utilization.

Subvenciones y otras ayudas gubernamentales

a) Características generales

En el párrafo 190 el informe indica que China otorga ayuda gubernamental a las empresas a nivel central y subcentral y que los principales instrumentos de apoyo son las donaciones directas, los préstamos subvencionados y las bonificaciones fiscales.

32. *Podría el gobierno de China explicar en qué consisten las donaciones, préstamos y bonificaciones?*

Answer: Please refer to our subsidy notification G/SCM/CHN/123, G/SCM/CHN/155, G/SCM/CHN/186 for detailed information.

En el párrafo 193 el informe indica que, entre 2008 y 2010 China aplicó un conjunto de medidas de estímulo de 4 billones de yuan (equivalente al 12,7% del PIB de 2008).

33. *Podría el gobierno de China indicar si estas medidas de estímulo aún se continúan aplicando, los montos y sectores beneficiados por las mismas?*

Answer: In response to the severe impact of the international financial crisis, in the second half of 2008, China implemented a proactive fiscal policy and moderately loose monetary policy, and promptly launched a package of plans to deal with the impact of global financial crisis, including the 4 trillion yuan investment program formed through the social capital driven by the 1.18 trillion yuan of central government investment within the two years. The investment of 4 trillion yuan is focused on a total of seven areas including affordable housing projects, rural livelihood projects and rural infrastructure, critical infrastructure, health care, education, culture and other social undertakings, energy conservation, emission reduction and ecological construction, independent innovation and industrial restructuring, as well as post-disaster restoration and reconstruction after Wenchuan earthquake. As of the end of 2010, the investment plan of 4 trillion yuan has been satisfactorily completed and it has made remarkable achievements.

b) Ayuda al sector de la energía y a actividades encaminadas a la protección del medio ambiente

En el párrafo 196 el informe menciona que la fabricación de partes y componentes de equipos de generación de energía eólica cuenta con la ayuda de donaciones, desgravaciones de derechos de importación y prescripciones en materia de componentes nacionales.

34. *Podría el gobierno de China indicar en qué consisten estas donaciones, degradaciones y prescripciones en materia de componentes nacionales? Existen programas de incentivos para la producción de otras energías renovables?*

Answer: Since 1 November 2009, China has cancelled the localization rate requirement on wind power equipment and implemented open, fair and equitable bidding procurement for wind power equipment projects in accordance with relevant national standards and technical requirements by the project unit.

d) Ayuda a las pequeñas y medianas empresas

En el párrafo 202, el informe menciona que el Fondo de Desarrollo para las PYME otorga a estas empresas donaciones o préstamos subvencionados, de hasta 3 millones de yuan, para proyectos en los que inviertan.

35. *Podría el gobierno de China explicar cuáles son las bases sobre las cuales se otorga esta ayuda? Qué requisitos debe cumplir una PYME para acceder a la misma?*

Answer: Please refer to our subsidy notification G/SCM/CHN/123, G/SCM/CHN/155, G/SCM/CHN/186 for detailed information about the assistance to small and medium sized enterprises, such as item 46.47.48.

En el párrafo 204, el informe indica que las empresas con escasos beneficios reciben un trato fiscal preferencial.

36. *Podría el gobierno de China explicar eué se entiende por escasos beneficios? En qué consiste el trato fiscal preferencial? Cualquier empresa puede acceder a este beneficio?*

Answer: From 2010 to 2015, for small and low-profit enterprises with yearly payable tax amounting to 60,000 yuan or less, the taxable income is reduced to 50% of its income, and the enterprise income tax is levied at a reduced tax rate of 20%.

vi) **Política de competencia y protección de los consumidores**

c) Fusiones y adquisiciones

Examen de seguridad nacional

En los párrafos 265 a 272, el informe indica que la adquisición de empresas nacionales por inversores extranjeros, si se consideran relacionadas con la seguridad nacional, están sujetas a exámenes por motivos de seguridad nacional. Hasta el 2011, han sido sometidos a examen 3 casos.

37. *Podría el gobierno de China indicar en qué consiste el examen y qué elementos se tienen en cuenta para otorgar o no la autorización? Qué resultados han tenido los 3 casos bajo examen?*

Answer: At present, China can't publish relevant information of review cases for the confidentiality of applicant enterprises.

- (1) Impact of the M&A transactions on the national security, including the domestic product manufacturing capacity, domestic service provision capacity, and relevant equipment and facilities needed for the national security;
- (2) Impact of the M&A transactions on the stable operation of national economy;
- (3) Impact of the M&A transactions on the basic living of the people; and
- (4) Impact of the M&A transactions on the R&D capacity for key technologies related to the national security.

The reason for approval or disapproval is whether the M&A transactions have impacts on national security.

Following contents of the security review system are mainly provided in the Notice on Launching the Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors promulgated by the General Office of the State Council in February 2011.

IV. POLÍTICAS COMERCIALES POR SECTORES

4) SECTOR MANUFACTURERO

i) Evolución reciente

En el párrafo 73 el informe menciona que desde 2011, China ha puesto en marcha varios programas de financiación y establecido fondos para las "industrias emergentes estratégicas", las cuales detalla en la nota al pie n° 47.

38. *Podría el gobierno de China explicar en qué consisten estos programas y fondos?*

Answer: Information on measures supporting the development of the "strategic emerging industries" are found in the Decision of the State Council on Accelerating the Cultivation and Development of Strategic Emerging Industries (State Council Circular No. 32 of 2010). The Circular is available at the official website of the Central Government of China. The fund for development of strategic emerging industries mentioned in the Circular was established in 2011 as a measure of the Central Government. China will consider to incorporate this fund into its future subsidy notification based on studies and analyses on the relationship between the fund and the subsidy as defined in the WTO SCM Agreement.

ii) Subsectores seleccionados

a) Automóviles, partes de automóviles y componentes

En el párrafo 81 el informe indica que China se encuentra elaborando normas industriales para los vehículos propulsados por nuevas energías as como también está en proceso de redacción un programa de Planificación Industrial para estos vehículos.

39. *Indicar en qué consisten estas normas industriales y el Programa de Planificación Industrial, as como también los plazos para su puesta en vigencia.*

Answer:

1. With regard to standards on new energy vehicles

The vehicle standard system needs to be constantly improved according to technological progresses of industry development. It is necessary to accelerate the formulation of standards on new energy vehicles in order to regulate and guide the development of new energy vehicles. Up till now, China has released more than 60 national and industrial standards on new energy vehicles and will constantly improve the standard system of new energy vehicles to promote the technological upgrading and industrialized development of new energy vehicles.

2. Please refer to the Development Plan for Energy-saving and New Energy Vehicle Industry (2012-2020) adopted on April 2012 for details of industrial planning.

c) Maquinaria y equipo

En el párrafo 87 el informe indica que en 2011, el Ministerio de Industria y Tecnología de la Información (MIIT) anunció las Políticas de desarrollo de la maquinaria agrícola y que, además, se otorgan incentivos fiscales para la fabricación y las actividades de investigación y desarrollo relacionadas con este sector.

40. *Podría el gobierno de China explicar en qué consisten estas políticas de desarrollo y qué incentivos fiscales se otorgan específicamente?*

Answer: According to Article 30 of the Law of the People's Republic of China on Enterprise Income Tax, the research and development fees incurred by enterprises in the development of new technology, new products and new skills may be deducted when the taxable income is computed. According to Article 95 of the Regulations on the Implementation of the Law of the People's Republic of China on Enterprise Income Tax, the term additional deduction of research and development expenses refers to an additional 50% deduction of the research and development expenses incurred from the research and development of new technologies, new products, and new techniques on the basis of the actual deductions within the enterprise when no intangible asset has been formed and calculated into the current gains and losses. If intangible assets have been formed, they shall be amortized at 150% of the cost of the intangible assets.

5) **SERVICIOS**

ii) **Servicios financieros**

a) Sistema bancario

En el párrafo 102, al describir las obligaciones de los bancos comerciales en cuanto al cumplimiento del Acuerdo de Basilea, el informe clasifica a los bancos en dos categorías: bancos con importancia sistémica y bancos sin importancia sistémica.

41. *Podría el gobierno de China indicar los cuáles son estos bancos y los criterios utilizados para esta clasificación?*

Answer: At present, the CBRC has not yet identified the list and criteria for the systematically important banks, the regulatory frameworks and assessment methods for systematically important banks are still in the process of study. According to Guiding Opinions on Implementing New Regulatory Standards for Chinese Banking sector issued by the CBRC, the assessment of systematically important banks will mainly consider those factors which might include scale, relevance, complexity and substitutability etc.

c) Seguros

Marco reglamentario y legislativo

En el párrafo 156 el informe menciona que todas las compañías de seguros que operan en China, sean nacionales o con financiación extranjera, deben pagar gravámenes al Fondo de Protección de los Seguros de China.

42. *Podría el gobierno de China explicar en qué consisten estos gravámenes?*

Answer: Based on Regulatory Measures on Insurance Guarantee Fund, the insurance guarantee fund is divided into property insurance fund formed by property insurance company payment and life insurance fund formed by life insurance company payment. The detailed conditions can be referred to Regulatory Measures on Insurance Guarantee Fund.

iv) Transporte

a) Servicios de transporte marítimo
Régimen comercial

En el párrafo 212, el informe menciona que en China hay cuatro niveles de reglamentación comercial relativa al transporte marítimo.

43. Podría el gobierno de China indicar cuáles son estos cuatro niveles y las diferencias que existen entre las mismas?

Answer: We are still in coordination with competent authorities to provide responses to this question.

ASEAN

Report by China

We note that China's economic growth is attributed by the opening up of the economy and as a result, a growing number of free trade agreements have been implemented. However, China also mentions that there are five negotiations currently under way.

Would China be able to share which countries or economic blocs she is negotiating with.

Answer: China is pursuing negotiations on possible RTAs/FTAs with: Australia; Norway; Switzerland; Iceland; the Gulf Co-operation Council (GCC); the Republic of Korea. For further information, please refer to: <http://fta.mofcom.gov.cn/topic/encosta.shtml>.

Report by Secretariat

Page 17, Paragraph 35:

Could China please provide information on China's assessment on the potential impact of the proposed China-Japan-Republic of Korea tripartite agreement on ASEAN?

Answer: China, Japan and Korea have signed their FTA agreements with ASEAN respectively. We believe that the establishment of China-Japan-Korea free-trade agreement will help to accelerate economic integration process in East Asia.

Currently, the negotiation on China-Korea free-trade zone has been launched successfully; free-trade zone negotiation among China-Japan-Korea is also under preparation. We believe that free-trade zone among the three countries will contribute to accelerating economic integration.

AUSTRALIA

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

1) INSTITUTIONAL AND LEGAL FRAMEWORK

1. We note the Secretariat report has concluded that China has made no major changes to its institutional and legal framework regarding trade since 2010 (Paragraph 1 on page 11 of WT/TPR/S/264). Can China provide advice on how it intends to continue to reforming its legal and institutional framework for trade, including by implementing the measures outlined in the 12th Five-Year Plan.

Answer: China plans to keep the foreign trade policies consistent and enforce the coordination among the different authorities in respect of stipulating and implementing foreign trade policies and laws and regulations based on the Foreign Trade Law of the People's Republic of China. China plans to improve and perfect applicable laws and regulations on such matters related to foreign trade as investment cooperation, intellectual property rights, environment and climate, trade investigation, trade remedies, trade promotion and credit management.

(i) Transparency

2. *We note the Secretariat report has concluded that China has taken only some small steps to improve the transparency of its legal and institutional framework related to trade, and that many aspects of China's trade and investment policy regime remain complex and opaque, leaving scope for administrative discretion (Paragraph 4-5 on page 11 of WT/TPR/S/264). How does China propose to further improve transparency of its legal and institutional framework through government information disclosure and public consultations for drafting regulations and rules?*

Answer: China understands that its transparency commitment for WTO accession is to give a period of time after the promulgation of laws, regulations and rules related to or affecting trade in goods, trade in services and trade-related intellectual property right or foreign exchange control prior to their enforcement. It is not mentioned in China's commitment to solicit public opinions for the drafts of laws, regulations or rules to be promulgated. Nevertheless, in order to advance scientific and democratic legislation and improve the quality of legislation, the Chinese Government has always made unremitting efforts to improve the transparency of legislation, promote solicitation of public opinions on legislation drafts and expand public participation. Since 2008, public opinions have been solicited for draft administrative laws and regulations which are all published on <http://www.chinalaw.gov.cn> except those to be kept secret in line with law. And public opinions have also solicited for draft regulations of various departments on their websites or <http://www.chinalaw.gov.cn>. All parties including foreign investors can propose opinions and suggestions.

With regard to the transparency of foreign capital policies, foreign capital authorities have solicited public opinions in accordance with laws, regulations and rules. When amending the "Catalogue for the Guidance of Foreign Investment Industries 2011" and promulgating the regulations on anti-monopoly review and national security review concerning foreign capital, foreign capital authorities solicited public opinions by publishing the drafts on the website and absorbed reasonable suggestions from all parties including foreign-funded enterprises and chambers of commerce. Up till now, China has not made provisions in relevant laws and regulations on the written documents and records of public opinion solicitations and consultations.

Therefore, the statement of "many aspects of China's trade and investment policy regime remain complex and opaque, leaving scope for administrative discretion" is lack of evidence and incorrect.

(c) Appeal procedure

3. *We encourage China make available information regarding appeals procedures and complaints by foreign-invested enterprises (FIEs) that consider their rights have been impaired by authorities, which were not made available to the Secretariat for the purposes of the review (Paragraph 15 on page 14 of WT/TPR/S/264). Has there been an evaluation of the pilot programmes to establish "administrative reconsideration commissions" independent from other government agencies?*

Answer: Obvious achievements have been made through the pilot programs of administrative reconsideration commissions for more than three years: firstly, the public confidence on

administrative reconsideration has been obviously increased. China has improved the transparency and the justice of administrative reconsideration by involving such social force as experts and scholars in case hearing and the parties have more trust on the results of administrative reconsideration. Secondly, the correction capability of administrative reconsideration is greatly enhanced. There are more such cases in some pilot regions that are corrected by such methods as cancellation, modification and confirmation on violation of laws. Thirdly, the capability of administrative reconsideration to settle disputes is dramatically improved. There are more administrative reconsideration cases accepted in the pilot regions and there are more administrative disputes settled through administrative reconsideration.

4) FOREIGN INVESTMENT REGIME

4. *We welcome the Chinese Government's intention to increase decentralisation and simplify verification procedures for foreign investment (Paragraph 42 on page 19 of WT/TPR/S/264). Does China have any plans to further liberalise the sectors or thresholds to which these new procedures apply?*

Answer: In the "Catalogue of Industries for Guiding Foreign Investment" taking effect on 30 January 2012, there are 473 sectors, 354 items of which are in the "encouraged" category, 80 items in the "restricted", and 39 items in the "prohibited". The 2012 Catalogue include three additional items in the encouraged category, seven items removed from the restricted category, and one item removed from the prohibited category. In addition, restrictions on Chinese shareholder percentages for some items have been removed from the 2012 Catalogue. 11 items with the requirement on shareholder percentage have been removed from the encouraged category and the restricted category. The fact indicates the confidence and the determination of the Chinese government on further opening up. In future, China will appropriately amend the Catalogue and stably promote the opening up of some industries based on the Chinese economic development and China's commitment for WTO accession.

(ii) Regulatory Framework

5. *We note the Secretariat has concluded that the main laws and regulations relating specifically to FDI in China have remained unchanged during the review period (Paragraph 44 on page 19 of WT/TPR/S/264). We encourage China to simplify the large number of laws and regulations which apply to foreign investment, including the various foreign investment catalogues. What plans does China have to further review the industries considered to be restricted or prohibited?*

Answer: Refer to the answer of question 4.

(iii) Examination and approval procedure

6. *For the purposes of transparency, can China to make available information on the details of measures to "guide" financial institutions to enhance credit supports to FIEs, which was also not made available to the Secretariat for the purposes of the review (Paragraph 57 on page 23 of WT/TPR/S/264).*

Answer: All Chinese financial institutions have become the market-oriented entities with full autonomy and the People's Bank does not directly manage credit scale and structure of financial institutions. Financial institutions make their own decisions on whether to grant loans to enterprises based on the market principles and the credit conditions irrespective of foreign-invested enterprises or domestic enterprises.

(d) Tariff-rate quotas

7. *Australia notes that MOFCOM and NDRC issue product-specific implementing rules each year (WT/TPR/264 Page 32 Paragraph 30)*

Australia encourages regular information being made publicly available on TRQ allocation, in accordance with the requirements established in the WTO Agreement on Import Licensing Procedures. Could China provide information on recent TRQ fill rates, for the agricultural products identified in paragraph 31, particularly for wool and wool tops?

Answer: In 2011, the fill rate for cotton was 100%, for wheat was 13%, for corn was 24.4%, for rice was 11.3%, for wool was 100%.

(iv) Import prohibitions and licensing

8. *Australia refers to paragraph 43, page 36 of WT/TPR/S/264. Could China please provide details of the trends in imports for the 32 tariff lines which were added in 2010 and 21 lines added in 2011 to the list of products requiring automatic licenses? Can China explain how this automatic licensing regime complies with Article 2, paragraph 2 (a)(i–iii) of the Agreement on Import Licensing Procedures?*

Answer: According to regulations of WTO and based on the "Measures on the Administration of Automatic Import License of Goods" (Decree No. 26 2004 of Ministry of Commerce and General Administration of Customs), China applies automatic import administration to products like chicken, chemical fertilizer, coal and alike. If relevant industries ask for supervision on all major products of large volume involving market stability, food safety and trade order, these products will be put into the list of administrated products. Catalogue of goods will be adjusted dynamically and by the end of each year the Catalogue of automatic import license for the next year will be released. The purpose of the administration of automatic import license is to enhance real-time monitoring, master the overall situation of import and provide public information to industries.

(vi) Contingency trade measures

Anti-dumping measures

9. *Australia notes that Paragraph 60, page 38 of WT/TPR/S/264 on Anti-Dumping includes a statement that "There are no published rules specifying how [public interest] consideration must be implemented". Is there any unpublished information that might assist understanding of China's public interest assessment in anti-dumping cases? Could China provide general information and/or information relating to specific cases indicating how it addresses the issue of public interest as a consideration underlying the decision whether to impose a measure?*

Answer: In anti-dumping investigations, the Chinese investigation authorities hold public hearings and opinion statement meetings among others to provide adequate opportunities for all parties, including involved producers and exporters, the government of the involved country, upstream and downstream enterprises, relevant trade associations as well as importers, to listen to their opinions, and seriously take their relevant appeals into account so as to ensure objective, impartial and equitable investigations

10. *Australia refers to Paragraph 62, page 39. What is the basis for the imposition of "corresponding" trade measures, given that the relevant agreements contain no provision for such measures?*

Answer: China has not such practice till now.

(vii) Standards and other technical requirements

11. *Australia notes that China's application process for developing or revising national standards has not changed over the past few years (WT/TPR/S/264 Page 47 paragraph 88). This process has a heavy reliance on endorsed original documents, which can be expensive and time consuming to organise.*

Could China advise if they are considering refining the application process to allow for full electronic lodgement and to remove administrative requirements such as the requirement for paper documents to be stamped and certified?

Answer: Applications for standard formulation can be filed by any working unit or person. After review by relevant technical committees and industry authorities, the applications will be submitted formally to SAC. Detailed requirements will be adjusted and prioritized at any time to reflect market demands.

12. *Australia notes the roles and responsibilities for the various Chinese Government agencies with respect to policy, legislation, regulations and their implementation.*

Could China advise on the systems in place to review the roles and responsibilities of these agencies to ensure that assessment procedures are not duplicated? (for example, we note that both MOA and AQSIQ have responsibilities for the approval of animal feed and that there is some replication of assessment processes by each agency).

Answer: In the regard of the import approval of the animal feed, a close cooperative relationship has been established between China's State General Administration of Quality Supervision, Inspection and Quarantine and the Australian Ministry of Agriculture, Forestry and Fisheries. How the Chinese Ministry of Agriculture and the State General Administration of Quality Supervision, Inspection and Quarantine would work in cooperation with a due division of duty in the supervision of feed import, has for many times been introduced to Australia via bilateral meetings regarding technology. It is our hope that Australia strengthens the inner sharing of information and should there be any need for more information, please contact your colleague in charge of the feed import and export in the Ministry of Agriculture, Forestry and Fisheries or the Office of Agriculture in the Australian Embassy in China.

If they would like to prolong the comment period of the notification, others members could apply to China via the Chinese enquiry point of SPS notification (sps@aqsiq.gov.cn). This year, China has so far approved the application by Australia and the USA to prolong the comment period of the Notification No. CHN511 and that by the USA regarding the comment period of the Notification No. CHN522.

(c) Sanitary and phytosanitary measures

Australia notes that China is a member of the Codex Alimentarius (WT/TPR/S/264 page 51 paragraph 101).

What proportion of China's food standards is more restrictive than Codex standards?

13. *Where there is no existing domestic standard, could China consider adopting Codex standards until it develops a domestic standard?*

Answer: The Chinese food safety standard system is basically consistent with the standards system adopted in Codex Alimentarius. The Ministry of Health stipulates the Chinese national food safety standards based on the results of food safety risk evaluations, the residents' different food consumption and diet structure and the actual production and operation conditions and with reference

to the international standards. The national standards are not totally the same as CAC but we have the scientific basis. Currently, Ministry of Health is clearing and consolidating food standards based on the Food Safety Law and tries to speed up the stipulation and amendment of national food safety standards.

14. *Australia notes that China is a contracting party to the International Plant Protection Convention (WT/TPR/S/264 page 51 paragraph 101).*

What systems does China have in place to ensure compliance with IPPC decisions and recommendations (for example in the case where the IPPC recommends no phytosanitary requirements for processed products, does China have systems in place to remove the requirement for a risk assessment)?

Answer: Please refer to AQSIQ department of Animal and Plant Inspection official website <http://dzwjyjs.aqsiq.gov.cn/> and State Forestry Administration official website <http://www.forestry.gov.cn/>.

15. *Australia notes that a country or region that wishes to export a food product to China for the first time must first be assessed by AQSIQ (WT/TPR/S/264 page 51 paragraph 103).*

Does China have procedures in place to ensure that trade commences as soon as possible following the examination of factors relevant to the safety of the product concerned?

- *Do these procedures ensure that non- sanitary or phytosanitary concerns do not interfere with the commencement of trade?*
- *When audits of overseas establishments are required, what systems does China have in place to ensure that adequate resources are allocated to conduct the audits in a timely manner?*

Answer: China has established access procedure of the inspection and quarantine of import food. Members can export food to China after go through the procedures. The procedure complies with the requirements of the SPS Agreement and it will not disturb trade.

16. *Australia notes that other Members have used the WTO SPS Committee to raise concerns about SPS measures taken or proposed by China (WT/TPR/S/264 page 51 paragraph 102).*

Will China consider providing trading partners with extended comment periods in cases where:

- *SPS notifications include links to large documents without English translations which, therefore, require time for accurate translations to be made?*
- *SPS notifications require extensive consideration but are released simultaneously with a large number of other notifications so that appropriate consideration is difficult?*

Answer: If the other members would like to prolong the comment period of the notification, others members could apply to China via the Chinese enquiry point of SPS notification (sps@aqsiq.gov.cn). This year, China has so far approved the application by Australia and the USA to prolong the comment period of the Notification No. CHN511 and that by the USA regarding the comment period of the Notification No. CHN522.

17. *Australia notes that AQSIQ introduced the China Inspection and Quarantine E-cert System (China E-cert) in 2010 (WT/TPR/S/264 Page 52 paragraph 106).*

Will China E-cert remove the need for original certificates to be presented at the point of quarantine clearance?

Answer: In order to facilitate the health growth of trade, especially the trade of agricultural and food product, as well as prevent fake inspection and quarantine certificate, China initiated the Inspection

and Quarantine E-cert System. In July 2010, AQSIQ signed the Memorandum of Initiating China-Australia Inspection and Quarantine E-cert Data and Information Exchange System with Australian Department of Agriculture, Fish and Forestry, which officially initiated the exchange of inspection and quarantine E-cert information. Now, China's inspection and quarantine agencies are examining Australian inspection and quarantine E-cert and its corresponding original paper certificate, rather than invalidating the original paper certificate.

III. TRADE POLICIES AND PRACTICES BY MEASURE

18. *(WT/TPR/S/264 Paragraph 143, page 59) states that partial rebates of VAT on exported products may constitute assistance to downstream processing of affected products. Has China taken, or does China intend to take, any steps to ensure that VAT rebate arrangements are consistent with WTO rules/requirements? If so, what are they?*

Answer: Tax rebate is an international normal practice. China keeps the rebate rates generally lower than the rates actually paid mainly because of the insufficient fiscal capacity. We consider that the views on the difference between the rebate rates and the actually-paid rates constituting "assistance to downstream processing of the products affected" is wrong and cannot be duly supported by either theory or practice. The products entitled to export rebate and the rebate rates can be obtained from the website of the State Administration of Taxation.

19. *Please provide the number, location and value of investments for which the Export Import Bank of China has provided some of the funding with a stipulation that a level of Chinese content be achieved.*

Answer: The Export Import Bank of China has no such a stipulation on providing funding to offshore investment projects that a level of Chinese content be achieved based on the relevant credit policies of the Export Import Bank of China.

(ii) Subsidies and other government assistance

20. *Australia notes that (WT/TPR/S/264 Paragraph 189 et seq, page 68) subsidies information is not generally available. What steps is China taking to make subsidies provided by all levels of government more transparent given that this is also a requirement for the WTO TPRB trade and trade-related measures monitoring reports as well?*

Answer: Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work towards incorporating local subsidies in its future notifications. Although at this stage it is still difficult to propose a timetable, China will accelerate its efforts in this regard.

Intellectual Property Rights (IPR)

(a) Industrial property

21. *With reference to (WT/TPR/S/264 Paragraph 282, page 87), given the recent amendments to the Patent Law (and its Implementation Regulations), could China please explain what are the key outcomes from these amendments? We understand that patent disclosure was included as one of these reforms, and we would be interested to learn about this particular reform and any key outcomes for patent examination and patent owners.*

Answer: the major achievements of this revision include the following: First, we improved the conditions of patent grant, revising the novelty standard of invention and utility model into "absolute novelty". Second, we strengthened patent protection, including the adding of pretrial evidence preservation, the increase of statutory amount of compensation, and bringing of the reasonable expenses paid by the obligee to stop the infringement into the scope of compensation. Third, we improved the appearance design system. Fourth, we reasonably balanced the interests between the patentee and the public and improved the compulsory licensing system. In addition, the new patent law explicitly allows parallel imports, and provides the "Bolar exception".

About patent disclosure, the modification of the patent law added the second clause in the twenty-first article, providing that "the patent administration department under the State Council shall release patent information completely, accurately and timely, and regularly publish patent gazettes." It made clear provisions for the release of patent information, which will help improve the starting point of innovation, reduce repeated R&D activities, and avoid infringing other patents, and ultimately promote technological progress and economic and social development.

Trademarks

22. *We note that China's Trademark Law has not been revised since 2001 (Paragraph 298 on page 91 of WT/TPR/S/264). We therefore welcome the revision of the Law.*

23. *We very much welcome the announcement that the procedure for trade mark reviews and dispute settlement will be shortened to 20 months and that trade marks that have not been used for three consecutive years will be revoked (Paragraph 304 on page 92 of WT/TPR/S/264). The latter should assist reduce the level of "abusive registration" including trademark "squatting".*

a) *Does China have any plans to place a time limit on decisions by the Trademark Review and Adjudication Board?*

b) *Does China have any plans to move from a "first registration" basis to a "first use" basis for the use of trademarks?*

Answer: a) China has always been endeavoring to further shorten the review time, but it is difficult to precisely estimate the review time as there are an increasing number of applications for trademark review with the continuous growth in the applications for trademark registration. Currently, China has no plan to set up the limits on the review time in terms of legislation.

b) Currently, China has no plan to change the principle of "first registration and prior use".

Geographical indications

24. *Australia notes that Geographical Indications (GIs) Paragraph 308 and 311, page 93 are currently regulated by the State Trademark Office (as collective marks or certification marks), the General Administration of Quality Supervision Inspection and Quarantine (AQSIQ), and the Ministry of Agriculture. How is this GI regime working with these three different authorities? Are there any plans to rationalise GI protection in China? How are the boundaries between these authorities defined? Is there the chance for any overlap of protection? Is there any coordination mechanism for enforcement against violation if GIs are registered with only one authority?*

Answer: Currently, SAIC, AQSIQ and MOA are jointly studying how to establish the joint Geographical Indications certification system.

The three agencies have different focuses in GI protection. The SAIC protects geographical indications by applying collective trademark and certification trademark registration pursuant to the Trademark Law. Corresponding remedies for geographical indication infringement include administrative, civil and criminal ones. The Ministry of Agriculture has registration administration

for geographical indications of agricultural products based on administrative rules formulated in accordance with the Law on Quality Security of Agricultural Products. The focus of the protection is on geographical indication resources of agricultural products, product quality and traditional farming culture. AQSIQ's protection of geographical indication focuses on processing, which is based on administrative rules formulated in accordance with the Product Quality Law.

25. *Australia notes that Geographical Indications (GIs) are currently regulated by the State Trademark Office, the AQSIQ and the Ministry of Agriculture (WT/TPR/S/264 Page 93, Paragraph 308).*

26. *Does China publish its GI registers so that foreign individuals or companies that wish to register a GI in China are able to refer to them?*

Answer: Trademark Office shall compile the Trademark Gazette, and release to the public, on a regular basis, all the relevant information about trademark registration, transfer, change and others, including geographical indications. The State General Administration of Quality Supervision, Inspection and Quarantine shall publish on its official website www.aqsiq.gov.cn the Protection Provisions for Geographical Indication Products and other laws and regulations, and shall regularly publish the admissibility announcement and ratification announcement of geographical indication product protection, and the announcement of approving enterprises to use the geographical indication product names and special marks. The above information is available for reference by foreign individuals or companies.

27. *Could China provide additional information to demonstrate that, with regard to GIs, China is compliant with Articles 22-24 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement)?*

Answer: Currently China provides protection for geographical indications mainly in accordance with Trademark Law, Implementing Regulations of Trademark Law, Registration and Management Measures of Collective Marks and Certification Marks, Administrative Measures of Geographical Indications of Agricultural Products, Protection Regulations for Geographical Indication Products and other laws and regulations. All of its relevant provisions are consistent with the TRIPS Agreement, and its level of protection has also reached the level required by the TRIPS Agreement.

Specific campaign

28. *With reference to (WT/TPR/S/264, Paragraph 325 and 326, page 96) was the national IPR enforcement campaign against infringement (that was completed in June 2011) a success? The report mentions that from the campaign there were 47 investigated cases of trade mark violation on internet trading that were transferred to the public security authorities for further criminal investigation. Has the campaign resulted in any 'successful' criminal prosecutions?*

Answer: China has carried out the enforcement campaigns against IPR infringement and sale of fake and shoddy commodities during the period between October 2010 to June 2011, preventing IPR infringement and sale of fake and shoddy commodities from happening in some regions and some sectors and obviously improving the market order and the operation environment.

It normally takes about one year for the suspected offence cases investigated by the administrative enforcement authorities and transferred to the public security organs to be heard in the courts upon criminal case registration, ratifying the arrest and prosecution. From January to April this year, the number of the cases prosecuted, accepted and concluded by the procuratorate authorities and the court system is greatly increased compared with that in the same period of last year, which indicates that the

cases investigated and transferred by the administrative enforcement authorities during the campaigns are entering or have entered the criminal judicial proceedings.

29. *Can China provide an English copy of the Promotion Plan for National Intellectual Property Strategy 2011?*

Answer: <http://www.nipso.sap?id=11358> Intellectual Property Office: Please refer to the network of National Intellectual-Property Strategy for the full text in both Chinese and English of the Promotion Plan for the Implementation of the National Intellectual Property Strategy in 2011, and its domain is <http://www.nipso.cn/oneews.sap?id=11358>.

Agriculture policies

30. *According to the Secretariat's report (WT/TPR/S/264 Page 102 Paragraph 10). Under the 13th Five-Year Plan China Intends to increase minimum purchase prices for key grains (presumably wheat and rice). What impact does China expect this to have on market price support measures generally? From China's perspective how effective is market price support as a means of improving productive capacity and competitiveness, which are key objectives of the domestic policy. How does China differentiate between the impacts of this support with other forms of support provided to producers of the same commodities through procurement for public stockholdings and direct payments?*

Answer: Currently, China adopts the minimum purchase price policy for key grains (presumably wheat and rice) mainly for the purpose of ensuring the supply in the market and protecting the farmers' interests. The policy has helped China resist the impact of the large fluctuation in the international grain market on Chinese grain market, promoted the continuous rich harvest of grain and kept Chinese grain market and price basically stable.

During "the 12th Five Year Plan", the Chinese consumption demands on grain are growing rigidly and the farmers' farming cost is increasing year by year. China will continue to adopt the minimum purchase price policy for wheat and rice and to stably raise the minimum purchase price in order to protect the farmers' interests, to guarantee the grain supply and keep the grain market and price basically stable.

31. *Australia notes direct payments and input subsidies have increased significantly in recent years, with new programs being introduced (WT/TPR/S/264 paragraph 23, page 104 and paragraphs 25 and 27 page 105). The Secretariat's report notes that the "New Variety Extension Payment scheme may be operating as a direct payment linked only to planted area." Could China please confirm whether this scheme is linked to planted*

Answer: The new variety extension payment for such agricultural products as wheat and maize is made based on the planted area. China has made the new variety extension payment for agricultural products as the amber box support measure for specific products in the agricultural domestic support data notified by China to WTO.

32. *Australia notes that all farmland in China is owned by the State or by collectives, and administered by local authorities (WTO TPR Report p. 102).*

a. *When will China's "Decision on Certain Issues Concerning the Advancement of Rural Reform and Development", announced in 2008, be translated into law? And how will this affect land rights?*

Answer: It is specified in the Decision on Certain Issues Concerning the Advancement of Rural Reform and Development adopted by the Third Plenary Session of the 17th CPC Central Committee

in 2008 that, "the current land contractual relationship shall remain the same in order to grant farmers with more sufficient and guaranteed land contractual operation right." This provision is consistent with the relevant provisions in China's current constitution and laws and can better stabilize the farmers' anticipation on land operation and will not affect the nature of land ownership.

Import measures

33. *The secretariat report notes that the average tariff for agricultural goods is almost double that for all other products (Paragraph 15 & 16 on page 103 of WT/TPR/S/264). As a net importer of agricultural products can China provide an explanation of why tariff protection is so high for agricultural products in comparison with other goods?*

Answer: Agriculture is the basis of national economy, involving national food security and social stability. Therefore, it is normal that the average tariff for agricultural goods is higher than that for all other products. China is a developing country having the largest population, so agriculture becomes more important in China than that in other countries in terms of such social functions as food security and farmers' living. However, China has made great contribution to the world agricultural trade liberalization during China's WTO accession. China's tariff for agricultural goods is not high, which is only ¼ of the average tariff in the world with smooth tariff structure and simple tax system. China is also one of the openest agricultural goods market in the world.

34. *Australia notes that quotas are allocated based on the volumes requested, previous imports, production capacity, or on a first-come, first-served basis, with State-trading enterprises continuing to dominate access to tariff quotas (WT/TPR/264 Page 103 paragraph 18).*

35. *Could China provide information to demonstrate that this process allows non-State-trading enterprises with sufficient ability to increase quotas in response to growing business needs*

Answer: Since the accession to the WTO, China has honoured its commitments of all kinds. Increase quotas are not only related to the increase of trade needs, but also to the amount of applying enterprises as well as the total amount of the distribution of that year.

36. *What arrangements does China have in place to reallocate unused quota?*

Answer: China's unused quota will be reallocated according to rules of "Interim Measures for the Administration of Import Tariff Rate Quotas of Agricultural Products".

37. *Australia notes that China's last notification regarding the administration of tariff quotas was made in 2003 (Paragraph 18 on page 103 of WT/TPR/S/264). What are the reasons for the delay in notification and when will the subsequent notifications be made?*

Answer: China's notification regarding the administration of tariff quotas has no change since last notification.

Internal price supports

38. *Australia notes that provincial governments set the purchase prices for sugar cane and that this price has risen steadily over the past 6 years (Paragraph 34 on page 106 of WT/TPR/S/264). Are any controls or requirements placed upon provincial governments when setting these prices?*

Answer: At present, the purchase price for sugar cane in main producing areas is determined by provincial governments based on the actual situation, while in non-main producing areas, it is determined fully liberalized by the market.

Support levels

39. *Australia notes that the most recent notification on domestic support to the Committee on Agriculture was in October 2011 for the calendar years 2005-08 (WT/TPR/S/264 Page 107 Paragraph 38). When will domestic support notifications for 2009 onwards be notified?*

Answer: China is carefully preparing the national agricultural domestic support data for the years after 2008 and will submit the notifications after the relevant data is collected and consolidated.

SERVICES

Banking

40. *Para 98 on page 122 of the Secretariat report document WT-TPR-S-264-05 refers to the market structure of China's banking sector, which is dominated by state-owned banks. The report says the five largest state-owned commercial banks (SOCBs) accounted for about 50% of the total assets of all financial institutions during the review period. Separately, Australia understands the overall market share in China of foreign banks in terms of total assets remains at around 2% (see Australian Chambers of Commerce in China – Australian Financial Services Business in China - Issues Paper, 2011 Publisher?). For foreign banks in China, a significant constraint on their ability to grow is the current limit of two investments in Chinese-funded financial institutions (i.e. those financial institutions set up upon approval of China Banking Regulatory Commission (CBRC)) by foreign financial firms. The Secretariat report notes that recent policies encourage private investment in city commercial banks (CCBs). Could China indicate whether it is considering relaxing the current limit of two investments in Chinese-funded financial institutions?*

Answer: At present, the opening-up of China's banking industry is basically in line with its economic development, market growth and financial regulation competence. However, Chinese banks are still in an initial stage to introduce overseas investors, there is still a room for deepening mutual cooperation, the international financial situations remains turbulent, and the financial crisis has exposed various drawbacks of the global financial system in risk management and business model. Therefore, the restrictions on foreign financial institutions meet the requirements of prudent banking regulation, aim to protect the interests of depositors and safeguard stable financial order, and comply with the principle of prudent regulation provided in the *Annex on Financial Services* of GATS. Currently, China is not in the position to relax the limitation of foreign equity investment. Chinese banking regulators will guide Chinese- and foreign-funded banks to further expand the scope and depth of cooperation and compete on an equal basis based on comparative advantages, in a bid to promote mutual progress and common development.

41. *WT/TPR/S/264 (para 100 on page 122 of the Secretariat report) refers to foreign participation in local currency business. Australia is concerned that current waiting periods for Renminbi Business Licences (based on 3 years for operation and 2 years profitability) are impeding business scope for foreign banks in China. Further, recent regulatory changes have meant the waiting period for Hong Kong, China and Chinese Taipei banks has been reduced to 2 years operating history and 1 year profitability, creating potentially a different starting point among foreign banks. Can China indicate if it is considering standardising these requirements for all banks?*

Answer: According to China's services schedule, qualified foreign financial institutions which wish to engage in local currency business shall meet specific requirement, namely three years business operation in China and being profitable for two consecutive years prior to the application. We believe the situation for banks from Hong Kong, China and Chinese Taipei which engage in the local currency business is a little bit different, for the reason that these two regions have signed FTAs with mainland China. Currently, we don't have plan to change the relevant requirements.

42. *Australia understands that China liberalised relevant regulations on 1 May 2012 allowing participation by foreign insurers in the statutory (mandatory) third party motor vehicle insurance market subject to approval by the China Insurance Regulatory Commission (CIRC). Can China indicate what factors CIRC will have regard to in approving applications by foreign insurers? Will equity restrictions remain on foreign-invested insurers wishing to participate in this business sector, effectively limiting a foreign insurer to holding no more than a 20 per cent interest in a foreign invested enterprise engaged in statutory third party motor vehicle insurance business?*

Answer: CIRC will fairly and impartially examine the applications submitted by domestic and foreign-invested insurance companies in accordance with the Regulation on Compulsory Traffic Accident Liability Insurance for Motor Vehicles. In accordance with China's commitments made at the WTO accession, China will permit foreign non-life insurance companies to set up foreign-invested subsidiaries and eliminate the restrictions on the types of enterprises" within two years after China's WTO accession.

Equity market

43. *WT/TPR/S/264 (para 136 on page 131 and 132) refers to the introduction of an "International Board" on the Shanghai Stock Exchange pursuant to which eligible foreign enterprises (registered outside China) are to be allowed to be listed on Shanghai Stock Exchange at an "appropriate time". Could China indicate what enterprises are to be regarded as "eligible" and provide an indicative timeframe for introduction of this measure?*

Answer: The construction of international board in stock exchange has currently made preliminary progress. And, the related regulatory measures and draft rules have been drawn up preliminarily. To be sure, international board construction is a very complex systematical project, which involves the cooperation of various fields, such as law, accounting, foreign exchange control, investor protection, intermediation management, and cross-border supervisory cooperation. More questions need to be further analyzed, researched and resolved. Currently, the timetable of international board has not been carried out. CSRC will continue to negotiate with related departments and move the system design and technical preparation forward steadily. In terms of the "appropriate" companies, our initial view is that they should be the qualified offshore companies in accordance with the listed requirements of international board. As for the "eligible" enterprises are concerned, we are not in the position to identify the specific criteria in this stage since the relevant regulations are not in place yet.

Regulatory and legislative framework

44. *We note that (WT/TPR/S/264 page, 136, paragraph 159) of the report mentions an investment cap for foreign securities firms. Does China have any plans to increase this beyond 25% without requiring foreign securities firms to lose their status as a 'domestic' provider of securities? What category of foreign invested securities firms would remain subject to the lower foreign investment cap referred to in paragraph 159 in the future?*

Answer: paragraph 159 of Chapter IV of the report seems to discuss about the insurance service, so we don't understand the Australian question.

Other

45. *We also note that there were some recent announcements on securities in the US-China Strategic and Economic Dialogue (SED) process that "China is to amend relevant regulations to allow foreign investors to hold up to a 49% equity stake in securities joint ventures, which are allowed to engage in underwriting and sponsoring of stocks (including common share denominated in RMB and foreign share) and bonds (including government bonds and corporate bonds) and to allow*

qualified securities JVs which have been in on-going operation for no less than two years to acquire additional licenses and broaden their business scope. China commits to allow foreign investors to hold up to a 49% equity stake in futures broker joint ventures." What is the anticipated timeframe for implementing this SED commitment?

Answer: We thank Australia for its attention to the achievements of SED, the implementing measures for SED achievements is under way, we believe the relevant policies will be introduced in the near future.

46. *As part of China's strategy of introducing competition into the telecommunications market, does China plan to allow resale of basic telecommunications and internet services?*

Answer: In the Telecommunications Regulations promulgated in 2000, there is a category of "resale" in the telecommunications business classification. However, no enterprise has ever applied for this business and no license has ever been issued. After China's WTO accession, resale were not be listed as a separate business but were deemed as way of business operation based on the principles of WTO on the classification of telecommunication business and the explanations in the relevant reference documents on resale and in the consideration that the basic conditions to carry out the resale business are not met.

We must determine whether there is any necessity to separately set up a business category for resale in future based on the studies on such matters as the type of the resale and the network environment, the market environment and the policy environment for various resale businesses.

47. *Can China advise what the usual approval period for foreign companies seeking value-added services licences is? Is China undertaking any activities to encourage investment in these value-added telecommunications services, especially for internet service provision?*

Answer: In accordance with the Provisions on the Administration of Foreign-funded Telecommunications Enterprises, where the foreign fund invests in the basic telecom businesses or in value-added telecom businesses within the area of more than one province, autonomous region or municipality directly under the Central Government, the competent authorities shall examine the application on the date when it receives the application and finish the examination within 180 days in case of basic telecom business; or within 90 days in case of value-added telecom business. If approval is to be granted, an Examination Decision of Foreign Investment in the Telecommunications shall be issued; if the application is to be disapproved, the applicant shall be informed in writing together with a statement of the reasons.

If the foreign fund invests in provincial-level value-added telecomm business, the provincial-level telecom administration authority shall sign and issue the opinions within 60 days from the date when it receives the application. If approval is to be granted, the application shall be transferred to the competent industrial and information department under the State Council. The competent industrial and information department under the State Council shall finish the examination within 30 days from the date when it receives the application.

The competent commerce authority under the State Council and the competent commerce authority under the provincial-level People's government shall finish the examination within 90 days from the date when they receive the contract and the articles of association of the proposed foreign-funded telecom enterprise. If approval is to be granted, a Certificate of Approval for Foreign-invested Enterprises shall be issued; if the application is to be disapproved, the applicant shall be inform in writing together with a statement of the reasons. The Chinese partner of the proposed foreign-funded telecom enterprise shall bring the Certificate of Approval for Foreign-invested Enterprises and apply

for the Telecommunication Business Operation License with the competent commerce authority under the State Council.

In accordance with the Provisions on the Administration of Telecommunications Enterprises, the competent telecom administration authority shall finish the examination on the application for the basic telecom business within 180 days from the date when it receives the application; and finish the examination on the application for the value-added telecom business within 60 days from the date when it receives the application

China encourages the development of value-added telecom business, including the provision of network service. Currently, all the other value-added telecom businesses have been open to the private capital except the domestic multi-party telecommunication business which is on the trial run. There are about 25,000 value-added telecom enterprises in China now, more than 90% of which are private enterprises.

Appendices

a) China is unbound on national treatment on mode 3 (commercial presence) and has limitations on market access requirement for joint ownership and management of schools. Could China explain what measures it is taking to liberalise trade in education services, and particularly in relation to provision of education services by foreign providers within China?

Answer: After accession to the WTO, China has faithfully implemented the commitments in education services sector, the scope of opening up has been constantly expanded, and the education cooperation and communication with other countries is further enhanced. The National Plan of Education Reform and Development in Medium and Long Term (2010-2020) sets a separate chapter for "Broadening the Opening-up of Education Services", which is a guideline for education reform and development in China for the specified decade.

Chinese-foreign cooperation in the sector is developing rapidly in a variety of forms, and the scope thereof has been constantly widened. At present, 1205 institutions and projects of Chinese-foreign joint schools have been approved and established by now, covering 26 provinces, autonomous regions or municipalities directly under the Central Government.

China allows schools and other education institutions to invite or employ qualified foreigners to provide education services in China. The number of foreign teachers employed by higher education schools is steadily increasing.

China doesn't impose any restriction on Chinese citizens in respect of studying or accepting other education services abroad. In recent years, the number of students studying abroad is increasing rapidly and constantly. China has become one of the largest source countries of international students.

China has established education exchange and cooperation relationship with 188 countries and regions and has signed mutual recognition agreement on academic degrees or certificates with 35 countries and regions, which further promotes the liberalization of the Chinese education market.

b) Current regulatory requirements for foreign providers are discriminatory, lack transparency, involve lengthy approval periods, and do not provide for review. Could China advise when it proposes to review its regulations relating to Sino-Foreign Cooperative Education to address these issues?

Answer: First, please specify in what terms "current regulatory".

Second, the Regulations on Sino-Foreign Cooperative Education and the implementation measures thereof are still the main policy basis for Sino-foreign education projects so far. The examination and approval procedures are explicitly specified in Articles 15, 18 and 19 of the Sino-Foreign Cooperative Education and Article 19 of the Implementation Measures for the Sino-Foreign Cooperative Education. The relevant policies and examination and approval status are timely announced on the official website of the Ministry of Education.

Of course, there will appear some new conditions and new problems during the development of the Sino-foreign cooperative education. The Chinese Government will also summarize the experience learned and improve the work procedures in the daily work in order to guarantee the interests of the Chinese and foreign education institutions and the students.

c) China's restrictions on trade in education services extend to a lack of clarity over processes for remitting funds overseas and limitations against foreign education agents. Can China outline measures it is taking to address the lack of clarity?

Answer: As prescribed in the Articles 5 and 12 of the "Regulations on Foreign Exchange Administration", the State imposes no restrictions on international payments and transfers of current account transactions for trade in services including education services. But the foreign exchange receipts and payments for current account transactions shall be based on bona fide and legal transactions. Thus, China has ensured the clarity over processes for remitting funds overseas and doesn't maintain limitations against foreign education agents.

d) Are there other regulations governing education services which have not been identified in the Secretariat's report?

Answer: The main laws and regulations on education have been specified in the report. All the relevant education laws and regulations including 6 laws and regulations have been published on the official website of the Ministry of Education.

BRAZIL

PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT

I. ECONOMIC ENVIRONMENT

Page 1 (Paragraph 2)

The Secretariat assesses, as part of various economic imbalances, that China maintains its heavy dependence on overseas demand for its manufactures exports to sustain economic growth. Could China comment on this assertion considering:

- (i) the weight of investments in its GDP growth model;*
- (ii) the rebalancing process of its economy; and;*
- (iii) the future role of trade in a rebalanced economic model?*

Answer: In 2011, the contribution rate of capital formation to GDP was 53.3% which spurred the economic growth by 4.9 percentage points; the contribution rate of final consumption was 50.8% which spurred the economic growth by 4.7 percentage points; while the net export contribution rate was -4.1%, with a negative pull of 0.4 percentage points. Thus, domestic demand is still the main driving force of China's economic growth. Since its WTO accession, China's exports maintained a rapid growth, but of which nearly 50% of exports was processing trade. China's import growth was also fairly fast, providing a broad market space for the countries in the world, China has become the

largest export market of Japan, South Korea, the ASEAN, Australia and South Africa, the second largest export market of the EU, and the third largest export market of the United States. On the whole, by balancing out the import and export, the net export contribution to China's economic growth is limited.

The 12th Five-Year Plan made it clear that China's economic development will take accelerating the transformation of the pattern of economic development as the main thread, which requires a consumption, investment and export-led economic growth, taking the expansion of consumer demand as a strategic focus to expand domestic demand, strengthening the consumption ability of its residents, improving consumer expectations, promoting the upgrading of consumption structure, and further releasing the consumer potential of urban and rural residents. In addition, we will adjust and optimize the investment structure, encourage expansion of private investment, promote positive interaction between investment and consumption, and combine expanding investment, increasing employment with improving people's livelihood to create the final demand.

Meanwhile, China will continue to implement a more proactive strategy of opening up and take active expansion of imports as an important part of the transformation of foreign trade development mode to promote the balanced development of foreign trade, and promote the balanced development of foreign trade to boost the transformation from scale expansion to the quality and efficiency. It is expected that in the future the development of foreign trade will play an important role in boosting China's economic development, especially in improving the quality and efficiency of economic growth.

Page 2 (Paragraph 3)

The Secretariat claims that, under the period under review, China adopted few measures to liberalize its international trade and investment. Could China comment on that assessment in light of China's 10 years of WTO accession and in comparison with the liberalization record of other WTO Members?

Answer: We believe that the description in the Secretariat Report contains some misunderstanding about China. In fact, over the past two years China did not stop its pace of opening up. On the contrary, the Chinese Government adopted a series of substantive initiatives to expand market and investment access, and the specific contents have been described in detail in the Statement of Chinese Government Policies.

Page 9 (Paragraphs 20, 21, 22)

The Secretariat analyses China's role in Asia's supply and processing chains, as well as China's trade surpluses with the USA and Europe. How does China assess the impact of trade restrictions in those markets on Asia's supply and processing chains as a whole?

Answer: In the context of current division of labour in Asia, China, as a manufacturing base in Asia and the world as a whole, imports spare parts and other intermediate products from Chinese Taipei, South Korea, Japan and other regions, and exports finished products after processing and assembling to the United States, Europe and other regions, forming a situation of trade deficit with other Asian countries and a surplus with the United States and Europe. As a processing and manufacturing link of the international and Asian chain of division of labour, China has objectively promoted the upgrading of other Asian countries towards higher technological content and higher value-added industries, and has boosted the deepening of the division of labour and improved efficiency of resource allocation in Asia. At present, the impact of international financial crisis has not been completely eliminated, and trade restrictions of the United States and European markets are on the rise, this situation has not only squeezed China's export space but also affected China's imports of intermediate products from other Asian countries, and will further affect the overall effectiveness of the Asian supply and processing chain.

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) INSTITUTIONAL AND LEGAL FRAMEWORK

(ii) Central-provincial relationships

Upon its accession to the WTO, China has pledged that trade policies, regulations and measures at the local level would also be consistent with China's obligations in the WTO, including the one with regard to their transparency. Nevertheless, measures adopted by local governments are seldom notified to the relevant WTO bodies. What steps are being taken to ensure local trade legislation will be duly notified to the WTO?

Answer: After China's accession to the WTO, China has sorted out trade-related laws and regulations at local level in a comprehensive way in order to make them consistent with WTO rules. China has fulfilled its notification obligation of related laws and regulations in line with its commitment on transparency. With regard to subsidy notification at local level, China is now accelerating its domestic coordination.

(3) TRADE AGREEMENTS AND ARRANGEMENTS

Page 17 (Paragraph 31, 32, 33, 34)

Critics of China's FTAs/RTAs claim that most of them, particularly with ASEAN, constitute FTA-lite (e.g. The Economist, Banyan, Trading Strategies, 19 May 2012). Could China comment on that assessment?

Answer: China's RTAs with its free trade partners are in line with relevant WTO rules.

Under the framework of China - ASEAN Free Trade Area, more than 90% of the products between China and six old members of ASEAN implemented a zero tariff. The average tariff of China to ASEAN countries has decreased from 9.8% to 1%, and the average tariff rate of the six old members of ASEAN to China has decreased from 12.8% to 0.6%. The four new members of ASEAN will also achieve the target of zero tariff for 90% of products by 2015.

The China - ASEAN Free Trade Area was officially established in 2010 and has played a positive role in promoting bilateral trade and investment. In 2011, the volume of trade between China and ASEAN countries reached US\$362.9 billion, 6.6 times the trade volume of 2002 when "China - ASEAN Comprehensive Economic Cooperation Framework Agreement" was first signed with an average annual growth rate of 20%. At present, China is ASEAN's largest trading partner and ASEAN is China's third largest trading partner. Meanwhile, bilateral investment between China and ASEAN also grew rapidly. By the end of 2011, the Chinese direct investment in ASEAN was US\$14.4 billion, being the fourth largest source of foreign investment of ASEAN; and ASEAN direct investment in China reached US\$70 billion, being the third largest source of foreign investment of China. In addition, considerable progress has been made in bilateral cooperation in infrastructure, agriculture, tourism, economy and technology, the SPS/TBT and other areas.

Page 17 (Paragraph 35)

China, Japan, and the Republic of Korea announced in Beijing on 13 May 2012 negotiations a the tripartite trade agreement.

(i) Could China give some indication of the scope of such agreement as envisaged by the 3 countries?

Answer: According to the conclusions and recommendations of the Joint Study Report, China, Japan and Korea FTA negotiations will include trade in goods, trade in services, investment and other issues.

(ii) *How does the future tripartite agreement relate to the ASEAN+3 processes?*

Answer: The free-trade area of China, Japan and South Korea constitutes an important part of economic integration in East Asia. Over a long period of time, relevant countries have put forward many choices for regional economic cooperation in East Asia, including 10+3, 10+6, RCEP (Regional Comprehensive Economic Partnership), etc. the free-trade area of China, Japan and South Korea will greatly promote the 10+3 process.

(iii) *How does the future negotiations and agreement relate to the Trans-Pacific Partnership (TPP)?*

Answer: At present, a variety of economic integration paths co-exist in the Asia-Pacific region. China is open to all types of cooperation committed to achieving the goal of regional economic integration and advocates all economies should choose their own paths according to their national conditions and development levels.

We are of the opinion that all types of regional economic cooperation, including TPP, should adhere to the principle of non-discrimination, inclusiveness and transparency, and form a useful complement to the multilateral trading system instead of replacing it.

The Economic liberalization and integration in the Asia-Pacific region should be "All roads lead to Rome", having a variety of channels. TPP might be a choice, 10+3 (ASEAN + China, Japan and South Korea) and 10+6 (ASEAN + China, Japan and South Korea, India, Australia and New Zealand) might be another, which have already had a good foundation, since ASEAN has already reached a free trade agreement with the above-mentioned six countries respectively.

(4) FOREIGN INVESTMENT REGIME

Page 22 (Paragraph 54)

What was the share of loans to foreign-invested enterprises in the total credit extended by domestic banks from 2008 to 2011?

Answer: Currently, there are no statistics on the loans provided by financial institutions, which are classified by the registered types.

III. TRADE POLICIES AND PRACTICES BY MEASURES

(1) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures, valuation and rules of origin

Page 24 (Paragraph 5)

Even though advanced written rulings are allowed by Chinese Customs Law, economic operators complain that customs officials refuse to put them in written form. What is the Chinese government planning to do in order to enforce the law on advanced rulings by local customs officials?

Answer: The administrative rulings are generally binding decisions on Customs affairs related to actual import/export activities made by the General Administration of Customs or institutions

authorized by the GAC, and announced by the GAC in a unified manner, being equally authentic as customs regulations. Local customs has no power to make an administrative ruling.

Page 26 (Paragraph 12)

Can you provide data concerning the percentage of use of transaction value for customs valuation in 2010 and 2009? Importers often complain that many local customs officials tend to use price references as a method so it would be useful to verify if the use of transaction value has been increasing in the last years.

Answer: There is no such a problem as price references or the use of price references in direct valuation by Chinese Customs. The Chinese Customs verifies and determines the duty-paid price in strict accordance with the principle of transaction value of the WTO Valuation Agreement. Over the years, the percentage of using transaction value for Customs valuation in China is around 99%.

(ii) Tariffs

Page 27 (Paragraphs 23 and 24)

In 2012, is the Chinese Government planning to offer new interim tariff reductions? Which products will be subjected to such reductions?

Answer: For specific information on interim tariff reductions please refer to the Circular of the Tariff Commission of the State Council on the Tariff Execution Plan in 2012 (Shui Wei Hui [2011] No. 27).

Page 27 (Paragraphs 23 and 24)

How are interim tariff reductions decided by the Chinese Government? Which Chinese organs are entitled to introduce requests for tariff changes?

Answer: The Tariff Commission of the State Council determines the goods, tariff rates and time limits for interim tariffs, which are made on the basis of the conditions of national economic development, as well as the production, consumption, import and export of related products.

(iv) Import prohibitions and licensing

Page 35 (Paragraph 43)

China has been increasing the list of products which are subjected to automatic licensing. If the application for the license is correct, how much time does it take for the relevant Chinese authorities to approve the license?

Answer: according to provisions of Article 10 of the Measures for the Administration of Automatic Import License for Goods (Order No.26 of the Ministry of Commerce and the General Administration of Customs), after receiving correct and complete application for the license, the relevant issuing authorities should issue the Automatic Import License in no more than 10 working days.

Page 35 (Paragraph 43)

How much time in advance to customs clearance can the economic operator apply for the automatic license?

Answer: According to provisions of Clause 2 (a)(ii) of Article of the WTO Agreement on Import Licensing Procedures, the application for licenses can be submitted on any day in advance to customs clearance. Article 19 of the Measures for the Administration of Automatic Import License for Goods (Order No. 26 of the Ministry of Commerce and the General Administration of Customs [2004]) states that the Automatic Import License is valid in solar calendar year, with a validity period of 6 months. Importers can apply for the automatic license based on actual trade situation according to the above-mentioned provisions.

(v) State trading

Page 35 (Paragraph 44)

Important part of the Chinese imports and exports of agriculture products are under the control of state trading enterprises. Is the Chinese Government preparing a new and full notification on its state trading system to the Committee on State Trading Enterprises?

Answer: The state trading regime of China, including the products covered and the STR enterprises, did not have significant changes except that a couple of products were no longer subject to state trading administration. Besides, for a few products subject to state trading, some statistics required in the notification are not produced officially in China. In view of these, China did not submit its state trading notification. That said, if members expect China to submit the notification despite of the few changes, China will try to submit the notification as soon as possible.

Page 35 (Paragraph 45)

Even though MOFCOM publishes on an annual basis the amount of quotas of the products whose imports and exports are made through state trading, there is no statistical data on the actual trade. Can you provide the latest data on the actual imports/exports of products subject to tariff quotas?

Answer: Please refer to the answer of the above question.

(vi) Contingency trade measures

Page 39 (Paragraph 62)

What are the objective criteria used to determine if a trading partner has discriminatorily imposed AD measures on exports from China?

Answer: Up to now, China has no practice of applying AD measures according to Article 56 of the Anti-dumping Articles.

Page 39 (Paragraph 62)

What would be the corresponding measures to be adopted by the Chinese government if the Chinese government considers that a trading partner has discriminatorily imposed AD measures on exports from China?

Answer: Up to now, China has no practice of applying AD measures according to Article 56 of the Anti-dumping Articles.

(vii) Standards and other technical requirements**Page 46 (Paragraph 85)**

With regard to the trade standards and local standards, can you please comment on their process of elaboration and adoption? The mentioned paragraph seems to imply that the State Council is responsible only for the national standards. Does the central government have any influence in their development and adoption?

Answer: The formulation plan and proposal of trade standards are issued by relevant executive agencies of the State Council. These standards are approved, numbered and published in a unified way. Requirements of the formulation procedure are the same as national standards and all trade standards shall be submitted to national standardization authorities as records.

Page 47 (Paragraph 87)

Is there in place a notification requirement to the Chinese central government of the local standards which are adopted at the provincial level? Why are they seldom notified to the WTO relevant Committee?

Answer: Article 6 of the Standardization Law of PRC stipulates that in case there is no national or local standard, where unified standards on safety and hygiene industrial products are in need, local standards can be formulated by local standardization authorities at that province, autonomous region or municipality. These local standards shall be submitted to national standardization authority and executive agencies of the State Council as records and shall be terminated immediately after national standards or trade standards are published. China will further enhance notification of compulsory local standards according to its obligation under the WTO.

Page 48 (Paragraph 91)

Taking into account that local standards for safety and hygiene are in fact mandatory in the administrative region in which they are developed, it seems important that the Chinese Government keep track of them. Why the Chinese authorities could not provide data on the number of local standards developed in 2010, as shown on Table III.5?

Answer: Currently no data is available for 2010.

Page 48 (Paragraph 92)

According to the figures presented, the majority of Chinese national standards are not based on international standards, as disposed in Article 2.4 of the TBT Agreement. What are the steps that the Chinese Government is taking to ensure it fulfills this obligation?

Answer: Adopting international standards is one of the important technical and economic policies of China, which will be further promoted to enhance harmonization between Chinese national standards and international standards. Emphasis is given to standards for general use, human health and safety, resource conservation and environment protection, and staple products exported, and more efforts will be devoted to adopting international standards. There are many areas with Chinese characteristics and no international standards exist, like languages (incl. minority languages), devices for family planning, spirits, rare earth, bamboo and cane, GI products. For fireworks and Chinese Traditional Medicine, corresponding technical committees exist but no relevant international standards are found.

Page 51 (Paragraph 102)

Since the enactment of the Food Safety Law, in 2009, several new regulations were issued by the Chinese Ministry of Health in order to ensure adequacy of new requirements to the new piece of Law. In this context, on 4 December 2009, the Ministry of Health issued Circular No. 108 (Circular on the Conduct of Food Packaging Material Clean-up Operations) which was not notified to the WTO. As a result, foreign companies did not have the opportunity to provide comments on the food additives that should be listed as benign. Can the Chinese government please explain why this important piece of legislation was not notified to the SPS Committee?

Answer: Circular No. 108 of the Ministry of Health is mainly a campaign aimed at cracking down on illegal behaviours of producing food packaging and containers using poisonous and harmful materials, particularly waste materials. It is not legislation. If we intend to modify the safety standards of food containers, packaging materials or additives, we will notify the WTO in accordance with relevant procedures.

Page 53 (Paragraph 114)

How does the Chinese central government control public expenditure at the local level with regard to public procurement? Is there in place an automated system to verify expenditures in public procurement by local governments?

Answer: Chinese governments at all levels have their own separate budgets, the central government cannot control the expenditure on government procurement at local levels, and there is not an automated system to verify expenditure in public procurement by local governments.

(iv) Tax rebates on exports

Page 59 (Paragraph 143)

Can the Chinese government provide a list of the VAT rebate rates for its exports?

Answer: The list of the VAT rebate rates is publicized on the official website of State Administration of Taxation. Please refer to <http://www.chinatax.gov.cn/n8136506/index.html>.

(3) MEASURES AFFECTING PRODUCTION AND TRADE
Taxation and tax incentives

Page 66 (Paragraph 177)

(iii) Industrial Policies

Page 72 (Paragraph 211)

What is the average lending rate of commercial banks to state-owned enterprises, in particular those owned by the central government?

Answer: At present, commercial banks in China determine the concrete level of interest rates for loans to customers mainly according to the cost of capital, risks and time limits regardless of whether they are state-owned enterprises or enterprises owned by the central government, therefore we cannot provide the average lending rate of commercial banks to state-owned enterprises, in particular those owned by the central government.

(iv) Price controls

Pages 72-73 (Paragraphs 212-217)

In light of the extensive price controls stated in the paragraphs above, how do they fit with the concept of market economy?

Answer: In our opinion, the view of extensive price controls is not an objective one. After years of market-oriented reform of prices, at present, the prices of more than 95% of goods and services in China are liberalized and formed independently on the market, including the vast majority of the means of production such as coal and metal ore. The basic role of market mechanism in allocating resources has been brought into full play and a socialist market economy system has been established. In addition, the price control measures of the government have correspondingly turned to the use of economic and legal means which are in line with the requirement of market economy. Currently, prices of just a few commodities and services which are vital to national economic development and peoples livelihood are controlled by the government, and the government-controlled prices can basically reflect the production costs and the situation of supply and demand in domestic market, this is the same as practices of other market economies.

(v) State-owned enterprises, private enterprises, and corporate governance

Page 74 (Paragraph 220)

What is the role of SASAC in managing the state-owned enterprises, particularly in foreign-investment and strategic decision-making?

Answer: As a shareholder and contributor to state-owned enterprises, the SASAC exercises shareholders rights and enjoys the rights of asset benefits, participating in important decision making and choosing managers in accordance with the Company Law and the Law of the People's Republic of China on the State-Owned Assets of Enterprises. The introduction of foreign investment by state-owned enterprises is carried out on the basis of the Catalogue for the Guidance of Foreign Investment Industries and the Implementing Measures for the Supervision and Administration of the Investment of Enterprises Owned by the Central Government.

Page 74 (Paragraph 222)

Considering the corporatization of SOEs, how is the process of appointment of the leading executives of SOEs?

Answer: According to the Law of the People's Republic of China on the State-Owned Assets of Enterprises, the Interim Regulation on the Supervision and Administration of the State-owned Assets of Enterprises, the Company Law and other laws and regulations, chief executives of SOEs are selected through market-based recruitment and internal competition within the company according to legal limits of authority and procedures.

Page 75 (Paragraph 226)

How does the dominance of SOEs in diverse and central sectors of the Chinese economy fits with the concept of market economy?

Answer: After more than three decades of reform, the distribution, structure, systems and mechanisms of the state sector of the economy have undergone profound changes, and the state-owned enterprises have achieved a separation of enterprise from administration and separation

of the functions of the government from those of enterprises, and SOEs have become independent market players and legal entities. Furthermore, a great many SOEs have become public companies with diverse equities through reorganization and listings.

(vi) Competition and consumer protection policy

Page 78 (Paragraphs 239 and 243)

What is the effectiveness of the legislative and institutional framework of competition policy in light of the concentration of assets and sales in several central sectors of the Chinese economy?

Answer: The Ministry of Commerce is responsible for anti-monopoly investigations for concentration behaviour of operators, the NDRC is responsible for investigating and prosecuting price monopolies according to law, the General Administration of Industry and Commerce is responsible for anti-monopoly law enforcement in such areas as monopoly agreement, eliminating and restricting competition by abusing market dominance and administrative powers (except for price monopoly). In addition, the State Council established an Anti-monopoly Committee to organize, coordinate and give guidance to anti-monopoly work.

Since the Anti-monopoly Law was put into force in 2008, the Ministry of Commerce, the National Development and Reform Commission and the General Administration of Industry and Commerce have constantly enhanced supportive anti-monopoly legislation and actively carried out law enforcement work. Practice has proved that the Chinese anti-monopoly legislation and law enforcement systems worked well and effectively maintained the competition order of Chinese market.

How many anti-trust processes have been adopted and finalized? How many of them were faced by SOEs?

Answer: Since the enactment of the Anti-monopoly Law in 2008 to 2011, the Ministry of Commerce accepted a total of 382 operator concentration cases, of which 12 cases were approved with certain conditions, 1 case was prohibited and all of the rest cases were approved unconditionally. The General Administration of Industry and Commerce actively carried out anti-monopoly law enforcement, and to date, 3 cases were handled and 1 case was suspended. Besides, the NDRC also investigated and punished a number of price monopoly cases. The implementation of China's Anti-monopoly Law does not differentiate the ownership of companies.

(IV) TRADE POLICIES BY SECTOR

(3) ENERGY

Page 114 (Paragraph 60)

The National Energy Administration (NEA), under the NDRC, performs executive functions as the regulator, and as the general office of the NEC.

Considering the relevance of the energy sector for the Chinese development, could China comment on the news publicized by China Daily (Super-Ministry Considered, 01/07/2012) according to which there are governmental plans to establish an executive office with status of Ministry in charge of energy affairs?

Answer: We cannot verify the news for we have no idea of the sources.

Page 115 (Paragraph 69)

Pricing for gas is also under government "guidance".

Could China give some indication of the means by which the exploitation of its shale gas reserves will be fostered in order to reach the goals of the recently publicized five-year plan for the development of that resource?

Answer: China will adopt the following measures in order to reach the goal for the development of shale gas. First, strengthen the scientific and technological research for shale gas exploration and development. Second, develop a new mechanism by introducing competitive enterprises to participate in the exploration and development of shale gas and promote the diversification of investors. Third, improve the corresponding infrastructure for the development of shale gas.

- (4) Manufacturing**
- (ii) Selected subsectors**

Pages 118-119 (Paragraphs 78-82)

Is it possible to provide a detailed and updated assessment of policies of support to the automotive sector?

Answer: We have never done such assessment.

How much local content is actually incorporated in domestic manufactured automobiles, in particular from state-owned companies?

Answer: Such statistics are not available at present.

- (5) Services**
- (ii) Financial Services**

Page 129 (Paragraph 123)

How does the interest rates benchmarks set by the PBC fit with the concept of market economy?

Answer: Interest rate is one of the important tools of monetary policy, even in the most developed market economies, their central banks also set and adjust the interest rate benchmarks to regulate and control various types of interest rates on the market. In recent years, the market-oriented reform of China's interest rates was advanced steadily, and the interest rates of money market, securities market, saving and lending rates of foreign currencies in China have all been set by the market, the lower limit of saving rates and the upper limit of lending rates of Renminbi have also opened to the market, and the role of market mechanism in the formation of interest rates have been strengthened. The successful experiences of countries in the world have shown that market-based interest rate is a gradual process, which need to be promoted and improved step by step according to the actual conditions of different countries and the maturity of necessary basic conditions, at present, the People's Bank of China sets and adjusts the interest rate benchmarks and financial institutions independently decide their own floating levels of saving and lending rates, this conforms to the actual conditions of China's economic and financial development and generally fits with the concept of market economy.

Since China's accession to the WTO, what has been the relation between deposit rates and consumer inflation?

Answer: With the continuous deepening of market-based reform of interest rates, at present China only administers the upper limit of deposit rates and lower limit of lending rates. The central bank adjusts the benchmarks of deposit rates and lending rates according to macroeconomic and financial situation so as to maintain the basic stability of economic and price levels. Historically speaking, there exists a clear cyclical relation between benchmark deposit rates and price index, i.e., the benchmark deposit rates tend to rise when price index increases, and vice versa. On the whole, the benchmark deposit rates timely reflect the changes of prices, which is conducive to stabilizing prices. Furthermore, it should be noticed that in the context of economic globalization and an open macro-environment, restrictions on the adjustment of interest rates, in particular restrictions of monetary policies of developed economies are on the rise, therefore, the central bank need to balance its policies on both domestic and foreign currencies, and make decisions on the basis of considering all affecting elements. For these reasons, we should probe into this problem from the perspective of overall balance rather than a partial one.

How does this relation affect the broader objective of rebalancing the economy towards a larger household consumption share of GDP?

Answer: The relation between deposit rates and expanding consumption is indeterminate. In essence, the economic structure is determined by actual economic variants instead of the amount of money supply. Central banks can adjust nominal interest rates, however, from a long term perspective currency is largely neutral, and central banks can hardly affect and change the real level of interest rates. Therefore, it is more reasonable to analyse the problem of economic restructuring from the perspective of actual economic variants. Another thing need to be noticed is that with the development of financial market, Chinese citizens have more diversified channels of investment, such as financing, stocks, securities and so on, and their dependence on deposits has decreased which may also have a certain impact on the relation between deposit rates and consumption.

PART II: QUESTIONS REGARDING THE GOVERNMENT REPORT

II. ECONOMIC AND TRADE ENVIRONMENT AND MACROECONOMIC POLICY DIRECTION

Page 8 (Paragraph 14)

China analyses several challenges in the international economic environment and gives the indication of the broad lines of its 12th Five-Year Plan.

(i) *How does China factor a deteriorating international economic environment into its strategic economic planning?*

Answer: China's economic development is more closely connected with the outside world, and changes in global economy and international market have a greater impact on China's development. The global financial crisis started in 2008 had a tremendous impact on the world, as a result, global development is facing unprecedented challenges and the global market has become more uncertain, besides, challenges brought by climate change and energy and resource security have become increasingly prominent. Therefore, when we study to put forward the guiding principles, objectives, strategic tasks and policies of development, we have to take into consideration the changes of domestic and international environment. The Outline of 12th Five-Year Plan for the National Economic & Social Development of the People's Republic of China (hereinafter referred to as the Outline) had given full consideration to this factor when putting forward the guiding principles, objectives, main tasks and key measures for the development during the 12th Five-year Plan period.

(ii) *What role does China envisage for its international trade when a successful transition is completed from an economic model based on investment to another based on domestic consumption?*

Answer: Expanding domestic demand, particularly consumption, is an important content for China to accelerate its pattern of economic development. Expanding domestic consumption can help increase imports and maintain a balance in international trade and international payments, thus laying a foundation for stabilizing exports. Expanding domestic consumption can also enhance our advantages in foreign trade, since the expansion of consumption scale will increase competition in the domestic market and improve the competitiveness of Chinese industries at home, and subsequently enhance their competitive edge abroad. Chinese products with high international market shares such as textiles, light industry products and home appliances, went to the international market after a full competition at home. With the deepening of China's industrialization and urbanization process, China's consumption potential will be further released to form a huge demand for imports, and China is hopeful to be the world's largest import market.

Page 12 (Paragraph 35)

Taking into account that China is the biggest energy consumer, a major producer and that it is not a member of the International Energy Agency, could China comment on its view of the future energy multilateral regime?

Answer: China is still in coordination with competent authorities to provide responses to the question.

PART III: OTHER QUESTIONS

CUSTOMS ADMINISTRATION

1. *Is the revenue collected by the Chinese Customs administered by Customs itself or is it transferred to another central body in the Chinese government?*

Answer: The revenue collected by the Chinese Customs, including tariffs, import VAT collected by Customs and consumption tax, as well as revenue from fines and confiscation, is handed over to the national treasury.

2. *Is there any provision on the maximum amount of time that Customs can take for customs clearance, after which the clearance becomes automatic?*

Answer: There is no such provision on the maximum amount.

3. *What kind of risk assessment is implemented for customs clearance?*

Answer: The Chinese Customs assesses whether there are risks based on an overall consideration of a specific company, concrete trade-related companies, commodities and shipping lines (high-risk countries of shipment, destination or key shipping lines), and decides whether physical inspection is necessary based on the degree of risks.

4. *Can China E-Port be used by all operators or only by economic operators graded AA or A? Nowadays, how many users does China E-Port have?*

Answer: All companies can apply for the use of China E-Port which is not confined to operators graded AA or A. currently, a total of 650,000 companies have registered in China E-Port on an accumulation basis.

5. *How many AA, A, B, C and D economic operators does China have today?*

Answer: As of the end of April 2012, there are 2,174 AA-grade companies, 25,582 A-grade companies, 483,944 B-grade companies, 930 C-grade companies and 210 D-grade companies.

6. *By means of the China E-Port, what type of information is shared between Customs and other agencies involved with customs procedures?*

Answer: The Chinese Customs shares electronic data with other departments by means of China E-Port, including among others, the export tax rebate, settlement of exchange, RMB settlement in cross-border trade, import and export of toxic chemicals, solid wastes and pesticides, handing in of revenue, etc.

7. *How is the relationship between the local e-ports, such as the Shanghai E-Port, and China E-Port? Do their functions overlap?*

Answer: China E-Port is mainly used for sharing clearance-related information among relevant departments of the State Council, and conducting online inspection, while local e-ports are mainly used for sharing clearance-related information in the region, and providing one-stop services for customs clearance and relevant logistical services. The two levels of e-ports support and complement each other, forming a unified information platform for customs clearance.

8. *How many ports of entry are there in China? Are there any restrictions with regard to the nature of the imports and the entry ports which can be used?*

Answer: At present, China has a total of 284 different types of ports, of which 82 are water carriage ports (seaports). According to the nature of imports and exports, the Chinese Customs administers the exports of antimony and antimony products, part of magnesium sands, liquorices, rare earth and other goods by designating ports of exit in accordance with relevant regulations.

EXPORT RELATED FINANCING

Under the framework of the China-US Strategic and Economic Dialogue, Chinese and US authorities have been discussing the eventual development and adoption of new international guidelines on export financing. What does China envision for these new guidelines?

Answer: China hopes that the new guidelines could take into consideration the interests and national conditions of different countries and reflect the best international practices.

BRAZIL (SECOND BATCH)

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(4) Foreign Investment Regime

(ii) Regulatory framework

Paragraph 48

FIEs in the encouraged category may import capital equipment duty free. All foreign-invested enterprises may enlarge their scope of business, subject to approval. Foreign investment in the restricted category may be permitted, subject to approval, if export sales are over 70% of total sales of the product.

Could China please comment on how the required percentage of export sales would fit in the TRIMs Agreement?

Answer: This provision does not mean that foreign investment in the restricted category must export more than 70% of its product. Foreign-invested enterprises in the restricted category can decide by themselves whether to sell product to the Chinese market or to export. Therefore, it complies with the TRIMs Agreement.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Measures Directly Affecting Imports

(ii) Tariffs

Page 32 (Para 31)

A sliding duty is applied to out-of-quota imports of cotton. In 2011, this duty was applied so that, for cotton valued above a certain threshold, a specific duty of 0.57/kg applied; for cotton valued below the threshold, the rate was calculated based on an equation, but was no higher than 40%, taking into consideration the c.i.f. price of cotton (in Chinese yuan). The threshold for 2011 was 11.397/kg. The average applied in-quota rate was 4.8%, while the out-of-quota rate was around 50.4%.

Is the sliding duty applied to out-of-quota imports of cotton in force until now? If so, could China explain how this sliding duty is consistent with its schedule?

Answer: The sliding duty is still in force until now. The sliding duty is a tentative rate applied to out-of-quota imports of cotton. Its maximum rate is 40% which does not exceed the duty rate limit; since the implementation of the sliding duty, no import duty rate higher than 40% has been adopted. The in-quota (894,000 tonnes) import rate is 1%, which is consistent with the rate limit promised by China. The description in the Secretariat's report is inaccurate. We believe the Secretariat does not understand our reality.

Could explain whether both in-quota and out-of-quota duties for cotton are in accordance with China's bound tariffs for cotton?

Answer: Please refer to the answer to the above question.

(vii) Standards and other technical requirements

(c) Sanitary and phytosanitary measures

Page 46 (Para 84) and page 51 (Para 101)

Brazil would like to underline the importance of China's participation as a member of the Codex Alimentarius as well as the World Organisation for Animal Health and as a contracting party to the International Plant Protection Convention. It is a clear indication of the commitment China should have with the scientific principles in its SPS decision framework.

Brazil would also highlight the importance of independent scientific expert advice to the Codex Alimentarius Commission - CAC and its specialist Committees given by the JOINT FAO/WHO COMMITTEE ON FOOD ADDITIVES JECFA.

In this regard, Brazil would call attention to the enormous task, carried out three times by JECFA, providing scientific advice to the Codex Alimentarius related to the safety condition of the proposed ractopamine MRLs of four pork and bovine tissues seeking their approval within CAC.

Questions:

1. *Could China please inform if it continues against the approval of the proposed MRLs of ractopamine now risk evaluated three times by the JECFA and recommended for approval in the CAC?*

2. *If so, could China please explain the relation between its position and Articles 3.4, 5.1, 5.4 and 5.6 of the Agreement on the Application of Sanitary and Phytosanitary Measures SPS/WTO Agreement?*

Answer to Question 1 & 2: According to SPS Agreement, Members are encouraged to base their SPS measures on international standards, guidelines or recommendations. However, China would like to point out that Members take risk control measures based on the CAC standards, risk analysis and Members own conditions. Therefore, if Members SPS measures are not exactly the same with the CAC standards, it doesn't mean that they are violating WTO or CAC principles. Furthermore, MRLs of ractopamine is still under discussion in CAC and far from becoming an international standard.

According to SPS Agreement, Members shall ensure their SPS measures are based on scientific principles. That is exactly what China does. China has made great efforts to conduct risk analysis of ractopamine. The result has shown that its residue level are high on pigs organs, especially lungs, which are Chinese regular food resources.

Thus, China's measure is to protect human health and based on scientific evidence.

(i) Customs procedures, valuation, and rules of origin

Could China provide further information on the scope and objective of its cooperation with some partners in the area of customs data exchange system, referred to by the report by the Secretariat in paragraph 7?

Answer: The details of China's current customs data exchange system are as follows:

1. China-EU Smart and Secure Trade Lanes (SSTL) Pilot Project

Scope: to achieve the sharing of information and supply chain security through customs data exchange, authorized management, mutual regulation of results, common risk rules and the application of electronic seals and intelligent containers.

Objective: to monitor the whole process of logistics, reduce the security risks of goods and facilitate international trade by establishing a safe, convenient and smart international trade transport chain.

2. China-Russia Customs Data Exchange of Bilateral Trade

Scope: exchange information of cargo and means of transport collected by the Customs if it is trade between China and Russia or transit trade.

3. China-Kazakhstan Customs Data Exchange of Bilateral Trade

Scope: exchange information of cargo and means of transport collected by the Customs if it is trade between China and Kazakhstan or transit trade.

Objective: raise the supervision efficiency of the border Customs; speed up the cargo transportation between the two countries; protect the interests of the two countries.

(iv) Import prohibitions and licensing

Between 2010 and 2011, China added 32 tariff lines, including poultry, vegetable oil and tobacco, to the list of goods subject to automatic import licensing. Could China explain the reason for applying import licensing to those goods?

Answer: According to the rules of WTO and the laws of China and based on the need to supervise import, China has applied automatic import licensing to certain goods, including vegetable oil and tobacco. The reasons are as follows: due to the delay of Customs statistics, enterprises have to wait till the customs are cleared to know the overall situation of the import, which always leads to unfavorable situations such as blind import and concentration of goods arrivals. Through automatic import licensing, import information can be monitored and known beforehand, which enables enterprises to rationalize import and achieve balanced and orderly arrivals of goods.

(vii) Standards and other technical requirements

The report by the Secretariat notes that there are four levels of standards in China (national, trade, local and enterprise standards), and that national and trade standards may be compulsory or recommendatory. Although the process for developing a national standard in China is well described in the report, it is unclear how trade standards are developed.

Could China provide information on the process of developing trade standards and on the measures in place to ensure that those standards meet the TBT transparency obligations?

Answer: The formulation plan and proposal of trade standards are issued by relevant executive organs of the State Council. These standards are approved, numbered and published in a unified way. Requirements of the formulation procedure are the same as national standards and all trade standards shall be submitted to national standardization authorities as records.

What are the requirements that a foreign certification body must meet to be accredited by the CNAS, so that it can perform certification of products under the CCC system?

Answer: China abide by the Regulations on Certification and Accreditation of PRC, and China is actively promoting and allowing mutual recognition in international product testing and factory inspection within the framework of multilateral or bilateral MRAs. China has signed consignment agreements with 19 overseas certifying bodies (located in Europe, America, Japan and other economies) for follow-up inspections of 3C certification over factories abroad. CNCA accept the inspection reports and results of these bodies.

(2) MEASURES DIRECTLY AFFECTING EXPORTS

(i) Procedures

According to the report by the Secretariat, China has recently adopted a classified customs clearance, which seems a kind of risk management system for export goods. Could that system help to curb practices such as undervaluation of export goods?

Answer: China has applied classified customs clearance to import and export goods based on risk levels and enterprise credibility. As an effective way of Customs risk management, this system aims at facilitating credible enterprises customs clearance, speeding up customs clearance for export goods and promoting international trade development. China Customs check and determine the duty-paid values of import and export goods in strict accordance with the Customs Law, the Regulations of the People's Republic of China on Import and Export Duties, the Provisions of the Customs of the People's Republic of China for Assessment of Duty on Import and Export Goods, the Regulations on Customs Valuation and other relevant provisions.

(iv) Tax rebates on exports

Paragraph 143

VAT may be rebated on exports, although the rebate rates are, by and large, lower than the VAT rates actually paid. The difference between the two rates constitutes a levy on exports, which may in turn constitute assistance to downstream processing of the products affected, and could affect China's terms of trade. China adjusts VAT rebate rates as part of its industrial policies, to control, restrict, or otherwise "manage" the export of certain products. In particular, on 15 July 2010, China eliminated VAT rebates on exports of steel, starch, ethanol, and semi-finished copper products, covering 406 tariff lines.² VAT rebates on exports reached 920.5 billion in 2011, some 7.7% of total merchandise exports (up from 648.7 billion and 7.9% in 2009).

Could China please inform what is the average difference between the rebate rates and the VAT rates actually paid?

Answer: Statistics about the average difference between the rebate rates and the VAT rates actually paid is not available at present.

Could China provide information on which industries have most benefitted from adjusted VAT rebate rates in the recent years?

Answer: The principle observed by China in adjusting VAT rebate rates for export is that it should not exceed statutory tax rate. China does not think the VAT rebate on exports brings benefits to industries.

IV. TRADE POLICIES BY SECTOR

- (1) AGRICULTURE**
- (ii) Agricultural policies**
- (c) Domestic Support**

Page 105 (Para 30)

Purchases of agricultural machines are also subsidized at rates between 20% and 30% of the sale price. In 2008, the scheme was extended to cover the whole country. The local authorities are responsible for running the scheme and deciding what machines are covered pursuant to a catalogue of agricultural machines issued by the central government. The amount provided for the purchase of agricultural machines has increased steadily, from 2 billion in 2007 to 15.5 billion in 2010.

1. This program seems to be a non-product specific subsidy. Could China clarify how this program was notified in China's last domestic support notification (G/AG/N/CHN/21)?

Answer: In the domestic support notification for 2005-2008 submitted by China in October 2011, subsidies for purchasing agricultural machinery and tools are notified as input subsidy under non-product-specific *de minimis*.

² WTO document WT/TPR/OV/W/5/Rev.1, 7 September 2011; and WT/TPR/OV/W/5/Rev.1.

(3) MEASURES AFFECTING PRODUCTION AND TRADE
(ii) Subsidies and other government assistance

Paragraph 194

During the period under review, programs described in the industrial revitalization plans adopted in 2009 for ten sectors were implemented (see section (iii) below). No details on the budget allocated to and actually disbursed on these programs was made available to the Secretariat.

Could China please elaborate on the impacts of the revitalization plans on the ten sectors at issue?

Answer: The implementation of Industrial revitalization plans in 2009 for ten sectors has greatly boosted the confidence of the market and business, reverse the declining trend of some key industries in a short time and consolidate the recovery momentum and industrial restructuring process. These plans play a positive role in global economic recovery against the backdrop of international financial crisis.

(vii) Intellectual property rights

1) The Report by the Secretariat, Section III (Trade Policy and Practices by Measure), Paragraph 275, states that the National Intellectual Property Strategy, announced by the State Council in June 2008, established four medium-term goals for a five-year period between 2008 and 2013: a large-scale increase in "indigenous intellectual property rights"; a significant increase in the share of IP-intensive commodities; improvement in IPR protection; and an overall increase in awareness of intellectual property rights.

Could China elaborate on the measures aimed at attaining the medium-term goal of a large-scale increase in "indigenous intellectual property rights"?

Answer: China's National Intellectual Property Strategy puts forward the strategic objective of significant improvement in level and further increase in number of indigenous intellectual property rights during the period from 2013 to 2015. In order to realize this goal, the Strategy proposes the following strategic measures: (1) improving the capability of creating intellectual property rights; (2) encouraging the application of intellectual property rights; (3) accelerating the legal system construction of intellectual property rights; (4) improving the law enforcement for intellectual property rights; (5) strengthening the administration of intellectual property rights; (6) developing intermediary services of intellectual property rights; (7) enhancing team building for talents in intellectual property rights; (8) advancing the construction of intellectual property right culture; and (9) expanding external exchanges and cooperation on intellectual property rights.

2) The Report by the Secretariat, Section III (Trade Policy and Practices by Measure), describes China's policies regarding registration and administration of trademarks. Paragraph 300 describes provisions on the Trademark Law under which registration may be rejected.

Paragraph 300 states that registration may be rejected and usage of a relevant mark is forbidden under the following circumstances: if the mark involves a copy, imitation, or translation of well-known brands that have not been registered in China for the same or similar goods and services, and such a copy, imitation, or translation easily creates ambiguity; and if the mark involves a copy, imitation, or translation of well-known brands that have been registered in China for goods and services that are not deemed identical or similar to the goods and services in question, and such a copy, imitation, or translation may mislead the public and result in possible harm to the interests of the right-holders of the well-known brand.

Could China indicate which procedures are in force in order to prevent the misappropriation as trademarks of generic terms/names in third countries?

Answer: China's relevant laws and regulations stipulate the provisions on generic terms/names that are consistent with those specified in TRIPS and other international treaties. A mark only having the generic/term/name of the commodity should not be registered as a trademark, but can be registered as a trademark provided that the mark has obtained distinctive features and becomes easily identifiable after being used.

Whether a mark belongs to generic term is determined by such factors as consumers' awareness and the use of the mark in that country. It is very likely that a mark recognized as a mark of generic term/name in one country is not identified as a generic term/name in another country. Therefore, the registration of a generic term/name of a third country in China depends on the actual conditions of such generic term/name. If the generic term/name of the third country is recognized as a generic term/name in China, such generic term/name should not be registered as a trademark. On the contrary, if China doesn't consider the mark as a generic term/name or the mark has obtained distinctive features and becomes easily identifiable after being used, the mark can be registered as a trademark.

3) The Report by the Secretariat, Section III (Trade Policy and Practices by Measure), regarding China's policies regarding registration and administration of trademarks, Paragraph 307, states that parallel imports are not addressed in the legislation on trademarks, and it is not clear to the Secretariat whether they are prohibited/allowed.

Could China clarify whether parallel imports are allowed in the applicable regulation?

Answer: In respect of trademark, the current Trademark Law does not have provisions concerning parallel import. In respect of copyright and related rights, parallel import is prohibited in the current Copyright Law. In respect of patent, Article 69 of the Patent Law stipulated only the patented products launched on the Chinese or international market by the patentee or the patent licensee can be parallel imported to China. Therefore, parallel imports can increase the supply of patented products on the Chinese market, without leading to such issues as counterfeiting, or affecting consumer's health and safety.

4) In the field of copyright, the Report by the Secretariat, Section III (Trade Policy and Practices by Measure), Paragraph 313, states that Copyright Law was revised in 2010, as well as its Implementing Regulation.

Could China elaborate on the perceived effects of the new legislation? Details concerning enforcement activities would be welcome, as well as statistics on copyright protection trends.

Answer: (1) Effects of implementing the Copyright Law revised in 2010:

On 26 February 2010, China released the revised Copyright Law of the People's Republic of China. The revisions mainly involved Article 4 which concerns the works to be prohibited from being published and disseminated in accordance with law, work registration and copyright pledge registration. NCAC has strictly enforced the revised Copyright Law of the People's Republic of China.

(2) Details concerning enforcement activities

On 27 October 2010, the State Council issued the Scheme for Special Campaign of Cracking down on Infringing Intellectual Property Rights and Manufacturing and Selling Counterfeit and Substandard Commodities (Guo Ban Fa [2010] No. 50), which decided to intensively carry out a special campaign aimed at cracking down on infringing IPRs and manufacturing and selling counterfeit and substandard

commodities nationwide during a period from October 2010 to March 2011. The special campaign was scheduled to be completed at the end of March 2011, but the State Council extended the campaign to the end of June 2011 to achieve more results.

During the campaign, NCAC selected 18 key video websites including Sina, Sohu, Youku, Tudou, Ku6 and Thunder and identified 300 key works on these websites for priority supervision. On 15 September 2010, NCAC issued a notice to relevant websites and required them to carry out self-inspection and self-correction on the dissemination and use of these 300 works.

At the same time, NCAC intensified technical monitoring over the dissemination of the website works, and checked and verified the authorization information of the works disseminated by the websites in an in-depth manner.

(3) Statistics on copyright protection trends

According to the statistics, China had carried out special campaigns of cracking down on Internet infringements and piracies for seven consecutive years from 2005 to 2011 and investigated and handled 3,769 Internet infringement and piracy cases in various places. China closed down 1,569 illegal websites engaged in infringement and piracy, ordered the suspension of 2,505 infringements, fined RMB 7.83 million, and confiscated 948 servers and computer hardware devices. 157 cases suspected to constitute copyright crimes were transferred to relevant judicial authorities.

From July 2010 to late June 2011, copyright administration and enforcement authorities, public security organs and industry and information technology authorities investigated and handled 1,148 Internet infringement and piracy cases, gave administrative penalties for 466 cases, handed over 36 cases to judicial authorities for criminal investigation.

5) The Report by the Secretariat, Section III (Trade Policy and Practices by Measure), Paragraph 323, states that Customs is in charge of enforcement of intellectual property rights at the border. The revised Regulations on Customs Protection of Intellectual Property entered into effect on 1 April 2010.

Table III.12, on pages 95-96, presents information on Intellectual property enforcement from 2008 to 2010. It shows that cases handled by Customs at the border, in million, were at 294.8 in 2008, 452.3 in 2009 and 277.1 in 2010.

Could China elaborate on the perceived effects and/or trends of the revised regulations in Customs enforcement activities?

Answer: In 2011, to protect intellectual property, China Customs suspended 20,000 batches of import and export goods, among which 18,200 batches of goods suspected of being involved in IPR infringements were detained. 103,000,000 right-infringing goods were detained, among which 100,000,000 right-infringing goods were seized in the export link, accounting for 97% of the total volume. China's efforts to strengthening its border protection of intellectual property have received good reputation from the international community. In 2011, Global Anti-Counterfeiting Group awarded China Customs the only Global Anti-Counterfeiting Awards 2011-Public Sector Organization Award of that year.

IV. TRADE POLICIES BY SECTOR

(3) Energy

(i) Policy objectives for the sector

Paragraph 59

China's medium- and long-term objective for its energy sector is "to establish a stable, economical, clean and secured energy supply system so to meet the demand from social and economy development".

On 5 December 2011, the National Energy Administration issued the National 12th Five-Year Plan for Energy Technology, with the aim of supporting the development of "strategic emerging industries" and of the energy sector.

Could China please elaborate on the implementation measures to be adopted within the context of the Five-Year Plan?

Answer: China will adopt the following measures within the context of the National 12th Five-Year Plan for Energy Technology. First, China will actively promote the construction of related Demonstration projects and encourage technology innovation and application conversion. Second, China will encourage key energy R&D laboratory and related research institutes, colleges and universities to participate in energy technology innovation.

Will trade in goods and services play a role in fulfilling the objectives of the Five-Year Plan?

Answer: Trade in goods and services will play a role in fulfilling the objective of the Five-Year Plan.

(ii) Electric utilities

Paragraph 63

The revised Law on Renewable Energy entered into force on 1 April 2010. The law states that development and utilization of renewable energy is the priority for national energy development, and "encourages" all enterprises, including foreign firms, to participate in the development of renewable energy.

What is the legal framework under which foreign firms could participate for the development of the renewable energy sector in China?

Answer: The Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures, Foreign Investment Law, Catalogue for the Guidance of Foreign Investment Industries and related renewable energy laws and regulations.

Could China elaborate on its main priorities on the renewable energy sector?

Answer: Nuclear power, solar power, wind power, biomass, biogas etc.

- (4) **Manufacturing**
- (ii) **Selected subsectors**
- (d) **Iron and steel**

(Paragraphs 89-93)

The Chinese Steel Industry Revitalization Plan set the goal of eliminating 72 million tonnes of iron production capacity and 25 million tonnes of steel production by the end of 2011. These included the elimination of 25 million tonnes of iron production capacity, and 6 million tonnes of steel production capacity in 2010.

Could China please elaborate on its future goals for the modernization and revitalization of its iron and steel sectors?

Answer: On 24 October 2011, the Ministry of Industry and Information Technology of the People's Republic of China issued the 12th Five Year Plan for Steel Industry which sets goals for Steel Industry Development during the 12th Five Year Plan. Please refer to http://www.gov.cn/zwgk/2011-11/07/content_1987459.htm for details.

II. ECONOMIC AND TRADE ENVIRONMENT
IV. TRADE POLICIES BY SECTOR

(Pages 11 and 121)

The Report of the Secretariat highlights China's efforts to transform its economic development pattern and restructure its economy towards a more domestic demand-centered model. Concurrently, also according to the Report, China has been pursuing a gradual, progressive and managed opening of the services sectors in the framework of a broader development strategy.

How does China envisage liberalization of the services sector contributing to both objectives: transition to a more consumption-driven pattern of growth and development?

Which sectors are deemed strategic in this regard?

Answer: To implement opening-up through development and to develop through opening-up should be the general trend and strategic direction of the development of services trade in China. In this principle, we understand that opening-up of the services industry plays an important role in improving the competitiveness of services trade. The Outline of the 12th Five-Year Plan for Development of Trade in Services has clearly proposed that a more actively strategy of opening-up will be implemented, and the sectors of financial services, logistics, education, medical care will be progressively opened in the future.

Pages 121-137 (Para 1)

The Secretariat report indicates that the Chinese financial services sector is largely dominated by banks, most of which are state owned. On the other hand, there seem to be indications of new market access opportunities for foreign providers through non-bank financial institutions.

Could China expand on its market opening plans for the financial sector in light of its development strategy? Does the country consider improving access to commercial banking services? Are there any plans for increased private capital participation?

Answer: The Chinese Government has always attached great importance to the development of financial industries, and continuously promotes its financial market opening up in accordance with domestic market situation. Recently, China decided to further liberalize its insurance and securities sectors, which reflect China's concrete actions to implement its financial development strategy. As for the access of commercial banking services, in accordance with Several Opinions of the State Council On Encouraging and Guiding the Healthy Development of Private Investment, the CBRC recently promulgated the Implementation Opinions on Encouraging and Guiding the Private Capital to Enter into the Banking Sector, encourage and guide private capital to participate the banking services, and enhance financing support to private investment.

How does China expect to strike a balance between development of the capital market and financial stability? To this effect, what are some of the policy and regulatory tools under consideration?

Answer: China strives to accelerate the development of capital market, establish diversified financing channels, disperse financial risks and maintain the stability of financial system. China insists the principle of step by step and risk controllable, to push forward its capital market development. The relevant measures are as follows:

First, enhance the cooperation and coordination among different regulators, and promote the supervision and regulation of the capital market. To this end, The PBC, the CSRC, the CIRC and the CBRC will establish a coordination mechanism for financial supervision, to enhance the evaluation of cross-sectors and cross-markets risks. Moreover, the aforesaid regulators will build a special cross-ministry meeting mechanism, to facilitate the development of a standard and uniform bond market.

Second, push forward investor education and improve the management of investor eligibility. For example, the regulators have set up investor eligibility management system in the Growth Enterprises Board market and financial futures market, which realize the matching between investor risk tolerance and investment products risk characteristics.

Third, promote the construction of financial infrastructures and advance the healthy development of market. Take the derivatives market for example, China has already established Shanghai Clearing Center as the central counterparty, to bear the central clearing function of OTC derivative market.

Pages 15-16

The Secretariat Report stresses the fact that the Chinese balance of payments and RMB exchange rates have been approaching a level of equilibrium as current account surpluses in relation to GDP have been declining and the RMB has steadily appreciated since 2005, when a managed free-floating system was put in place.

Could China provide details on the next steps it intends to take to ensure RMB exchange rates move further towards equilibrium level?

Answer: Starting from July, 2005, China moved into a managed floating exchange rate regime based on market supply and demand with reference to a basket of currencies. In June 2010, China announced that it would further push forward the reform of exchange rate formation mechanism. On 16 April 2012, the People's Bank of China widen the exchange rate fluctuating band of RMB yuan against USD from 0.5% to 1%, which made the RMB exchange rate more flexible. According to the estimation of BIS, the nominal and real effective exchange rates of RMB had appreciated 19.4% and 27.4% respectively from July 2005 to April 2012. The RMB exchange rate has approached to an even and reasonable level. In the future, the PBC will further promoting the reform of the RMB exchange rate regime in line with the self-initiated, controllable, and gradual approach, accelerate the

development of the foreign exchange market, promote the innovation of the exchange rate risk management tools, continuously improving the managed floating exchange rate regime based on market supply and demand with reference to a basket of currencies, and further enhancing the flexibility of RMB exchange rate.

BRAZIL (THIRD BATCH)

SECRETARIAT REPORT

III. TRADE POLICIES AND PRACTICES BY MEASURE

Page 36 (Para 51)

MOFCOM may also self-initiate an anti-dumping investigation, if it has sufficient evidence of the existence of dumping, injury, and causal link; it did not self-initiate any investigations in 2010 and 2011. Implementing rules regarding the initiation of anti-dumping investigations are set out in Provisional Rules of the Ministry of Foreign Trade and Economic Co-operation on Initiation of Anti-dumping Investigations.

Please explain how the government monitors and collects sufficient evidence of injury in self-initiated AD investigations.

Answer: In this case, the Ministry of Commerce will monitor and collect sufficient evidence of injury in strict accordance with provisions 5.6 and 5.2 of Agreement of Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

Page (36)

(vi) Contingency trade measures

How does China deals with questions regarding circumvention? Does China have any law or regulation on this matter currently in force?

Answer: Currently, China does not have practices or laws regarding AD investigation circumvention.

Page 61 (Para 156)

The Bank's main mandate is to facilitate the export and import of Chinese mechanical and electronic products, complete sets of equipment, and new and high-tech products; assist Chinese companies with comparative advantages in their offshore contract projects and outbound investment; and promote its foreign relationship and international economic and trade cooperation.

Please provide clarifications regarding the choice of sectors that may benefit from EXIM export credit financing operations. Is there any limitation for sectors other than those identified in para 156 to apply for EXIM export credit financing?

Answer: China EXIM Bank does not formulate credit financing policies targeted at specific industries.

**TRADE POLICIES AND PRACTICES BY MEASURE
CUSTOMS PROCEDURES, VALUATION, AND RULES OF ORIGIN
Page 24 (Para 3)**

Customs collects the following administrative charges: handling charges for customs supervision, registration fees of customs intellectual property protection, charges for ATA (Admission Temporary/Temporary Admission) document adjustment, and storage charges for goods and luggage, in accordance with relevant regulations.

Regarding the registration fees of customs intellectual property protection, please explain in which situations they are required and what is the extra protection granted.

Answer: According to Article 8 of the Measures of the General Administration of Customs for the Implementation of the Regulations on the Customs Protection of Intellectual Property Rights, an IPR holder shall pay registration fees when he applies to the General Administration of Customs for registration of customs intellectual property protection or re-applies for the registration of customs intellectual property protection after the original registration becomes invalid, and an IPR holder shall not pay registration fees when he applies for registration renewal or modification. According to Article 1 of the Public Announcement of the General Administration of Customs on Charging Registration Fees of Customs Intellectual Property Protection, an IPR holder applying to the General Administration of Customs for the registration of customs intellectual property protection shall pay RMB 800 registration fees for each registration application.

Please refer to Chapter 3 of the Regulations of the People's Republic of China on the Customs Protection of Intellectual Property Rights for what extra protection will be provided.

Which types of intellectual property protection can be registered?

Answer: Exclusive right to use a trademark, copyright, patent right, exclusive right of the Olympic symbols and exclusive right of the World Expo symbols could be registered.

**MEASURES AFFECTING PRODUCTION AND TRADE (INTELLECTUAL PROPERTY RIGHTS)
Page 87 (Para 277)**

For 2011, the plan assigned 176 tasks including: the launch of a national specific campaign on IPR protection, and revisions of the Trademark Law, the Copyright Law, and the Measures for Exercising Compulsory License as well as drafting Anti Monopoly Guidelines for Abusive Use of Intellectual Property Rights.

With regard to competition policy, please provide information of its interface with Intellectual Property Rights. Has any case of abusive use of intellectual property rights ever been investigated under the competition law? Are there sentences on this subject?

Answer: Intellectual property rights are exclusive. Patents or trademarks, right holders have a monopoly over the intellectual property. Competition policy is in fact against monopoly and exclusiveness. These two seem to be contradictory but in fact have the same goal which is to stimulate innovation, protect intellectual property while encouraging fair play in the market and fight against the abuse of intellectual property.

According to Article 55 of the Anti-monopoly Law, the undertakings that exercise intellectual property rights according to laws, administrative regulations related to intellectual property rights, shall not be applied to this law; however, the undertakings that abuse the intellectual property rights

to eliminate or restrict competition, shall be applied to this law. Intellectual property rights, as any other rights, have a scope of application, and exceeding that scope would be an abuse. Anti-monopoly Law applies to the abuse of IPRS, not the legal exercise of them.

PART II: QUESTIONS REGARDING THE GOVERNMENT REPORT

Page 11 (Para 32)

From October 2010 to June 2011, the Chinese Government launched a special enforcement campaign nationwide aiming at cracking down on infringing IPRs and manufacturing and selling counterfeit commodities.

Does China have preliminary results of this campaign? Could China share the results?

Answer: China has scored positive achievements in the special enforcement campaign aiming at cracking down on infringing IPRs and manufacturing and selling counterfeit and substandard commodities during the period between October 2010 and June 2011. During the special law-enforcement campaign, administrative law enforcement authorities at all levels filed for investigation 156,000 cases of infringing IPRs and manufacturing and selling counterfeit and substandard commodities which involved RMB 3.43 billion, destroyed 9,135 hideouts and intensively regulated and improved 329 key areas and key markets. Public security organs cracked 16,000 cases involving RMB 13.11 billion and arrested 29,000 criminal suspects. Procuratorial organs approved the arresting of 5,336 criminal suspects in 2,895 cases, and initiated public prosecution on 2,176 cases. The Peoples Courts accepted 2,492 cases and concluded 1,985 cases.

How can right holders from third countries enroll in this campaign?

Answer: The Chinese Government welcomes IPR holders including foreign right holders to actively participate in the campaign aiming at cracking down on infringing IPRs and manufacturing and selling counterfeit and substandard commodities. A foreign right holder may file a report or complaint to relevant Chinese law enforcement authorities if he finds that his IPR is infringed upon in China. An IPR infringement involving copyright may be reported or complained to NCAC, an IPR infringement involving trademark right may be reported or complained to SAIC, and an IPR infringement involving patent right may be reported or complained to SIPO. Relevant Chinese law enforcement authorities will timely investigate and handle the case based on the relevant report or complaint, and investigate the criminal responsibility of the relevant responsible person through judicial means if crime is suspected to be involved in the case.

TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

Page 23 (Para 58)

China had signed 131 bilateral investment agreements by the end of December 2011. Between 2010 and 2011, China concluded bilateral investment agreements with Chad, Libya, Uzbekistan, and Congo (DRC).

Please identify relevant differences in Investor-State Dispute Settlement provisions in China's recent Bilateral Investment Agreements, as compared to BITs signed by China in earlier decades.

Answer: As compared to BITs signed by China in earlier decades, the recently-signed Bilateral Investment Agreements add provisions which require the investors to complete the administrative reconsideration procedure. This means if one of the contracting parties wants to refer the dispute to international arbitration, it has to complete the related administrative reconsideration procedure first; but this provision does not apply to investors who choose on their own will the judicial remedies of the host country of investment.

CANADA

Report by the Secretariat (WT/TPR/S/264)

Part II. Trade Policy Regime Framework and Objectives; (1) Institutional and Legal Framework; (i) Transparency: paragraph 4-5, page 11:

The Secretariat's report notes that since China's last Review it has made some small improvements in transparency.

1. Could China elaborate on its plans to systematically increase transparency?

Answer: China did not make commitment to soliciting public opinions for publicizing draft laws, regulations and rules. However, in order to promote scientific and democratic legislation and improve the quality of legislation, Chinese government has been trying to increase the transparency of legislation and enlarge public participation. Since 2008, in addition to the confidentiality required by law, all the draft administrative regulations are publicized on the website of legal affairs information of the Chinese government to solicit public opinion. In July 2011, China's State Council revised the "Provisional Method for Soliciting Public Opinions on the Draft of Laws and Regulations", and released the Notice on Soliciting Public Opinions on the Departmental Draft Rules on the Website of Legal Affairs Information of the Chinese Government". The notice required that, in addition to the exceptional conditions, administrative and departmental rules that are related to economy and trade shall open at least 30 days for soliciting public opinion. Since then, all administrative and departmental rules that are related to economy and trade are publicized on the website of legal affairs information of China for public opinions within 30 days, except some urgent and extraordinary conditions.

Part II. Trade Policy Regime; Framework and Objectives; (1) Institutional and Legal Framework; (i) Transparency: paragraph 8, page 12:

Canada notes throughout the Secretariat's report that subnational levels of government are increasingly being vested with the authority to enact foreign trade-related rules, regulations and policies. The Secretariat Report also notes a number of means through which China is making efforts to disclose trade related laws, rules, regulations and policies at both central and provincial levels. While Canada notes the steps China has taken to improve transparency since the last trade policy review, we are concerned that the variety of sources through which laws and regulations are being disclosed is making public consultation more cumbersome than necessary.

2. Could China explain what steps are being taken to pursue a coordinated approach at subnational levels for publishing foreign-trade related laws, regulations?

Answer: Since 2008, in addition to the confidentiality required by law, all the draft administrative regulations are publicized on the website of legal affairs information of the Chinese government to solicit public opinion. local governments with legislation right have solicited public opinions on local regulations and rules on their websites.

3. Could China clarify whether, to ensure consistent and transparent reporting of foreign-trade related laws and regulations, it intends for MOFCOMs China Foreign Trade and Economic Gazette to be a central repository for such publications at both the central and sub-national levels?

Answer: In June 2002, the General Office of the State Council issued the Official Reply to the Relevant Issues Concerning China's Implementation of the Transparency Clause of the Protocol of China's Accession to the WTO and designated China Foreign Trade and Economic Cooperation Gazette (hereinafter referred to as the "Gazette") as the official publication for collecting and publishing all the laws, regulations and other measures pertaining to or affecting trade in goods, trade in services and trade-related intellectual property rights or foreign exchange control, and also for sharing information with WTO and its members and for WTO to review China's trade policies. In October the same year, the former Ministry of Foreign Trade and Economic Cooperation established a liaison officer system for the Gazette together with the provinces, autonomous regions and municipalities directly under the Central Government and relevant departments under the State Council. In March 2006, the General Office of the State Council issued the "Circular on Further Improving Relevant Work Concerning China's Implementation of the Transparency Clause of the Protocol of China's Accession to the WTO (Guo Ban Fa [2006] No. 23) which reiterated that the Ministry of Commerce is responsible for editing and publishing the Gazette, and required all the regions and departments to send a copy to the Ministry when promulgating the above-mentioned laws, regulation and other measures, or soliciting opinions from the public for their drafts so that they can be published on the Gazette on time.

With the strong support of all regions and departments, the edition and distribution of the Gazette was carried out smoothly and as a result, the transparency obligations of China's accession to the WTO were well fulfilled. From its first issuance in 2002 to the end of May 2012, 762 issuances and 13 trial issues of the Gazette were published, with a total of 4,724 documents, including 1,805 documents of the Ministry of Commerce, 2,247 from other departments and 455 local regulations and measures (including 140 drafts for soliciting public opinions).

Part II. Trade Policy Regime; Framework and Objectives; (1) Institutional and Legal Framework; (ii) Central-provincial relationships: paragraph 19, page 14:

The Secretariat's report notes that the implementation and enforcement of national policies and measures is carried out mostly by counterpart agencies of local governments. It notes further that coordination between the national and local level remains weak. On the resolution of conflicts, the Report says that according to authorities, higher level agencies tend to use the argument local yields to central to solve conflicts.

4. *In cases of conflict, could China explain what enforcement mechanisms it uses to ensure that sub-national level governments comply with national policies?*
5. *In cases where the local level is not implementing or enforcing national policies and measures, what means of enforcement are available to FIEs?*

4-5 Answer: The Legislation Law of the PRC states that the Standing Committee of the NPC has the right to rescind local regulations in contradiction with the Constitution, laws and administrative regulations. The State Council has the right to change or rescind inappropriate local rules. China has set up record review system of laws and regulations, according to the Ordinance on the Archivist Filing of Regulations and Government Rules, the legal office of the State Council will review the regulations and rules submitted to the State Council for filing. Those that are in contradiction with administrative rules will be further submitted to the standing committee of the NPC for review; the legal office of the State Council will also coordinate differentiated regulations between local and department rules on a single item. The legal office will offer recommendation and submit it to the State Council for deliberation if consensus can't be achieved through coordination.

Part II. Trade Policy Regime Framework and Objectives; (3) Trade Agreements and Arrangements; (i) Participation in the World Trade Organization: paragraph 27, page 16:

Paragraph 27 of the Secretariat Report notes that some of China's WTO notifications, namely those on state-trading enterprises, are considerably out-dated or overdue.

6. *Could the delegation from China please provide an update to WTO Members on its plans to provide an updated notification on state trading enterprises in keeping with its obligations under Article XVII of the GATT?*

Answer: The state trading regime of China, including the products covered and the STR enterprises, did not have significant changes except that a couple of products were no longer subject to state trading administration. Besides, for a few products subject to state trading, some statistics required in the notification are not produced officially in China. In view of these, China did not submit its state trading notification. That said, if members expect China to submit the notification despite of the few changes, China will try to submit the notification as soon as possible.

Part II. Trade Policy Regime; Framework and Objectives; (4) Foreign Investment Regime; (i) Recent Developments in FDI Policy: paragraph 40, page 19:

The Secretariat Report notes a revised Catalogue for the Guidance of Foreign Investment Industries (2011 version).

7. *To achieve greater clarity, can China provide explanatory notes to define sectors listed in the Catalogue? Such definitions would benefit foreign investors as they determine whether their projects are prohibited, restricted, allowed or encouraged. As an example, it is not evident what IPR Service in the Encouraged Category refers to.*

Answer: We are coordinating competent agencies to assess the feasibility of providing such explanatory notes.

8. *Could China please explain what criteria it uses when it removes a sector from the encouraged category? Can China confirm that all investments made in the Encouraged Category of the 2007 Catalogue will continue to receive preferential treatment even if these sectors were removed from the Encouraged Category in the 2011 Catalogue? The predictability in China's investment environment is beneficial both to investing parties and recipient parties. Once an investment is made under the encouraged category, a category change for that sector should not lead to changes in the previously established preferential policies for a guaranteed, predictable period of time.*

Answer: An array of macro- and micro economic indication and criteria are used to come up with Scientific decisions on which sector should be removed from a particular category by taking into account the overall strategy and needs of own national economic development.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (i) Customs Procedures, Valuation, and Rules of Origin; (b) Pre-shipment inspection: paragraphs 10-11, page 25:

The Secretariat Report outlines China's pre-shipment inspection requirement for certain commodities, including those related to national security or with high value or complicated technology.

9. *Does China publish guidelines on the pre-shipment inspection process? If yes, where? If no, when does China intend to publish these guidelines?*

Answer: Pre-shipment inspection procedures for the import of used mechanical and electronic products shall be implemented in accordance with Administrative Measures for Inspection and Supervision of Imported Used Mechanical and Electrical Products (Decree No. 37 of 2002) and Procedural Requirements for Inspection and Supervision of Imported Used Mechanical and Electronic Products (Decree 53 of 2003) released by General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China. In accordance with the legal requirements of the country stationed and the company's business situations, various designated pre-shipment inspection agencies shall also draft specific processes, and announce them all on their web sites.

10. Could China explain what criteria are used to determine which commodities are related to national security, or which have high value or complicated technology?

Answer: The projects involving users personal and property safety, health, and environmental protection are the high-risk imported used mechanical and electrical products, which need pre-shipment inspection. High-value equipment refers to the equipment of the country's large-scale introduction project. If facts exist that the equipment does not meet the mandatory requirements of the Chinese national standards, it will cause huge economic losses to the enterprises. There is no such item of complicated technology in the implementing regulations of the Commodity Inspection Law.

11. In the case of pre-shipment inspection of high value or complicated technology, what measures are taken to ensure that sensitive intellectual property rights are not divulged as a result of this inspection?

Answer: Various overseas agencies that implement pre-shipment inspection bear the responsibility of confidentiality for the information involved in the inspection process, and in the relevant documents to the customer from all pre-shipment inspection agencies there will be relevant commitment to confidentiality. General Administration of Quality Supervision, Inspection and Quarantine will investigate and treat any action of information leakage. So far, all pre-shipment inspection agencies can fulfill their confidentiality obligations properly, and the General Administration of Quality Supervision, Inspection and Quarantine has not received any complaint about leakage of sensitive intellectual property caused by the implementation of pre-shipment inspection.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (ii) Tariffs: paragraph 18, page 27:

It is noted that the Customs Tariff Commission of the State Council sets interim tariff rates for specific products.

12. Could China please elaborate on the function of these interim tariffs, as well as under what conditions interim rates are applied?

Answer: Interim tariff rates are more favorable tariff rates that are implemented upon certain imported important raw materials for industrial and agricultural production and key components of mechanical and electrical products (but only confine to the imported goods from countries and regions that have signed reciprocal agreement on tariffs with China) and upon some of exported resource products on the basis of the beneficial import tariff rates and export tariff rates specified in Customs Tariff of Import and Export. These tariff rates are generally set annually, and are subject to restoration to statutory tariff rates at any time based on needs. Interim import tariff rates are the temporary tariff set in order to reduce the cost of inputs of industrial import, while interim export tariff rates are the temporary adjustments to the export tariff in order to protect exhaustible resources.

13. Could China indicate where a list of these interim rates is published?

Answer: Office of Customs Tariff Commission of the State Council and Department of Tariff of Ministry of Finance of the People's Republic of China compile and release on a regular basis each year Import and Export Tariff of the People's Republic of China, which is published and distributed by China Financial and Economic Publishing House.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (ii) Tariffs; (d) Tariff-rate quotas: paragraph 31, page 32:

It is noted that the process of quota allocation and re-allocation of China's MFN tariff-rate quotas is managed by the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM).

14. Could China please elaborate on the processes of quota allocation and re-allocation, especially as it pertains to state-traded goods?

Answer: Since China joined the WTO, Chinese Government has implemented management of agricultural tariff quotas and of state trading strictly in accordance with its commitments to WTO and relevant laws and regulations, has announced on schedule annual amounts of import tariff quotas of related agricultural products, its time of distribution and redistribution, its application conditions, handling procedures and others, has improved the utilization ratio of the quotas, and has timely notified relevant information to the WTO. The distribution and redistribution process of import tariff quotas of agricultural products (including state trading) is established in accordance with Interim Measures for the Administration of Import Tariff Quotas of Agricultural Products.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (iv) Import prohibitions and licensing: paragraph 43, page 35:

Paragraph 43 states that China applies automatic import licenses to monitor certain imports for statistical purposes.

15. Could China please provide greater clarity as to what is meant by for statistical purposes? How does China intend to use that information?

Answer: the purpose for China to implement the automatic import license administration is to strengthen the real-time monitoring of imports, to grasp the overall situation of imports and provide public information services for industries, which is in line with relevant WTO provisions. By counting the automatic import licenses applied for by companies, we can understand the overall situation of relevant imported goods earlier than customs statistics so that companies can make reasonable arrangements for imports and the imported goods can be delivered in a balanced and orderly manner and therefore avoid over-concentrated arrival of goods resulted from haphazard imports, as well as other unfavorable situation. When there is abnormal situation in importing of certain commodities, or when companies or government departments need to understand the import situation of certain goods earlier than customs statistics, we will consider the implementation of the automatic import license administration for the goods in question, or we will consider abolishment of the automatic import license administration.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (v) State Trading: paragraphs 44-45, page 35:

The Secretariat Report states that certain products (including sugar, grain, cotton, chemical fertilizer and crude oil) are subject to state-trading on imports into China to protect, among other things, a stable domestic supply.

16. Could China please clarify the requirements that must be met by non-State Trading Enterprises in order to import products subject to state trading?

Answer: As long as the products are consistent with Interim Measures for the Administration of Import Tariff Quotas of Agricultural Products and they meet the requirements of the detailed rules and regulations for application established in accordance with the Measures.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (vi) Contingency trade measures: paragraph 62, page 39:

It is noted that China has not yet applied Article 56 of the AD Regulations. Canada notes that questions have been raised in the WTO Committee on Anti-Dumping practices concerning Article 56.

17. Could China comment on the conformity of this provision with the Anti-dumping Agreement?

Answer: According to WTO Protocol, China has formulated and promulgated domestic law regarding trade remedies, established and optimized trade remedy legal system. China's trade remedy rules follow the material and procedural requirements stated in WTO Protocol to facilitate interested parties to participate in investigation procedure.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (vi) Contingency trade measures: paragraph 70, page 42:

The differences in China's anti-dumping and countervailing investigation procedures are noted.

18. As transparent, predictable rules are an important element of the multilateral trading system, would China indicate if there are any plans to more fully develop the countervailing procedures so that they are as developed as the anti-dumping investigation procedures, i.e. provide for new shipper reviews, interim reviews, price undertakings and judicial reviews?

Answer: China will amend and optimize relevant laws, regulations and department rules, and timely launch new countervailing investigation procedural provisions, as situation needs according to the requirements of countervailing investigation practices.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (vii) Standards and Other Technical Requirements: paragraphs 82 and 101-108, pages 45, 51:

Page 45, paragraph 82 of the Secretariat Report indicates that 387 notifications were sent out between 1 January 2009 and 31 October 2011, while on page 51, paragraph 102, China indicates that 376 notifications were sent out between 1 January 2009 and 31 October 2011.

19. Given the number and complex nature of China's SPS notifications, would China consider submitting all of its SPS notifications in English, and with English versions of all supporting documentation (e.g., copies of relevant legislation, information on relevant testing methodologies, etc...) to facilitate the provision of timely and fulsome comments?

Answer: China's SPS notification involves many departments, and a lot of information collection, analysis and collation. After the accession to the WTO, China established an inter-departmental working mechanism of SPS notification, and began a more effective operation. China, as a developing member, overcomes the constraints of capacity, resources and language to conscientiously fulfill the obligation of transparency. At this stage now the huge language barrier remains by submitting all of its SPS notifications with English versions of all supporting documentation, but we

will continue our efforts to constantly improve our SPS notification, to fulfill our commitments in the WTO.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (vii) Standards and other Technical Requirements; (a) Standards and Technical Regulations: paragraph 84, page 46:

The Secretariat Report outlines that trade, local and enterprise standards become null and void once a national standard enters into effect.

20. *Could China please explain:*

- a. *How those lower-levels of standards are repealed once the national standard comes into effect?*
- b. *How national standards are enforced over those at a lower level?*

A-B Answer: Once national standards come into effect, relevant trade and local standards shall be annulled after notices are published.

Canada notes that there are many standards in China at numerous levels (i.e. central government, sub-central, industry etc.) yet there does not seem to be one central portal to which industries can consult which contains all levels of standards. Canada has concerns that this practice makes it difficult for enterprises to know which standards must be followed. Further, many standards can only be obtained by hard copy while some cannot be obtained at all (particularly those related to security).

21. *Does China have plans to create one electronic portal that lists all standards that industries and companies must adhere to and that makes electronic copies of those standards available?*

Answer: The whole texts of all the security-related compulsory national standards can be found at the official website of SAC.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (vii) Standards and other Technical Requirements; (a) Standards and Technical Regulations: paragraph 85, page 46:

The secretariat report outlines the levels of standards in China. The report explains that if, for example, a national standard is not available, trade standards may be formulated. However, the trade standards will become null and void automatically after corresponding national standards enter into effect. The report goes on to state that where there are already national, trade or local standards, enterprises are encouraged to formulate and apply enterprise standards that are stricter than the corresponding standards.

22. *Could China please explain what is the basis for encouraging enterprises to formulate new, stricter standards if there are standards that already exist?*

Answer: Encouraging enterprises to formulate stricter standards aims at promoting technological advancement, improving product quality and achieving innovative development.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (vii) Standards and other Technical Requirements; (a) Standards and Technical Regulations: paragraph 86, page 46-47:

There are many categories for which standards are mandatory in China.

23. *Could China specify which products are important products that need to be controlled by the State?*

Answer: Details can be found in the Implementation Rules of Standardization.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (vii) Standards and other Technical Requirements; (a) Standards and Technical Regulations: paragraph 88, page 47:

The Secretariat Report outlines the process by which standards are developed in China. Once a standard is drafted, it is circulated to solicit comments and posted on the SAC website.

24. *Could China please explain:*

- c. *At what stage are the drafts circulated? For example, are the drafts circulated when the standard is almost finalized or as the standard is being developed?*
- d. *To whom is the draft circulated?*
- e. *For those drafts posted on the SAC website, how long is the comment period?*

c-d-e Answer: This stage is harmonized with the formulation procedure of international standards, which belongs to Stage CD, mainly referring to soliciting opinions from relevant working units in production, marketing, application, R&D, and testing. The normal period is two months.

In the same bullet, the report notes that for standards of public concern or other important standards, the drafts are posted on the SAC website for comment. Could China please explain what constitutes a standard of public concern or an important standard? Canada notes that posting all draft standards as they are being developed creates transparency that can better prepare industry to abide by Chinese standards.

25. *Does China have plans to post all standards and not just those it deems to be important or of public concern?*

Answer: SAC shall solicit opinions from relevant working units in production, marketing, application, R&D, and testing, but to put standards online before publication shall be decided by that particular industry involved.

The Secretariat Report explains that of the 489 technical committees in China, only 15% included representatives of foreign companies.

26. *Could China confirm that FIEs are welcome to participate in technical committees?*

Answer: SAC, in the spirit of openness and transparency, provides equal opportunities for Foreign Investment Enterprises (FIEs) to participate in formatting and revising standards. FIEs can apply to join in relevant standardization technical committees (TCs) in line, following related rules. Except TCs on national security and information security, etc. all legally registered FIEs can participate in relevant as members.

27. *Could China explain then why foreign participation on technical committees is so low? Canada believes that the highest quality of standards can be developed through the collaboration of experts, both domestic and international.*

Answer: The figure Canada mentioned is the ratio of FIEs as P members (formal members) in TCs. However, in fact, the ratio of FIEs as P members in TCs, SCs and SWGs is about 25%, and lots of FIE representative have participated via O membership (observers) and consultancy.

The ratio cited is the objective figure and no limitation is imposed by any government agency. FIEs participation relies on the development of that industry, the requirement and review by that TC, the willingness of FIE to join, and the conformity of application to become P member or other members. In a word, the ratio of 25% has proved that many FIEs have been participating substantively in China's standardization, though the participation varies because of differentiation in TCs, industries, FIE qualities. No single ratio can be cited to interpret that FIEs participation is low or high.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (vii) Standards and other Technical Requirements; (b) Product certification: paragraphs 93-98, pages 48-49:

Under the CCC system, only products tested, inspected and certified by Conformity Assessment Bodies (CAB) recognized by the Certification and Accreditation Administration of the People's Republic of China (CNCA) can be sold in China.

The process companies must follow in order to test and certify their products under the CCC system is lengthy, complicated and costly. This process can also lead to the duplication of work, since often the same product is already certified for sale in Canada by a Canadian certification body. China committed that it would not maintain multiple or duplicative conformity assessment procedures in its Protocol of Accession (paragraph 192).

28. Could China explain why it does not accredit foreign Conformity Assessment Bodies (CAB), as is common international practice?

Answer: According to the Regulations on Certification and Accreditation of PRC, products listed in the 3C Catalogue cannot be marketed, imported or used in other business activities if without 3C certificates. The Rules on Management of Compulsory Certification stipulate that, generally speaking, CCC Certification is issued within 90 days since acceptance.

29. Would the CNCA accredit foreign CABs to issue certificates of conformity for products subject to its Compulsory Product Certification System (CCC)?

f. If yes, what would be the process for a foreign lab to be accredited under the CNCA?

Answer: China abide by WTO/TBT Agreement and Regulations on Certification and Accreditation of PRC, and China is actively promoting and allowing mutual recognition in international product testing within the framework of multilateral or bilateral MRAs. As an IECEE-CB member, China recognizes CB testing certificate issued by other IECEE-CB members.

There are also concerns that submitting equipment to the CNCA for testing and certification constitutes a risk to the protection of intellectual property. This concern reflects the experience of foreign companies who allege confidentiality breaches in the Chinese agencies which hold intellectual property information.

30. Could China explain the steps used by certifiers to ensure intellectual property rights/proprietary information is safeguarded? /

Answer: Please refer to the website: www.sipo.gov.cn/

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (vii) Standards and other Technical Requirements; (b) Product certification: paragraph 97, page 49:

The Secretariat Report notes that the China Quality Certification Centre (CQC) has more than 200 designated laboratories in China and abroad.

31. *Could China please indicate where the CQCs abroad are located and what functions they carry out?*

Answer: Please refer to the website: www.aqsiq.gov.cn/

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (vii) Standards and Other Technical Requirements Section; (c) Sanitary and Phytosanitary Measures: paragraphs 99-110, pages 49-53:

32. *With respect to AQSIQ's "Provisions on the Administration of the Registration of Foreign Manufactures of Imported Foods", what are the PRC's intentions for implementation of these regulations? Will they be introduced one commodity at a time? If so, can the PRC share a schedule of which commodities will be affected and in what order?*

Answer: See below.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (vii) Standards and Other Technical Requirements: paragraphs 80, 93, 99, and 100, pages 45, 48-50:

33. *Given China's ongoing focus on enhancing the quality and safety of its domestic agricultural production and improving the laws and regulations on import product quality and safety, what measures is China taking to ensure that the measures and requirements to register foreign exporting manufacturers/facilities will be done in a timely and least trade-disruptive manner? Could China's regulatory bodies please provide a procedural document highlighting the steps required by CNCA in order for foreign food producers and manufacturers to register for export to China?*

32-33Answer: In order to protect health and safety of Chinese consumers, China regulates overseas manufacturers of imported food listed in The Catalogue of Administrative Measures for Registration of overseas Manufacturers of imported Food which has been issued by the Announcement No. 73 2012 of AQSIQ. China takes full consideration of the principles of trade facilitation, the current regulations of other countries and regions. Its implementation will have a sufficient transitional period. According to the Administrative Measures for Registration of Overseas Manufacturers of Imported Food, CNCA is responsible for implementing and supervising the registration of overseas manufacturers of imported food.

For more information about the registration procedure please refer to http://www.aqsiq.gov.cn/zwgk/jlgg/zjl/2011_1/201203/t20120330_212967.htm.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (viii) Government Procurement: paragraph 111, page 53:

Paragraph 111 notes that China objectives in procurement include the promotion of better governance.

34. *Has China considered, or does China invoke any procurement measures to support sustainable procurement, particularly environmental sustainable procurement?*

Answer: According to the Government Procurement Law of PRC, government procurement should be conducive to the accomplishment of environmental protection and other goals set by national economic and social development policies. Chinese government has come up with a series of policies which stipulate preferential or mandatory procurement of energy-saving and environment-friendly products.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (viii) Government Procurement: paragraph 113, page 53:

The Secretariat Report notes that government procurement data covers only procurement by government departments, institutions, and public organizations using fiscal funds for goods, construction and services listed in the Centralized Procurement Catalogue. However, this appears to only cover a very small amount of government procurement.

35. *Would China confirm whether projects regulated by the Bidding and Tendering Law such as transportation, construction, telecommunications, etc. are excluded from the Central Procurement Catalog? Can China provide any clarification on the value of procurement of goods and services that is not included in the Central Procurement Catalog?*

Answer: China confirms that, projects such as transportation, construction, telecommunications etc. are excluded from the Central Procurement Catalog. In 2010, the value of government procurement projects excluded from the Central Procurement Catalog reached RMB 110 billion.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (viii) Government Procurement: paragraph 114, page 54:

The Secretariat report notes that local governments account for 93% of the total value of government procurement.

36. *Could China clarify how 93% was calculated? Does China have any data available on the breakdown of procurement by local governments, for example by province, municipality or by goods, services, and construction services?*

Answer:

	2008	2009	2010
Total	599.09	741.32	842.2
Goods	255.92	301.06	317.63
Central government	32.36	30.23	30.82
Local governments	223.56	270.83	286.81
Construction, engineering services	297.84	385.84	453.66
Central government	19.25	23.41	17.59
Local governments	278.58	362.43	436.07
Other services	45.33	54.42	70.91
Central government	7.36	8.42	8.28
Local governments	37.97	46	62.63

37. *Given that the majority of government procurement occurs at sub-central levels of government, and recognizing that an essential element of transparency is notification of procurement opportunities, can China confirm whether it maintains a catalogue of procurement portals at provincial and local government levels?*

Answer: The Ministry of Finance has designated www.ccgp.gov.cn to release government procurement information. The provincial areas all have established local government procurement portal websites, which realize interconnection and intercommunication with www.ccgp.gov.cn.

38. *Does China have any plans to create a central portal for government procurement contracts at all levels of government?*

Answer: Please refer to the same answer above.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (viii) Government Procurement: paragraph 116, page 54:

Paragraph 116 notes that China does not consider procurement by SOEs as government procurement. However, footnote 191 on page 73, indicates that SOEs include wholly state-owned enterprises or state-controlled enterprises. Canada understands that if an SOE procures a good or service with a view to commercial resale or with a view for the use in the production of goods for commercial resale that such procurement would not be considered government procurement.

39. *Do Chinese SOEs engage in procurement for purposes other than commercial use or use in the production of goods for commercial resale? Are there any circumstances in which an SOE would be engaged in procurement for a government purpose?*

Answer: Chinese SOEs are independently operated market entities, and their procurements are of commercial purpose.

40. *Are there any laws, regulations or requirements imposed by the government on procurement of goods and service by SOEs?*

Answer: Chinese SOEs are governed by civil, and commercial legal systems, and their procurements, as those of other private enterprises, shall be governed by the Contract Law of the People's Republic of China.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (viii) Government Procurement: paragraphs 118-119, pages 54-55:

According to Article 10 of China's Government Procurement Law, the Government is required to procure domestic goods, projects and services. However, the Secretariat Report states that there are no provisions pertaining to local content or rules of origin to determine if a product is produced domestically.

41. *Could China please explain how it determines if a product is produced domestically*

Answer: Relevant authorities of the Chinese Government are, in accordance with Government Procurement Law of the People's Republic of China, formulating Administrative Measures for the Government Procurement of Domestic Products, to make provisions for the identification criteria of domestic products.

42. *What criteria are used?*

Answer: The public opinions have been solicited on the Administrative Measures for the Government Procurement of Domestic Products in May 2010, including the identification criteria of domestic

products. Currently, relevant authorities are making further amendments on such measures according to feedback opinions from all related parties.

43. *Paragraph 118 notes that exceptions to the domestic requirement are routinely made when the goods, products or services required are unavailable or unavailable on reasonable commercial terms. How does the government of China determine that goods, products or services are unavailable on reasonable commercial terms? What is the process for procuring entities who seek an exemption to this requirement? When processing an exemption, do authorities take into account the origin of goods to be procured?*

Answer: In accordance with relevant prevailing provisions, when the goods, products or services to be procured are unavailable or unavailable on reasonable commercial terms, experts shall be organized to demonstrate, and the demonstration opinions shall be reported to the financial department for approval. Public bidding is mostly applied when the government buys products from abroad, without distinction of origin.

Part III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Exports; (iii) Export Taxes: paragraph 139, page 58:

It is noted that China applies both statutory and interim export taxes, and that interim rates may be higher than statutory rates.

44. *Could China please explain under what condition the interim rate would be higher than the statutory rate?*

Footnote 133 notes that in Annex 6 of China's Protocol of Accession, the statutory export tax rates would be the maximum export tax levels.

45. *Could China please explain how applying an interim rate which is higher than the statutory export tax rate is consistent with Annex 6 of China's Protocol of Accession?*

44-45 Answer: The interim rate is formulated in accordance with Article 4 of the Regulations of the People's Republic of China on Import and Export Duties. Currently, considering resources, energy consumption and pollution, pig iron, among export products being taxed, has an interim rate higher than the statutory export tax rate. We believe this is in line with the rules of WTO.

Part III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Exports (vi) Export Prohibitions, Restrictions, and Licensing; (b) Export Quotas and Licensing: paragraph 150, page 60:

"For the remaining tariff lines (covering mainly substances depleting ozone, and some metals and their products), exporters must obtain a permit prior to applying for a licence. Export permits are granted by the Ministry of Environmental Protection (for ozone-depleting substances) and MOFCOM (for others). After the exporter obtains the permit, an export licence should be issued automatically by MOFCOM or its authorized agencies."

46. *Could China explain the export permit allocation process? Is it a matter of fulfilling paper work which, if adequately fulfilled by the demander leads automatically to the allocation of the permit, or is there is a quota of export permits that are allocated through a specific process?*

Answer: In accordance with the relevant requirements of the Montreal Protocol on Substances that Deplete the Ozone Layer, in order to better fulfill the Protocol, the Chinese government established in

2000 the licensing system where the import and export of ozone-depleting substances are managed, and Ministry of Environmental Protection, Ministry of Commerce and General Administration of Customs jointly established State Management Office of Import and Export of Ozone-Depleting Substances to conduct management of import and export of ozone depleting substances. The Administrative Measures on Import and Export of Ozone-Depleting Substances promulgated by the Chinese government provides for the application procedures and requirements for export of ozone-depleting substances. In accordance with the requirements of the Measures, the units engaged in export of ozone-depleting substances are required to submit written application materials to the Management Office of Import and Export, including application form, contract, relevant supporting materials and others. The application form includes the exporting country, importer, manufacturer (or user) of ozone-depleting substances, name of the substance, code number, quantity, purpose and other information. In receipt of the written application submitted by the applicant as required, the Import and Export Office shall examine and verify the written application in accordance with the requirements of the Protocol and of China's relevant provisions. When necessary, it may also take other measures to contact the country of the other side and obtain confirmation. Take advance notice procedures as an example, approval documents will not be issued before their national accreditation is got. Only under the circumstances that the contract is true, the requirements of the Protocol are met, the requirements of the country of the other side are met and others, can approval documents be issued. Upon receipt of the approval documents, the exporter shall exchange them at authorities of commerce into a license for which the authorities of commerce will no longer conduct an examination.

47. How does this process apply specifically to natural resources (i.e. raw materials which include minerals)?

Answer: There are many types of ozone-depleting substances. Same as the United States, the European Union, and other countries or regions, China will conduct adjustments for its export policy according to the requirements of the Protocol and the implementation progress of various countries, banning some substances, conducting license management to other substances, and quota management to still others. For example, since 2000, China has implemented quota license management to CFCs (chlorofluorocarbon substances).

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (ii) Subsidies and other government assistance: paragraph 193, page 69:

48. Given the large economic stimulus package that was implemented between 2008 and 2010, would China please elaborate on which sectors of the economy received support through these measures?

Answer: In response to the severe impact of the international financial crisis, in the second half of 2008, China implemented a proactive fiscal policy and moderately loose monetary policy, and promptly launched a package of plans to deal with the impact of global financial crisis, including the 4 trillion yuan investment program formed through the social capital driven by the 1.18 trillion yuan of central government investment within the two years. The investment of 4 trillion yuan is focused on a total of seven areas including affordable housing projects, rural livelihood projects and rural infrastructure, critical infrastructure, health care, education, culture and other social undertakings, energy conservation, emission reduction and ecological construction, independent innovation and industrial restructuring, as well as post-disaster restoration and reconstruction after Wenchuan earthquake. As of the end of 2010, the investment plan of 4 trillion yuan has been satisfactorily completed and it has made remarkable achievements.

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (ii) Subsidies and other government assistance: paragraph 191, page 69:

It is noted that China issues circulars describing government support available in line with China's medium- and long-term plans, often with respect to sector-specific industrial policies. Canada expresses concern at the lack of transparency with respect to these circulars and the support programs therein, particularly when the financial support is offered at the sub-central level.

49. What measures is China taking to enhance transparency with respect to these circulars?

Answer: To boost the development of emerging industries and high-tech industries, the Chinese government have formulated and implemented relevant policies, which have all been published, including Resolution on The Cultivation and Development of Strategic Emerging Industries and Notice on Policies for Further Encouragement for the Development of Software Industry and IC Industry, etc. So far relevant departments are studying specific policies and measures to be promulgated successively. And in accordance with the Chinese government, they will improve the releasing of policies, planning and projects to enhance transparency of the information of the government.

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (ii) Subsidies and other government assistance: paragraph 192, page 69:

Canada notes that China's last WTO subsidy notification was made in 2009 and covered programs from 2005-2008. Canada also notes that China has not notified any programs at the sub-central level.

50. What steps is China taking to ensure that all subsidies are notified to the WTO as per China's obligations?

Answer: Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work towards incorporating local subsidies in its future notifications. Although at this stage it is still difficult to propose a timetable, China will accelerate its efforts in this regard.

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (ii) Subsidies and Other Government Assistance; (c) Assistance to the Automotive Sector: paragraph 200, page 71:

The Secretariat Report notes that China has started to provide lump sum grants to consumers purchasing certain energy-saving cars.

51. Could China please confirm whether the promotion catalogue used to identify eligible new energy-saving or new-energy cars includes foreign as well as domestic models of cars?

Answer: Drawing on the promotion experience and practices of other countries, China has begun new-energy cars promotion in the public service sectors of 25 pilot cities and private sectors of 6 pilot cities. This promotion includes energy-saving cars under the Energy-saving Product People Benefiting Project Energy-saving Vehicles (PVs with a capacity lower than 1.6 liters) Promotion Catalogue and new-energy cars under the Recommended Models Catalogue for the Energy-saving and New-energy Vehicles Promotion Pilot Project. Currently, no imported models are listed in the

two catalogues due to the following reasons. First, most imported cars are with capacities larger than 1.6 liters, and foreign automobile enterprises have not applied to enter the catalogues; second, the technology of new-energy cars is not mature enough and the performance of such cars need to be improved during the pilot project. Imported new-energy cars are not included in the catalogues for now to ensure safety and reliability.

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (ii) Subsidies and other government assistance; (d) Assistance to small and medium-sized enterprises: paragraph 204, 71:

The report notes that enterprises making low profits receive preferential tax treatment.

52. Could China please explain why enterprises making low profits receive preferential tax treatment?

Answer: Small low-profits enterprises play an irreplaceable role in promoting economic growth, boosting employment, and improving scientific and technological innovation ability. Providing support for small and weak economic entities is generally adopted by countries across the world.

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (iv) Price controls: paragraphs 212-217, pages 72-73:

It is noted that China uses price controls to regulate the cost of certain goods and services.

53. Would China indicate what steps, if any, are being taken to reduce the influence of the central government in setting prices?

Answer: Only some special commodities prices are currently set by the government, mainly including few key goods closely related to economic growth and peoples life, few scarce commodities, naturally monopolized products, key public utilities and public-welfare services. Generally the prices can indicate product costs and the supply and demand in the market. What China is doing is much the same as other countries and does not violate the requirement of market economy. Meanwhile, the Chinese government is making efforts to accelerate pricing reform and environmental charging reform of natural resources including petroleum, power and natural gas, in the hope that a pricing mechanism can be set up to well indicate the markets supply and demand, resources scarceness and the damage costs of s to nature.

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (v) State-owned enterprises, private enterprises, and corporate governance; Table III.8 Number of enterprises, 2008-2010, page 74:

The Report includes data on the number of enterprises, including the number of Foreign Invested Enterprises (FIEs), in the years 2008, 2009 and 2010.

54. Taken together, the number of Chinese enterprises (SOEs, collectively-owned enterprises and domestic private enterprises) increased by 20% to 9.56 million between 2008 and 2010. During the same period, the total number of FIEs (equity joint ventures, contractual joint ventures and wholly foreign-owned enterprises) was effectively unchanged, rising from 288,069 to 288,088. How does China account for the stagnation in FIE growth at a time when China's real GDP was expanding at an annual rate of over 9%?

Answer: It's normal that some FIEs withdraw from Chinese market in light of market situation and their corporate strategies. According to MOFCOM data, newly established FIEs amounted to over

20,000 annually for 2008-2011. For 2011 it numbered 27,700. The value of FDI also grew during the period, up to 23.6%, 17.4% and 9.7% respectively for 2008, 2010, 2011. According to the World FDI report 2011 published by UNCTAD, China still remains as prime destination of FDI.

55. *The data also show a drop in the number of equity joint venture FIEs and contractual joint venture FIEs with corresponding increases in the number of wholly foreign-owned enterprises. Can China explain why foreign companies are turning away from equity and contractual joint ventures as a business model?*

Answer: Over the past 3 decades, FDI forms diversified from equity and contractual JV to wholly owned foreign FIEs, with the Improvement of China's investment climate and administration procedures, as a result, joint ventures is no longer the only choice when foreign investors are looking for business opportunities in China.

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (v) State-owned enterprises, private enterprises, and corporate governance: paragraph 224, page 75:

China recently committed to steadily increase the dividend payout ratio of SOEs and to increase the number of both central and provincial SOEs that pay dividends to the government. Canada notes that dividends paid by SOEs have been increased for a number of industries, but that financial services and telecommunications SOEs been excluded from the list of SOEs paying dividends.

56. *Could China please explain why?*

Answer: First, telecommunication SOEs are in the list of SOEs paying dividends. In fact, telecommunication SOEs have been included since 2007 when a pilot project of central SOEs operating budget was launched. Second, financial service SOEs in China carry out management procedures, determine the dividend payout ratio and pay the dividends according to the provisions of the Company Law of the PRC and other related laws and regulations. Therefore, financial service SOEs pay dividends to their stockholders, including the government. The statement preceding the question is not correct.

57. *Are there future plans to increase further and how are the percentages determined?*

Answer: According to the Circular of the Ministry of Finance on Relevant Issues Concerning the Operating Budget for State-Owned Capital of Central Enterprises (Cai Qi [2010] No. 392), the collection ratios of the income from state-owned capital of central enterprises shall be increased appropriately since 2011, and the specific collection ratios shall be implemented on the basis of the following four categories. Category 1 includes SOEs of resource-based industries and its ratio has been raised from 10% to 15%; category 2 includes SOEs of regular competitive industries and its ratio from 5% to 10%; category 3 includes defense enterprises, transformed research institutes and other enterprises newly put in the category, and its ratio is 5%; category 4 refers to policy-based enterprises which are exempt from paying dividends to the government. The percentage shall be increased gradually with differentiation among categories so as to reach a reasonable level.

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (v) State-owned enterprises, Private Enterprises, and Corporate Governance; (a) Reform of State-owned Enterprises: paragraph 226, page 75:

The secretariat's report notes that a joint report of the World Bank and the Development Research Center of China's State Council argues that the industries and sectors that must maintain SOE dominance in China are too broadly defined, and suggests limiting the range of industries and sectors.

The report also suggests that China define a clearer state-ownership policy regarding the disposal of SOEs non-tradeable shares, and private participation through SOE equity diversification.

58. *Does China intend to implement the suggestions of the World Bank and the Development Research Centre of China's State Council? If so, what are China's implementation plans?*

Answer: Since the reform and open-up, a basic multi-ownership economic system has been founded, with public ownership as its main body and other ownerships developing all together. To guide the healthy development of private investment, the State Council released in 2010 Several Opinions of the State Council on Encouraging and Guiding the Healthy Development of Private Investment (Guofa [2010] No. 13), which expanded the scope of private investment. In May 2012, Guiding Opinions on Actively Introducing Private Investment into the Reorganizing of State-Owned Enterprises (Guozifachanquan [2012] No. 80) was released, requiring central enterprises and local state-owned assets commissions to introduce private investment into the reorganizing of state-owned enterprises, develop mixed-ownership economy, set up modern property system, boost operation mechanism shift of state-owned enterprises and development mode, and gradually lower the proportion of state-owned assets in general competitive domains. Statistics indicate that by the end of 2011 state-owned shareholders average shareholding ratio in listed companies controlled by central enterprises dropped to 43%. From 2007 to 2011, there were 4,147 public transfer transactions of national property right conducted in property right market by central enterprises, with 69% sold to private or foreign transferees.

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (v) State-owned enterprises, private enterprises, and corporate governance; (b) Non-public enterprises, page 76:

The Report notes that in 2010 gross exports by Chinese private enterprises exceeded US\$450 billion and accounted for more than 30% of China's total exports.

59. *Can China provide data on the value of exports in each of the following enterprise categories: SOEs, collectively-owned enterprises, FIEs: equity joint ventures, FIEs: contractual joint ventures, FIEs: wholly foreign-owned enterprises and domestic private enterprises annually for 2008, 2009 and 2010?*

Answer:

Year	Categories	Export value (US\$ million)
2008	Total	1,430,693.07
	SOEs	257,479.24
	contractual joint ventures	18,337.82
	equity joint ventures	226,744.11
	wholly foreign-owned enterprises	545,410.78
	collectively-owned enterprises	54,663.81
	private enterprises	325,725.72
2009	Total	1,201,611.81
	SOEs	190,997.40
	Contractual joint ventures	14,585.24
	equity joint ventures	182,329.43
	wholly foreign-owned enterprises	475,159.43
	collectively-owned enterprises	40,520.70
	private enterprises	296,358.71
2010	Total	1,577,754.32
	SOEs	234,302.18
	Contractual joint ventures	16,470.20
	equity joint ventures	237,581.60
	wholly foreign-owned enterprises	608,177.02
	collectively-owned enterprises	49,847.76
	private enterprises	429,774.65

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (v) State-owned enterprises, private enterprises, and corporate governance; (b) Non-public sector enterprises: paragraph 231, page 76:

The State Councils 36-clauses includes measures to promote market access of private sectors, however the Secretariat Report does not have any details on these measures.

60. Could China elaborate on these measures and how they will affect FIEs?

Answer: In 2010, the State Council promulgated Several Opinions of the State Council on Encouraging and Guiding the Healthy Development of Private Investment (Guofa[2010] No. 13, i.e. new 36 articles). It applies to private investment excluding foreign investment. The investment access for foreign companies and foreign investors is subject to Catalogue of the Guidance for Foreign Investment Industries and other regulations.

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (v) State-owned Enterprises, Private Enterprises, and Corporate Governance, (a) Reform of State-owned Enterprises: paragraphs 225-226, pages 75-76:

61. Are there plans to narrow the scope of areas where SOE dominance is to be maintained?

Answer: In 2010, the State Council promulgated Several Opinions of the State Council on Encouraging and Guiding the Healthy Development of Private Investment (Guofa [2010] No. 13), further expanded the scope of private investment. Under the requirements in the regulation above and the Notice on the State Councils Approval and Distribution of National Development and Reform Commissions Opinions on Furthering Key Tasks in Economic System Reform 2012 (Guofa [2012] No. 12), relevant departments will study and formulate supportive measures and implementing regulations to encourage and guide private investment.

62. With respect to maintaining SOE dominance in certain areas, could China explain what is meant by pillar industries and what constitutes general competitive sectors?

Answer: State-owned capital concentrate on key industries and domains that involve national security, key infrastructures and supply of important public products and services.

63. Aside from better access to capital, could China outline the means used to promote national champions and the tools given to such SOEs.

Answer: China is devoted to creating a fair and competitive market for enterprises of different ownership. Enterprises are treated without discrimination by Chinese law. State-owned enterprises do not enjoy preferential treatment in loan, tax and supervision.

Report Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (v) State-owned enterprises, private enterprises, and corporate governance: paragraphs 220-227, pages 74-76:

Paragraphs 220 to 227 of the Secretariat report address China's state-owned enterprises.

64. Could China indicate how the Intellectual Property (IP) framework apply to state-owned enterprises (SOEs), whether IP laws apply in the same manner to SOEs as they do to private domestic and foreign enterprises, and whether there are any special rules governing how IP laws are applied to SOEs?

Answer: Yes, the IP framework equally applies to SOEs and private domestic and foreign firms. There are no special rules governing the IP laws apply to SOEs.

Report Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (vii) Intellectual Property Rights: paragraph 278, page 87:

The Secretariat report provides that "For 2011, the plan assigned 176 tasks including: the launch of a national specific campaign on intellectual property rights (IPR) protection, and revisions of the Trademark Law, the Copyright Law, and the Measures for Exercising Compulsory Licence as well as drafting Anti-Monopoly Guidelines for Abusive Use of Intellectual Property Rights."

65. *Could China indicate the outcome of the 176 tasks?*

Answer: 176 specific measures in seven aspects are specified in the Promotion Plan for the Implementation of the National Intellectual Property Strategy in 2011. According to the statistics, 28 joint conference members formulated and revised 38 IPR laws, regulations and regulatory documents, promulgated 101 relevant policy measures, carried out 43 IPR law enforcement actions and established 16 service platforms in 2011.

66. *We understand that China published revisions regarding the Measures Exercising compulsory licensing in March 2012. Could China indicate whether further revisions can be expected to be issued?*

Answer: China has just promulgated the Implementation Measures for Compulsory License of Patents on 15 March 2012. We do not have a plan to further revise the Measures at present.

Report Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (vii) Intellectual Property Rights: paragraph 278, page 87:

The Secretariat report indicates that a number of regulations and departmental rules on IPRs have been amended since China's previous Review.

67. *Could China confirm the latest status of the value and volume thresholds that must be met in order for commercial scale intellectual property rights violations to be subject to criminal procedures and penalties?*

Answer: Please refer to the Interpretations of the Supreme People's Court and the Supreme People's Procuratorate for Several Issues Concerning the Specific Application of Laws on Handling Criminal Cases of Intellectual Property Right Infringement, the Interpretations of the Supreme People's Court and the Supreme People's Procuratorate for Several Issues Concerning the Specific Application of Laws on Handling Criminal Cases of Intellectual Property Right Infringement (II) and the Opinions of the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security on Several Issues Concerning Application of Laws in Handling Criminal Cases of Intellectual Property Right Infringement.

Report Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (vii) Intellectual Property Rights: paragraph 279, page 87:

The Secretariat report indicates that political accountability for IPR violations is to be increased at the provincial level. A footnote further clarifies that Enforcement of IP rights in their regions will be taken into account for provincial officials performance.

68. *Can China provide further clarifications on what measures are in place or are being contemplated relating accountability of local and provincial IP offices and officials?*

Answer: In November 2011, the State Council issued the Opinions on Further Cracking Down on Infringements of Intellectual Property Rights and the Production and Sale of Counterfeit Commodities, explicitly specifying that a restraint and incentive mechanism for crackdown on IPR infringement and counterfeit products and a supervision and evaluation system should be established and improved. Crackdown on IPR infringement and counterfeit products is included in the governments performance evaluation system, which is supervised and inspected level by level. Areas where have outstanding infringement and counterfeit products cases should be urged to strengthen law enforcement and be ordered to rectify within a specified time limit. Heads of local government and responsible administrative authorities will be held accountable and punished for regional and systematic IPR infringement situations in the area. Up till now, China has not formulated special measures relating to accountability of local IPR offices and officials.

Report Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (vii) Intellectual Property Rights: paragraph 281, page 87:

The Secretariat report indicates that local IPR administrative offices are responsible for patent disputes.

69. *Can China indicate whether all local IPR offices have adopted a standardized set of rules, regulations and procedures for handling patent disputes?*

Answer: To regulate patent enforcement work and protect the legitimate rights and interests of patent right holders and the public, SIPO promulgated the Measures for Administrative Enforcement of Patents in December 2010.

70. *Can China clarify the role of local IPR offices in a given province relative to the role of the national and provincial IPR office? Is there a hierarchical relationship?*

Answer: Local IPR offices are established by local peoples governments to take charge of patent administration work in the region and there is no a hierarchical relationship between local IPR offices and SIPO. SIPO provides business guidance to all local IPR offices on handling patent infringement disputes, investigating and punishing patent counterfeits and mediating patent disputes, while provincial IPR offices provides business guidance for local IPR offices within the administrative region.

Report Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (vii) Intellectual Property Rights: paragraph 282, page 87:

The Secretariat Report indicates that the Patent laws Implementing Regulations (last amended in 2010) elaborates details on compulsory licenses.

71. *Could China elaborate on how its implementing regulations, which include a definition of insufficient exploitation as a basis for issuance of compulsory licenses, complies with Article 28, 30 and 31 of the TRIPS Agreement, particularly subparagraph (c) of Article 31?*

Answer: China's amendments to the provisions concerning compulsory licenses (including the definition of insufficient exploitation) of the Patent Law and its implementing regulations comply with the Paris Convention and the TRIPS Agreement.

As specified in Paragraph (4) of Article 5 A of the Paris Convention, a compulsory license may not be applied for on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent. Article 48 of the Chinese Patent Law conforms to the above provision in the Paris Convention.

As provided in Paragraph (c) of Article 31 of the TRIPS Agreement, the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive. Article 52 of the Chinese Patent Law provides where a compulsory license involves semiconductor technology, the use of such semiconductor technology shall be limited to the purpose of public interests and circumstances specified in Paragraph (2) of Article 48 hereof. This provision accords with Article 31 of the TRIPS Agreement.

Part III. Trade Policies and Practices by Measure; (3) Measures Directly Affecting Exports; (vii) Intellectual property rights: paragraph 292, page 90:

The Secretariat report states that Guidelines for Competition against Abusing Intellectual Property Rights are being drafted.

72. Could China please confirm when it expects its draft Guidelines for Competition against Abusing Intellectual Property Rights to be completed?

Answer: The State Administration for Industry and Commerce is leading the research and drafting of the Guidelines on the Enforcement of Anti-Monopoly Law in the Field of Intellectual Property Rights which is currently being further perfected.

73. Can China confirm whether the draft Guidelines will be provided for public consultations?

Answer: In the course of studying and drafting the Guidelines, the State Administration for Industry and Commerce studied and drew lessons from law enforcement practices and related guidelines and regulations published by foreign competition agencies, carried out research activities at home, and solicited opinions and suggestions from companies, law courts and government departments related to intellectual property for several times. In the course of further improvement, we will continue to solicit opinions from the relevant parties and we welcome your comments and suggestions in this regard.

74. Can China specify the scope of the concept of "abuse of intellectual property rights and describe what conditions would be required for a finding of abuse of an intellectual property right and under what circumstances a compulsory license would be granted?"

Answer: From a practical sense, competition elimination or restriction by abuse of intellectual property right, based on its nature and manifestation, may constitute one or more of the monopoly agreement, abuse of market dominance and concentration of business operators defined in the Antimonopoly Law. During the actual law enforcement, the analysis and ascertainment of competition elimination or restriction by abuse of intellectual property right shall be based upon a consideration of the nature of intellectual property right and basically follow the analysing and establishing method of monopoly agreement, abuse of market dominance and concentration of business operators. Business operators will not be directly established as to bear special obligations or presumed as to have a dominant position in relevant market just because of his possession of intellectual property right. Therefore, we have to not only take into consideration the behavior

characteristics but also do a comprehensive analysis of the effect this behavior has produced in eliminating or restricting competition.

75. *Have there been any complaints or cases submitted to the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of the State Administration for Industry and Commerce (SAIC) or other competition authority alleging abuse of an intellectual property right? If so, could China indicate what were the circumstances and what was the outcome?*

Answer: after the enactment of the "Anti-monopoly Law," the State Administration for Industry and Commerce carefully sorted out and analysed complaints and reports received, and guided the timely rectification of operators with monopolistic symptoms or tendencies, and conducted investigations, verifications and punishment of monopolistic cases in accordance with the law.

Part III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Exports; (vii) Intellectual Property Rights: paragraph 292, page 90:

76. *Could China please confirm when it expects its draft Guidelines for Competition against Abusing Intellectual Property Rights to be completed?*

Answer: It seems to China that here Canada is reproducing question 72.

77. *Can China confirm whether the draft Guidelines will be provided for public consultations?*

Answer: It seems to China that here Canada is reproducing question 73.

Part III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Exports; (vii) Intellectual Property Rights: paragraph 294, page 91:

Canada notes China's affirmation that no compulsory licenses have been granted under the patent law.

78. *Could China please confirm whether compulsory licenses have been issued under different legislation? If so, which ones?*

Answer: No compulsory license has been issued under Trademark Law and Anti-Unfair Competition Law.

Part III. Trade Policies and Practices by Measure; (3) Measures Directly Affecting Exports; (vii) Intellectual property rights: paragraph 294, page 91:

The Secretariat report outlines situations where compulsory licenses may be issued. Canada notes China's affirmation that no compulsory licenses have been granted under the patent law.

79. *Could China please clarify whether compulsory licenses have been issued under different legislation? If so, which ones?*

Answer: It seems to China that here Canada is reproducing question 78.

Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (vii) Intellectual Property Rights: paragraph 296, page 91:

The Secretariat report indicates that [l]ocal enforcement authorities are responsible for administration of trade marks at the local level.

80. *Can China explain what measures have been taken to harmonize the administration of trademarks across local trademark offices?*

Answer: The Trademark Office of SAIC harmonizes the administration of trademarks by promulgating regulatory documents, giving case replies and organizing law enforcement trainings as well as enhancing business guidance and information sharing through SAIC integrated business system.

Besides, local industrial and commercial authorities have actively strengthened horizontal exchanges and established seven regional networks for trademark administrative law enforcement cooperation covering 31 provinces. The operation of regional law enforcement cooperation networks are of significance in strengthening cross-region law enforcement information sharing, unifying law enforcement standards and promoting law enforcement exchanges and cooperation.

81. *Can China indicate whether local trademark offices issue or otherwise administer sub-national rules, regulations and procedures in addition to administering national laws and regulations, and whether these sub-national regulations are made public?*

Answer: Yes, and these regulations are also made public.

82. *Can China indicate whether all local trademark offices have adopted a standardized set of rules, regulations and procedures for registration of trademarks and handling trademark disputes, with similarly standardized contents from one local trademark office to the other?*

Answer: The SAIC Trademark Office and Trademark Appeal Board have established a complete set of procedure and system in respect of application acceptance and review concerning trademark registration and trademark disputes. Local administrations for industry and commerce do not formulate their own rules, but enforce relevant trademark laws and regulation.

Part III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Exports; (vii) Intellectual Property Rights: paragraph 298, page 91:

83. *Could China please clarify when it expects the revision to the Trademark law to be complete?*

Answer: The draft amendment of Trademark Law is under review by SCLAO. There is no specific time table for the promulgation of the amended law.

84. *Can China explain how, if at all, the revised Trademark law will address the issue of bad faith trademark filings?*

Answer When reviewing the draft revision of the Trademark Law, the Chinese Legislative Affairs Office of the State Council studied how to address the issue of bad faith trademark filings and considered the following preliminary countermeasures: (1) adding the provision that trademark filing and use shall follow the principle of good faith, and regarding violation of good faith principle as a reason for proposing a trademark opposition and applying for trademark invalidity; (2) adding the provision that an application by a person for the registration of a trademark used by others, with whom the applicant has contractual, business or other relations and knows the existence of the trademark, shall be denied. These measures will play a positive role in addressing the issue of bad faith trademark filings.

Report Part III. Trade Policies and Practices by Measure; (3) Measures Directly Affecting Production and Trade; (vii) Intellectual property rights: paragraph 298, page 91:

The secretariat report states that China's trademark law is being revised.

85. *Could China please confirm the status of its trade-mark reform, next expected steps and timeline for those steps?*

Answer: The question is not clear, please clarify.

86. *Can China explain how, if at all, the revised Trademark law will address the issue of bad faith trademark filings?*

Answer: It seems to China that here Canada is reproducing question 84.

Report Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (vii) Intellectual Property Rights: paragraph 301, page 92:

The Secretariat report notes that the 2003 "Rules on Recognition of and Protection over Well-Known Brands" defines well-known brands as trademarks that are widely known and enjoy a high reputation among the relevant public in China; Canada notes that a similar definition is found in the "Interpretations of the Supreme People's Court on Several Issues Concerning the Application of Law to the Trial of Cases of Civil Disputes over the Protection of Famous Trademarks".

87. *Can China indicate what the threshold is for a brand to be deemed widely known and to enjoy a high reputation? Can China indicate how this relates to what is provided for in the TRIPS Agreement and the Paris Convention?*

Answer: Article 14 of the current Chinese Trademark Law explicitly provides factors to be taken into account when recognizing well-known trademarks. The Provisions for the Determination and Protection of Well-known Trademarks issued by SAIC give detailed provisions on the above factors and standards and specify the evidence materials for proving a well-known trademark. Please refer to relevant regulations for details. The Paris Convention stipulates recognition and protection of well-known trademarks, but does not mention recognition standards or elements of well-known trademarks. Article 16 of the TRIPS Agreement provides that in determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark. Relevant provisions specified in the Chinese Trademark Law and the Provisions for the Determination and Protection of Well-known Trademarks embody principles provided in the Paris Convention and the TRIPS Agreement.

88. *Can well-known brand or well-known mark status be attained in China if the relevant goods and services are not sold in China?*

Answer: Chinese Trademark Law provides factors to be taken into account for the protection and recognition of well-known trademarks. One important factor to consider a trademark is well-known or not is the use of the trademark on relevant goods and services. As provided in Implementing Regulations of the Trademark Law, the use of trademarks include the use of trademarks on goods, packages or containers thereof and commodity trading instruments, or use of trademarks in advertisements, exhibitions and other commercial activities.

Report Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (vii) Intellectual property rights: paragraph 303, page 92.

The Secretariat Report notes that there is no time limit within which the Trademark Review and Adjudication Board must make its decision.

89. *Does China intend to institute a time limit for Trademark Review and Adjudication Board appeals? If not, could China please provide a rationale for not doing so?*

Answer: The current time period for trademark review and dispute settlement is around 20 months in China. In recent years, in order to reach this goal, the Trademark Review and Adjudication Board has adopted a series of measures to optimize case hearing procedures, improve automation level, expand the team of trademark reviews, scientifically quantize target tasks and reasonably allocate existing human resources so as to increase the number of case reviews and completions. China will be devoted to consolidating and further shortening review time. However, the number of trademark review applications keeps increasing year by year along with the increase of trademark applications, so it is difficult to set a time limit for trademark review.

Part III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Exports; (vii) Intellectual Property Rights: paragraph 303, page 92:

The Secretariat Report notes that there is no time limit within which the Trademark Review and Adjudication Board must make its decision. This can cause uncertainty for companies whose trademarks are in jeopardy.

90. *Does China intend to institute a time limit for Trademark Review and Adjudication Board appeals?*

Answer: Again, is Canada reproducing question 89?

91. *If not, could China please provide a rationale for not doing so?*

Answer: Here Canada is reproducing question 89.

Report Part III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (vii) Intellectual Property Rights: Copyright paragraph 312, page 93:

The Secretariat report indicates that copyright is administered by local offices.

92. *Can China indicate whether local copyright offices issue or otherwise administer sub-national rules, regulations and procedures in addition to administering national laws and regulations, and whether these regulations are made public?*

Answer: The peoples governments of provinces, autonomous regions, municipalities directly under central government, and relatively large municipalities may formulate local government rules in accordance with laws, administrative regulations and local regulations of provinces, autonomous regions and municipalities directly under the central government. Local copyright offices may not issue sub-national rules, but shall enforce local regulations and rules. All local government rules are made public.

93. *Can China indicate whether all local copyright offices have adopted a standardized set of rules, regulations and procedures, with similarly standardized contents from one local copyright office to the other?*

Answer: Besides observing Copyright Law and relevant administrative regulations and departmental rules, local copyright offices should also observe local regulations and local government rules in their copyright administration and enforcement work.

Part III. Trade Policies and Practices by Measure, (3) Measures Affecting Production and Trade, (vii) Intellectual Property Rights, paragraph 315, page 94:

The Secretariat report indicates that a verification campaign on genuine software for government agencies was launched in 2010 to consolidate the achievement from the software legalization programme for government agencies between 2001 and 2005.

94. *Can China please provide more detail about what is involved with the verification campaign, and what actions will be taken as a consequence to ensure government agencies are using genuine software?*

Answer: Since 2010, the Chinese Government has advanced a verification campaign on genuine software for government agencies and scored positive achievements. 135 central and state agencies finished verification campaign on genuine software before the end of May 2011 as scheduled and purchased 91,800 sets (licenses) of operating systems, office software and antivirus software involving an amount of RMB 77.23 million. As of 30 April 2012, 11 provinces (autonomous regions and municipalities directly under the Central Government), namely Beijing, Shanghai, Chongqing, Shanxi, Jiangsu, Zhejiang, Anhui, Jiangxi, Guangxi, Shaanxi and Xinjiang, already finished tasks of the verification campaign on genuine software for government agencies. In January 2012, the State Council approved the establishment of an inter-ministerial joint conference system for advancing genuine software use. With 15 members, the system aims to advance the use of genuine software by government agencies and enterprises in an all-round manner.

Part III. Trade Policies and Practices by Measure; (3) Measures Directly Affecting Production and Trade; (vii) Intellectual property rights: paragraph 320, page 95:

The Secretariat report indicates that undisclosed information and trade secrets are protected by, *inter alia*, the Criminal Law, the Anti-Unfair Competition Law, the Labour Law, and regulations issued in accordance with these laws.

95. *Can China indicate whether there are authorities involved in the enforcement of trade secret rules other than the SAIC?*

Answer: According to Article 3 and 10 of the Anti-Unfair Competition Law, local administrations for industry and commerce of county level and above also have authority to supervise and investigate trade secret cases.

96. *Can China indicate whether it has legislation to criminalize economic espionage?*

Answer: Article 219 of the Criminal Law of the People's Republic of China and Article 7 of the Interpretations of the Supreme People's Court and the Supreme People's Procuratorate for Several Issues Concerning the Specific Application of Laws on Handling Criminal Cases of Intellectual Property Right Infringement stipulate explicit provisions on punishments against trade secret infringements.

97. *Can China indicate what type of information is protected under trade secrets law and what is the nature of the protection for undisclosed information provided for under each of the criminal law and the unfair competition law?*

Answer: According to Article 10 of the Law of the People's Republic of China on Countering Unfair Competition, trade secrets refer to technical information and business information with practical applicability which may bring economic benefits to the right holder and is unknown to the public and kept secret by the right holder with protective measures. Therefore, two types of information are protected by trade secret laws in China, namely technical information and business operation information.

TRIPS Agreement identifies undisclosed information as an independent category of IPRs and provides three conditions for the protection of undisclosed information. Trade secrets rather than undisclosed information are adopted in the Anti-Unfair Competition Law. Provisions on trade secrets in Chinese laws are consistent with relevant provisions in the TRIPS Agreement in essence. Article 217 of the Criminal Law adopted the same provision on trade secret as the Anti-Unfair Competition Law.

98. *Can China clarify how trade secrets and undisclosed information rights are enforced and have there been any cases either before an administrative body, a court or other adjudicative body regarding alleged violations of the protections for undisclosed information? If so, could China indicate how many cases there have been under each law, what were the issues raised and what was the outcome?*

Answer: China protects trade secrets and undisclosed information according to Anti-Unfair Competition Law and Criminal Law. In 2011, Chinese courts accepted 50 new criminal cases involving trade secret, concluded 49 cases and convicted 63 criminals.

Part III. Trade Policies and Practices by Measure, (3) Measures Affecting Production and Trade, (vii) Intellectual Property Rights, paragraph 323, page 96:

The Secretariat report states that Customs is in charge of enforcement of intellectual property rights at the border and that revised Regulations on Customs Protection of Intellectual Property entered into effect on 1 April 2010.

99. *Can China indicate whether goods imported and exported to free trade zones are covered by customs enforcement?*

Answer: If the goods in the free trade zones are imported or exported goods, they are covered by customs enforcement according to Article 2 of the Regulations on Customs Protection of Intellectual Property Rights.

100. *Can China indicate whether Customs enforcement is applicable to intellectual property rights other than copyright, trademark and patents?*

Answer: The Olympic symbols and World Expo symbols are also protected by Chinese customs.

Part III. Trade Policies and Practices by Measure: (3) Measures Affecting Production and Trade; (vii) Intellectual Property Rights: paragraph 324, page 96:

It is noted from the Secretariat's report that intellectual property right-holders may register their rights in Customs records for border protection and that subject to approval, each registration is valid for ten years and renewable.

101. *Could China explain the process to approve such a registration?*

Answer: Please refer to Chapter II of the Regulations on Customs Protection of Intellectual Property Rights.

102. Could China explain the criteria applied to determine whether such registration is approved?

Answer: Please refer to Chapter II of the Regulations on Customs Protection of Intellectual Property Rights.

Part III. Trade Policies and Practices by Measure: (3) Measures Affecting Production and Trade; (vii) Intellectual Property Rights: paragraph 324, page 96:

103. It is noted from the Secretariat's report that counterfeit goods seized by Customs may not enter commercial channels by simple removal of trade marks from the counterfeit goods, and that Customs must destroy the goods if the infringing features cannot be removed.

Answer: Please refer to Chapter II of the Regulations on Customs Protection of Intellectual Property Rights.

104. Could China explain what happens to counterfeit goods where the infringing features can and are removed?

Answer: Please refer to Item 1 of Article 27 of the Regulations on Customs Protection of Intellectual Property Rights.

105. Could China explain, in cases where suspected counterfeit goods are detained, whether simple removal of a mark can lead to the exportation of those goods?

Answer: Please refer to Chapter II of the Regulations on Customs Protection of Intellectual Property Rights.

Part III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Exports; (vii) Intellectual Property Rights: paragraph 329, page 97:

Canada notes that China has recently committed to making the Special Campaign on IPR enforcement permanent and be overseen by the State Council.

106. Can China explain whether the Special Campaign on IPR includes measures to ensure coordination of enforcement efforts at the national and provincial levels? If so, what specific actions has the national government taken in order to ensure coordination and implementation at the sub-national level?

Answer: In October 2010, the State Council issued and distributed the Scheme for Special Campaign of Cracking down on Infringing Intellectual Property Rights and Manufacturing and Selling Counterfeit Commodities. A nationwide special campaign aimed at cracking down on infringing IPRs and manufacturing and selling counterfeit commodities was carried out from October 2010 to June 2011. The national leading group office of the special campaign established with relevant authorities a communication and coordination mechanism for law enforcement cooperation. The local peoples governments developed specific implementation schemes to carry out special campaigns for IPR protection. Besides, the leading group office also provides guidance to local authorities by prompt sharing of statistics and information.

Part III. Trade Policies and Practices by Measure; (3) Measures Directly Affecting Production and Trade; (vii) Intellectual property rights: paragraph 329, page 97:

Canada notes that China has recently committed to making the Special Campaign on IPR enforcement permanent and be overseen by the State Council.

107. Can China explain what concrete actions will be taken to ensure coordination of enforcement efforts at the national and provincial levels?

Answer: How does question 107 relate to question 106? It seems to China that question 106 is reproduced here.

108. Does China have results from border enforcement (by import/export, type of IPR and foreign/domestic ownership)?

Answer: In 2011, Chinese customs detained 103 million pieces of commodities in 18,200 batches suspected of IPR infringement, in which 100 million pieces are export commodities, accounting for 97% of all detained goods infringing IPR. The results were highly recognized by the international community. Global Anti-Counterfeiting Group awarded Chinese customs the Global Anti-Counterfeiting Awards 2011-Public Sector Organization Award, the only award of its kind in 2011.

109. Could China provide the current outcomes of the "Vice-Premier's role of overseeing IPR enforcement"?

Answer: China has scored positive achievements in the special enforcement campaign aiming at cracking down on infringing IPRs and manufacturing and selling counterfeit and substandard commodities during the period between October 2010 and June 2011. During the special law-enforcement campaign, administrative law enforcement authorities at all levels filed for investigation 156,000 cases of infringing IPRs and manufacturing and selling counterfeit and substandard commodities which involved RMB 3.43 billion, destroyed 9,135 hideouts and intensively regulated and improved 329 key areas and key markets. Public security organs cracked 16,000 cases involving RMB 13.11 billion and arrested 29,000 criminal suspects. Procuratorates approved the arresting of 5,336 criminal suspects in 2,895 cases, and initiated public prosecution on 2,176 cases. The Peoples Courts accepted 2,492 cases and concluded 1,985 cases. After the special campaign, market orders and operational environment have been significantly improved. According to preliminary statistics, during January-April 2012, the administrative law enforcement authorities nationwide investigated 78,773 cases of IPR infringement and manufacturing and selling of counterfeit commodities, concluded 44,371 cases and transferred 1,016 suspected criminal cases to public security organs. Public security organs cracked 7,140 cases of IPR infringement and manufacturing and selling of counterfeit commodities and arrested 9,305 criminal suspects. Procuratorial organs approved arresting 3,289 criminal suspects in 1,743 cases, and filed lawsuit against 2,516 cases and 4,870 suspects. Courts accepted 2,586 new cases of IPR infringement and manufacturing and selling of counterfeit commodities, concluded 2,021 cases and gave an effective judgment for 3,170 suspects.

Part III. Trade Policies and Practices by Measure, (3) Measures Affecting Production and Trade, (vii) Intellectual Property Rights, paragraph 330, page 97:

The Secretariat report states that... In January 2011, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Justice jointly issued the Circular of Opinions on Some Issues Concerning the Application of Law in the Trial of Criminal Cases Involving IPRs Infringement.

110. Could China clarify what is the threshold of criminal enforcement and what is the frequency of domestic versus foreign IP rights being enforced?

Answer: Please refer to the Interpretations of the Supreme People's Court and the Supreme People's Procuratorate for Several Issues Concerning the Specific Application of Laws on Handling Criminal Cases of Intellectual Property Right Infringement, the Interpretations of the Supreme People's Court and the Supreme People's Procuratorate for Several Issues Concerning the Specific Application of Laws on Handling Criminal Cases of Intellectual Property Right Infringement (II) and the Opinions of the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security on Several Issues Concerning Application of Laws in Handling Criminal Cases of Intellectual Property Right Infringement.

Part IV. Trade Policies by Sector; (1) Agriculture; (ii) Agriculture Policies; paragraph 13, page 102-103:

Canada understands that land rights were reformed in China in 2007 under the Property Rights Law. Property rights under the law are similar to rights under private ownership however land may not be sold, or sublet, or used as collateral for loans. In October 2008, the 17th Party Congress approved the Decision on Certain Issues Concerning the Advancement of Rural Reform and Development which indicated that land policy would change, giving greater rights to holders to transfer, rent or trade land. Such reforms would give greater autonomy to farmers, reduce regulatory burdens, and foster a more competitive agricultural sector.

111. Can China please give an update on the status of these land policy reforms?

Answer: Since 2009, the Chinese government continues to stabilize and improve the basic management systems in rural areas, to implement and maintain the farmers' interests of land contract according to law, to establish and improve the transfer market for the right of rural land contractual management, to develop various forms of business of moderate scale. On 1 January 2010 Law on Mediation and Arbitration of Disputes concerning Land Contract in Rural Areas was implemented. In 2010, China's relevant government departments promulgated Rules on Arbitration of Disputes concerning Land Contract in Rural Areas, Model Bylaws for Rural Land Contracting Arbitral Commissions and other complementary regulations. At the moment, the legal system of rural land contracting with Law on Land Contract in Rural Areas, Law on Mediation and Arbitration of Disputes concerning Land Contract in Rural Areas as the mainstay has basically taken shape.

Part IV. Trade Policies by Sector; (1) Agriculture; (ii) Agriculture Policies; (a) Import Measures; paragraph 18, page 103:

The Secretariat Report indicates that quotas are allocated based on the volumes requested, previous imports, production capacity, or on a first-come, first-serve basis. State-trading enterprises dominate access to tariff quota allocations through: 90% of the wheat quota; 60% of the maize quota; 50% of the rice quota; 70% of the sugar quota and, 33% of the cotton quota.

112. How does China allocate the quota for wheat?

Answer: Wheat quota is allocated in accordance with the Interim Measures of Import Tariff Quotas of Agricultural Products.

113. Does China have plans to reform the allocation system in order to allow more access to quota for private-owned enterprises?

Answer: Ever since its accession to the WTO, China has formulated or modified its laws and regulations including Foreign Trade Law of the People's Republic of China, Regulation of the People's Republic of China on the Administration of the Import and Export of Goods, and Interim Measures for the Administration of Import Tariff Quotas of Agricultural Products, etc. The policies are open and transparent. China's import and export regime on agricultural products is consistent with its accession commitment and in line with the relevant laws and regulations. China has notified in a timely manner the relevant information on state-trading enterprises and required the enterprises operate in accordance with laws and regulations. The outcome proves that the laws and regulations are implemented effectively. Therefore China has no plan to reform the system at present.

Part IV. Trade Policies by Sector; (1) Agriculture; (ii) Agriculture Policies; (a) Import Measures; paragraph 19, page 103-104:

China's most recent notification for in-quota imports for rice, wheat, and maize have been low compared to the quota quantity. In response to questions in the Committee on Agriculture, China indicated that it did not intend to review its methods for allocating quotas, and the low level of imports relative to the size of the tariff quota was due to high levels of domestic production coupled with high international prices. Canada regrets China's decision to not review its methods for allocating quota.

114. Will China reconsider the method for allocating quota, specifically with regard to wheat?

Answer: China has no plan to change its method for allocating quotas.

Part IV. Trade Policies by Sectors: (1) Agriculture; (ii) Agriculture policies; (a) Import measures; paragraphs 18-19, page 103:

It is noted that China's tariff rate quotas are mostly being allocated to state-trading enterprises and that they tend to be significantly under-filled. It is further noted that China attributes quota underutilization to market conditions, and that it does not intend to review methods for allocating quotas.

115. Could China describe the measures it has put in place as part of the administration regimes of its TRQs to ensure their maximum possible utilization?

Answer: There are specific provisions in the Interim Measures for the Administration of Import Tariff Quotas of Agricultural Products to ensure the maximum possible utilization of TRQs. Please refer to the Interim Measures for details.

Part IV. Trade Policies by Sector; (1) Agriculture; (ii) Agriculture Policies; (c) Domestic Support; paragraph 23, page 104:

The Secretariat Report notes that China's direct payments are based on the area of land contracted by the farm household, and are decoupled from production and prices according to the notification to the WTO Committee on Agriculture.

116. Could China provide information on the defined and fixed period that is used to form the payment basis for the contracted area of land?

117. Could China confirm whether producers who do not have contracted area of land in the base period, but currently are farming, have received direct payments?

118. Could China provide details on specific criteria that local authorities would base their decision on which areas under their jurisdiction may receive payments? Would such criteria exclude any producers who are currently farming?

119. Could China provide details on specific criteria that local authorities would use to base their decision on varying subsidy level from one locality to another? Would such criteria depend on factors of production such as land?

116-119 Answer: Approved by the State Council, each province decides its own cashing format of direct grain subsidy and comprehensive subsidy for means of agricultural production. Both subsidies are targeted at grain producers. Currently, the major criterion that local authorities use is land size, including the size of land that is taxed, the size of land that is actually used to produce grain and the land size of the second round contract. Other criteria such as time period and subsidy recipient are related to the cashing format and also decided by provinces themselves. When the central government considers the subsidy scale of each province, it shows policy preference for granary provinces.

Part IV. Trade Policies by Sector; (1) Agriculture; (ii) Agriculture Policies; (c) Domestic Support: paragraph 24, page 104:

The Secretariat Report notes that China's pilot insurance scheme was introduced in 2007 and it had expanded to 28 provinces by end of 2010.

120. Does China intend to expand the insurance scheme nation-wide and to other products?

Answer: Since 2007, China's total accumulated premium income from agricultural insurance in five years has been over 60 billion yuan, an average annual growth rate of 85%. In 2011, China's premium income from agricultural insurance reached 17.38 billion yuan, an increase of 28.1% on year-on-year basis, covering 652.3 billion yuan for agricultural risk.

Since 2011, China's agriculture insurance coverage continues to expand. In 2012, the central government incorporated the sugar crop into the premium subsidies range, up to 15 varieties financed by the central budget.

121. Could China indicate what the current program participation rate is?

Answer: Since 2011, China's agriculture insurance coverage continues to expand. In 2012, the central government incorporated the sugar crop into the premium subsidies range, up to 15 varieties financed by the central budget, covering 168,600,300 farming households.

Part IV. Trade Policies by Sector; (1) Agriculture; (ii) Agriculture Policies; (c) Domestic Support: paragraph 27, page 105:

This paragraph states Although the support is provided through lower priced inputs in some areas, it has been reported that there is a growing tendency to pay subsidies directly to farmers without monitoring.

122. Could China explain precisely what is or is not being monitored? In addition, what is the share of support provided through lower price inputs versus the share of support paid directly to farmers?

Answer: It is not being monitored whether farmers spend the direct payment from the government buying seeds or not. At present, most seeds subsidy funds are granted to farmers directly.

Part IV. Trade Policies by Sector; (1) Agriculture; (ii) Agriculture Policies; (c) Domestic Support: paragraph 31, page 106:

This paragraph states that... Although the prices have been rising each year, the purchase price for rice has usually been below the world market price. According to the authorities, under ordinary circumstances, farmers sell grains at market prices; it is only when the prices of rice and wheat in the principal growing areas fall below the minimum purchase prices that farmers may sell grains at the minimum purchase prices to enterprises designated by the State.

123. Historically, what has been the relationship between this market price and the minimum purchase price?

Answer: In May 2004, the Chinese Government promulgated the Administrative Regulation on Cereal Circulation which specifies that... To ensure market supply and to protect the interests of grain farmers, the State Council can decide to apply the minimum purchase prices to key grain varieties in shortage in the principal growing areas when major changes occur in the grain supply.

The purchase price is usually determined by the market. The Government exercise macroeconomic regulation and control in addition to the full function of the market mechanism. The minimum purchase price is carefully worked out on factors of production costs of farmers, the supply and demand in the market, the income changes of rural and urban residents, price levels and macroeconomic situation. When the market price is higher than the minimum purchase price, farmers sell their grains at the market price. When it becomes lower than the minimum purchase price, the latter will be initiated. The implementing agency will buy grains from farmers at the minimum purchase price. Farmers can decide whether to sell their grains or not in line with their own needs.

124. What are the principal growing areas that determine the market price?

Answer: The Administrative Regulation on Cereal Circulation provides that: grain prices are mainly determined by the market supply and demand. The State will strengthen its administration of cereal circulation and improve its macroeconomic regulation and control capacity. The market price is not determined by the principal growing areas. It is based on two factors: the supply and demand and costs of production. Other natural and social factors that affect cereal grains production may also affect the cereal price. They include the fluctuation of international price, the break of natural disasters and the macroeconomic measures on cereal, etc.

125. If the market price falls below the minimum purchase price, may farmers choose to sell to buyers other than enterprises designated by the state?

Answer: Farmers could sell their grain directly to all qualified grain purchasers. The implementation of the minimum purchase policy for grain in some of the main producing areas is mainly to better protect the interests of grain farmers.

Part IV. Trade Policies by Sector; (1) Agriculture; (ii) Agriculture Policies; (c) Domestic Support: paragraph 33, page 106:

This paragraph states that In order to reduce demand and prices for grains, the State decided in November 2010 to restrict auctions to flour millers, feed millers, and livestock producers.

126. Exactly what is sold at weekly auctions: ad hoc stockholdings, regular purchases of grain, or both?

Answer: Currently, weekly auction sales of food through the food wholesale market include both food sold at the minimum purchase price and food from national interim storage. In addition, some local governments and enterprises sometimes will resort to wholesale market in taking auctions or purchasing some food.

127. How do other buyers other than flour millers, feed millers, and livestock producers purchase grain?

Answer: At the moment other buyers can purchase grain by means of direct purchases, trade purchases, etc. They can also participate in commercial auction activities between enterprises organized by wholesale markets.

Part IV. Trade Policies by Sector; (1) Agriculture; (ii) Agriculture Policies; (c) Domestic Support: paragraph 31-33, page 106:

The report paints the following picture: each year the National Development and Reform Commission (NDRC) sets a minimum purchase price for wheat. When the market price is below the minimum purchase price, farmers sell wheat to designated enterprises at the minimum purchase price. Purchasing and stockpiling takes place on an *ad hoc* basis. The State Administration of Grain purchases wheat for the national grain reserves. Could China please explain:

128. Are the designated enterprises mentioned in paragraph 31 the same as those listed in paragraph 32, i.e., Sinograin, COFCO, and CGLC?

Answer: The designated enterprises carrying out the minimum purchase price mentioned in the paragraph 31 include Sinograin and its branches, COFCO and CGLC and their affiliations entrusted by Sinograin.

129. Does the purchasing and stockpiling on an ad hoc basis apply to wheat? If so, at what prices are the purchases made?

Answer: Currently, wheat temporary purchasing and storage policy is only executed in Xinjiang Uygur Autonomous Region. Purchasing price is at the same with the minimum purchase price of wheat in other main producing areas of that year.

130. Are the purchases of wheat by the State Administration of Grains for the national grain reserves different from or the same as any purchasing of wheat on an ad hoc basis?

Answer: State Administration of Grain, as the main administrative body responsible for the nations grain circulation, has not conduct purchases of wheat for the State Grain Reserve. Interim purchasing and storage policy is a temporary policy implemented by the country according to the Xinjiang region wheat production and market conditions, and is currently implemented only in Xinjiang area. Such policy aims to protect the interests of wheat growers.

131. The operations of the State Administration of Grain seem to potentially distort the market for wheat. Given that farmers can sell wheat to the designated enterprises at the minimum purchase price, what is, at a time when the market price for wheat is below the minimum purchase price, the nature of that observed market price? What motivates a farmer to sell wheat to the State Administration of Grain at anything less than the minimum purchase price he obtains by selling to the designated enterprises?

Answer: The State Administration of Grain is responsible for the administration of cereal circulation throughout China. Working with other relevant agencies, it works out the minimum purchase policy

to protect wheat farmers interests, to protect the legitimate rights of the operators and consumers and stabilize the market order. The State Administration of Grain does not engage in any purchase or business activities. When the market price goes lower than the minimum purchase price, China Grain Reserves Corporation and its entrusted enterprises will buy wheat from farmers at the minimum purchase price. This is to protect the interests of farmers and to stabilize the production of wheat. Farmers have their rights not to sell their wheat. With this system, some wheat will be diverted from the market circulation and thus help balance the market supply and demand, and stabilize the market price at a reasonable level. When the market price goes higher than the minimum purchase price, China Grain Reserves Corporation will cease its purchase. The market will then fully function. Therefore the minimum purchase price is not a distortion to the market.

Part IV. Trade Policies by Sector; (1) Agriculture; (ii) Agriculture Policies; (d) Support Levels: paragraph 42-42, page 109:

Paragraph 42 suggests taking into account different countries, different situations, different problems, different stages of development, and different policy objectives to measure support levels. Paragraph 43 describes two opposing trajectories of total value of support: declining among OECD countries (which include some developing countries) and rapidly increasing in China.

132. Could China please comment on how taking into account the cited differences might reduce any trade distortions arising out of the provision of large amounts of certain types of agricultural support.

Answer: China is a large populous developing country. To secure the supply of agricultural goods, especially the food, is always the priority of Chinese agriculture industry. It is of more importance for China than for other developing countries. Different countries are of different conditions and faced with different challenges. Particularly, developed countries and developing countries have different policy objectives due to their different development stages. China's support measures are in line with its WTO accession commitment and relevant WTO rules. The fact has shown that these food security and small farmers livelihood support measures played a positive role in stabilising agriculture production and farmers incomes. They have no trade-distorting effect. The protection through tariff and tariff rate quotas is also considered by the OECD when calculating supports to farmers. However, tariff and tariff rate quotas are protection measures allowed by the WTO. Therefore we do not need to comment on the OECD calculation.

Part IV. Trade Policies by Sector; (1) Agriculture; (ii) Agriculture Policies; (d) Support Levels: paragraph 45, page 109:

The Secretariat report points out some apparent conflicts with regard to China's policy objectives, in particular the report states On the one hand, protection of the natural environment is stressed in the 12th Five-Year Plan while subsidies and price-based measures have contributed to high use of fertilizers which has, in turn meant they are one on the principle causes of groundwater pollution. Chinese authorities state that these mechanisms are meant to increase production during seasonal shortages, but the use of price-based mechanisms to reduce price fluctuations, and maintaining high tariffs at widely varying levels may distort price signals for producers which means they may not be reacting to real demand.

133. What policy reforms in China are being considered to shift from trade distorting price-based support towards less trade distorting forms of support like those meeting the green box criteria?

Answer: Having honoured its accession commitment and followed relevant provisions of the Agreement on Agriculture, China's AMS is zero and amber box measures are well below de minimis

having little trade distorting effect. China will provide more green box supports in accordance with its accession commitment and the WTO rules

Part IV. Trade Policies by Sector; (2) Fisheries; (iii) Fisheries policy: paragraph 58, page 113:

The report notes that official data on the value of support to the fisheries sector were not available.

134. Could China please provide greater details on fisheries sector supports?

Answer: China attaches great importance to the principle of transparency and has made our best efforts in fulfilling transparency obligation. Nowadays, members are conducting negotiations to strength the fisheries subsidies disciplines, including the notification regulation. China is willing to provide relevant information once such disciplines agreed upon by members.

Part IV. Trade Policies by Sector; (4) Manufacturing (i) Recent Development: paragraph 73, page 116.

It is noted that China has established a number of funding programs and funds for strategic emerging industries since 2011.

135. Would China please provide more information on the funding program and funds available to high-end equipment manufacturing (one of its seven strategic industries targeted in State Council Circular 2010/32)?

Answer: In recent years, to promote energy saving and environmental protection, such seven emerging industries as new generation information technology, biotechnology, new energy and new materials have become a commonly accepted strategy, and countries successively take measures to accelerate the development of emerging industries. By reference to these countries experience and practices, the Chinese Government issued the Decision on Speeding up the Cultivation and Development of Strategic Emerging Industries in 2010, and set up special-purpose funds for the development of strategic emerging industries in 2011, and has adopted such means as equity participation and venture fund, high-end equipment research and development subsidiaries, implementing key application demonstration projects and key innovative development projects to break key core technology in the initial period of industrial development, cultivate new business type market, and put focus on supporting the research and development of technologies and products as well as achievement transformation in new generation information technology, biology and new materials domains. Such support is universal, and targets at various types of enterprises.

Part IV. Trade Policies by Sector; (4) Manufacturing; (ii) Selected subsectors; (a) Automobiles, automotive parts, and components: paragraph 82, page 119:

It is noted that a review of the current pricing mechanism for refined oil is planned.

136. Could China please elaborate on when the new policy will be implemented?

Answer: The Chinese Government has released the pricing mechanism for refined oil on the portal website of competent price authority in May 2009 the National Development and Reform Commission. That pricing mechanism is what we currently apply.

It is noted that a revision of the Automobile Industry Development Policy is being drafted.

137. Could China provide an indication of when this revised policy will be implemented?

Answer: The revision of the Development Policy for Automobile Industry is soliciting opinions, and detailed time of release and implementation cannot be determined now.

Part IV. Trade Policies by Measure; (4) Manufacturing; (ii) Selected subsectors: paragraph 91, page 120:

It is noted that China endeavoured to eliminate 25 million tonnes of steel production by the end of 2011 pursuant to the Steel Industry Revitalization Plan and that the target for 2010 was achieved.

138. Were substantial steel production capacity reductions achieved in 2011, and was China able to meet its overall goal of eliminating 25 million tonnes of production?

Answer: The Steel Industry Revitalization Plan duration from 2009 to 2011 proposes to eliminate 25 million tonnes of backward steel production capacity. Statistics indicate that China eliminated 28.77 million tonnes of backward production capacity from 2009 to 2010 and planned to eliminate 27.94 million tonnes in 2011. The total eliminated production capacity for the three years exceeded 56 million tonnes, which overfilled the plan.

139. How much steel production capacity was added in each of 2010 and 2011?

Answer: In 2010 the newly added production capacity of iron making was 68.05 million tonnes, newly added production capacity of steel was 72.58 million tonnes. In 2011, the newly added production capacity of iron making was about 70 million tonnes, while 30 million tonnes of backward production capacity eliminated, and the net added capacity was 40 million tonnes. (In 2012 ?), the newly added production capacity of steel was 80 million tonnes, while 20 million tonnes of backward production capacity eliminated, and the net added capacity was about 40 million tonnes.

Part IV. Trade Policies by Sector; (5) Services; (ii) Financial services: paragraph 132, page 138:

It is noted that 16 commercial banks are now allowed to participate in bond trading on the Shanghai and Shenzhen stock exchanges on a pilot basis.

140. How many of these 16 commercial banks are foreign-owned or joint stock banks?

Answer: according to China Banking Regulatory Commission Notice on Issues Related to the Pilot Program Concerning Commercial Banks Participate Bond trade in Stock Exchanges, the approved banks which are entitled to participate the bond trade on pilot basis are limited to the domestic listed banks. At present, the above-mentioned 16 commercial banks do not include foreign banks.

141. Are foreign-owned commercial banks and joint stock banks accorded equal treatment as domestic Chinese banks in granting pilot scheme participation?

Answer: The Chinese authorities will decide the next opening up steps based on the result of pilot programme.

Part IV. Trade Policies by Sector; (5) Services; (ii) Financial services:

The Canadian Embassy has reported that the approval process for foreign and domestic insurers obtaining branch (as well as sub-branch, etc.) licences differs.

142. Are foreign and domestic insurers accorded the equal treatment substantively in the branch licensing approval process, both in the analysis of applications and the length of the approval process?

143. Why does China maintain separate approval processes for foreign and domestic insurers?

142-143 Answer: In accordance with China's WTO accession commitments, China accords national treatment to foreign insurance companies for the branch establishment. China Insurance Regulatory Commission (CIRC) applies the same law, regulations and procedures to the establishment of new branches of domestic and foreign-invested insurance companies. Rules on Administration of Insurance Companies stipulates specific requirements for the application and establishment procedures of branches, which are transparent, non-discriminatory and consistent with China's commitments.

Part IV. Trade Policies by Sector; (5) Services; (iii) Telecommunications; (a) Market Structure: paragraph 168 and (b) Regulatory Regime paragraph 171, pages 138-139:

It is noted that China's telecommunications regulatory authorities have set out licences, regulations and tariffs governing the operation of telecommunications providers in China.

144. Could China provide information on:

- a. the procedures of its regulatory authorities for applicants to request a licence or regulatory decision;*
- b. the procedures for affected service providers and service users to participate in the licensing and regulatory processes; and*
- c. the means for gaining public access to the regulations, tariffs and decisions of the telecommunications regulatory authorities in China.*

a-b-c Answer: According to Regulation on Telecommunications, MIIT issued the Measures for Administration of Telecommunication Business License, which stipulates the application conditions, requirements on documents and approval procedures for telecommunication business license. The above-mentioned regulation and measures have been published and they are available at the official website of MIIT (www.miit.gov.cn).

MIIT publishes the relevant regulations and measures at its official website and other authorized websites.

Part IV. Trade Policies by Sector: (5) Services; (iv) Transport (a) Maritime transport services: paragraph 209, page 146:

145. Could China list the ports, both coastal and inland, that are open to foreign vessels?

Answer: Currently, there are 284 various types of ports in China, among which, 82 costal ports and 56 inland ports are opened up to foreign ships. Since there are over 100 opened up ports, for the detailed list of these ports, Canada may consult with General Administration of Customs of the People's Republic of China.

Part IV. Trade Policies by Sector; (5) Services; (iv) Transport; (a) Maritime transport services: paragraph 212, page 147:

It was indicated that after following registration formalities a foreign shipping company may transport self-owned or leased empty containers between coastal ports in China.

146. Could China clarify what it means by registration formalities?

Answer: At present, international liner transportation operators engaging in liner transportation among Chinese ports could allocate and transport empty containers among Chinese coastal ports once

they submit application to Ministry of Transport of the People's Republic of China for the record and acquire the Empty Container Transport Certification. But this business is only limited to allocating and transporting self-owned or rented empty containers by self-employed ships of the international liner transportation operators.

147. Could China clarify how many foreign shipping companies currently transport self-owned or leased empty containers between coastal ports?

Answer: The requirement for international liner transportation operators engaging in referred business is to submit application to Ministry of Transport of the People's Republic of China for the record and acquire the Empty Container Transport Certification, with no restriction on quantity or other aspects. Currently, an overwhelming majority of the foreign shipping companies engaging in liner transportation among Chinese ports have acquired Empty Container Transport Certifications granted by Ministry of Transport, China.

148. Would China allow the transport of empty containers between a coastal port and an inland port if registration formalities have been followed?

Answer: The international liner transportation operators who has finished registration procedures could allocate and transport empty containers only between Chinese coastal ports.

149. Is China considering allowing a similar regime for transport between inland waterways?

Answer: Maritime Code of The People's Republic of China stipulates that maritime transport of foreign ships between the ports of the People's Republic of China is prohibited in principle. Therefore, the international liner transportation operators who has finished registration formalities could allocate and transport empty containers only between Chinese coastal ports, with the premise that their business is only limited to allocating and transporting self-owned or rented empty containers by self-employed ships of the international liner transportation operators. As regard to the internal waterways transport, there is no such mechanism.

150. Can China identify the main reasons why no waivers have been granted to foreign shipping companies?

Answer: There is explicit description on the scope of prohibited business for foreign ships in Maritime Code of The People's Republic of China, please refer to the answer for question 148.

Part IV. Trade Policies by Sector; (5) Services; (iv) Transport; (d) Rail: paragraph 270, page 159:

It was noted that the Chinese Ministry of Railways will be undergoing certain reforms, such as separating its functions as both the regulator and operator of the national railway network and the rail price-setting mechanism.

151. Could China explain how far they have progressed with separating the operational function of the railways from the regulatory function?

Answer: Since China's opening up and reform, Ministry of Railways of People's Republic of China (MOR) has been always actively promoting the reform of railway enterprises and adjusting administrative function of MOR to better facilitate the enterprises in accordance with central governments requirement on SOE reform.

Over the past one year, MOR has issued a series of reform measures, introduced a series of reform measures, and further delegated operational autonomy to subordinate railways bureaus.

As the competent authority, MOR concerns more about the plans, policies, regulations and other system construction related issues for better facilitate industry development, it also further strengthen the system building of railway technical standards.

Especially in the aspects of railway transport security supervision, railway project quality supervision and quality improvement of transport services, MOR spares no efforts to strengthen functions to improve the efficiency of government administration and supervision, and implement enterprises responsibility and accountability, with the aim of meeting the need of economic and social development.

152. Could China explain how far they have moved to allow pricing to be set by the operating body?

Answer: Yes, please refer to <http://www.chnrailway.com/news/20120521/0521393028.html> for more information.

Part IV. Trade Policies by Sector; (5) Services:

Certain service professions play an important role in enhancing the two-way trade (for both good and services trade) among WTO Members. Such key professionals include engineers, architects, lawyers and accountants. Yet, Canada noted the absence of a separate section in the Secretariat Report on this vital service sector.

153. Could China provide an overview of the professional services sector, for key professions such as engineers, architects, lawyers and accountants? In particular, could information be provided on each of them, for examples in terms of how these professions are regulated (through self-regulation, by formal, delegated authority regulation to an association, or through direct government regulation), and whether any of these professions maintain a temporary licensing regime for foreign providers and if so, under what conditions?

Answer: We suggest that the WTO Secretariat add a separate section on professional service in the Secretariat Report in the future, as suggested by Canada. And China will offer assistance in providing relevant information on Chinese professional service sectors.

Appendix Tables, Table AIII.7, China's membership of international intellectual property rights conventions, 2011, p. 215:

With respect to the WIPO Performances and Phonograms Treaty, the WIPO website indicates that China has filed a reservation which provides that "China not consider itself bound by Article 15(1) of the WPPT Treaty with regard to the right of the performers":

154. Could China explain what the implications of this reservation are? Are payments by broadcasters for playing music over the radio or television discounted as a result of this reservation? What are the other applicable discounts? What are the bases for remuneration rates for the broadcast of sound recordings? Are there different rates for each rights? What are the rates? Under which procedure or process are the rates established by the National Copyright Administration (discovery process, evidence filed by the parties, valuation methodologies, proxies, etc.)? How are collective societies regulated by the National Copyright Administration (directions, guidelines, orders, directives, prescribed criteria, etc.)?

Answer: Payments by broadcasters for playing music over the radio or television are not discounted as a result of this reservation. On 6 May 2009, the State Council promulgated the Interim Measures for the Payment of Remuneration for Audio Products Played by Radio and TV Stations in accordance with Article 44 of the Copyright Law. The Measures, which stipulates provisions on the calculation and payment of remunerations, has followed strict formulation procedures including project establishment, drafting, review, approval and promulgation.

The basis for remuneration rates for the broadcast of sound recordings includes the advertisement revenues of various radio stations and TV stations (subject to the statistical communiques of SARFT and provincial radio and television bureaus) and the share of music use in total broadcasting time. According to statistics, the Music Copyright Society of China signed contractual license fees of RMB 19 million with CCTV in 2010, and signed contractual license fees of RMB 20.25 million with CCTV, CNR and 10 local radio stations in 2011.

As the only collective administration organization of music copyright jointly initiated and founded by NCAC and the Chinese Musicians Association in the Chinese Mainland, the Music Copyright Society of China is specialized in safeguarding the legitimate rights and interests of music composers, lyricists and other music copyright holders and carries out various tasks in accordance with Article 8 of the Copyright Law and the Regulations on the Collective Administration of Music Copyright.

Report by the Government of China (WT/TPR/G/264)

Part II. Economic and Trade Environment and Macroeconomic Policy Direction; (2) Improving Relevance, Flexibility and Perspectiveness of Macroeconomic Policy; (i) Macroeconomic Policy Objectives: paragraph 14, page 8:

In reference to the 12th Five-Year Plan, the Government report notes China's intention to enhance incentive and restraining mechanisms for energy conservation and emission reduction.

155. Can China provide additional information on the policy framework that will be used to advance this objective? What are the implications of this objective for China's international trade policy?

Answer: According to the 12th Five-Year Plan, the Ministry of Environmental Protection will implement the Comprehensive Work Program for Energy Saving and Emission Reduction during the 12th Five-Year Period by the State Council. On one hand, incentive policies shall be perfected and permanent mechanisms shall be improved. Environmental economic policies and market-based instruments shall be made full uses of in order to promote pollution reduction. The reform of levying fees for pollutant discharge shall be deepened and the charge rate shall be moderately elevated. The electricity price for desulphurization shall be strictly implemented and the policy regarding the electricity price for the coal-fired power plant with flue gas denitrification shall be put forward as soon as possible. The compensated gaining and use-right trading system of sewage drainage shall be established and perfected while the incentive policy to offer enterprises and regions with financial subsidies for emission reduction shall also be established. At the same time, policies and measures encouraging enterprises and the public to participate in emission reduction shall be actively explored and innovated.

On the other hand, harden the target and responsibility while enhancing the accountability. Relevant governments at the provincial level, power companies, power grids and large-scaled energy enterprises shall be organized to sign responsibility pledges for emission reduction. Monitoring, assessing, inspecting and accounting methods for the emission reduction of key pollutants shall be revised and perfected, and the assessment of local total emission amount reduction and the degree to

which the annual objective of emission is completed shall be carried out with the assessment results reported to the State Council for approval and announced to the public and with rewards and punishments strictly implemented. At the same time, strict measures for EIA approval shall be adopted and additional emission shall be taken under effective control, both of which shall help provide a solid guarantee to achieving the emission reduction objective of the 12th Five-Year Plan.

The strategic guidance for environmental protection in China is to protect the environment while developing the economy and to develop the economy while protecting the environment, putting an emphasis on the role environmental protection has been playing in promoting the transformation of economic development mode. The objective of energy saving and emission reduction of China has helped to boost the demand for environmental protection industry and to advance its healthy development. All the policies abide by the principle of national treatment. (The Ministry of Environmental Protection)

Part II. Economic and Trade Environment and Macroeconomic Policy Direction; (3) Accelerating the Transformation of Economic Development Pattern: paragraph 20, page 9:

The Government report notes that China has realized the importance and urgency of transforming the economic development pattern to the robust and sustainable economic development.

156. Can China provide additional information on how sustainability is defined within its economic and trade policy framework? How is sustainability being promoted/implemented at the policy level in China?

Answer: To propel the sustainable development of economy, gradually change the high pollution & high energy consumption economic growth pattern, which mainly depends on investment and export, the Chinese Government more proactively combines economic growth speed with development mode, implements the strategy of domestic demand expansion, especially the consumption demand, accelerates the development of service industry, strengthens the protection of intellectual property rights, propels energy saving, emission reduction and industrial restructuring, and unswervingly deepen system and mechanism reform. Meanwhile, the Chinese Government is committed to the balanced development of import and export, makes more efforts to expand export, and optimizes trade payment structure. More attention has been transferred from absorbing foreign investment to attracting foreign investment and investing in foreign countries, China aims to create a more open and optimized investment environment. China also addresses itself to develop full-sided economic and trade relations, carries out practical cooperation based on full exertion of the advantages to reach mutual benefits and win-win.

Part II: Economic and Trade Environment and Macroeconomic Policy Direction; (3) Accelerating the Transformation of Economic Development Pattern; (ii) Accelerating the Development of the Service Sector: paragraphs 28-29, page 11:

China notes that accelerating the development of the service sector will play an important role in China's economic development. This is also indicated in China's 12th Five Year Plan; yet many restrictions remain on service sectors open to foreign investment.

157. Could China provide more information on its plans to further open up the services sector? If so, which sectors and what is the timeline?

Answer: China always attaches great importance to the development of services industry and takes a positive position on the liberalization of trade in services. On 24 December 2011, the Chinese Government issued the revised Catalogue for Guidance of Foreign Investment, which has been implemented since 30 January 2012. This revised Catalogue for Guidance of Foreign Investment

aims to enlarge the opening-up in services sectors, and encourages foreign enterprises to invest in the modern services industry. For example, it has moved the foreign-invested medical institutions and financial leasing companies into the permitted category from the restricted category.

China recognizes that the progressive liberalization of trade in services among WTO Members would promote the development of international trade in services. Since service industry cover many sectors, we don't have specific timetable for the opening up in each sector. However, further liberalization of services trade in China are be discussed in the DDA negotiations and we hope that a successful conclusion will be reached soon.

158. Could China provide more information on the arduous efforts it will make to further develop China's services sector?

Answer: Please refer to the answer for Question 156.

Part II. Economic and Trade Environment and Macroeconomic Policy Direction; (3) Accelerating the Transformation of Economic Development Patterns; (ii) Accelerating the Development of the Service Sector: paragraph 28, page 11:

It is noted that the Chinese Government has strived to establish fair, standardized and transparent market access conditions to encourage the participation of private capital and non-public economy in services sectors, and proposed a series of guidance on the development of specific services sectors.

159. Could China provide more details on what guidance might entail, particularly in the sectors of professional services and e-commerce?

Answer: We are in the process of coordinating domestic agencies involved to generate proper details on this issue.

Part II. Economic and Trade Environment and Macroeconomic Policy Direction; (3) Accelerating the Transformation of Economic Development Pattern (iv) Advancing Energy Conservation and Pollution Reduction and Industrial Restructuring, paragraph 37, page 12:

The report notes that for industries seriously damaging resources and the environment, the access standards were further raised.

160. Can China clarify what is meant by the access standards in this section? Also, what methodology does China use to determine whether environmental damage is serious?

Answer: The industrial access standards refer to indexes and conditions in terms of technology, environmental protection and safety that are set in line with the industrial development to develop and protect resources and environment and boost the healthy development of different industries. These standards include technologies and equipment adopted by enterprises, production scale, energy consumption indexes, comprehensive utilization of resources, pollutant emission index and product quality standards.

The Environmental Protection Law and related laws and regulations give standards to judge whether an enterprise has caused serious impact on the environment, for example, whether it has installed anti-pollution equipment, whether the equipment works well, whether it causes damage to farmland and vegetation and contaminates underground water during its production, and whether its pollutant emission exceeds limits defined by the central government and local governments.

Part II. Economic and Trade Environment and Macroeconomic Policy Direction: (3) Accelerating the Transformation of Economic Development Pattern (iv) Advancing Energy Conservation and Pollution Reduction and Industrial Restructuring, paragraph 37, page 13:

It is noted that stricter policies and environmental protection standards have been adopted for certain non-renewable resources, including rare earth minerals.

161. Can China provide further details on these policy changes? Other than production caps, what measures have been adopted to promote reasonable and efficient exploitation and utilization?

Answer: The measures include: be strict at project approval and environmental protection standards, encourage enterprises to conduct technical reform with advanced technologies, enhance recovery and comprehensive utilization of resources, promote optimization of industrial layout and structural adjustment and conduct specific rectifications.

Part III. Trade and Investment Development and Related Policies; (2) Promoting Balanced and Sustainable Development of Trade and Investment; (i) Striving to Balance the Growth of Imports and Exports: paragraph 75, page 20:

The report notes that, starting in July 2009, China exempted certain spare parts of major technical equipment from import tariffs and VAT. It claims that these changes promote industrial restructuring, energy saving, and emission reductions.

162. Can China provide additional information on the product lines that were granted an exemption?

Answer: Equipment granted a taxation exemption is from 16 industries, including large scale power generation equipment that is clean and highly efficient, and other products.

163. Can China explain how these exemptions result in energy savings and emission reductions? What emissions were reduced through these changes?

Answer: By supporting the research and development of large scale wind turbines, large scale environmental protection equipment and other clean and highly efficient generators, this policy will promote energy savings and emission reductions in China.

Part III. Trade and Investment Development and Related Policies; (3) Optimizing the Utilization of Foreign Investment through Further Opening Up; (i) Foreign Investment Policy Direction: paragraph 91, page 23:

China notes in paragraph 91 that the April 2010 Opinions on Further Improving the Use of Foreign Investment, released by the State Council, Reform of foreign investment regime should be deepened to sort out administrative licensing and further improve transparency.

164. Could China please elaborate on the steps that will be taken in the short and long term to achieve the goals of simplifying administrative licensing processes and improving transparency?

Answer: Yes, please refer to <http://www.fdi.gov.cn/> for more information.

CHILE**Defensa Comercial****Informe de la Secretaria WT/TPR/S/264, capítulo III Políticas y Prácticas Comerciales por Medida, sección 1.- Medidas que Afectan Directamente a las Importaciones, número iv) Medidas Comerciales Especiales, Medidas Antidumping:**

En el párrafo 52 se señala que: "el 'centro de lectura pública' contiene toda la información pública (es decir, no confidencial) relacionada con una investigación; las partes interesadas en la investigación pueden acceder al centro de lectura para buscar, leer y copiar toda la información pertinente (no solamente la información relacionada con el daño)".

1. *¿Existe algún requisito y/o procedimiento especial contemplado en la reglamentación para acceder a la calificación de 'parte interesada'?*

According to PRC Anti-dumping Regulations, the Interested Parties include the Petitioner, the known exporter(s) and import, the government(s) of the country (countries) (region(s)) and other interested organizations and individuals.

2. *¿Existe la posibilidad de acceder de manera virtual o electrónica a la información que se encuentra disponible en el "centro de lectura pública"?*

The Interested Parties can get the catalogue of the unclassified information and materials from other interested parties through the internet.

Política de Competencia**Informe de la Secretaria WT/TPR/S/264, capítulo III Políticas y Prácticas Comerciales por medida, sección 3.- Medidas que Afectan a la Producción y el Comercio, número vi) Política de Competencia y protección de los consumidores:**

En el Párrafo 239, sección a) Marco Legislativo e Institucional, se señala que entre las leyes y disposiciones de China relativas a la competencia figura la Ley de Represión de la Competencia Desleal, cuya revisión se halla en la fase final del proceso legislativo.

1. *¿Qué motivó la revisión de la ley y cuáles serán los aspectos fundamentales que se modificarían (en caso de haber modificaciones)?*

Answer: The provisions in the Anti-Monopoly Law are most principle, and the enforcing authorities such as MOFCOM can promote to formulate the regulations within the limits of their functions and powers, in order to elaborate the provisions of the law and enhance the transparency of the enforcement.

En el Párrafo 246, sección c) Fusiones y adquisiciones, se señala que "Entre 2008 y 2011 se sometieron al MOFCOM 382 casos para su examen, de los que 371 casos se aprobaron sin condiciones, 10 casos se aprobaron con condiciones y 1 se rechazó."

2. *¿Qué parámetros incluye o considera el examen de fusiones? ¿Qué tipo de condiciones se han impuesto?*

Answer: According to Article 27 of the Anti-Monopoly Law, the following factors shall be taken into consideration in the review of concentration of undertakings:

- (1) the market shares of the undertakings involved in concentration in a relevant market and their power of control over the market;
- (2) the degree of concentration in relevant market;
- (3) the impact of their concentration on access to the market and technological advance;
- (4) the impact of their concentration on consumers and the other relevant undertakings concerned;
- (5) the impact of their concentration on the development of the national economy; and
- (6) other factors which the authority for enforcement of the Anti-monopoly Law under the State Council deems to need consideration in terms of its impact on market competition.

Propiedad Intelectual

1. ¿En qué consiste la Estrategia Nacional de Propiedad Intelectual anunciada por el Consejo de Estado en 2008?

Answer: Please refer to the website at http://www.gov.cn/zwggk/2008-06/10/content_1012269.htm for the full text of the Outline.

2. ¿A qué se refiere el concepto de "derechos de propiedad intelectual autóctonos" y cuál es su relación actual con la "innovación autóctona" (indigenous innovation)? ¿De qué manera se relaciona con la Estrategia Nacional de Propiedad Intelectual?

Answer: For "indigenous intellectual property", there is no specific legal definition in China now.

3. ¿Qué cambios sustantivos fueron introducidos por las reformas legales que se han hecho en materia de Propiedad Intelectual?

Answer: The main revisions of the amended Patent Law include: enhancing conditions for patent rights granting, improving compulsory license system to protect public health and enhancing patent right protection while protecting the legitimate rights and interests of the public. The amendment work of Trademark Law, Copyright Law and Anti-Unfair Competition is still in progress.

4. Respecto de las indicaciones geográficas y considerando las normas del Acuerdo sobre los ADPIC, ¿cuál es la diferencia entre la protección que otorgan los registros efectuados por las 3 agencias, más allá de los plazos de protección que se señalan?

Answer: Currently, SAIC, AQSIQ and MOA are jointly studying how to establish the joint Geographical Indications certification system.

The three agencies have different focuses in GI protection. The SAIC protects geographical indications by applying collective trademark and certification trademark registration pursuant to the Trademark Law. Corresponding remedies for geographical indication infringement include administrative, civil and criminal ones. The Ministry of Agriculture has registration administration for geographical indications of agricultural products based on administrative rules formulated in accordance with the Law on Quality Security of Agricultural Products. The focus of the protection is on geographical indication resources of agricultural products, product quality and traditional farming culture. AQSIQ's protection of geographical indication focuses on processing, which is based on administrative rules formulated in accordance with the Product Quality Law.

5. El artículo 31 del Acuerdo sobre los ADPIC establece ciertos requisitos para posibilitar "otros usos si autorización del titular de derechos". ¿Cómo se compatibilizan dichas disposiciones con la posibilidad en el ordenamiento jurídico de China de otorgar licencias obligatorias como una medida de remediar o sancionar conductas que atentan contra el bien jurídico libre competencia, según lo señalado en los puntos 290 y siguientes?

Answer: The provisions of compulsory license in Patent Law and its implementation regulations are consistent with Article 31 of TRIPS.

Subvenciones

En el párrafo 189 se señala que el uso de subvenciones y otras ayudas gubernamentales parece ser una característica importante de la formulación de políticas comerciales de China. Sin embargo, debido a la insuficiente información de que dispone la Secretaría, es difícil confirmarlo. En general, se dispone de muy poca información detallada sobre las subvenciones y otras ayudas gubernamentales de China, particularmente a nivel subcentral, en lo que respecta a clase y magnitud, desembolsos financieros realizados, y objetivos y resultados de los programas.

Pregunta: *Agradeceríamos nos clarificaran a que se debe esta falta de información al respecto. Asimismo, agradeceríamos que nos clarificaran que es o a que corresponde lo notificado por China a OMC.*

Answer: Use of subsidies and other government assistance is an important feature in trade policies of many WTO Members. Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work towards incorporating local subsidies in its future notifications. As to the 2009-2011 notification, it will not be too difficult if covering only central programs. However if local programs are to be incorporated, it will be a different case. In any case, China will accelerate its efforts for a new notification.

En el párrafo 192 se señala que en la notificación más reciente que China ha hecho a la OMC en relación con las subvenciones (notificación de 2009) figura información sobre la ayuda a las empresas establecidas en diversos sectores o regiones (cuadro AIII.6). En la notificación se enumeran los programas que prestaron asistencia a nivel del Gobierno central entre 2005 y 2008; no se ha facilitado información sobre programas de subvenciones otorgados por los gobiernos locales. En muchos casos no hay cifras precisas sobre la magnitud de las subvenciones que concede el Gobierno, muchas de las cuales revisten la forma de bonificaciones fiscales. La notificación de 2009 de China no ha sido examinada aún por el Comité de Subvenciones y Medidas Compensatorias.

Pregunta: *¿Podría China darnos una cifra estimativa de los montos en subvenciones?*

Answer: In China's subsidy notification, the amount of subsidies provided in the form of budget allocation has all been provided. The amount of tax foregone as a result of the implementation of preferential tax policies is not available because currently China does not have a statistic system for tax expenditure.

En el párrafo 204 se señala que las empresas con escasos beneficios reciben un trato fiscal preferencial.

Pregunta: *¿Cómo determinan los beneficios y a cuales empresas se le ayuda? ¿Se subvenciona, entonces, a aquellas empresas que funcionan a pérdidas?*

Answer: From 2010 to 2015, for small and low-profit enterprises with yearly payable tax amounting to 60,000 Yuan or less, the taxable income is reduced to 50% of its income, and the enterprise income tax is levied at a reduced tax rate of 20%.

Otras Preguntas

1. *Did PRC include in its recent RTA/FTAs with Chinese Taipei and with Costa-Rica any labour cooperation Memorandum of Understanding or other agreement? On what terms?*

Answer: The issue of labour is not included in China-Costa Rica Free Trade Agreement and in ECFA.

2. *PRC has included labour issues in its FTAs with Chile, New Zealand and Peru through separate Memoranda of Understanding on Labour Cooperation. How evaluates PRC the experience of these agreements?*

Answer: The contracting parties committed to strengthening bilateral exchanges and cooperation in labor and social security by implementing the "Memorandum of Understanding on Labor Cooperation between the Governments".

CHINESE TAIPEI

PART I: REPORT BY THE SECRETARIAT (WT/TPR/S/264)

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

- (3) **Trade Agreements and Arrangements**
- (ii) **Regional arrangements**

Pages 16 & 17 (Para 29)

As the Report indicates, in its 12th Five-Year Plan, China intends to accelerate the implementation of the Free Trade Area Strategy, strengthen economic linkages with major trading partners, and deepen cooperation with emerging markets and developing countries.

Questions:

1. *Could China please elaborate further on the development strategies and objectives of free trade agreements or arrangements in the period covered by its 12th Five-Year Plan?*

Answer: In the future, China will adapt to the international situation of accelerated regional economic integration and actively work with relevant countries and regions to advance the construction of free trade areas while resolutely upholding multilateral trading system and participating in the Doha Development Round in an in-depth manner. Moreover, China will implement free trade area strategies, continue its opening up policy to promote reform, development and win-win results, and leverage domestic and international markets and resources to expand the room for economic and trade development. To be specific, China will implement free trade agreements signed, increase the utilization ratio of preferential policies under the free trade agreements and take advantage of free trade area agreements in expanding consumption and promoting trade and investments on one hand,

and will actively promote breakthroughs in on-going free trade area negotiations and endeavour to start new negotiations on the other hand.

2. *Apart from trade in goods and services, what other items are the subject of China's attention in the context of the above?*

Answer: Apart from trade in goods and services, China has also paid attention to investment, economic and technological cooperation as well as other sectors that both parties are interested in.

(4) Foreign Investment Regime

(iii) Examination and approval procedure

Page 21 (Paras 49 and 50)

As indicated in the Report, FDI in "important or restricted" projects requires verification by the authorities in accordance with the relevant regulations. All other investment projects need to be registered only with the relevant authorities, such as the local development and reform commissions (DRCs).

Questions:

3. *In practice, how many working days on average does it take to approve a foreign investment case in China?*

Answer: To this day, China has not collected the data of average time for approving a foreign investment case.

4. *Are there great differences between the various provinces of China in the number of days it takes for the examination procedures to be completed?*

Answer: No. The relevant Chinese laws and regulations on foreign investment explicitly provide the time limits for various examination procedures, and the government departments at all levels should exercise administration in accordance with law and complete relevant examination and approval procedures within the given time periods. At the same time, the Chinese Government has also attached importance to strengthening training and regulating the administrative behaviours of governments at all levels to improve the degree of facilitation and endeavour to foster a good investment environment for foreign investors.

5. *In the event that a foreign investment application is rejected, are prospective investors informed of the reasons for the rejection?*

Answer: Yes.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(2) Measures Directly Affecting Exports

(v) Tax concessions under processing trade

Page 59 (Para 145)

Under the mode of "processing trade", goods are imported in bond (therefore not subject to import tariffs and related taxes) if they are exported within a certain period after processing and assembly.

Questions:

6. *We would be interested in knowing how many different types of processing trade in China come under bonded Customs supervision and clearance procedures?*

Answer: According to existing policies, there are generally two types of bonded management for processing trade: first, bonded management for all materials and parts of enterprises that enter the special Customs supervision areas; and second, bonded management for all imported materials and parts applied by enterprises outside special Customs supervision areas for export processing, which will be cancelled based on verification after finished goods are exported.

7. *We would also appreciate more information on how the rules for domestic companies apply to foreign companies in bonded areas.*

Answer: According to existing policies, the commerce authorities have implemented unified administrative rules on processing trade for foreign-funded and Chinese-funded enterprises located in bonded areas and other special Customs supervision areas.

(3) Measures Affecting Production and Trade
(vi) Competition and consumer protection policy

Page 78 (Para 243)

Enforcement of competition legislation in China is shared by three agencies, and coordinated and "guided" by the Anti-Monopoly Commission under the State Council. The Anti-Monopoly Bureau of the MOFCOM is responsible for anti-trust reviews. The Price Supervision and Anti-Monopoly Bureau of the National Development and Reform Commission is the authority over price-related violations of the rules against monopoly agreements and abuse of market dominance and of administrative power. The Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of the State Administration for Industry and Commerce (SAIC) enforces the Anti-Unfair Competition Law on issues related to monopoly agreements, abuse of market dominance, and abuse of administrative powers (excluding price-related monopolies).

Question:

8. *Would China consider establishing a single authority responsible for the enforcement of all competition legislation in the future?*

Answer: SAIC, NDRC and MOFCOM have conducted smooth communications, close cooperation and good coordination during anti-monopoly work, and jointly carried out in-depth researches on and reached a consensus on some issues. These three authorities coordinate with each other to do a good job in the enforcement of the Anti-monopoly Law. According to the Anti-monopoly Law, the State Council will establish the Anti-monopoly Commission responsible for the organization, coordination and guidance of anti-monopoly work. In July 2011, the Anti-monopoly Commission Office under the State Council was officially established at the Anti-monopoly Bureau of MOFCOM, which is responsible for the routine work of the Commission.

Page 80 (Box III.1)

As indicated in the first paragraph of Box III.1, in the NDRC Provisions on Procedures of Administrative Enforcement of Prohibition of Price Monopoly (NDRC Decree 2010/8), relevant provincial-level authorities (including provincial DRCs), delegated by NDRC, are the anti-price-

monopoly enforcement within their administrative territories. The provincial DRCs are allowed to delegate investigation to local price supervision departments one level below themselves.

Question:

9. *Could China please elaborate further on how consistency is ensured between the different provincial-level authorities in their interpretation and enforcement of the Anti-Monopoly Law?*

Answer: To assure a strict and uniform implementation of the *Anti-Monopoly Law*, National Development and Reform Commission promulgated the Resolution on Authorization of Anti-price-fixing Enforcement in December 2008, requiring provincial pricing departments to work under the guidance, organization and coordination of the National Development and Reform Commission, report in a timely manner the latest progress and other related information about anti-price-fixing enforcement, and submit duplicates of documents on case acceptance, investigation and punishments and so on to the National Development and Reform Commission.

On 29 December 2010, the National Development and Reform Commission promulgated the Anti-price-fixing Provisions and the Anti-price-fixing Administrative Enforcement Procedural Regulation, giving substantial and procedural uniform requirements for the anti-price-fixing enforcement. All provincial pricing departments shall abide by these requirements strictly.

(vii) Intellectual property rights

Pages 91 & 92 (Paras 300 & 301)

As described in the Report, the SAIC is building up an e-commerce monitoring system.

Questions:

10. *Has the above-mentioned system already been completed and put into operation?*

Answer: Chinese industry and commerce administration authorities are building up a national online trade supervision information system that centers on SAIC's online trade supervision information platform and is backed up by online trade supervision platforms of provincial industrial and commercial bureaus. SAIC's online trade supervision platform is expected to be completed in 2012. Currently, 1/3 provincial industrial and commercial bureaus have completed the system building and it is expected that all provinces will finish their system building tasks in 2013.

11. *Does the US-China joint programme on combating online sales of counterfeit physical products also pertain to such sales supported by overseas websites?*

Answer: Online sales of counterfeit physical products are very complicated, involving the cases where the subjects of law violation and crime and website servers located in China or in overseas regions. For the former case, the Chinese government will timely clamp down relevant illegal websites, punish relevant responsible persons and bring suspected criminals to justice. The latter case involves more than two administration and jurisdiction subjects including the Chinese Government, so the China is willing to jointly combat illegal and criminal acts by strengthening cross-border cooperation and exchanges such as information sharing and joint law enforcement, etc.

IV. TRADE POLICIES BY SECTOR

(5) Services

(iii) Telecommunications and (vii) Postal and courier services

Pages 145 and 168 (Paras 204 and 322)

12. The Report indicates that China has not yet established universal services funds to support the provision of either universal telecommunications or postal services.

Questions:

Could China please explain the reasons for the delays in establishing these universal services funds?

Answer: The universal postal service fund is an important system set up by the amended Postal Law. The establishment of the fund will proceed following certain legal procedures without delay.

China has not yet established universal services funds, but it has never stopped the provision of universal telecommunications services.

13. In the absence of these funds, how have residents been provided with the necessary telecommunications and postal services?

Answer: As prescribed in the amended Postal Law, the state protects the universal postal services in China, the State Council, local governments at various levels and other related departments should take measures to support the postal enterprises in the provision of universal postal services, the State will provide subsidies to the postal enterprises for provision of universal postal services.

Universal telecommunications services are increasingly accessed by urban and rural residents, especially those residents in remote rural areas. Since 2004, the Chinese Government has carried out the program of Providing Telephone Access for All Villages in rural areas. As of the end of 2011, telephone access and Internet broadband access had been made available for 180,000 remote villages and 100,000 villages respectively, and information service stations had been constructed in 27,000 villages and towns, realizing the target of "enabling all villages to access to telephone services and all towns to access to Internet services" nationwide.

PART II: REPORT BY GOVERNMENT OF CHINA (WT/TPR/G/264)

I. INTRODUCTION

Page 5 (Para 2)

The Report states that the Chinese government has proactively promoted the change of the trade development pattern, continued to implement the strategy of "going global" and paid more attention to balance and sustainability in the development of both trade and investment.

Questions:

14. Please elaborate further on recent trade and investment measures introduced in response to the changing strategy on trade development?

15. What is the impact of the above on domestic and foreign environments as far as trade and investment is concerned?

Answer: (14-15) In February 2012, 10 ministries and commissions including MOFCOM, NDRC and Ministry of Finance jointly issued the Guiding Opinions on Accelerating the Shift of Development Mode of Foreign Trade (Shang Mao Fa [2012] No. 48). In April 2012, MOFCOM issued 12th Five-year Plan for Foreign Trade Development and the State Council distributed the Guiding Opinions of the State Council on Strengthening Import and Promoting the Balanced Development of Foreign Trade (Guo Fa [2012] No. 15).

Mainstream media, government websites and other emerging media have extensively publicized and reported the abovementioned policies and measures, causing strong responses in local regions and industries. The in-depth implementation of the policies and measures will play a positive role in helping China change its trade development pattern, promote trade balance and make more contributions to world economic and trade development.

II. ECONOMIC AND TRADE ENVIRONMENT AND MACROECONOMIC POLICY DIRECTION

(2) IMPROVING RELEVANCE, FLEXIBILITY AND PERSPECTIVENESS OF MACROECONOMIC POLICY

(i) Macroeconomic policy objectives

Page 8 (Para 14)

The 12th Five-Year Plan proposes that within the five years from 2011 to 2015, China will continue to maintain steady and rapid economic development on the basis of significantly improving the development quality and efficiency.

Questions:

16. Chapter 51 of the 12th Five-Year Plan aims to "advance the foreign trade structure". Could China please provide details of any related laws and practical measures introduced to further this objective?

Answer: Refer to the answer of questions 14-15.

17. The Ministry of Commerce (MOFCOM) has published the "12th Five-Year Plan for foreign trade development", which places emphasis on changing the structure of foreign trade and improving quality and efficiency. Could China please elaborate further on any relevant measures and laws brought in to this effect?

Answer: Please refer to Part 5 of the 12th Five-year Plan for Foreign Trade Development and Part 4 of the Guiding Opinions on Accelerating the Shift of Development Mode of Foreign Trade for major supporting measures. Relevant laws, policies and measure issued and to be issued in the future will be made available on relevant government websites.

(3) ACCELERATING THE TRANSFORMATION OF ECONOMIC DEVELOPMENT PATTERN

(ii) Accelerating the development of the service sector

Page 11 (Para 29)

The tertiary sector accounted for 43.2% of China's GDP in 2010 and 43.1% in 2011. As the Report states, in general, contribution to GDP from the tertiary sector is still comparatively low, and development of the service sector requires more arduous efforts.

Questions:

18. Why has the tertiary sector's contribution to China's GDP decreased in recent years?

Answer: According to the statistics of National Bureau of Statistics, the tertiary sector accounted for 43.1% of China's GDP in 2011 and 43.2% in 2010. In 2009, this figure is 43.4% and in 2008 it is 41.8%. So we consider that the tertiary sector's contribution to China's GDP did not decrease significantly in recent years.

19. Would China agree that efforts are needed to accelerate liberalization of the services market in order to encourage greater participation by both domestic and foreign investors?

Answer: China always attaches great importance to development of services industry and takes a positive position on liberalization of trade in services. On 24 December 2011, the Chinese Government issued the revised Catalogue for Guidance of Foreign Investment, which has been implemented since 30 January 2012. This revised Catalogue for Guidance of Foreign Investment aims to enlarge the opening-up in services sectors, and encourages foreign enterprises to invest in the modern services industry. For example, it classifies the foreign-invested medical institutions and financial leasing companies into "permitted" category instead of "restricted" category.

China recognizes that the progressive liberalization of trade in services among WTO Members would promote development of international trade in services. We hope that the DDA negotiations will come to a successful conclusion soon.

III. TRADE AND INVESTMENT DEVELOPMENT AND RELATED POLICIES
(3) OPTIMIZING THE UTILIZATION OF FOREIGN INVESTMENT THROUGH FURTHER OPENING UP
(iv) Caring for and protecting rights and interests of investors

Page 24 (Para 98)

The Chinese Government indicates in the Report that since the last review, it has worked on a series of issues that were of interest to investors.

Question:

20. Could China please provide detailed descriptions of its legal framework covering: a) protection of the property rights of foreign investors, and; b) the temporary entry and stay of foreign investors?

Answer: (1) With regard to protection of the property rights of foreign investors, please refer to Article 18 of the Constitution of the People's Republic of China as well as relevant provisions specified in the Law of the People's Republic of China on Chinese-foreign Joint Ventures and the Law of the People's Republic of China on Foreign-Capital Enterprises. At the same time, Article 5 of the Law of the People's Republic of China on Protection of Investment by Compatriots for investors from Chinese Taipei, the Provisions of the State Council Concerning the Encouragement of Investments by Compatriots from Chinese Taipei and the Detailed Rules for the Implementation of the Law of the People's Republic of China on Protection of Investment by Compatriots From Chinese Taipei also stipulate explicit provisions on the protection of the property rights of compatriots from Chinese Taipei.

(2) With regard to the temporary entry and stay of foreign investors, please refer to the terms and clauses concerning the entry and stay procedures and provisions specified in the Law of the People's

Republic of China on Control of the Entry and Exit of Aliens, the Detailed Rules for the Implementation of the Law of the People's Republic of China on Control of the Entry and Exit of Aliens and the Regulations of the People's Republic of China on Entry and Exit Frontier Inspection.

COLOMBIA

RESUMEN

En el párrafo 7 del resumen de la Secretaría indica que... En el período examinado hubo pocos cambios en las políticas de China en materia de importaciones y de entrada de inversiones extranjeras. China hace uso de diversas medidas en frontera no arancelarias, como las licencias de importación y exportación y el comercio de Estado, para "orientar" la asignación de recursos. El uso de procedimientos de aviso y formulación de observaciones se está haciendo más general en el proceso de redacción de leyes, reglamentos y normas departamentales en materia de comercio, pero, al parecer, no toda la información relacionada con el comercio se pone a disposición del público.

1. *El gobierno chino tiene previsto en un futuro poner a disposición del público todas sus normas relacionadas con el comercio, para contribuir con la transparencia en la OMC?*

Answer: China understands that its transparency commitment for WTO accession is to give a period after the promulgation of laws, regulations and rules related to or affecting trade in goods, trade in services and trade-related intellectual property right or foreign exchange control prior to their enforcement. It is not mentioned in China's commitment to solicit public opinions for the drafts of the laws, regulations or rules to be promulgated. Nevertheless, in order to advance scientific and democratic legislation and improve the quality of legislation, the Chinese Government has always made unremitting efforts to improve the transparency of legislation, promote solicitation of public opinions on legislation drafts and expand public participation. Since 2008, public opinions have been solicited for draft administrative laws and regulations which are all published on <http://www.chinalaw.gov.cn> except those to be kept secret in line with law. And public opinions have also solicited for draft regulations of various departments on their websites or <http://www.chinalaw.gov.cn>. All parties including foreign investors can propose opinions and suggestions.

En el párrafo 8 del resumen de la Secretaría señala que Las subvenciones y otras formas de asistencia gubernamental son elementos importantes en la formulación de las políticas comercial e industrial chinas. En 2011 China presentó a la OMC una nueva notificación de sus subvenciones, en la que se enumeran los programas que prestaron asistencia gubernamental a nivel del Gobierno central entre 2005 y 2008. Sin embargo, en muchos casos no hay cifras sobre la magnitud del apoyo prestado, y no se dispone de información sobre las subvenciones y otras ayudas gubernamentales de nivel provincial, que se cree que son considerables.

2. *Puede el gobierno chino proveer información relacionada con la magnitud de los programas de asistencia a nivel central que complemente la notificación realizada, correspondiente al período 2005-2008? Puede brindar información sobre los programas de apoyo a nivel de las provincias? Ha pensado el gobierno chino actualizar la notificación de subvenciones cubriendo un período más reciente?*

Answer: Use of subsidies and other government assistance is an important feature in trade policies of many WTO Members. Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then

extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work towards incorporating local subsidies in its future notifications. As to the 2009-2011 notification, it will not be too difficult if covering only central programs. However if local programs are to be incorporated, it will be a different case. In any case, China will accelerate its efforts for a new notification.

III) POLÍTICAS Y PRÁCTICAS COMERCIALES, POR MEDIDAS

A. MEDIDAS QUE AFECTAN DIRECTAMENTE A LAS IMPORTACIONES

1. Procedimientos aduaneros, valoración en aduana y normas de origen

a) Procedimientos aduaneros

El párrafo 5 del informe de la Secretaría indica que... Los importadores pueden solicitar a la Administración de Aduanas resoluciones anticipadas por escrito, que son vinculantes. Constituyen el fundamento jurídico de esas resoluciones anticipadas la Ley de Aduanas y las Medidas provisionales sobre la administración de las resoluciones administrativas de la Administración de Aduanas

3. Para qué temas o procedimientos aduaneros puede solicitarse Resoluciones Anticipadas?

Answer: Article III of "the Interim Measures of the People's Republic of China for the Administration of the Administrative Rulings of Customs states that the administrative rulings of customs cover the following areas: classification of the import and export commodities, determination of the origins of import and export goods, application of the measures for prohibiting imports and exports and of the licenses, as well as other customs affairs that the GAC decides these measures shall apply to. Price evaluation by the Customs is not within the coverage of administrative rulings.

4. A parte del importador, que otros usuarios aduaneros pueden solicitar Resoluciones Anticipadas?

Answer: The Applicant for Customs administrative rulings should be an entity that operates goods import and export and has registered in the Customs.

5. Cuáles son los requisitos para su expedición?

Answer: There is no connection between importers application for customs administrative rulings and shipment.

v) Comercio de Estado

En el párrafo 44 del informe de la Secretaría indica que... En virtud de la Ley de Comercio Exterior, determinados productos pueden ser objeto de comercio de Estado, entre otras cosas para asegurar la estabilidad del suministro interno, estabilizar los precios, salvaguardar la inocuidad de los alimentos, y proteger el medio ambiente y los recursos agotables. (Nota al pie. La última notificación de China a la OMC sobre la lista de empresas comerciales del Estado se realizó en 2003)

6. Podría el gobierno chino indicar si tiene aún la obligación de notificar a la OMC en forma periódica su listado de empresas comerciales del Estado? En caso afirmativo el gobierno chino podría indicar cuando tiene previsto hacer la próxima notificación del listado de empresas comerciales del estado?

Answer: The state trading regime of China, including the products covered and the STR enterprises, did not have significant changes except that a couple of products were no longer subject to state trading administration. Besides, for a few products subject to state trading, some statistics required in

the notification are not produced officially in China. In view of these, China did not submit its state trading notification. That said, if members expect China to submit the notification despite of the few changes, China will try to submit the notification as soon as possible.

vii) Normas y otras prescripciones técnicas

- Normas y reglamentos técnicos

En el resumen inicial, párrafo 9, la Secretaría señala que En los Comités de OTC y MSF de la OMC, algunos Miembros expresaron su preocupación respecto de medidas OTC adoptadas y/o impuestas por China en relación con distintos productos, desde el algodón y los textiles hasta los faros y dispositivos de señalización luminosa de motocicletas, y respecto de MSF propuestas y/o impuestas, entre ellas normas de higiene para los licores destilados, restricciones a la importación de determinados productos, y pruebas de cuarentena, así como respecto de las prácticas de notificación.

7. *Nos gustaría que el Gobierno Chino brindara una mayor información a la registrada en las notificaciones realizadas a la OMC y citada en el anexo de este documento, con el fin de entender mejor el sustento científico para aplicar dichas medidas. Asimismo, el listado de los productos a los que se les aplicaron las restricciones de importación?*

Answer: China notification procedure to WTO is consistent with the WTO rules, and China will make effort to improve its notification work.

B. MEDIDAS QUE AFECTAN DIRECTAMENTE A LAS EXPORTACIONES

ii) Subvenciones a la exportación

En el párrafo 136 del informe de la Secretaría indica que Las autoridades afirman que China no concede subvenciones a la exportación. En octubre de 2011 China notificó a la OMC sus programas de subvenciones correspondientes a 2004-2008.

8. *El gobierno chino tiene previsto en un futuro poner a disposición del público todas sus normas relacionadas con el comercio?*

Answer: Refer to the answer of question 1.

9. *Es posible que por tratarse de la normativa comercial, ésta sea publicada en inglés?*

Answer: The Legislative Affairs Office of the State Council issues a Chinese-English bilingual Laws and Regulations of the People's Republic of China each year, which is also published to the public.

IV. POLÍTICAS COMERCIALES, POR SECTORES

1) Agricultura

ii) Políticas agrícolas

En el párrafo 10 de la página 118, del informe de la Secretaría indica que En el Duodécimo Plan Quinquenal (2011-2015) se reafirman los compromisos que figuran en planes anteriores para crear un nuevo campo socialista fortaleciendo el apoyo a los agricultores, dándoles más beneficios y promoviendo la modernización, con el fin de mejorar sus niveles de vida. El objetivo principal de la política nacional es salvaguardar la seguridad alimentaria mediante el aumento de la capacidad de producción y la mejora de la competitividad. En el plan se establecen objetivos más específicos, que incluyen un aumento de 50 millones de toneladas de la capacidad de producción de granos (definidos como arroz, trigo, maíz y habas (porotos, frijoles, fréjoles) de soja (soya)). Este aumento ha de lograrse mediante mayores inversiones y pagos en las zonas productoras de granos, mejorando al mismo tiempo las condiciones de la producción agrícola. En el plan también se resalta la necesidad

de aumentar la mecanización agrícola y de desarrollar y adoptar biotecnología. Figuran en el plan otras medidas, como el aumento de los precios de compra mínimos de los principales granos y la mejora de la compra y el almacenamiento provisionales de productos agrícolas a granel.

10. Podría China dar una explicación de los factores y metodología utilizados para determinar el aumento de los precios mínimos de compra; período en el que se determina el aumento y a qué granos aplica?

Answer: Currently, China adopts the minimum purchase price policy on rice and wheat in the main producing areas. The minimum purchase price of rice and wheat is reasonably determined based on such factors as the farmers farming cost, supply and demand relationship with respect to grain, the change in the urban and rural residents income, the price of commodities and macro-economic trends. The minimum purchase price will rise when the grain production cost is increased.

11. Nos gustaría conocer en forma detallada cómo funciona la directriz del Gobierno Chino para mejorar la compra y el almacenamiento provisional de productos agrícola a granel? A que productos aplica?

Answer: The temporary purchase and storage policy is an action taken by the designated enforcement body (normally Sinograin) to purchase the grain delivered and sold by the farmers at the specified stabilization price when the market price is lower than the temporary purchase and storage price prescribed by the State during the centralized supply period of fresh grain in order to protect the farmers interests and promote the stable production of grain. The temporary purchase and storage policy is generally adopted with respect to such non-grain-ration varieties as maize and such oil varieties as soybean and rape seed.

a) Medidas relativas a las importaciones

En el párrafo 17 de la página 120, la Secretaría señala que... En consonancia con los compromisos asumidos con motivo de su adhesión, desde 2006 China no aplica contingentes arancelarios al aceite de soja (soya), al aceite de palma ni al aceite de colza. No obstante, sigue aplicando siete contingentes arancelarios que abarcan 39 líneas arancelarias correspondientes al trigo, el maíz, el arroz, el azúcar, la lana y el algodón.

12. Podría China proporcionar información acerca de la cuanta actual de los contingentes para dichos productos y cuál ha sido su utilización?

Answer: The China's WTO Accession Protocol has explicitly specified the name, the annual tariff rate quota, the tariff rate and the similar matters of the agricultural products subject to import duty quota in China. Since China's WTO accession, China has been strictly performing the relevant commitments and timely notify WTO of the relevant information.

En el párrafo 18 de la página 120, del informe de la Secretaria indica que... Según las autoridades, no ha habido cambios en la administración de contingentes arancelarios desde la última notificación que presentó China al Comité de Agricultura en 2003. De conformidad con esa notificación, los solicitantes deban cumplir determinados criterios básicos, entre ellos registrarse en la Administración de Industria y Comercio y superar un examen anual de la empresa llevado a cabo por la Administración de Industria y Comercio y las autoridades de inspección y cuarentena. A continuación, se asignaban los contingentes según los volúmenes solicitados, las importaciones previas o la capacidad de producción, o por el orden de presentación de las solicitudes. Las empresas comerciales del Estado siguen teniendo un acceso predominante a los contingentes arancelarios, pues se les asignó el 90 por ciento del contingente correspondiente al trigo, el 60 por ciento del

correspondiente al maíz, el 50 por ciento del correspondiente al arroz, el 70 por ciento del correspondiente al azúcar y el 33 por ciento del correspondiente al algodón.

13. Podría China indicar en qué consiste el examen anual realizado por la Administración de Industria y Comercio a las empresas solicitantes en la asignación de un cupo y cuál es su finalidad?

Answer: Article 13 of the Measures for the Annual Inspection of Enterprises defines the inspection content to enterprises.

Annual inspection to enterprises is one of the important legal functions of the administrative department for industry and commerce. It is the important method to conduct follow-up supervision after administrative permitting and learn the law-abiding and operation condition of enterprises. Moreover, it is the basic work for administrative department for industry and commerce to strengthen market supervision, maintain fair competition, promote economic and social development, and play a full functional role.

14. El resultado de este examen cómo se aplica a las empresas solicitantes diferentes a las del Estado?

Answer: No difference. Both state-owned trading enterprises and non-state-owned trading enterprises apply for import duty quota based on the published conditions and procedures. Enterprises not passing the annual inspection may not apply for the quota of the next year.

b) Medidas relativas a las exportaciones

En el párrafo 22 del informe de la Secretaría indica que Las exportaciones de arroz, maíz, algodón y tabaco se realizan mediante empresas comerciales del Estado y, al igual que las de otros granos, están sujetas a contingentes de exportación.

15. Agradecemos al Gobierno Chino brindar mayor información sobre el funcionamiento y reglamentación de estas empresas?

Answer: The state trading regime of China, including the products covered and the STR enterprises, did not have significant changes except that a couple of products were no longer subject to state trading administration. Besides, for a few products subject to state trading, some statistics required in the notification are not produced officially in China. In view of these, China did not submit its state trading notification. That said, if members expect China to submit the notification despite of the few changes, China will try to submit the notification as soon as possible.

16. Cuáles son los otros cereales cobijados por este régimen?

Answer: According to China's WTO Accession Protocol, the imports of maize, rice, cotton and other similar agricultural products is subject to state trading. Since China's WTO accession, China has always been managing the relevant agricultural products in strict accordance with the commitments for WTO accession and the relevant laws and regulations.

c) Ayuda interna Pagos directos

En el párrafo 23 de la página 121, el informe de la Secretaría señala que... La política de China en materia de pagos directos a los productores agrícolas no ha cambiado desde el último examen de sus políticas comerciales.

Según la notificación presentada al Comité de Agricultura de la OMC, esta política se basa en la superficie de tierra contratada por la unidad familiar rural y está desconectada de la producción y los precios.

Actualmente los pagos directos se realizan en casi todo el medio rural, aunque las autoridades locales tienen la responsabilidad de decidir qué zonas de su jurisdicción pueden recibir pagos; el nivel de las subvenciones también puede variar según las localidades. La cuanta total prevista en el marco del programa de pagos directos fue de 15.100 millones de yuan anuales para el período 2007-2010.

17. Podría China explicar cómo garantiza que estos pagos basados en la superficie, están desconectados de la producción y los precios?

Answer: Direct payment is made to the farmers mainly based on the area of the farmers contracted lands which is determined at the execution time of the contracting agreement and remains as the same within the contractual term (30 years). Direct payment is not subject to the requirements on actual production volume and price.

Programas de seguros

En el párrafo 24 del informe de la Secretaría señala que... En respuesta a la muy escasa cobertura de los seguros para la agricultura en China y al riesgo elevado de sequías o inundaciones, en 2007 se puso en marcha un programa piloto de seguros con cobertura geográfica limitada a seis provincias. Para finales de 2010 su ámbito se había ampliado a 28 provincias. Las primas de los seguros están subvencionadas por el Gobierno central y los gobiernos locales y las unidades familiares rurales pagan la parte restante, que oscila entre el 20 y el 30 por ciento.

18. Qué estrategias o medidas forman de este programa además de la presupuestal para lograr su masificación?

Answer: For the purpose of further improving agricultural insurance, the Ministry of Finance expand the fiscal subsidy for agricultural insurance premium at the central level to the whole country in 2012 and each region can roll out at its own discretion and apply for the subsidy as stipulated. In addition, China will also further marketize the agricultural insurance industry, actively guide farmers to procure insurance and better promote the development of agricultural insurance by some methods as studying the legislations on agricultural insurance, improving innovation in products and services and enhancing the promotion efficiency.

Sostenimiento de los precios internos

En el párrafo 33 del informe de la Secretaría indica que... Además del Programa de precios de compra mínimos, el Estado adopta otras medidas para ajustar la oferta y la demanda de determinados productos agrícolas, tales como la compra y almacenamiento ad hoc y la liberación de existencias de remolacha azucarera, habas (porotos, frijoles, fréjoles) de soja (soya), maíz, colza y algodón. Los principales distribuidores de granos son las empresas comerciales del Estado, como Sinograin, que compran a los productores y venden a las empresas de transformación en subastas semanales. Con el fin de reducir la demanda y los precios de los cereales, en noviembre de 2010 el Estado decidió restringir la participación en las subastas a los molineros, los fabricantes de piensos y los productores de ganado. Según las autoridades, las compras y las ventas de las reservas nacionales de granos que lleva a cabo la Administración Estatal de Cereales se realizan a precios de mercado.

19. Podría el Gobierno Chino explicar cómo se logra garantiza que esta mecanismo se realice a precios de mercado?

Answer: China is still in coordination with relevant agencies to provide response to this question.

d) Niveles de ayuda

En el párrafo 38 del informe de la Secretaría señala que... La notificación más reciente sobre ayuda interna fue presentada al Comité de Agricultura en octubre de 2011 y corresponde a los años civiles 2005-2008. Junto con notificaciones anteriores, esta notificación muestra que la ayuda se ha incrementado de manera significativa en los últimos 10 años, tanto en el compartimento verde como en el ámbar. En el compartimento verde la ayuda fue de 593.000 millones de yuan en 2008 y en el compartimento ámbar, de 89.000 millones de yuan (incluyendo la ayuda *de minimis* y restando la ayuda por productos específicos negativa).

20. Por lo anterior, el Gobierno Colombiano invita a las autoridades chinas a actualizar sus notificaciones sobre ayuda interna en el menor tiempo posible. Es importante, no olvidar que el mecanismo de notificaciones es una herramienta para mejorar la transparencia dado que permite conocer los programas y medidas que aplican los pases Miembros.

Answer: So far, China has notified WTO of the agricultural domestic support data by the end of 2008. China is carefully preparing the national agricultural domestic support data for the years after 2008 and will submit the notifications after the relevant data has been collected and consolidated.

C. PESCA

i) El sector pesquero en China

En el párrafo 49 del informe de la Secretaría señala que... La FAO no dispone de datos sobre el valor de la pesca de captura. En términos de cantidad, se captura una amplia variedad de especies, entre ellas peces sables, peces globo, jureles, camarones y langostinos, calamares y moluscos. Según la FAO, en 2002 haba en China 220.000 embarcaciones, y estaba previsto reducir su número a 192.000 para 2010. Los aparejos de pesca más utilizados eran las redes de arrastre, aunque también se emplean redes de enmalle, redes estacionarias, sedales y anzuelos, as como redes cerqueras. Según informes, en 2005 y en 2010 haba en China 90 empresas dedicadas a la pesca de altura, con 1.700 embarcaciones faenando en todo el mundo.

21. Agradecemos al Gobierno Chino confirmar si están reduciendo el número de sus embarcaciones pesqueras y detallar las mediadas adoptadas para logra tal fin.

Answer: In November 2003, the Ministry of Agriculture laid down the "Opinions on the Implementation of Marine Fishing Vessel Reduction System from 2003 to 2010". There are three specific measures. First, it requires the coastal local governments to make plans on the reduction of the number of fishing vessels and the power in accordance with the "dual control" indicators issued by the state, to strengthen the administration in fishing vessel building approval, inspection, registration, licensing and other aspects, and to implement the "fishing vessel inspection regulations" and fishing vessel decommissioning system strictly. Second, it requires the coastal local governments to implement the regulations on fishing license issuers and issue fishing licenses in strict accordance with the "regulation on the administration of fishing license". Third, it requires the coastal local governments to vigorously promote the process of fishermen job transfer. At present, thanks to the efforts of the central government and local governments at different levels, the number of Chinese marine fishing vessels is reduced gradually.

COSTA RICA

PARTE I: PREGUNTAS EN RELACIÓN CON EL INFORME DE LA SECRETARÍA

Página 21 (párrafo 38)

El 1 de enero de 2008, China eliminó el trato preferencial de los proyectos de IED por lo que respecta al impuesto sobre la renta de las sociedades, con la salvedad de que, en ciertos casos, se aplica el principio de anterioridad a los incentivos durante un período de transición de cinco años.

Pregunta:

1. *Podría China especificar cuáles son aquellos casos en los que se aplica el principio de anterioridad, en cuanto a la aplicación del trato preferencial del impuesto de la renta?*

Answer: The State Council issued the Circular of the State Council on the Implementation of the Transitional Preferential Policies on Enterprise Income Tax (Guo Fa [2007] No. 39) upon the implementation of the Enterprise Income Tax Law, according to which enterprises enjoying the preferential policies with regard to enterprise income tax under the former tax laws, administrative regulations and documents with the effects of administrative regulations shall be subject to a transition under the following measures:

Enterprises which enjoy the preferential policies of low tax rates in the past shall be gradually transitioned to be paying the tax at the statutory rate within 5 years from 1 January 2008.

Enterprises which enjoy such preferential policies of tax reduction and exemption with the fixed term as 2-year exemption and 3-year half deduction and 5-year exemption and 5-year half deduction in the past are entitled to the original preferential policies based on the original rules and the original preferential years after the implementation of the new tax law on 1 January 2008 except that the preferential term shall begin from 2008 if the enterprises have not actually enjoyed the original preferential policies due to the failure to make profit.

In addition, Guo Fa [2007] No. 39 has also explicitly specified the enterprise income tax preferential policies subject to the transitional period.

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Desde el 1 de enero de 2011 se "permite" a los inversores extranjeros invertir en servicios de atención de salud en China sobre una base experimental; anteriormente, estos servicios figuraban en la categoría "restringida".

Preguntas:

2. *Podría China explicar con más detalle qué significa la inversión sobre una base experimental?*

Answer: In China, many service sectors has been undergoing gradual liberalization on pilot-project basis. The meaning of pilot-project is that, on the premise of not violating related national laws and regulations, government permits foreign businesses investment to establish certain kind of foreign-invested enterprises within the specific regions only, with the aim of accumulating experience, etc. As regard to the issue of foreign investors qualifications, there already exist explicit laws and regulations on the utilization of foreign investment for relevant medical institutions in China.

According to CEPA and ECFA , since 1 January 2011, service providers from the Hong Kong and Macao Special Administrative Regions have been permitted to establish subsidiary hospitals in the provinces and municipalities of Shanghai, Fujian, Guangdong, Hainan and Chongqing. Service providers from Chinese-Taipei also have been permitted to establish subsidiary hospitals according to rules in the provinces and municipalities of Shanghai, Jiangsu, Fujian, Guangdong and Hainan on a pilot-project basis. Since 1 April 2012, pilot project of the Hong Kong and Macao SARs to establish subsidiary hospitals in mainland China will be extended to all provincial capitals and municipalities.

3. *Cuáles son las diferencias con respecto a la inversión sobre una base no experimental?*

Answer: According to the provisions with regard to service providers from the Hong Kong and Macao Special Administrative Regions and Chinese Taipei establishing subsidiary hospitals in CEPA and ECFA, Ministry of Health and Ministry of Commerce of the People's Republic of China formulated the Provisional Administrative Measures on Hong Kong and Macao Service Providers Establishing Subsidiary Hospitals in Mainland China, and Provisional Administrative Measures on Chinese Taipei Service Providers Establishing Subsidiary Hospitals in Mainland China, which allows services providers from these regions apply to establish subsidiary hospitals accordingly.

4. *Qué restricciones contiene para los inversionistas extranjeros?*

Answer: Except for the Hong Kong, Macao and Chinese Taipei Service Providers who are allowed to establish subsidiary hospitals in specific cities in mainland China on the basis of CEPA and ECFA, foreign service suppliers from other countries and regions of the world are only permitted to establish joint venture and cooperative hospitals or clinics with Chinese partners proportion of share or equity no less than 30%.

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Las autoridades señalaron que el 30 de enero de 2012 también se eliminó el límite máximo a la participación extranjera en el capital con respecto a 11 subsectores de las categorías "alentada" y "restringida".

Preguntas:

5. *En total, en cuántos sectores y subsectores existe aún un límite máximo de participación de capital extranjero?*

6. *Qué planes tiene China para eliminar el límite máximo a la participación extranjera en estos sectores y subsectores?*

Answer: (5-6) The Catalog of guidance of foreign investment industry enforced on 30 January 2012 and relevant laws and regulations have clearly stipulated the restriction to ratio of foreign shares, and foreign investors can obtain such information from open channels. In future, we will timely amend the Catalog by connection of the economic development condition of China and China's commitment made while entering WTO to steadily promote openness of relevant industries.

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Con miras a aclarar el procedimiento y el alcance de los exámenes antimonopolio y los exámenes de seguridad nacional de las fusiones y adquisiciones con IED, en septiembre de 2011 entraron en vigor medidas detalladas para los exámenes de seguridad nacional de las fusiones y adquisiciones por extranjeros, as como una orientación para la evaluación del impacto en los exámenes antimonopolio.

Preguntas:

7. *Podría China explicar qué implicaciones tienen las medidas aplicadas a los exámenes de seguridad nacional de las fusiones y adquisiciones por extranjeros?*

Answer: In February 2011, the General Office of the State Council of China has promulgated the Circular on Establishment of the State Security Review System Concerning Merger and Acquisition of Domestic Enterprise by Foreign Investors, to formally establish uniform and standard security review system for acquisition by foreign investors, and to clearly stipulate the scope, content, work mechanism and procedure of the security review. The Ministry of Commerce of China also promulgated detailed implementation regulations to further explain relevant procedural matters on state security review for merger and acquisition by foreign investors. According to relevant regulations, a foreign investor is subject to the state security review for its merger or acquisition of domestic enterprises in the following situations: i) the target engages in military or military support business enterprises which locate near important and sensitive military installations, or other business which is related to national defense; or 2) the targets business is related to the important agricultural products, important energy and resources, important infrastructure, important transportation service, key technology, or significant equipment manufacturing, and after the merger or acquisition the foreign investor will have the control right of the target.

Establishment of state security review for merger and acquisition by foreign investors perfects China's legal system in the fields of foreign investors, meets the objective requirements of further raising the level of opening up, and complies with not only international practices but the constant strategy of mutual benefit and opening up of China.

8. *Existen diferencias con respecto a las fusiones y adquisiciones por nacionales?*

Answer: The state security review for merger and acquisition by foreign investors does not apply to domestic merger and acquisition.

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Además, las empresas con inversión extranjera (excepto las del sector financiero) que deseen establecerse en China deben presentar simultáneamente su solicitud al MOFCOM o a los departamentos de comercio locales para obtener un certificado de aprobación de empresa con inversión extranjera. Esto permite a las empresas con inversión extranjera llevar a cabo todos los demás procedimientos necesarios para desempeñar sus actividades, como el registro de la empresa.

Pregunta:

9. *Qué criterios emplea China para excluir a las empresas del sector financiero de obtener un certificado de aprobación de empresa con inversión extranjera?*

Answer: There is no exception for financial industries setting up from obtaining investing approval in China. When the financial industries set up in China, the approval procedure is implemented by specific department, such as CBRC, CSRC and CIRC, but not MOFCOM.

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La Administración de Aduanas también ha promovido la cooperación con las autoridades aduaneras de los países con los que China ha concluido acuerdos de libre comercio (ALC), principalmente en el establecimiento de una red electrónica en relación con los certificados de origen preferenciales y de

un sistema de intercambio de datos aduaneros con las aduanas europeas y de la Federación de Rusia, respectivamente.

Preguntas:

10. *En qué consiste la red electrónica en relación con los certificados de origen preferenciales?*

Answer: Currently, China Customs exchanges electronic data with regard to CEPA certificates of origin and ECFA certificate of origin with the Hong Kong and Macao Special Administrative Regions, Chinese Taipei, and other relevant departments. Only the contents of the certificate of origin are required to be electronized, the manual or electronic signature of the exporter is not required.

11. *Qué tipo de información se puede compartir por este medio que ayude en la aplicación del control aduanero?*

Answer: We need more time to identify what type of information can be shared in custom surveillance.

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En virtud del Reglamento sobre aranceles de importación y exportación, la Comisión de Aranceles Aduaneros del Consejo de Estado está facultada para establecer tipos arancelarios "provisionales", que se aplican a ciertos productos durante un período determinado (normalmente de un año).

Preguntas:

12. *Podría China indicar cuáles son los productos sujetos a la aplicación de aranceles provisionales?*

Answer: The list of the products subject to interim tariff rates in 2012 is specified in the Notice of the Customs Tariff Commission of the State Council on the Tariff Execution Plan 2012 (Shui Wei Hui [2011] No. 27) which is available on the official website of the Ministry of Finance (www.mof.gov.cn).

13. *Qué criterio se utiliza para elegir los productos sujetos a la aplicación de estos aranceles?*

Answer: The Customs Tariff Commission of the State Council determines the goods for which interim tariff rate applies and the corresponding tariff rate and duration and the determination is mainly based on national economic development as well as production, consumption, import and export of relevant goods.

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La Ley de Comercio Exterior (artículo 18) permite a la Autoridad competente de Comercio Exterior del Consejo de Estado -que es el MOFCOM de manera independiente o conjuntamente con otros organismos competentes del Consejo de Estado- dictar, previa aprobación de este último, prohibiciones o restricciones temporales a las importaciones de determinados productos. Estas prohibiciones temporales parecen obedecer principalmente a preocupaciones sanitarias y fitosanitarias o a decisiones adoptadas por organizaciones internacionales.

Preguntas:

14. *Podría China aportar ejemplos de prohibiciones a la importación adoptadas entre 2009-2011 que respondan a decisiones adoptadas por organizaciones internacionales y su debida justificación?*

Answer: China is still in coordination with relevant agencies to provide response to this question.

15. *En el 2011, cuántos y cuáles productos estuvieron sujetos a prohibiciones o restricciones temporales?*

Answer: 14-15

Measures of the Ministry of Agriculture Concerning Import Prohibition in Business Scope

2009

Import ban of live pigs and pork products from: Mexico and a number of US states (26 and 29 April 2009), and Canada (Alberta) (3 May 2009) (A(H1N1) Flu related)

Import ban of poultry and poultry products (HS0105; 0207) from: Spain, France (Deux-Sevres), and the United Kingdom (Hampshire)

Import ban of poultry and poultry products (Low pathogenic avian influenza) from the United Kingdom (Hampshire)

Import ban of poultry and poultry products (Newcastle disease) from Spain

Import ban of poultry and poultry products (Low pathogenic avian influenza) from France (Deux-Sevres)

2010

Import ban on poultry products (HS0207) from Pennsylvania and Texas (USA) (15 January 2010), and Bhutan (12 March 2010), due to low pathogenic avian influenza

Import ban of poultry and poultry products (Low pathogenic avian influenza) from Canada (Manitoba)

2011

Import ban on poultry products (HS 0207) from Morbihan - France (12 January 2011), and Gotlands - Sweden (23 February 2011), due to Newcastle disease

Import ban on artiodactyl and artiodactyl products from Bulgaria (1 February 2011), and the Democratic People's Republic of Korea (23 February 2011), due to foot and mouth disease

Import ban of poultry and poultry products (H1N1 subtype highly pathogenic avian influenza) from Iran (9 November 2011)

Import ban of small ruminant animals such as sheep and goat and products (Peste des petits ruminants) from Israel (9 November 2011)

Import ban of plant seeds as the main host of rape stem canker pathogen (Rape stem canker pathogen) from Germany and New Zealand (21 December 2011)

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De conformidad con el Reglamento sobre certificación y acreditación, los productos enumerados en el Catálogo para la certificación obligatoria de productos no se pueden vender ni importar en China a menos que tengan la Certificación Obligatoria para China (CCC) y lleven la marca CCC.

Preguntas:

16. *Cuánto dura el proceso para obtener una certificación CCC?*

17. *En qué costos monetarios se incurre para la obtención de la certificación CCC?*

Answer: (16-17) According to the Regulations on Certification and Accreditation of PRC, products listed in the CCC Catalogue cannot be marketed, imported or used in other business activities if without CCC certificates.

Rules on Management of Compulsory Certification stipulates that generally speaking, CCC Certification is issued within 90 days since acceptance. In addition, 3C-related fees are much less than that of developed economies.

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Después de que las dos partes hayan firmado un protocolo de inspección y cuarentena, pueden comenzar las exportaciones de los productores de ese país o región inscritos en el registro de la AQSIQ.

Preguntas:

18. *En promedio cuánto tiempo requiere la negociación de protocolos para la importación de productos de origen animal?*

Answer: It depends on the risk assessment made and also the cooperation of the exporting country.

19. *Cuáles son los productos que no requieren del establecimiento de un protocolo sanitario o fitosanitario? Podría brindar China una lista o ejemplos al respecto?*

Answer: Please refer to The Catalogue of Entry-Exit Commodities Inspected and Quarantined by Entry-Exit Inspection and Quarantine Organs

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Para hacer frente a los problemas derivados de la falsificación y alteración de certificados sanitarios y fitosanitarios y facilitar el comercio de productos agropecuarios y alimenticios, la AQSIQ introdujo en 2010 el sistema de inspección y cuarentena E-cert de China (China E-cert). En el marco de este sistema, se exige a todos los exportadores que se inscriban en el registro en línea de la AQSIQ y que obtengan la autorización de este organismo a través de la embajada de su país en China. Los certificados sanitarios y fitosanitarios de importación para cada envío deben quedar registrados en el sistema.

Preguntas:

20. *Respecto a las materias primas para la elaboración de alimentos, Requiere China de la presentación de un Certificado de Libre Venta expedido por la autoridad competente del país exportador?*

Answer: Please refer to AQSIQ official website <http://www.aqsiq.gov.cn/>

21. *Para productos procesados de origen vegetal, Solicita China el certificado fitosanitario? Para qué productos?*

Answer: Please refer to AQSIQ official website <http://www.aqsiq.gov.cn/>

22. *Únicamente las empresas requieren del registro en la AQSIQ o también el producto a importar debe estar registrado?*

Answer: Please refer to AQSIQ official website <http://www.aqsiq.gov.cn/>

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China mantiene tanto contingentes globales como contingentes para destinos específicos. Los contingentes para destinos específicos se aplican a las exportaciones de animales vivos de las especies

bovina y porcina y aves de corral destinadas a las RAE de Hong Kong y Macao. Una vez que el exportador obtiene un contingente, el MOFCOM expide una licencia de exportación.

Pregunta:

23. *En el 2011, qué porcentaje de los contingentes de exportación se asignó a empresas estatales y qué porcentaje a empresas privadas?*

Answer: Quota management to fresh products for the Hong Kong or Macao Special Administrative Region is not against state-owned or private enterprise. There is no quota ratio. The quota is adjusted in accordance with the requirements of the Hong Kong or Macao SAR.

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China mantiene el comercio de Estado en el caso de algunas exportaciones, con miras a: garantizar un suministro nacional estable; evitar las grandes fluctuaciones de precios de los mercados internacionales; salvaguardar la inocuidad de los alimentos; y proteger los recursos naturales no renovables o no reciclables y el medio ambiente.

Preguntas:

24. *En China, las regulaciones y el monitoreo sanitario y fitosanitario se diferencian entre empresas estatales y empresas privadas?*

Answer: No difference.

25. *Qué diferencia existe entre una empresa estatal y una empresa privada para justificar que algunas exportaciones se mantienen bajo el Estado para salvaguardar la inocuidad de los alimentos?*

Answer: State trading enterprises refer to those enterprise that have acquired the qualification to engage in import and/or export trade of products listed in Annex 2A of China's WTO Accession Protocol. They are not necessarily state-owned enterprises. Some of the state-trading enterprises are private enterprises or enterprises with foreign investment. China's state-trading regime is the result of its WTO accession negotiations, and therefore the legal basis is China's Accession Protocol, including Annex 2 of the Protocol.

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La Comisión Nacional de Desarrollo y Reforma fija cada año los precios de compra mínimos del arroz y el trigo. Si bien los precios han ido aumentando cada año, el precio de compra del arroz ha sido generalmente inferior al precio del mercado mundial.

Pregunta:

26. *Existe algún mecanismo de compensación dirigido a los productores cuando los precios fijados a sus productos son inferiores a los precios internacionales?*

Answer: The main purpose of the implementation of the minimum purchase price policy for rice and wheat is to ensure market supply, and to protect the interests of farmers. The minimum purchase price of rice and wheat, is determined in a reasonable way, based mainly on the cost of farmers production, and grain supply and demand relations, changes in urban and rural incomes, the price level and the macroeconomic situation and other factors. When China's rice and wheat prices are

lower than that in the international market, there is no such thing of compensation mechanism for producers.

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La notificación más reciente sobre ayuda interna fue presentada al Comité de Agricultura en octubre de 2011 corresponde a los años civiles 2005-2008.

Pregunta:

27. *Se debe notificar al Comité de Agricultura dentro de los primeros 90 días del año el nivel de ayuda aplicado a la agricultura en el año inmediato anterior. Cuándo se notificarán los niveles de ayuda para los años 2009 al 2011?*

Answer: We have notified to WTO agricultural domestic support data up to 2008. We are making careful preparations on agricultural domestic support data after 2008, which will be actively informed after the relevant data summary is completed.

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La ayuda del compartimento ámbar notificada a la OMC también ha aumentado en años recientes al haberse incrementado los desembolsos presupuestarios para semillas y variedades de cultivos mejoradas, subvenciones a los transportes y subvenciones para mantener reservas nacionales.

Pregunta:

28. *Cuál es el valor de la MGA?*

29. *Se mantiene la ayuda AMBAR otorgada dentro de los niveles consolidados?*

30. *Dado que no hay notificación de ayudas para los años 2009 al 2011 y los datos de la OECD no son comparables con los métodos de cálculo de ayuda de la OMC. Cómo garantiza China que los niveles de ayuda no sobrepasan los consolidados?*

Answer: (28-30) According to China's WTO commitments, China's total AMS is 0. Amber box support are *de minimis* within the specific situation. Please consult the China Agricultural domestic support communications for more information.

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Las autoridades indican que se está terminando de redactar la Ley de la Energía, destinada a abarcar todo el sector de la energía.

Pregunta:

31. *Podría China indicar si en esta nueva Ley de Energía existen restricciones para la producción, distribución o comercialización de energía por parte de empresas de capital extranjero?*

Answer: At present, the Energy Law of China is still on the process of study and drafting. The Energy Law will comply with WTO regulations, meet China's commitment while entering WTO, and coordinate with the industrial policies on foreign investment of China.

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Desde el 1 de noviembre de 2011 se aplica el impuesto sobre los recursos con tipos *ad valorem* que oscilan entre el 5 y el 10 por ciento a las ventas de petróleo crudo y gas natural producidos en China, y se otorgan privilegios fiscales a la producción de aceite espesado, aceite con un elevado punto de fluidez, gas natural de alto contenido en azufre y otros productos del petróleo y del gas, aplicables por igual a todas las empresas nacionales (incluidas las empresas conjuntas contractuales).

Pregunta:

32. *Podría China confirmar si el impuesto sobre los recursos aplica forma idéntica a las empresas nacionales y a las empresas extranjeras, o existe alguna distinción?*

Answer: Article 1 of the Interim Regulations on Resource Tax of People's Republic of China enforced on 1 November 2011 stipulates that the policy on resource tax applies to both domestic and foreign enterprises, and that there is no policy difference.

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Los Dictámenes del Consejo de Estado sobre una mayor utilización de inversiones extranjeras (abril de 2010) han liberalizado en mayor medida la inversión en varios sectores o esferas de servicios.

Pregunta:

33. *Puede China mencionar cuáles son los sectores o esferas de servicios que ha liberalizado, siguiendo los Dictámenes del Consejo de Estado?*

Answer: There are definite regulations in Catalogue for the Guidance of Foreign Investment Industries 2011, which was entered into force in 30 January 2012. The foreign investors can get the information from public channel.

Página 141 (párrafo 95)

Durante el período objeto de examen, los cinco principales bancos comerciales de propiedad estatal representaban alrededor del 50 por ciento de los activos totales de las instituciones financieras.

Preguntas:

34. *Los cinco principales bancos comerciales de propiedad estatal compiten con los demás bancos privados tanto nacionales como extranjeros?*

Answer: As commercial bank, the big five state-owned banks are same as other private banks and foreign banks, all of them need to obey the relevant laws and regulations, and compete on equal footing.

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En el Reglamento de administración de bancos financiados con capital extranjero y las Normas para la aplicación del Reglamento de administración de bancos financiados con capital extranjero se estipulan los requisitos (en particular, sobre la cuanta mínima del capital social y el capital desembolsado y el total del capital de explotación) para el establecimiento de bancos financiados exclusivamente con capital extranjero y sucursales de bancos extranjeros.

Pregunta:

35. *Los requisitos de cuanta mínima, capital social desembolsado y capital de explotación en este Reglamentos son distintos a los requisitos establecidos para los bancos estatales?*

Answer: The minimum registered capital for a wholly foreign-funded bank or a Chinese-foreign joint venture bank stipulated in Article 8 of the Regulations of the People's Republic of China on Administration of Foreign-Funded Banks is consistent with the minimum registered capital for setting up a commercial bank stipulated in Article 13 of the Law of the People's Republic of China on Commercial Banks. As to the registered capital and the actually paid capital for setting up a commercial bank as well as the operational capital for branch institutions, there is no legal difference regarding a Chinese bank or a foreign bank. Article 8 of the Regulations on Administration of Foreign-Funded Banks also stipulates that, a foreign bank branch shall receive from its parent bank a non-callable allocation of no less than 200 million yuan or an equivalent amount in convertible currencies as its operating capital. As a foreign bank branch is not an independent legal person and carries out operation within Chinese territory mainly relying on the operating capital obtained from its parent bank, the requirements on its operating capital made by China complies with the principle of prudence of WTO General Agreement On Trade and Services.

Página 195 (párrafo 323)

En 2010 los servicios de entrega urgente representaron el 45 por ciento de los ingresos totales del sector postal chino. Con arreglo a la nueva Ley de Correos, los inversores extranjeros no están autorizados a prestar servicios de entrega urgente de correspondencia a nivel nacional; este servicio figura en la categoría "prohibidas" en la Gua para las industrias con inversión extranjera de 2011.

Pregunta:

36. *Vislumbra China alguna apertura en el sector de entrega urgente de correspondencia a nivel nacional?*

Answer: Chinese government will proactively fulfill its WTO commitments, implement opening-up in the area of express delivery services, and promote the fair competition and healthy development of the postal industry, in line with the Postal Law and other related laws and regulations.

PARTE II: PREGUNTAS EN RELACION CON EL INFORME DEL GOBIERNO

Página 8 (párrafo 16)

The Government continued to increase spending on agriculture, rural areas and farmers, in less developed areas, on education, healthcare, social security, low-income housing, and environmental protection.

Preguntas:

37. *En qué consiste el aumento en gasto para el sector agrícola?*

Answer: In recent years, the Chinese Government has diverted the focus of its infrastructures and social undertakings from urbans to countryside. More investment have been made to improve agricultural and rural conditions. The major investments are: 1) to support the production of agricultural commodities especially foodstuff; 2) to strengthen water conservancy construction; 3) to

improve infrastructures in countryside; 4) to strengthen forestry ecological construction; 5) to improve social undertaking facilities in the rural areas.

38. *Qué implicaciones tiene para el sector agrícola exportador?*

Answer: The policy mentioned above is about the measures that Chinese government implemented to improve the infrastructure construction of rural area, and to promote the social facilities development. The policy has no relationship with export agriculture, and will not bring negative effect to international agriculture trade.

Página 10 (párrafo 21)

In 2010, the Chinese Government continued to implement consumption stimulus programs such as the programs for rural residents to purchase home appliances and motor vehicles and motorbikes, for people to trade in old motor vehicles and home appliances for new ones, and for use of energy-efficient products.

Preguntas:

39. *Cuáles son las implicaciones del programa de estímulo de consumo (o demanda interna) en el comercio internacional?*

Answer: In recent years, Chinese government has adjusted import duty of some consumer goods, and been carrying through the policies of promoting consumption of household electricity appliances, vehicles and energy-saving products. Implementation of such policies effectively stimulates import of relevant goods. Meanwhile, during the implementation of such policies of promoting consumption as household electricity appliances going to the countryside and new for old of vehicles and household electricity appliances, unless otherwise prescribed by law, there is no restriction to import and export of goods.

Página 11 (párrafo 37)

More strict protective exploitation policies and environment protection standards were adopted on non-renewable resources such as bauxite, tungsten, antimony, tin and rare earth, and the total exploitation and production volumes were strictly controlled, in order to protect resources and ecological environment and promote reasonable and efficient exploitation and utilization.

Preguntas:

40. *Podría China dar ejemplo concreto de las medidas y estándares de protección ambiental que han aplicado para restringir la producción de estos materiales (recursos no renovables)?*

41. *Cuál es el impacto que estas restricciones han tenido en la industria china relacionada con este tipo de materiales?*

42. *Estas medidas impuestas han afectado el comercio de estos materiales con terceros países? Se han impuesto restricciones comerciales específicas? De ser así, podrían señalar qué tipo de restricciones se han impuesto?*

Answer: (40-42) China's export administration on unregenerated resources such as rare earth is for the purpose of protecting environment and conserving exhaustible natural resources. Since the WTO dispute cases on this issue are now under way, it is appropriate for us to refrain from making comments until the decision of the Panel.

Página 13 (párrafo 38)

The Chinese Government will, in accordance with the requirements on narrowing the gap between urban and rural areas and improving the balance between urban and rural development, continue the implementation of the "pay-back" policies.

Pregunta:

43. *En qué consisten las políticas Pay back y en qué tipo de ayuda son notificadas al Comité de Agricultura: Caja Verde o ámbar?*

Answer: China has long been implementing the policy of agriculture supporting industry, supporting industrial development with agricultural accumulation. As China's industrialization and urbanization accelerate, the industry has become the leading industries of the national economy. In order to achieve the coordinated development of industry and agriculture, China has strengthened agriculture support and protection, making it a shift from agriculture supporting industry to industry paying-back to agriculture. Support measures related to agricultural production, including the Green Box and Amber Box support measures, have been notified to the WTO Committee on Agriculture through China's agricultural domestic support.

Página 14 (párrafo 47)

Reform of state-owned enterprises (SOEs) in China, after going on for more than 20 years, now enters a stage focusing on restructuring of large SOEs. The direction of further deepening the reform is to accelerate the introduction of corporate and share-holding systems, realize diversification of investors, and push forward entire listing of those qualified large SOEs. For those not yet ready for entire listing, reform on diversification of ownership should speed up.

Pregunta:

44. *Podría China explicar si en estos procesos de reforma de antiguas empresas estatales se están eliminando restricciones a la compra de acciones o cuotas por parte de inversionistas extranjeros?*

Answer: There is no special provisions in the current Chinese laws and regulations as to a foreign investor engaging in the reform of the state-owned enterprises. A foreign investor purchasing shares of a Chinese enterprise (including a state-owned enterprise) shall comply with the relevant provisions regarding to equity ratio as stipulated by the Catalogue of Industries Invested by a Foreign Investor.

Página 20 (párrafo 78)

Export of products consuming too much energy and resources and causing serious pollution continues to be strictly controlled. The export administration measures on products of high energy consumption, high emission and pollution and products of exhaustible natural resources are an integral part of the ecological and environmental protection measures of the Chinese Government to achieve sustainable development under intensifying pressure from resources and environmental constraints. They are simultaneously implemented with domestic exploration and production restrictions.

Preguntas:

45. *Qué tipo de medidas se han tomado para restringir las exportaciones de este tipo de productos?*

Answer: A series of measures of restriction of export can be applied to these goods, such as adjustment of export tax rebate and cease of processing trade (i.e. terminating the preferential policy of bonded import of materials). Measures of imposing export tariff may also be taken in some cases.

46. *Qué tipo de medidas se han tomado a nivel doméstico para la producción relacionada con estos productos?*

Answer: China applies strict restrictions to some industries with surplus production capacity to avoid excessive expansion of production capacity, and strictly approve projects of high energy consumption and high pollution emission. China will further raise the access threshold of new projects. In order to protect resource and environment and promote sound development of these industries, a new project can be started only at the premise of elimination of the backward project, non-increase of the total output, low consumption of energy and standard pollution emission.

47. *Podría China dar ejemplos de las consideraciones científicas que legitiman la adopción de este tipo de medidas?*

Answer: Restriction to production and export of these goods equals to adjustment to supply and demand of goods, with the purpose to restrict excessive expansion of production of relevant goods, and finally release the pressure of domestic environment and resources.

DOMINICAN REPUBLIC

Preguntas

De acuerdo con el examen de políticas comerciales de China, el párrafo 7 de la página ix del Informe de la Secretaría, se menciona que en el periodo examinado hubo muchos cambios en las políticas de china en materia de importaciones y de entrada de inversiones extranjeras. Los aranceles NMF aplicados siguen estando próximos a los tipos consolidados en China, y el promedio aritmético de los aranceles NMF aplicados, del 9.5%, no ha variado. China hace uso de diversas medidas en frontera no arancelarias, como las licencias de importación y exportación y el comercio de estado para orientar la asignación de recursos. El uso de procedimientos de aviso y formulación de observaciones se está haciendo más general en el proceso de redacción de leyes, reglamentos y normas departamentales en materias de comercio, pero, al parecer, no toda la información relacionada con el comercio se pone a disposición del público.

- *A qué criterios responde la información relacionada con el comercio que no está disponible al público?*
- *De qué forma ha afectado esta situación a la comunidad comercial china y extranjera, al momento de gestionar o participar en uno de los mecanismos de comercio que disponen?*
- *Ha planificado China eliminar esta práctica, divulgando oportunamente toda la información que requieren los agentes de comercio para sus transacciones y aprovechamiento de las oportunidades derivadas del comercio?*

Answer: (1-3) It is not mentioned in China's commitment to solicit public opinions for the drafts of the laws, regulations or rules to be promulgated. Nevertheless, in order to advance scientific and democratic legislation and improve the quality of legislation, the Chinese Government has always

made unremitting efforts to improve the transparency of legislation, promote solicitation of public opinions on legislation drafts and expand public participation. Since 2008, public opinions have been solicited for draft administrative laws and regulations which are all published on <http://www.chinalaw.gov.cn> except those to be kept secret in line with law. And public opinions have also solicited for draft regulations of various departments on their websites or <http://www.chinalaw.gov.cn>. All parties including foreign investors can propose their opinions and suggestions

El Régimen de Política Comercial: Marco y Objetivos.

Transparencia

En el párrafo 4 y 5, página 13, se hace referencia a que muchos aspectos el régimen de política comercial y de inversiones de China siguen siendo complejos y opacos, lo cual deja posibilidades de discrecionalidad administrativa y de corrupción.

1. *Cómo ha repercutido esta falta de transparencia y discrecionalidad en el comercio y la inversión de/en China?*

Answer: Pursuant to Article 42 of the Legislation Law of the People's Republic of China, the power of law interpretation is vested with the Standing Committee of the National People's Congress. As further stipulated in Article 47 of the Legislation Law, the legal interpretation by the Standing Committee of the National People's Congress has equal effect with laws. According to Article 31 of the Ordinance Concerning the Procedures for the Formulation of Administrative Regulations, administrative laws and regulations to be further clearly defined or be added with supplementary provisions shall be interpreted by the State Council, and the interpretation of administrative laws and regulations shall have equal effect with the administrative laws and regulations. Pursuant to Article 33 of the Ordinance, if the legal organs of the peoples governments of provinces, autonomous regions and municipalities directly under the Central Government and relevant departments under the State Council request the legal organ of the State Council to give interpretations for issues concerning the specific application of administrative laws and regulations during administration work, the legal organ of the State Council may research and give reply; for significant issues, it may propose opinions and give reply after the opinions are submitted to and approved by the State Council. According the above provisions, China has unified interpretation of laws and regulations and the statement of leaving scope for administrative discretion and corruption.

Política y Prácticas Comerciales, Por Medidas

- a) **Medidas que afectan directamente a las importaciones**
- b) **Procedimientos aduaneros, valoración en aduana y normas de origen**
- c) **Inspección previa a la expedición**

Según el párrafo número de 10, página 29 de este Examen, se establece que las prescripciones en materia de inspección, previa a la expedición no han sufrido cambios desde 2010. Esas prescripciones, que se establecen en el Reglamento de aplicación de la Ley sobre Inspección de Mercancías de Importación y de Exportación revisado, están destinadas a proteger la salud pública, mejorar la situación fitosanitaria, proteger el medio ambiente y evitar la entrada en el país de mercancías falsificadas. Todavía no se han notificado a la OMC. Y que el Reglamento entró en vigor el 1 de diciembre de 2005.

1. *Podría China, explicar por qué aun no se han notificado las prescripciones que establecen dicho Reglamento?*
2. *Cómo favorece este instrumento el acceso flexible de los productos importados?*

Answer: In the Implementation Rules of the Inspection Law on Import and Export Commodities, inspection and quarantine of safety, sanitation, health, environmental protection and anti-fraud are taken as the major work of competent authorities, reflecting people-oriented thought and implementation of the Scientific Outlook on Development. In terms of regulating administrative enforcement of laws, the Implementation Rules requires clearly higher efficiency and better service and puts forward specifications on both supervision and management and legal responsibilities, so as to improve inspection efficiency of imported goods.

Normas y Otras Prescripciones Técnicas

❖ Medidas sanitarias y fitosanitarias

Por lo visto en el párrafo 102, páginas 58 y 59, otros Miembros han planteado en varias ocasiones al Comité preocupaciones por MSF adoptadas o propuestas por China, entre ellas, normas de higiene para los licores destilados, restricciones a la importación de determinados productos y pruebas de cuarentena, as como por las prácticas de notificación en materia sanitaria y fitosanitaria. Las preocupaciones acerca de las prácticas de notificación en materia sanitaria y fitosanitaria surgieron después de la adopción de la Ley sobre inocuidad de los alimentos de 2009, cuando se presentaron casi 100 notificaciones con un plazo para formular observaciones de 15 días.

1. *Cómo valora China la pertinencia de las medidas MSF para que las mismas no se conviertan en restricciones encubiertas del comercio internacional?*

Answer: China will make SPS measures that comply with the SPS Agreement and make sure that they do not constitute disguised restrictions on international trade.

Políticas Industriales

Empresas Estatales, Empresas Privadas y Gestión Empresarial

❖ Empresas del sector no público

De acuerdo a lo establecido en párrafo 228, página 88 de este Informe, en China, las empresas del sector no público pueden ser empresas privadas nacionales (incluidas las empresas individuales) y empresas con inversión extranjera. Según las autoridades, las empresas privadas nacionales y las empresas con inversión extranjera reciben el mismo trato, es decir, se benefician de condiciones igualitarias en el acceso a los mercados, el impuesto sobre la renta de las sociedades y demás medidas administrativas. Mas sin embargo, según lo indicado en párrafo 18 de la página 120, las empresas comerciales del Estado siguen teniendo un acceso predominante a los contingentes arancelarios, pues se les asignó el 90 por ciento del contingente correspondiente al trigo, el 60 por ciento del correspondiente al maíz, el 50 por ciento del correspondiente al arroz, el 70 por ciento del correspondiente al azúcar y el 33 por ciento del correspondiente al algodón.

1. *Cómo se explica esta distribución de los contingentes arancelarios, dentro de lo que son condiciones igualitarias en el acceso a los mercados para las empresas comerciales del Estado versus las empresas privadas, individuales nacionales?*

Answer: The quota allocation of the commodities subject to quota administration is duly in compliance with China's commitments to the WTO, and abides by the "Interim Measures for the Administration of Import tariff Quotas of Agricultural Products".

State trading enterprises refer to those enterprise that have acquired the qualification to engage in import and/or export trade of products listed in Annex 2A of China's WTO Accession Protocol. They are not necessarily state-owned enterprises. Some of the state-trading enterprises are private

enterprises or enterprises with foreign investment. China's state-trading regime is the result of its WTO accession negotiations, and therefore the legal basis is China's Accession Protocol, including Annex 2 of the Protocol.

2. *Cuáles son los criterios establecidos para que la distribución de los contingentes arancelarios beneficie ms a las empresas comerciales del Estado?*

Answer: The proportion of state-run trade quotas stipulated in China's commitments to the WTO are recognized by all members. The purpose of determining the proportion is to enable China to protect the interests of its farmers by regulating the market through imports and exports. In addition, the state-run trade enterprises operate independently according to market principles, so there is no question of them being allowed to enjoy more benefits by the country.

Políticas Agrícolas

Según establece el párrafo 13, página 119, todas las tierras agrícolas de China son propiedad del Estado o de colectivos y son gestionadas por las autoridades locales de la zona. No obstante, la tierra no se puede vender, subarrendar ni utilizar como garanta para créditos, lo que es un grave impedimento para la inversión y la reestructuración. En el decimoséptimo Congreso del Partido, celebrado en octubre de 2008, se aprobó la Decisión sobre determinadas cuestiones relativas a la promoción de la reforma y el desarrollo rurales, en la que se indicaba que la política de tierras podía cambiar a fin de conceder a los titulares ms derechos para transferir, arrendar o intercambiar la tierra.

1. *Podría China informar, si se aplicar la decisión del partido comunista para eliminar las disposiciones que limitan la tenencia de tierra?*

Answer: The "Decision on Several Major Issues Concerning the Promotion of Rural Reform and Development" adopted at the Third Plenary Session of the Party in 2008 requires us to "strengthen administration and services regarding the circulation of the right to land contractual management, establish and improve the circulation market of the right to land contractual management, allow farmers to circulate the right to land contractual management by means of subcontract, lease, exchange, transfer, joint-stock cooperation or by other means according to law and on a voluntary basis and with compensation, and promote the development of various forms of moderate scale businesses." Meanwhile, it also stresses that "the circulation of the right to land contractual management shall not result in any change of the collective ownership nature of the land or the use of the land, and shall not do harm to the farmers' land contract rights." These policies have great significance in promoting the legal, standardized and orderly development of the circulation market of the right to land contractual management, and promoting the development of moderate scale business entities like professional big businesses, family farms, and professional farmers cooperatives. Meanwhile, no mortgage is allowed to be established on the right to land contractual management obtained through household contract, according to the regulations of the "Property Law" and the "Guarantee Law". This is mainly because China's rural social security system is still not sound and the contracted land is still the most reliable livelihood security of the majority of farmers. If allowing mortgage on the right to land contractual management, some farmers might lose the contracted land and this would endanger their lives and cause social problems.

Según la OCDE, Párrafo 46, página 128, casi toda la ayuda para los productos principales se otorga mediante medidas de sostenimiento de los precios del mercado (con inclusión de los aranceles) y se dedica una cuanta importante a las subvenciones a los insumos. La OCDE ha señalado que estas formas de ayuda a los productores agropecuarios figuran entre las menos eficaces y las que ms distorsionan el comercio y son menos eficaces que las alternativas, como los pagos desconectados o basados en la superficie, porque una gran parte de los beneficios se pierde a causa de los costos ms

elevados de los insumos y los recursos; pueden, pues, distorsionar el comercio en mayor medida que otras alternativas ms eficaces.

2. *Tomando en cuenta las observaciones de señaladas por la OCDE, qué medidas se tienen pautadas para evitar las distorsiones en el comercio y lograr que los productores sean ms eficientes y sus producciones ms rentables?*

Answer: China is a big developing country. Taking into account the size of China's population, ensuring the effective supply of agricultural products, especially ensuring the food security, has always been the primary task in China's agriculture industry. The importance and difficulty of the task is more prominent in China compared with other developing countries. Countries have different national conditions and different specific problems. Developed and developing countries are in different stages of development, so they have different policy objectives. The policies implemented in China are consistent with its WTO commitments and the relevant WTO rules, and the practice showed that the implementation of these policies for safeguarding food security and small-scale farmers livelihoods played a positive role on the stability of agricultural production and farmers' income, did not result in trade-distorting.

3. *Cuáles medidas concretas pondrá en marcha el gobierno chino para orientar el superávit en el ahorro nacional hacia la inversión interna?*

Answer: The Chinese government constantly improves the social security system, effectively lightens the burden on residents in education, health care, housing, etc., and reasonably guides the residents' willingness to save. Meanwhile, it strengthens the construction of multi-level capital market to meet the diverse investment needs of residents; further improve the investment environment, reduce the corporate tax level, and promote moderate growth in investment.

4. *Tras la búsqueda de reducir el superávit comercial a través del estímulo a las importaciones, cual es la posición del gobierno chino en relación a las medidas que restringen las exportaciones?*

Answer: On the issue of export management measures, the Chinese Government does not intend to restrict and distort trade or to protect domestic industries. The export management of resource products and products whose production causes serious pollution or consumes large quantities of energy is an integral part of the Chinese Governments ecological and environmental protection measures to achieve sustainable development in the face of intensifying resource and environmental pressures.

5. *Cuáles nuevas medidas prevé el gobierno chino para poder controlar la capacidad de producción de algunos sectores, como el acero y el hierro, ya que hasta el momento no ha podido ser frenadas la producción de los mismos? Y cuáles son las implicaciones de este exceso de capacidad instalada?*

Answer: In the iron and steel industry, China's measures to control the excessive growth of production capacity have begun to show initial results, the iron and steel production growth has clearly slowed down, and the quantity reduction has become the industry consensus. For the next step, China will focus on promoting industrial layout optimization and structural adjustment, improving competitiveness, eliminating backward production capacity through market mechanisms, and accelerating the pace of industrial restructuring.

6. *En cuanto a la Inversión Extranjera, en el Informe se establece que el Gobierno chino sigue alentando a las Empresas China's a invertir en el extranjero, en particular, en los sectores de energía, materias primas, agricultura, manufacturas, entre otros; en ese sentido, nos*

interesara conocer si América Latina, en particular, la República Dominicana estarían entre de uno de sus principales destinos de su inversión.

Answer: Latin American region has always been an important destination for Chinese enterprises to make foreign investment and it is our understanding that any host country that is endowed with a sound investment environment where there is an investment opportunity meeting the development need of Chinese enterprises, is believed to become an investment destination for Chinese enterprises.

7. *En materia de Transparencia, el Informe establece que partir de mayo de 2008 entraron en vigor disposiciones sobre la información gubernamental, sin embargo, se establece que aún existen dificultades al respecto, sobre todo, falta de equilibrio entre la divulgación de información y la información confidencial; en ese tenor, nos interesaría tener conocimiento de las medidas que aplicarán con el objetivo de mejorar estas deficiencias en materia de Transparencia Gubernamental.*

Answer: The "Government Information Disclosure Regulations of the People's Republic of China" put into effect on 1 May 2008 clears the concept of government information and the scope of government information which the body to disclose government information should take the initiative to disclose, it also clearly stipulates that citizens, legal persons and other organizations have the right to apply for access to relevant information with the departments of the State Council and local people's governments above the county level. In order to implement the regulations, the General Office of the State Council has issued supporting documents like "the opinions of the General Office of the State Council on Several Issues Regarding the implementation of the Government Information Disclosure Regulations of the People's Republic of China" and "the Opinions of the General Office of the State Council on the Disclosure of Government Information upon Application"; local governments at all levels and relevant departments have also made great progress in disclosing financial budget and statement, the three official consumptions and other government information in accordance with the regulations. In 2012, the General Office of the State Council issued the "2012 Work Plan on Focus Points for Government Information Disclosure", giving specific instructions on the information disclosure in key areas and the building of information disclosure system.

Bancos Extranjeros (página 148 del documento WT/TPR/S/264)

1. *Existe trato discriminatorio a los capitales extranjeros en relación con los capitales nacionales?*
 - *Hacemos esta pregunta porque entendemos que el capital mínimo requerido para el establecimiento de una sucursal de un banco extranjero es de US\$20,000 millones de dólares, mientras que a la banca local solo se le exige 10,000 millones de dólares. Por lo tanto, observamos un trato discriminatorio a favor de los capitales chinos.*

Answer: The foreign financial institutions which meet the condition that total assets of more than US\$20 billion at the end of the year prior to filing the application, are permitted to establish a branch of a foreign bank in China. This different treatment is a reservation that China maintains in its schedule of specific commitments.

- *Otro aspecto que llamó nuestra atención, es que esta medida es doblemente discriminatoria porque solo favorece a los bancos de grandes capitales. Por lo tanto, ningún banco de la región de Centroamérica y el Caribe podrá establecerse en china, debido al alto monto que su legislación exige.*

Answer: The above-mentioned requirements are consistent with China's WTO commitments, we welcome all qualified foreign banking services suppliers including banks from Central America and Caribbean region to provide services in China.

2. *Por qué China no sigue los lineamientos de los otros países miembros de la OMC permitiendo que la IDE sea 100% de capital extranjero?*

Answer: According to China's service schedule, qualified foreign financial institutions are allowed to establish wholly foreign-owned banks, including subsidiaries and branches. However, China did not make any commitments on the acquisition of existing domestic banks by foreign financial institutions. Nevertheless, China allows foreign investors to acquire equities of Chinese-funded banks up to certain level. According to the Measures on Administration of Equity Investment of Overseas Financial Institutions in Chinese-funded Financial Institutions, the percentage of equity investment of a single overseas financial institution in a Chinese-funded financial institution may not exceed 20%.

- *Al hacer la revisión de la lista de los compromisos horizontales de China en el GATS (documento WT/ACC/CHN/49/A), nos hemos percatado de que este país condiciona su inversión extranjera a la presencia del capital local a parte del capital extranjero. En la parte in fine del numeral 3) del referido documento se establece lo siguiente: La proporción de inversión extranjera en una empresa conjunta de capital no debe ser inferior al 25 por ciento de su capital social.*
- *Hacemos esta pregunta porque países miembros de la OMC, han permitido que capitales chinos controlen el 100% de las acciones de compañías establecidas en estos países, sin ningún tipo de restricción.*

ECUADOR

Report by the Secretariat (WT/TPR/S/264)

The Secretariat report, Chapter II, Section (4) Foreign Investment Regime, (ii) Regulatory framework, paragraph 46 and footnote 50: regarding the "encouraged" industries and the tax incentives for FDIs in the central-western region, the classification of encouraged industries includes those helping to meet domestic and export market demand and important raw material industries.

Has this type of measure been notified pursuant to your export subsidy commitments?

Answer: The "encouraged" industries and the tax incentives for FDIs in the central and western region have been included in the subsidy notification submitted by China. It is important to declare that the tax incentives are not on the condition of product export, so they are not export subsidies.

Secretariat report, Chapter III, Section (1) Measures Directly Affecting Imports, (ii) Tariffs, paragraph 18 and footnote 13. With reference to "interim" tariffs:

- (a) *What criteria do the State Council and its Customs Tariff Commission apply in setting, adjusting and approving interim tariffs?*

Answer: The Customs Tariff Commission of the State Council sets and adjusts import and export tariffs mainly in accordance with national economic development as well as the production, consumption, import and export of relevant products, including goods applying interim tariffs, tariff rate and time limit.

- (b) *If the setting, adjustment and approval of interim tariffs is done by order of the mentioned bodies, and not as a border measure, and considering that interim tariffs may be applied to a variety of products, does the implementation of interim tariffs not amount to granting less favourable treatment to imported products?*

Answer: The setting and implementation of interim traffics accord with the principle of most-favoured-nation treatment.

Secretariat report, Chapter III, Section (2) Measures Directly Affecting Exports, (viii) Export finance, insurance and guarantees, paragraph 164. With reference to insurance premiums:

What is the method used for payment of the insurance premium? Does the State provide any financing or support for the payment of the net export insurance premium?

Answer: For export credit business with export credit insurance, the insurance premium is separately collected by Sinosure from the insurance applicant, the insurant or the designated third party. During the business operation, Sinosure has endeavored to realize the business goals of long-term balance of profit and loss and break-even operation in the way of "commercial operation" required in its constitution and strictly observed relevant WTO requirements. The Chinese Government doesn't provide any financing or support for the net export insurance premium.

Secretariat report, Chapter III, Section (3) Measures Affecting Production and Trade, (iv) Price controls, paragraphs 214 and 215 and footnote 187 regarding government prices, the purchase at market prices of reserve materials by State companies, and the claims by State companies to the Ministry of Finance for losses owing to government guided prices.

How does China ensure that the government prices measure does not distort the prices that are paid to producers, chiefly when it comes to agricultural products, and how does this measure fit in with China's WTO commitments?

Answer: Currently, China has applied the government prices to a minor proportion of goods and services in the total and even fewer agricultural products. The goods and services with government prices are not beyond the scope of Annex 4 of China's Protocol of Accession.

Secretariat report, Chapter IV, Section (1) Agriculture, (ii) Agriculture policies, paragraph 33.

What measures has China taken to ensure that the participation of its trading enterprises in the distribution of certain agricultural products, in some cases linked to exports or imports, complies with non-discrimination provisions and the requirement to base activities entirely on "commercial considerations"?

Answer: Pursuant to the Protocol on the Accession of the People's Republic of China, China has implemented state trading management for the import of wheat, maize, cotton, sugar and other agricultural products and the export of maize, rice and other agricultural products. Since the WTO accession, the Chinese Government has implemented state trading management in strict accordance with its accession commitments and relevant laws and regulations, timely notified relevant information of state trading enterprises to the WTO and required enterprises to carry out commercial activities according to relevant laws and regulations. The state trading enterprises independently choose import countries and opportunities based on market conditions, and the Chinese Government doesn't intervene into the commercial operations of the enterprises.

According to the Report by China, Chapter II, Section (3) Accelerating the Transformation of Economic Development Pattern, (i) Implementing the strategy of expanding domestic demand, paragraph 21, the Government of China is interested in expanding domestic demand through consumption stimulus programmes, the use of energy-efficient products and promoting credit for consumption.

Could the Government of China explain how these domestic policies are applied in conformity with Articles III.1 and III.4 of the GATT 1994, and provide examples of policies adopted to encourage increased domestic consumption of domestic and foreign products? How does China propose to increase consumption through credit? Are there already domestic regulations in this respect?

Answer: China's strategy of expanding domestic demand and consumption stimulus programmes are not only limited to purchasing domestic products, but also includes the consumption incentives for foreign products. So, this type of policies and measures doesn't violate the principle of most-favoured-nation treatment. The specific measures include the policy of home appliances going to countryside, and the policy of home appliances trade-in and so on. The relevant policies are formulated in accordance with the needs in special periods and are time-based. For example, the policy of home appliances trade-in was abolished in December 2011.

The Report by China, Chapter II, Section (3) Accelerating the Transformation of Economic Development Pattern, (ii) Accelerating the development of the service sector, paragraph 28 states that a series of guidelines have been proposed to stimulate the development of such specific services sectors as medical services, high-tech services, energy-saving services, logistics, accounting services, housekeeping services, e-commerce, inland shipping, etc.

Could China please provide further details concerning these guidelines to promote the development of the mentioned sectors?

Answer: Please refer to the Opinions on Accelerating the Development of Water Transportation of the Yangtze River and other Inland Rivers (Guo Fa [2011] No. 2 issued by the State Council, the Opinions of the General Office of the State Council on the Policies and Measures for Promoting the Sound Development of the Logistics Industry (Guo Ban Fa [2011] No. 38), the Guiding Opinions of the General Office of the State Council on Accelerating the Development of the High-tech Service Industry (Guo Ban Fa [2011] No. 58), the Notice of the General Office of the State Council on Forwarding the Opinions of the National Development and Reform Commission and Other Departments on Accelerating the Promotion of Energy Management Contract and Promoting the Development of the Energy Conservation Service Industry (Guo Ban Fa [2011] No. 25) and other policy documents for details. All these policy documents are made available at www.gov.cn.

Have foreign investment incentive policies been used for non-financial services? If so, please provide details.

Answer: In December 2011, the Chinese Government promulgated the Catalogue for the Guidance of Foreign Investment Industries (Revised in 2011) (No. 12 Order of the NDRC and MOFCOM.). The Catalogue was revised to encourage foreign investments in modern service industry, support expanded foreign investment utilization for the industry oriented at people's livelihood and promote the opening process of service industry. Nine "encouraged" clauses were added to service industry, including charging stations for motor vehicles, venture enterprises, intellectual property right services, technical services for offshore oil pollution cleanup, vocational training and so on. The share of clauses of service industry in the "encourage" category was further increased. The foreign investments in medical institutions and financial leasing companies among others were adjusted from the "restricted" category to "allowed" category, and the restriction on equity ratio of foreign investment was removed.

In addition to stimulation of the development of the mentioned services, could China please explain what policies it has adopted to encourage the liberalization of telecommunications and tourism?

Answer: With respect to telecommunications industry, China began to open up offshore call centers to foreign investors without restriction on equity ratio of foreign investment on pilot basis in 2010. The pilot regions include 21 demonstrative service outsourcing cities include Beijing, Tianjin and Shanghai.

On 27 June 2012, the Ministry of Industry and Information Technology issued the Implementation Opinions on Encouraging and Guiding Private Capitals to Further Enter the Telecommunications Industry (hereinafter referred as "Implementation Opinions"). The Implementation Opinions aim to guide private capitals to enter telecommunications industry through multiple ways and actively expand the investment channels and participation scope of private capitals. Please visit www.miit.gov.cn (official website of the Ministry of Industry and Information Technology) for details.

With respect to tourism, currently, China has fully opened up tourism to foreign investors in accordance with its WTO commitments. Therefore, there is no issue of liberalization of restrictions on tourism.

Report by China, Chapter II, Section (3) Accelerating the Transformation of Economic Development Pattern (iii) Intensifying efforts for intellectual property rights protection, paragraph 31: the Government of China states that it has carried out enforcement campaigns to crack down on infringements and counterfeits. Paragraph 33 further stresses the 2010 reform of the Copyright Law and Regulations on the Customs Protection of Intellectual Property Rights.

Could China please explain in detail how it reformed the mentioned Law and Regulations with a view to attaining the stated objective?

Answer: With respect to the perfection of the Regulations on the Customs Protection of Intellectual Property Rights, in March 2010, the State Council passed the decision of revising the Regulations on Customs Protection of Intellectual Property Rights with following revisions:

(1) Article 11 is revised as "In case of any change in respect of an Intellectual Property Right under recordation, the holder of the intellectual property right shall go through the procedures of modification or cancellation of recordation with the General Administration of Customs within 30 working days from the date of such change.

Where the owner of the Intellectual Property Rights fails to go through the procedures of modification or cancellation of recordation as required in the preceding paragraph, as a result of which the legal import or export of others or performance of regulatory duties in accordance with law by the customs, the General Administration of Customs may revoke the relevant recordation pursuant to the application by stakeholders concerned or initiatively revoke the relevant recordation."

(2) The Clause 1 of the Article 23 is revised as "An owner of Intellectual Property Rights may, after applying to customs for adoption of protective measures, apply to the people's court for an order of cessation of the infringing act or preservation of property for the impounded goods suspected of infringing upon rights prior to the institution of action in accordance with the Trademark Law of the People's Republic of China, the Copyright Law of the People's Republic of China, the Patent Law of the People's Republic of China or other relevant laws."

(3) Adding Clause 5 to Article 24: "The owner of Intellectual Property Rights withdraws its application for the impounded goods suspected of infringing upon rights before the customs considers such impounded goods suspected of infringing upon rights as infringing ones."

(4) The Clause 3 of Article 27 is revised as "Where the confiscated goods that have infringed upon Intellectual Property Rights can be used for public welfare, customs shall transfer the goods to the relevant public welfare organizations to be used for public welfare. Where the owner of the Intellectual Property Rights wishes to acquire the goods, customs may transfer the goods to the owner of the Intellectual Property Rights for compensation. Where confiscated goods that has infringed upon Intellectual Property Rights cannot be used for public welfare and the owner of the Intellectual Property Rights does not wish to acquire the goods, customs may auction off the goods according to law after removing the infringing characteristics provided that customs shall not allow the imported goods with counterfeit trademark to enter commercial channels only after removing the trademark logos on the goods except under exceptional circumstances. Where the infringing characteristics cannot be removed, customs shall destroy the goods."

(5) Article 28 is revised to Article 31 as "Where articles carried or sent by mail by individuals into or out of China exceed the amount for personal use or the reasonable amount and infringe upon the Intellectual Property Rights stipulated in Article 2 hereof, the goods shall be disposed of as infringing goods."

The revised Regulations of the People's Republic of China on the Customs Protection of Intellectual Property Rights came into force on 1 April 2010.

With respect to the reform of the Copyright Law, in 2010, China revised the Copyright Law. As provided in the Article 4 of the Copyright Law, "Copyright owners, in exercising their copyright, shall not violate the Constitution or laws or prejudice the public interests. The State exercises supervision and administration on the publishing and dissemination of the works in accordance with law". Meanwhile, the provision on copyright pledge is added in Article 26, "In case of pledge in copyright, the pledgor and pledgee shall go through the formalities of pledge registration with the administrative copyright authorities of the State Council. The revision further helps China perfect its copyright law system, further improve the level of copyright protection and safeguard the economic interests of copyright owners.

In addition to campaigns to crack down on counterfeiting and piracy, could China please elaborate on the legal and administrative mechanisms introduced to ensure the effective conduct of civil and criminal proceedings involving violations of intellectual property rights within a territory of China?

Answer: Currently, China has formulated complete intellectual property right laws according with the obligations provided in the international treaties. The Patent Law, Copyright Law and Trademark Law are three basic intellectual property right laws, the Anti-unfair Competition Law is an important supplement, and the Tort Liability Law and the Anti-Monopoly Law also provide important provisions on intellectual property rights. The Supreme People's Court also issued many judicial interpretations to enrich and break down standards on the application of laws. In addition to above mentioned laws passed by the National People's Congress and its Standing Committee, there are some administrative laws and regulations issued by the State Council such as the Regulations on the Protection of the Right of Communication through Information Network. With respect to procedural law, corresponding provisions of the Civil Procedure Law, Administrative Procedure Law and Criminal Procedure Law are applied to civil, administrative and criminal intellectual property right cases respectively.

Report by China, Chapter II, Section (4) Continuing to Deepen the Reform Steadfastly (iv) Reform of fiscal and taxation system, paragraph 51 refers to the reform of the resource tax system and states that the specific resource tax on crude oil and natural gas was "changed to *ad valorem* resource tax."

Could China please provide further details on the method used to calculate this tax and how the reform is consistent with WTO rules?

Answer: The policy statement by the Chinese government, paragraph 51 actually states the calculation method of resource tax, namely ad valorem resource tax is added based on the original specific resource tax. The specific resource tax on crude oil and natural gas was changed to ad valorem resource tax, and the resource tax rates and amounts of the specific resource tax on rare earth and other products were adjusted. As a universally applicable domestic tax system, China's reform of resource tax is consistent with WTO rules and particularly the principle of national treatment.

EUROPEAN UNION

REPORT BY THE GOVERNMENT

II. ECONOMIC AND TRADE ENVIRONMENT AND MACROECONOMIC POLICY DIRECTION

(3) ACCELERATING THE TRANSFORMATION OF ECONOMIC DEVELOPMENT PATTERN

(i) Implementing the strategy of expanding domestic demand

Report by the Government, page 10, para-s 21 and 22

The report by the Government states that "Expanding domestic demand, particularly consumer demand, is essential to long-term steady and robust economic development in China. It is a long-term policy that the Chinese Government will adhere to. //In the meantime, in view of the fact that some of the programs introduced in the course of addressing the international financial crisis were to be phased out, introduction of new policies for promotion of consumption was under study to facilitate and benefit people, with the general policy direction being green, low carbon, energy saving and environment protecting. "

1. *Could China inform which new policies for the promotion of consumption were under study and which policies did Chinese government choose for introduction? Could China provide details on the permanent mechanism for boosting consumption and any specific tools, incentives, programs the Chinese government has taken to increase the share of domestic consumption in the Chinese GDP?*

Answer: The Chinese government attaches great importance to expanding domestic demand, especially consumer demand, and consider it a long-term strategy and basic starting point for promoting China's economic development. The Chinese government promotes consumption in the following four aspects: enhancing the residents' consuming ability, actively fostering and expanding the consumption hot spots, improving consumer expectations, and positively improving consumption environment. The contribution rate of consumption to economic growth is 51.6% in 2011, 10.1% higher over the previous year.

In the future, China will continue improving the policies and measures to promote consumption, actively and steadily promote urbanization, implement employment priority strategy, deepen the income distribution system reform, improve the social security system, create a favourable environment for consumption, so as to enhance consumption capacity of residents, improve consumer expectations of residents, promote the upgrading of consumption structure, and constantly enhance the pulling effect of consumption to economic growth.

(ii) Accelerating the development of the service sector

Report by the Government, page 11, para-s 28-29

The report by the Government acknowledges that the development of services is a major task in China's transformation of the economy and that the development of the services sectors requires more arduous efforts. Under the foreign investment catalogue some sectors were opened in a number of health-related or green sectors.

2. *Could China provide an indication as to the intended timeline for liberalising services sectors like telecommunication, banking, insurance, construction, transport, distribution, postal and courier services, and professional and legal services?*

Answer: China always attaches great importance to development of services industry and takes a positive position on liberalization of trade in services. China has made extensive and substantial commitments in the sectors of telecommunication, banking, insurance, construction, transport, distribution, postal and courier services, and professional and legal services. This year, China further opens its insurance market, and permit foreign insurance companies to provide compulsory third party liability insurance for motor vehicles.

China recognizes that the progressive liberalization of trade in services among WTO Members would promote development of international trade in services. However, further liberalization of services trade in China, as we understand, is subject to the DDA negotiations.

(4) CONTINUING TO DEEPEN THE REFORM STEADFASTLY

(iii) Reform of state-owned enterprises and development of the non-public sector

Report by the Government, page 15, para. 48

The report by the Government mentions that beginning 2012 a standard board of Directors has been in place in 42 (of the 117) central SOEs.

3. *Can China elaborate on initial results that SASAC has drawn since this reform process was started in 2005? Does China have plans to put in place standard board of Directors in all central SOEs, and if so, what is the timing? Does SASAC intend to put in place external Directors in all central SOEs, and if so, what is the timing?*

Answer: As of now, the Board of Directors has been in place in 42 pilot central SOEs, the SOE scientific decision-making mechanism has been established, the decision-making system and decision-making effectiveness have been standardized and clarified, the decision-making quality has improved significantly, and the corporate governance has been further standardized and transparent. It is expected that the number of pilot central SOEs will reached 50 by the end of 2012 and most of the central enterprises will establish a standardized Board of Directors by the end of 2015. The introduction of external director on Board of Directors should be depended on the enterprises specific circumstances, and thus there is no clear timetable on this.

- III. TRADE AND INVESTMENT DEVELOPMENT AND RELATED POLICIES**
(3) OPTIMISING THE UTILIZATION OF FOREIGN INVESTMENT THROUGH FURTHER OPENING UP
(iv) Caring for and protecting rights and interests of investors

Report by the Government, page 24, para. 98

The report by the Government states that all laws and regulations had been amended at the time of WTO accession to annul stipulations on compulsory transfer of technology.

4. *Can China confirm that no government authority, whether central, provincial or local, shall take technology transfer as a pre-condition for market access including in the context of examining and approving planned investments of foreign operators?*

Answer: With regard to the issue of mandatory technology transfer, actually, China amended policies that are inconsistent with its WTO accession commitments and canceled provisions on mandatory technology transfer when sorting out laws and regulations shortly after its WTO accession. The Chinese Government has always clarified that technology cooperation and transfer are voluntary behaviors of enterprises and that it will not take them as preconditions for market access.

REPORT BY THE WTO SECRETARIAT

- II. TRADE AND INVESTMENT REGIMES**
(1) Institutional and legal framework
(i) Transparency

WTO Secretariat's report, pages 11-14

Although significant progress has been made, lack of transparency in implementation of laws and regulations by the judiciary and the administrative authorities remains a problem. Since its last TPR, China has taken some steps to improve transparency.

5. *Does China consider publishing ex ante or ex post economic evaluations of its introduced policies or measures?*

Answer: According to the Government Information Disclosure Regulations of the People's Republic of China and relevant regulations on audit results announcement issued by the Audit Office, under the premise of not involving national security and secrets, the Audit Office fully discloses the audit results on the implementation of policies or measures.

WTO Secretariat's report, page 13, para. 13.

The Secretariat's report also states that "All drafts of trade-related administrative regulations and departmental rules that are published for public comment must provide a comment period of not less than 30 days, subject to exceptions. With some exceptions, regulations and rules enter into force 30 days after promulgation."

Experience of European operators in the Chinese market is different: the average length of time given for comment was just 21 days, with the longest being 91 days and the shortest just 8 days. In contrast, within the European Commission, the best practice is to allow 8 weeks for the collection of responses to written public consultation. On occasion, regulations and circulars issued by the Chinese authorities apply retroactively, therefore creating uncertainties on the state of the law at any given time.

6. *Is China considering to further improve the transparency of its legislative procedures, e.g. by expanding the notification period and consultation process with affected parties, as well as allowing longer grandfathering periods to adjust to major changes?*

Answer: China has strictly honoured WTO agreements and its WTO commitments since its accession to WTO, and released all trade-related laws, regulations and rules at least 30 days prior to their enforcement for comments by any individuals, enterprises and other WTO Members. In addition to this commitment, China has also made great efforts in improving legislation transparency. Since 2008, public opinions have been solicited for all draft administrative laws and regulations except those to be kept secret in accordance with law on the <http://www.chinalaw.gov.cn> and public opinions have also been solicited for all department draft regulations on these departments websites or <http://www.chinalaw.gov.cn>. All parties including foreign enterprises and individuals can propose opinions and suggestions. Since August 2011, apart from exceptional cases, the drafts of all economic and trade-related administrative regulations and departmental rules have been made public at www.chinalaw.gov.cn for comments. There is more than 30 days for the public to make comments, apart from individual cases of urgency. Thanks to these two measures, the public has sufficient time to understand and become familiar with the contents of the laws and regulations and submit comments.

(ii) Central-provincial relationships

WTO Secretariat's report, page 15, para. 20

The Secretariat's report describes the division of responsibilities between provinces and central government and the impact on SOE mergers: "On 28 August 2010, the State Council issued a Circular of Opinions on Promotion of Enterprises Restructuring through Mergers and Acquisitions (State Council Circular 2010/27), requiring local authorities to abolish local regulations that hinder cross-province investment activities, in particular cross-provincial mergers and acquisitions.

7. *Could China provide information on the impact of the referred measure on the level of mergers and acquisitions in China?*

Answer: Mergers and acquisitions activities of all Chinese enterprises, including state-owned enterprises, are carried out in accordance with Chinese laws and market principles.

(3) TRADE AGREEMENTS AND ARRANGEMENTS

(iii) Unilateral preferences

WTO Secretariat's report, page 18, para. 37

The Secretariat's report informs that "As of 1 January 2011, unilateral preferential tariffs on 60% of products (in terms of national tariff lines) were offered to 36 least developed countries (LDCs). On 1 January 2012, Niger and Somalia were offered similar treatment. According to the authorities, about 90% of tariffs (in terms of national tariff lines) on imports from Lao PDR, Cambodia, and Myanmar have been eliminated unilaterally since 1 January 2010 under the China-ASEAN FTA framework. During the Eighth WTO Ministerial Conference, China indicated that it would reduce tariffs to zero on 97% of imports (in terms of national tariff lines) from LDCs that have diplomatic ties with China."

8. *Does China have any plans to extend its DFQF to all LDCs? Could China provide information on the implementation of its commitment made in November 2010 to extend DFQF to 97% of imports to all LDCs? Can China share the list of products that will not be eligible under China's DFQF regime?*

Answer: China plans to offer zero tariff treatment on 97% tariff lines from least developed countries (LDC) that have diplomatic ties with China under the South-South Cooperation Framework. Since July 2010, China has offered zero tariff treatment to 60% tariff lines from LDCs and will gradually extend to 97%. Right now, relevant authorities are considering the exception list.

(4) FOREIGN INVESTMENT REGIME

WTO Secretariat's report, pages 18, 23

A New Social Insurance Law was approved in China on 28 October, 2010 and came into effect on 1 July 2011. It would affect the cost of operation of foreign companies in China. This new Law is generally welcome, however, in the view of the EU, there is a lack of detailed clarification on contribution requirements, range of coverage, possibility of exception and exit from China for foreign employees.

9. *Does China consider granting adequate interim exemptions until the effectiveness of mandatory insurance in order to enable companies and foreigners to prepare and countries to negotiate bilateral agreements?*

Answer: To protect the social security rights and interests of foreigners employed in China, Article 97 of the Social Insurance Law of the People's Republic of China provides that foreigners employed in China should participate in social insurance scheme with reference to the provisions of the Social Insurance Law. The law was announced on 28 October 2010 and became effective on 1 July 2011. Before the entry into force of the Social Insurance Law, we set aside adequate time for companies and foreigners employed in China to prepare for that, and the issue on additional temporary exemption will no longer be considered.

To solve the problem of double payment of social insurance premiums, the internationally accepted approach is to waive the insurance obligations of the insured in a country through the signing of a bilateral social security agreement. China and Germany signed the social insurance agreement between the People's Republic of China and the Federal Republic of Germany in 2001 and signed the agreement on interim measures for mutual exemption of pension insurance contributions with ROK in 2003. Both agreements are implemented smoothly. After the introduction of the Social Insurance Law, over a dozen countries sent TPNs to the Chinese government, requesting negotiations on the signing of a bilateral social security agreement. At present, China has started bilateral social security agreement negotiations with Japan, Korea, France and other countries.

The EU welcomes a further opening of China towards foreign investment, however the new catalogue for the Guidance of Foreign Investment Industries has not fully met expectations.

The EU also does not share the view of the Chinese government that there has been no technology-transfer requirements imposed on foreign investment projects. The EU considers ownership limits for foreign investors and the requirement to cooperate with a local partner as a means to enforce technology transfer. The same is true for obligations to cooperate with Chinese design institutes. Also, regulations in the new-energy car manufacturing require technology transfer to a large extent. The EU thinks that the requirement for foreign manufacturers of new energy vehicles to master a core technology cannot be justified on the grounds of safety but must also be considered as a means to enforce technology transfer.

10. *Could China elaborate on its position on these referred issues and explain why it does not consider that these are technology transfer requirements?*

Answer: With regard to the issue of mandatory technology transfer, actually, China amended policies that are inconsistent with its WTO accession commitments and cancelled provisions on mandatory technology transfer when sorting out laws and regulations shortly after its WTO accession. The Chinese Government has always clarified that technology cooperation and transfer are voluntary behaviors of enterprises and that it will not take them as preconditions for market access.

With regard to the issue that China requires vendors concerned to consider core technology in new energy vehicles and other aspects, we believe that to master core technology doesn't mean technology transfer. To master core technology is not necessarily linked to technology transfer from one party to the other party of a joint venture. With regard to the issue of new energy vehicles, China has not required the foreign side to transfer technology to the Chinese side in the actual practices.

The seed sector is seen by China as strategic, because of food security and food safety considerations. Two important measures are 1) the level of required investments (investments by small companies are discouraged) and 2) the required majority stake in joint ventures (JVs). The latter is a major problem. When renewing business licenses, joint ventures should have Chinese majority stake, which gives Chinese partners full control over foreign investors key asset: the genetic basic material.

11. Could China indicate why it considers these limitations justified and how it ensures that key assets of investors in this sector are protected?

Answer: The Chinese government has been encouraging the introduction of foreign advanced technology and fine varieties & resources, and welcoming foreign enterprises to invest in China's seed sector. China imported 19,000 tons of crop seeds in 2010 and this number rose to 22,000 tons in 2011, an increase of 13.6%. There are 31 foreign-invested crop seed enterprises in China.

The Chinese government protects the intellectual property by raising the barrier to entry, improving the requirement on the registered capital, and standardizing enterprise behaviours. Practice has proved that the foreign-invested crop seed enterprises in China and Chinese enterprises achieve mutual benefit, common development and a win-win outcome through cooperation.

The requirements on the size of seed enterprise are in line with the actual needs of the development of China's seed sector. China is a developing country. The domestic seed enterprises are small, scattered, weak and at different levels of development, so it is necessary to raise the market access threshold in terms of enterprise size and technical resources, so as to promote the healthy development of the domestic seed sector and protect farmers' interests.

(i) Recent developments in FDI policy

WTO Secretariat's report, page 19, para. 40

The Secretariat's report briefly summarizes the revised Catalogue for the Guidance of Foreign Investment Industries, which entered into force on 30 January 2012.

12. Could China indicate what other sectors are expected to be liberalized (removal of joint venture requirements, removal of equity caps, lifting sectors out of the prohibited section etc.) in the current Five-Year Plan period?

Answer: China will implement a more proactive strategy of opening up, and continuously open wider to the outside world. We will timely revise the Catalogue for the Guidance of Foreign Investment Industries and actively guide the direction of foreign investment based on the needs of economic development and opening up. Opening wider to the outside world is always one of the key principles each time when we revise the Catalogue.

WTO Secretariat's report, page 19, para. 41

The Secretariat's report notes that the reclassification of certain sectors as encouraged in accordance with the State Councils Guiding Opinions on Central and Western Regions Receipt of Industrial Transfers will be reflected in the next revision of the Catalogue of Advantaged Industries for Foreign Investment in Central-Western China.

13. Could China indicate when such a revision will be completed, as well as which other sectors will be included? As was the case with the Catalogue for the Guidance of Foreign Investment Industries, will China open up to a 30-days consultation before a final draft is produced?

Answer: According to the requirements in the Opinions of the State Council on Further Improving the Utilization of Foreign Investment (Guo Fa [2010] No. 9), the National Development and Reform Commission, the Ministry of Commerce and other relevant departments are revising the Catalogue of Advantaged Industries for Foreign Investment in Central-Western China. The projects listed in the catalog will enjoy the preferential policies for encouraged foreign investment projects. The revision will be completed this year. It will further reflect the comparative advantages of the central and western regions, and play an active role in promoting foreign investment in central and western regions.

(ii) Regulatory framework

WTO Secretariat's report, page xi, para. 14 and page 20 para. 45

In May 2010 China's State Council set out policies to encourage investment in sectors dominated by SOEs but this is not applied to foreign investment. In addition the report notes that foreign investors may also be allowed to own some shares in SOEs in certain sectors.

14. Could China clarify whether this means that it does not want to encourage foreign direct investment into areas dominated by SOEs? In which ways does China try to encourage private (Chinese) investment in SOEs? Are there financial incentives for example or other flanking measures? Which sectors does this relate to?

Answer: Foreign investment in China's industry is mainly directed by the Catalogue for the Guidance of Foreign Investment Industries. The areas of foreign investment and the equity ratio are set based on industry type rather than business type in the catalogue, where there is no special provision on the state-owned enterprises.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) MEASURES DIRECTLY AFFECTING IMPORTS

- (i) Customs procedures, valuation, and rules of origin**
- (c) Customs valuation**

The Secretariat's report indicated that the customs value of 99% of China's imports was determined on basis of the transition value. However in some cases the Chinese customs authorities seem to be using reference prices for instance for the imports of wine, or in new plans regulating the import by Chinese individuals importing luxury products.

15. Can China inform if lists with reference prices will be made public?

Answer: China Customs reviews and determines the customs value of imported goods based on the transaction price, in accordance with the provisions of the WTO Valuation Agreement. It does not set the reference price, and there is no provision requiring taxing the goods based on the reference price.

(d) Rules of origin

WTO Secretariat's report, page 26, para. 13

The Secretariat's report describes rules of origin applied by China.

16. *Can China confirm that the presentation of a non-preferential certificate of origin is not required at importation?*

Answer: According to Article 14 of the Regulation of the People's Republic of China on Origin of Import and Export Goods, the Customs has the right to require the consignee of the imported goods to submit the certificate of origin of the imported goods and review it accordingly. If necessary, it may request the relevant agencies of the exporting country (region) to verify origin of the goods. "

(vii) Standards and other technical requirements

(a) Standards and technical regulations

WTO Secretariat's report, pages 45-48

The EU welcomes the improvements in the transparency of China's regulatory process, including the increased number of public calls for comments. However, as noted during China's last Transitional Review Mechanism (TRM), these practices are still uneven, and their application depends on the regulatory authority in charge. There are many instances where mandatory requirements are still enforced without prior stakeholder consultation or WTO notification, or even publication of the rules in question. The same situation often occurs when voluntary standards are made mandatory (for instance, through their incorporation in a mandatory conformity assessment scheme such as the CCC). A regulatory area where significant concerns in this regard still exist is Information and Communication Technology (ICT), under the regulatory authority of the Ministry of Industry and Information Technology (MIIT).

17. *What steps is China taking in order to ensure that all its authorities in charge of developing mandatory requirements (including notably the MIIT) consistently provide adequate public consultation opportunities at a sufficiently early stage on all new draft laws and administrative measures, and allow a reasonable period for comments?*

Answer: Please refer to the answer of Question 6.

18. *Could China explain what principles and procedures govern public consultation of interested parties according to existing regulations? Are steps being taken to harmonise the currently differing practices of Chinese regulatory authorities and provide a common set of rules in this regard?*

Answer: Article 35 of the Legislation Law of the People's Republic of China stipulates that "with regard to a legislative bill placed on the agenda of a Standing Committee meeting, it may, by decision of the Council of Chairmen, be published for soliciting opinions. Opinions gathered from the organs, organizations and citizens shall be sent to the working offices of the Standing Committee." The Ordinance concerning the Procedures for the Formulation of Administrative Regulations and the Ordinance concerning the Procedures for the Formulation of Government Rules provide that, except those involving national security, foreign exchange rates, monetary policy determination, and those of

which the implementation will be hindered if they are not put into effect immediately after the announcement, the administrative regulations and government rules should be implemented at least 30 days after the publication and this period of time is for public comments. The Ordinance concerning the Procedures for the Formulation of Administrative Regulations also provides that the draft of important administrative regulations for review should be made public for comments upon the approval of the State Council. The "interim measures for seeking public comments on draft laws and regulations" issued by the Legislative Affairs Office of the State Council provides that the draft administrative regulations should be made public for comments at www.chinalaw.gov.cn in principle, and the public comment period should be generally no less than 30 days, except individual cases of urgency and other exceptional cases. The "notice on several issues for further increasing public participation in government legislative work" and the "notice on several issues for making draft government rules public for comments at www.chinalaw.gov.cn" issued by the Legislative Affairs Office of the State Council include specific provisions on making the draft government rules public for comments. Since 2008, except those kept confidential according to the laws, all the draft administrative regulations have been made public for comments at www.chinalaw.gov.cn and the draft government rules have been made public for comments at the websites of government departments or www.chinalaw.gov.cn.

19. Could China explain existing mechanisms through which interested parties can participate in the development of technical regulations (including mandatory standards) and conformity assessment procedures? Do domestic and foreign-owned companies established in China enjoy identical rights in this respect? Can non-Chinese nationals participate in expert groups, task forces or the like set up by the Chinese authorities to assist the regulatory process? What opportunities are available for foreign stakeholders (i.e. not established in China) to provide input into the regulatory process?

Answer: Any working unit and individual can propose to formulate a standard. The drafting group consists of interested parties, and the draft will be circulated to solicit opinions from working units in production, marketing, application, R&D, and testing, which will normally last for two months. A technical committee of interested parties will review the standard. If the standard is a compulsory national standard, it will be put online again to solicit public opinions before it is published. Compulsory national standards affecting international trade will be notified to the WTO for international comments.

Relevant interested parties can participate in 3C technical committees to formulate rules and procedures for conformity assessment. 3C technical committees are open to all organization and individuals, domestic organizations and foreign-invested organizations enjoy the same right and treatment. Rules of 3C Technical Committees (CNCA No. 50, 2009) can be found at the website of CNCA

20. In the EU's experience, providing a single web portal for all public consultations has significantly enhanced the ability of stakeholders, and of information about on-going or planned public consultations and stakeholders' participation thereto?

Answer: The SAC website is such a single web portal on standardisation, and information about standard proposal, approval, and publication can be found. Any working unit or individual can comment freely on standard formulation and revision. SAC has appointed certain persons to collect opinions and reply.

21. What steps is China taking in order to expand the systematic use of Regulatory Impact Assessments (RIAs) by all its regulatory authorities? Is there an obligation to carry out RIAs for measures that may have a significant impact on trade?

Answer: China is still in coordination with competent authorities to provide responses to the question.

22. Could China provide information on the percentage of technical regulations or mandatory standards that have been subject to a call for public comments and the percentage of those subject to a Regulatory Impact Assessment prior to their adoption?

Answer: For compulsory national standards, public comments can be made at any stage of the whole formulation process. The standards to be formulated will be put online for any working unit and individual to comment. And the draft will be circulated to solicit opinions from working units in production, marketing, application, R&D, and testing, which will normally last for two months. Compulsory national standards affecting international trade will be notified to the WTO for international comments.

23. Could China explain what internal policy coordination mechanisms exist among regulators and standardisation bodies to ensure that technical regulations (including mandatory standards) and conformity assessment procedures are consistent with the WTO TBT Agreement, including its transparency requirements, and avoid the existence of duplicative or overlapping requirements?

Answer: The formulation procedure of compulsory national standards involves large amounts of internal coordination mechanisms, like inter-ministerial standard proposal joint meetings, coordinating meetings between authorities and technical committees, standard proposal coordinating meetings within authorities, etc. all these mechanisms are to ensure openness, fairness, justice, transparency and conformity.

24. Is there any obligation for regulators in China to review at regular intervals existing regulations to assess whether they have actually met their objectives and whether they are still justified or should be amended or simplified in light of changed circumstances, including technological developments?

Answer: National standards must be reviewed five years after its publication to determine whether it is still effective, or whether it needs revising or annulling.

WTO Secretariat's report, page 47, para-s 83-92

The Secretariat's report describes China's standardization system. The EU notes in particular (in para. 88) that, out of 489 technical committees in charge of developing national standards, 15% included representatives of foreign companies. While the EU is pleased with the significant improvements in recent years concerning the participation of foreign companies in standard-setting work, we consider that significant efforts still need to be made in this regard.

25. Can China provide more information as to the areas of standardization covered by the ca. 70 technical committees which include representatives of foreign companies? What steps are being taken in order to further increase the participation of foreign and foreign-invested companies in standardization work?

Answer: Statistics show that the ratio of representatives from foreign and foreign invested companies (FFIEs) in TCs has increased to 25%, and these TCs cover more than 120 standardization fields including steel, cement, coal, energy, agricultural machinery, industrial and mining machinery, construction materials, electric instrument and meter, electronic products, lab equipment and devices, medical devices, food and testing methods, biological materials and testing, telecommunications, logistics, and sports. Besides, there are a large number of foreign and foreign investment enterprises (FFIEs) participate in China's standardization activities via observer membership or seminars, forums, comments on drafts. No restrictions is found in Rules on Management of National Standardization

Technical Committees and Administration on Management of National Standards, and China does not see the necessity to adopt measures to increase participation of a particular interested group, which go against fairness and the law of standardization.

For certain sectors, the participation of foreign and foreign-invested companies in standardization work is severely restricted, even though the standards in question are for purely commercial applications (i.e. not relevant for national security). A worrisome example in this regard is the "National Information Security Technology Standardization Committee" (TC260), which does not allow any kind of participation of foreign-owned or foreign-invested companies. As many of these standards are later rendered mandatory, foreign companies are, in fact, deprived of opportunities to provide meaningful input in the regulatory process at the standards drafting stage.

26. Can China explain why for some sectors (e.g. ICT), the participation of foreign and foreign-invested companies is still constrained to observer status, while for others (e.g. information security) no involvement is allowed? What steps are being taken to increase the level of participation of foreign companies in information security-related standardization work, including TC 260?

Answer: The possibility for FFIEs to participate in certain TCs depends on the actual demand and their representativeness. On the one hand, FFIEs are only one group among all the enterprises and FFIEs represent many economies; on the other hand, the number of P membership is limited. Therefore, it is natural for some FFIEs to be denied P membership. FFIEs can become members or comment on drafts or participate in seminars, forums, and press conferences.

The Secretariat's report describes in detail the activities carried out by the Standardization Administration of China (SAC) in charge of developing national standards, but contains little information on the procedures for the development of other standards (e.g. trade/industrial or local standards). Indeed, while for national standards the process of development is quite transparent, with drafts normally posted on the SAC website for public consultation, the development of industrial standards is much more opaque, and practices vary significantly across sectors. Currently, over 60 entities appear to have competence to draw up industrial standards in China, many of which will become mandatory. Furthermore, many of these mandatory standards are subject to very short transitional periods.

27. What are the measures being taken by the Chinese government to enhance the systematic transparency of the industrial standard-setting process (e.g. public consultations, taking comments received into account, publishing work programmes, etc.)?

Answer: The formulation process of industrial standards is mainly based on that of national standards, but it is prioritizing and open for public opinions to ensure transparency and coordination

28. Can China provide statistics on the number of industrial standards adopted in the period under review? How many of these standards have been subject to a public consultation at draft stage, and what has been the average period allowed for the submission of comments? What has been, on average, the period of time between their adoption and implementation?

Answer: Currently, SAC is not involved in the submitting procedure and no statistics is available.

29. Could China clarify how many of the organizations with competence to draw up industrial standards have adopted the Code of Good Practice in Annex 3 to the TBT Agreement?

Answer: Currently, SAC is not involved in the submitting procedure and no statistics is available.

WTO Secretariat's report, page 48, para. 92

The Secretariat's report states that "As of end 2006, 46% of the 21,410 national standards had been adopted from international standards and advanced foreign standards. Of these, 5,064 were from the ISO, 2,075 from the IEC, 314 from ISO/IEC, 50 from ITU, and 2,428 from other international standard organizations. There are no data on the number of trade or local standards that include the contents of the standards formulated by international standard organizations."

The EU notes that China's 11th Five Year Plan set a target of 85% alignment to international standards by 2010 the subsequent 12th Five Year Plan reinforced this commitment. Nevertheless, many Chinese standards still deviate from international standards without adequate demonstration that those standards were inadequate or ineffective for the objectives pursued. Furthermore, in several sectors, numerous home-grown standards have been developed over the years, which feature unique Chinese technological solutions rather than working within the international standard-setting system. Again here, the ICT and information security sectors are a prime example.

30. Can China provide more recent statistics on the percentage of national standards aligned to international standards? How are these statistics compiled for instance, does a partial adoption of an international standard, or the addition of Chinese-specific features to an international standard are still considered as 'alignment' to the international standard in question?

Answer: No recent statistics is available.

31. Could China provide an update with regard to its progress in aligning its domestic (national, trade and local) standards to international standards? What measures will the Chinese Government take to make progress towards the 85% target set in the 12th Five Year Plan?

Answer: No recent statistics is available

32. The Secretariat's report indicates that there is no data on the number of trade standards based on international standards. The EU would therefore like to invite China to make such statistics available as soon as possible, and no later than the time of the next WTO TPR.

Answer: Currently, SAC is not involved in the submitting procedure and no statistics is available.

33. The EU would like to take this opportunity to remind China of the obligations enshrined in Article 2.4 of the TBT Agreement and Article F of the Code of Good Practice in Annex 3 of the TBT Agreement, and would like to enquire what steps are being taken by China to ensure that the organizations in charge of developing industrial standards comply with these obligations?

Answer: Currently, SAC is not involved in the submitting procedure and no statistics is available.

34. Can China explain how its policy of systematically developing Chinese-specific standards in the fields of ICT and information security, even where international standards exist, comply with its obligations under the TBT Agreement? If it is China's assertion that the international standards in questions are inappropriate or ineffective for the objectives pursued, can China clarify what these objectives are, and can it provide scientific and technical evidence to support this assertion?

Answer: China is still in coordination with competent authorities in order to provide responses to the question.

(b) Product certification

WTO Secretariat's report, pages 48-49, para-s 94-97

The Secretariat's report describes the China Compulsory Certification (CCC) system. The EU would like to take this opportunity to once again stress the need for a comprehensive review of the CCC, in order to replace the current 'one size fits all' approach with one based on consideration of the actual levels of risk to health and safety posed by the very diverse product groups coming under the CCC. At the time of the previous TPR, China explained that its current stage of economic and social development was still not sufficiently advanced as to introduce a mechanism of Suppliers Declaration of Conformity (SDoC) however, "relevant research" was being carried out.

35. Could China provide more detailed information on the "relevant research" carried out in this regard, and any conclusions thereof? Furthermore, could China give an update with regard to its reflection process on the possibility to introduce less burdensome procedures, including SDoC for lower risk products, as an alternative to the current compulsory third party certification combining both product testing with factory inspections?

Answer: Research on risk analysis has been carried out for products under 3C Catalogue. As different products vary in risks due to design, production, consumption and the development of that particular industry, 3rd party certification shall vary in control procedures as well. CNCA is collecting the results of risk analysis from the research and has initially set up a product risk classification system. A reasonable and effective diversified certification system will be established, based on different risk categories and emphasizing conformity and effectiveness in after-certification supervision.

CNCA will simplify the certification modes and improve efficiency for low-risk products to maintain quality management and meet development demand. Meanwhile, for the same product, CNCA will design different certification modes and procedures based on the creditability and quality control capacity of those enterprises to achieve classified management.

Details will be published and implemented after completion.

The CCC scheme currently combines mandatory product testing and manufacturer's quality management system (QMS) verifications, thus comprising both product type testing and factory inspections.

36. In those areas where, due to risk considerations, China considers it necessary to maintain a third-party conformity assessment procedure, is China considering amending the CCC scheme in order to allow manufacturers to choose between QMS and product verification modules, at least for certain categories of products?

Answer: CNCA will simplify the certification modes and improve efficiency for low-risk products to maintain quality management and meet development demand. Meanwhile, for the same product, CNCA will design different certification modes and procedures based on the creditability and quality control capacity of those enterprises to achieve classified management. Details will be published and implemented after completion.

37. Obtaining CCC certification is a lengthy and costly process. Factory inspections in particular are the major cost item for foreign manufacturers located outside China. In the absence of sufficient trade volumes, the costs of CCC certification cannot simply be absorbed by manufacturers and de facto prevent many companies, especially SMEs, from doing business in China. What steps has China taken and / or is considering to reduce the costs associated with CCC certification?

Answer: 3C system is a market access system supervised by government agencies and operated by 3rd party technical organizations that review and certify products. The main technical procedure includes type test, initial factory inspection and after-certification supervision. Type test refers to the test to prove that standards and technical requirements are met, after which a test report will be issued. Initial factory inspection refers to site inspections of how to ensure quality and product conformity conducted by certifying bodies. After-certification supervision is the annual supervision over enterprises and products by certifying bodies, including sample tests and follow-up inspections.

CNCA will consider appropriate adjustment for certain products, and for low-risk products and credible enterprises, initial factory inspections may involve fewer procedures to reduce costs and improve efficiency.

Rules on Management of Compulsory Certification stipulate that, generally speaking, CCC Certification is issued within 90 days since acceptance. In addition, 3C-related fees are much less than other similar international certifications.

China abide by WTO/TBT Agreement and Regulations on Certification and Accreditation of PRC, and China is actively promoting and allowing mutual recognition in international product testing and factory inspection within the framework of multilateral or bilateral MRAs. China has signed consignment agreements with 19 overseas certifying bodies (located in Europe, America, Japan and other economies) for follow-up inspections over factories abroad. CNCA accepts the inspection reports and results of these bodies, which further saves time and costs.

38. In the 2010 TPR, China stated that ISO 9001-certified companies could not be exempted from the factory inspection requirements because the scope of the factory inspection under the CCC concerned additional aspects relating to the conformity between the manufactured products and the certified products. Given that ISO 9001 does indeed specify requirements for QMS ensuring the manufacturer's ability to consistently provide products that meet certain requirements, in what respects does China consider that a manufacturer's quality management system certified compliant with ISO 9001 is not sufficient to guarantee the conformity between the manufactured products and the certified products?

Answer: 3C factory inspection focuses on enterprises quality assurance capacity to consistently produce 3C-compliant products and conformity of the final product (including product structure and key components), which is different from ISO 9001 certification, as the latter involves no conformity with 3C-certified products at all.

Currently, only domestic, state-owned certification bodies and laboratories have been approved by CNCA to perform testing and initial factory inspections under the CCC. Only a limited number of foreign certification bodies can perform follow-up factory inspections abroad based on specific arrangements with CNCA.

39. Will China enable foreign commercially independent testing laboratories and certification bodies to engage in testing under CCC and to conduct initial factory inspections for CCC abroad in order to facilitate and expand trade in both directions? (See also Question 37)

Answer: At present, China cannot designate overseas labs as 3C-designated labs by Chinese laws and regulations, taking into account of difficulties in tracing responsibilities and following practices in the EU. EU labs have been widely participating in 3C certification via multilateral/bilateral channels.

The EU notes that the Secretariat's report, while providing an outline of the CCC scheme, does not include information on any other product approval schemes applicable in China. In some cases,

however, several regulatory authorities exercise concurrent regulatory powers over the same product and with the same objectives, thereby leading to a situation where a product already tested and certified by one regulatory body needs to obtain a certification from another. Examples in this regard can be found in the information security, medical devices and motor vehicles sectors, among others.

40. What measures has China put in place, or is planning to take, in order to avoid duplication of conformity assessment procedures for the same products?

Answer: Information security certification is voluntary, not a market access prerequisite. No duplication is involved between information security certification and other certifications.

For duplication in medical devices, AQSIQ and SFDA has jointly issued two public notices in 2006 and 2008, in which commitment of one test, one factory inspection and one fee for 8 imported medical devices is made. In 2009, CNCA published another notice to designate certain medical-device labs as 3C labs, through which testing resources in certification and registration can be shared, and one test is really achieved. Duplication in medical devices has been resolved.

No duplication exists in vehicles and imported vehicles can go for customs clearance directly with effective 3C certificate.

As already explained to China bilaterally and in the TBT Committee, the EU is concerned that China's requirements for conformity assessment bodies (CABs) (see notification G/TBT/N/CHN/798) extend also to foreign CABs approved by foreign regulators, and performing mandatory conformity assessment on the territory of China, at the request of Chinese exporting manufacturers, to attest the compliance of Chinese products with the requirements of the foreign country in question as a consequence, a foreign CAB can only undertake such conformity assessment activities in China if it has a subsidiary in China.

41. Could China explain why it considers necessary to regulate CABs that perform conformity assessment activities required by another country, and which are already approved by the authorities of that country?

Answer: China is still in coordination with competent authorities in order to provide responses to the question.

42. What steps is China taking to ensure that product certification procedures safeguard IPR and, more generally, afford adequate protection to the legitimate commercial interests of the applicant companies as required by Article 5.2.4 of the TBT Agreement, particularly in the IT sector?

Answer: All the information required by certifying bodies and testing labs is only for certification and testing, and leaking to a 3rd party is forbidden. Certifying bodies and testing labs can sign confidentiality agreements upon request. Up to now, China has received no complaint in disclosure of commercial secrets

During the last TPR, China informed that the Office of State Commercial Cryptography Administration (OSCCA) 1999 Regulation on Commercial Encryption was still under amendment. Furthermore, China provided assurances that its WTO transparency obligations in this regard would be honoured in due course. The EU is grateful for China's confirmation in this regard however, it would like to stress that a WTO TBT notification has to be submitted at an early appropriate stage, while the text is in draft form and can still be changed to take into account comments of WTO Members. In this context, the mere publication of a final text by China's State Council Legislative Office just before the adoption of the Regulation would not be sufficient.

43. *Could China provide an update on the revision of the OSCCA 1999 Regulation? Furthermore, can China commit to ensure that a public consultation and TBT notification on the draft revised regulation will take place at an early draft stage, while comments made can still be taken into account?*

Answer: The Regulation on Commercial Encryption Products has been listed in the 2012 Legislation Plan of the State Council. Currently the Regulation is being revised in line with Chinese Legislation Law and Rules on Formulation of Administrative Laws. Opinions from various stakeholders will be widely solicited and due consideration will be given to publicity and transparency.

The EU would like to reiterate its strong concerns with regard to China's Multi Level Protection Scheme (MLPS), which is being gradually implemented and impacts on an increasing number of commercial sectors, not sensitive for national security (e.g. banking, public utilities, transportation). In its replies in the previous TPR, China explained that the organizations using information systems have to determine their level of protection according to the "importance" of the information system. Furthermore, the factors for determining the MLPS level of an information system were "objective", and unrelated with enterprise ownership.

44. *Could China provide an update on MLPS implementation? In particular, how many information systems have so far been assessed according to MLPS criteria, how many of those have been classified as 'critical infrastructure' (level 3 and above), and which sectors they belong to?*

Answer: China is still in coordination with competent authorities in order to provide responses to the question.

45. *Could China explain further what is meant with the "importance" of the information system?*

Answer: China is still in coordination with competent authorities in order to provide responses to the question.

46. *If the answer to the above implies that the classification of the information system depends on its importance to national security, can China provide a detailed outline of the reasons for which information systems in sectors such as banking (e.g. retail banking payment systems, debit cards, etc.), public utilities (e.g. energy or public transport companies, including applications such as subscribers' electronic cards), education (e.g. universities) or health (e.g. hospitals) would be considered as national-security sensitive?*

Answer: China is still in coordination with competent authorities in order to provide responses to the question.

47. *In case this does not relate to national security, can China explain how the MLPS requirements for systems classified in level 3 and above (notably the requirement for Chinese IPR and product development/manufacture by a Chinese entity) are consistent with China's WTO obligations, notably GATT Article III and Article 2.1 of the TBT Agreement?*

Answer: The core of the Regulation on Classified Protection of Information Security (RCPIS) lies in classified protection on information systems, aiming at safeguarding security of basic information network and important information systems and maintaining national security and public interests. In China, the security of information systems in banking, education, healthcare, transportation and other public utilities concerns direct interests of Chinese citizens in economic income, education rights, life and health and safety in transportation. Therefore, the importance of information systems is not necessarily decided by the sensitivity of that industry but by the damage caused to national security, social order, economic development and public interests.

48. *Could China explain how the exclusion of foreign technology and foreign manufacturers from information systems classified as levels 3 and above benefits the objectives of the MLPS?*

Answer: Article 21 (1) and (2) stipulate requirements for information security products to be used in information systems of Level III and above, with the aim of protecting national security and safeguarding security of important information systems, which, like relevant measures adopted by other members in protecting critical information infrastructure, conforms with international practice. Information systems of Level III and above are critical infrastructure and important assets that concern national security, public interests and social order, and these systems cover a very limited portion of all the information systems. As RCPIS has been implemented for a short time, information about the information systems of Level III and above is limited.

Besides, Article 21 of RCPIS does not forbid foreign information security products from being applied in any of the Chinese industries, and as these systems of level III and above cover a very limited portion; foreign products will be hardly affected. China has reiterated for many times that in indigenous innovation, intellectual property and government procurement, all enterprises will receive equal treatment.

China's State Food and Drug Administration (SFDA) requires re-registration of medical devices every 4 years. In order to grant the renewal of registration, the SFDA requests re-testing of the product as a result, the renewal costs are almost as high as the initial registration costs. SFDA-approved testing laboratories may not always have the required capacity to perform the required tests in a timely manner nevertheless, tests from foreign testing laboratories are not accepted. In addition, an increasing amount of detailed documentation is required by the SFDA in the renewal process these additional requests, often unpredictable, lead to an extension of the already very long product registration timeline and consequently to the expiration of licenses, thus hindering the product to be sold in China.

Another concern relates to the use of outdated standards in China, standard IEC 60601-1 2nd edition is currently mandatory; however, the 3rd edition of this international standard already exists and is used by most medical device manufacturers.

Finally, some medical devices require registration from both the SFDA and AQSIQ (under the CCC scheme), even though they both have similar requirements.

49. *In most other jurisdictions, the re-registration of medical devices is only an administrative procedure (assuming the regulations, product specifications and market performance did not change). What are the reasons for which the SFDA requires re-testing of the products?*

Answer: According to Method on Administration of Medical Devices Registration, re-registration requires registration testing report. Currently, SFDA is revising the Method in line with Regulations on Supervision and Management of Medical Devices, which is also being revised. In this process, requirements are reduced in re-registration, which emphasizes on review of its application after marketing, and Quality System Examination Report and Quality Tracing Report are needed. Re-registration does not require Registration Testing Report if no product change is found.

50. *The SFDA recommends that applications for license renewals be filed 6 months in advance however, according to EU industry, this timeline is insufficient, and some companies have had to apply as early as 15 months in advance. What are the steps currently being taken by the SFDA to deal with the delays in the re-registration process, in particular the lack of testing capacity and the numerous additional requests for documentation?*

Answer: In recent years, SFDA attaches great importance on the time limit of registration approval and has devoted more efforts in limiting approval period and improving review efficiency. After survey and research, SFDA came with the solution of Notice of Provisional Regulations on Strengthening and Regulating Registration Management of Medical Devices, Announcement on Registration Issues of Medical Devices, Second Catalogue of Medical Devices with Clinical Testing Materials Exempted (trial version), which laid the foundation to strictly follow approval time limit. Currently, most of the approvals of medical devices are finished within formulated time limit.

51. *Will the SFDA, as in the past, grant 'en masse' registration extensions to medical devices blocked in the re-registration process due to delays of Chinese testing laboratories, or additional documentary requirements?*

Answer: SFDA issued the Notice on Delay of Certification of Medical Device Registration (No. 63 of 2007) to solve delays in collective re-registration for medical devices falling to the 3rd domestic category and imported category.

According to the Procedure for Handling Delays of Certification of Medical Device Registration (No. 169 of 2007), application for extension can be filed in the following cases:

- *One, technical review of accepted re-registration exceeds time limit;*
- *Two, legitimate testing exceeds normal testing period due to reasons arising from testing centres for accepted and unaccepted re-registration;*
- *Three, delays caused by examination of related quality management systems for accepted and unaccepted re-registrations.*

52. *With regard to IEC standard 60601-1, will the SFDA allow the use of the 3rd edition of the standard, in parallel with the 2nd edition, until the relevant Chinese standard is amended to replace the 2nd edition with the 3rd edition? Will the SFDA accept test reports in accordance with IEC standard 60601-1 3rd edition?*

Answer: SFDA approves medical devices according to current rules and regulations, and has no plans to accept registration by IEC 60601-1 Version 3. However, to convert IEC 60601-1 version 3 into a Chinese standard, SFDA has established a working group to compare the differences between IEC standard and Chinese ones after translation. The next step is to formulate conversion plans.

53. *Despite the SFDA and AQSIQ joint announcement in 2008 that medical devices will be required "one test, one report, one fee and one factory inspection", some medical devices still have to undergo duplicative registration procedures. What are the steps being undertaken by these Chinese authorities in order to streamline and unify these requirements?*

Answer: In 2006, SFDA and AQSIQ jointly published Notice on Testing-related Issues for Certain Medical Devices (No. 70) to remove duplicative requirements. The Notice stipulates that for the same testing in registration and 3C, only one test, one fee will be conducted and no duplicative test and fee is allowed.

Duplicative test and fee encountered by enterprises can be reported to SFDA and AQSIQ.

54. *According to the SFDA, the revision of the main medical device legislation in China (Order 276) will address some, if not most of these issues. Can the SFDA provide more detailed information as to what this upcoming revision will contain, and what its timeline for adoption is? Furthermore, will China notify this revised legislation, while still in draft form, to the TBT Committee, according to its obligations under the TBT Agreement?*

Answer: The Revision of Regulations on Supervision and Management of Medical Devices is on the agenda of this year's legislation plan. China will notify the WTO according to its obligations under the TBT agreement.

In 2010, China's State Food and Drug Authority (SFDA) introduced new requirements for the registration of cosmetics, which led to a nearly complete standstill of approvals. Even though, in the meantime, the registration of products without new ingredients has improved, the registration of other products (e.g. products with new ingredients and baby care products), as well as the registration of new ingredients themselves, is still blocked.

A further issue is the SFDA's recent announcement of its intention to reclassify a majority of non-special cosmetics into special cosmetics, thus subjecting them to pre-market registration (as opposed to notification) requirements. This will greatly increase the number of products that need pre-market approval, further straining the SFDA's resources and most likely adding to the significant approval delays.

55. Following the introduction of new registration requirements for cosmetics in 2010, there was a complete blockage of product approvals. This was initially due to a lack of relevant guidelines on the registration of new ingredients such guidelines were subsequently published by the SFDA in 2011. Nevertheless, SFDA reviewers consistently reject product applications. What steps are being taken by the SFDA to correct this situation, and allow for the smooth registration of new ingredients, and products with new ingredients?

Answer: SFDA has been pushing forward reform in cosmetic licensing to regulation and improve administrative efficiency, under the principle of separating acceptance, review and approval. Meanwhile, SFDA has organized many trainings to provide guidance for cosmetic enterprises, including members of European Chamber of Commerce in China in cosmetic safety evaluation. Statistics showed that imported products approved (recorded) increased by 3.05% in 2011 than in 2010. Currently, qualified products, including cosmetics from EU, has been approved or recorded and administrative approval is going smoothly.

56. What steps are being taken by the SFDA to allow for the registration of baby care products?

Answer: Based on safety evaluation, Requirements on Materials for Cosmetics Application Acceptance stipulates that for cosmetics for women of pregnancy and lactation, children or babies, and other groups, safety-based formulation design principles (including overall formulation analysis report), raw material choice principles and requirements, working skills, quality controls, and other application materials are needed.

SFDA is organizing research, based on which, the draft of Guidelines for Application and Review of Children (Babycare) Cosmetics is formulated and SFDA is soliciting public opinions and commencing workshops with enterprises and experts.

57. What is the rationale behind the SFDA's decision to re-classify a majority of non-special cosmetics into special cosmetics, thus subjecting them to pre-market registration requirements? Can the SFDA provide safety or toxicological data that would justify that these products pose a significantly higher risk?

58. Given the likely significant trade impacts of this re-classification, the EU considers that it is very important to provide industry with practical implementation guidelines as soon as possible, and sufficiently long transition periods and/or grandfathering for existing products. Can the SFDA provide more information on the preparatory work being carried out in this regard, and in particular the development of any implementation guidelines? What is the transition period being

foreseen before implementation? What steps are being taken to ensure that no trade interruptions will occur?

Answer to 57&58: SFDA has formulated the draft of Opinions on Classification Management of Non-special Cosmetics, based on risk management. From Feb. to March of 2012, SFDA has solicited public opinions online. After revision with feedbacks, SFDA is planning to solicit again online and all the concerns and advice are welcome.

59. What is the timetable for harmonising the treatment of pharmaceutical products which have been trialled abroad with those which have been trialled in China, with respect to licensing?

Answer: According to the Drug Control Law, Rules for Implementing Drug Control Law, imported and domestic drugs are both subject to unified licensing scheme. Rules on Registration Management of Drugs stipulates that registration application covers application for domestic and imported drugs, and the requirements for application materials, technical regulations, time limit are basically the same. There is a little difference due to applicant distinction.

60. What steps is China taking to shorten the multi-stage licensing and approvals process for pharmaceutical imports?

Answer: Unified review and approval is carried out for marketing license for imported drugs and no multi-stage licensing exists.

(c) Sanitary and phytosanitary measures

WTO Secretariat's report, pages 49-52

The Secretariat's report refers to a Catalogue of Entry-Exit Commodities Inspected and Quarantined by Entry-Exit Inspection and Quarantine Organs. AQSIQ, China's quarantine authority, has also published the Administrative Measures for Registration of overseas Manufacturers of imported Food effective from 1 May 2012.

China notified the WTO of the draft measures on 19 August 2011 to solicit comments from trading partners. The EU sent its comments as it was concerned that the measure is not necessary neither proportionate that each establishment wishing to export to China should be required to go through the registration procedure. The EU expressed its strong concern that the registration measure has the potential of being highly disruptive to trade and which does not guarantee increased safety for imported products. In addition, the implementation for which products and which timelines has not been clarified to trading partners. The EU requests China to refrain from unnecessary administrative burden.

61. How will China make sure that the Administrative Measures for Registration of Overseas Manufacturers of Imported Food does not constitute an unnecessary trade barrier for third countries?

Answer: In order to protect health and safety of Chinese consumers, China regulates overseas manufacturers of imported food listed in The Catalogue of Administrative Measures for Registration of overseas Manufacturers of imported Food which has been issued by the Announcement No. 73 2012 of AQSIQ. China takes full consideration of the principles of trade facilitation, the current regulations of other countries and regions, including EUs regulation of third-country animal-origin food enterprises registration. Its implementation will have a sufficient transitional period.

62. *According to the Administrative Measures for Registration of Overseas Manufacturers of Imported Food the importing veterinary services systems, plant protection systems and public health management systems of the exporting country will be assessed by China to their qualification. Could China elaborate on who will do such assessment? Does China take into account in this assessment international guidelines and recommendations as set in the Codex Alimentarius to align with international harmonised inspection/audit systems, so that on-site reviews to verify compliance should rather only be audit-based?*

Answer: According to the Administrative Measures for Registration of Overseas Manufacturers of Imported Food, CNCA is responsible for implementing and supervising the registration of overseas manufacturers of imported food. On-site assessment will be conducted according to CAC guidelines about foreign inspection activity.

WTO Secretariat's report, page 51, para. 101

The Secretariat's report indicates that China is a member of international organizations related to SPS, including the World Organisation for Animal Health (OIE). The EU welcomes China's active participation in these organisations. However, China does not always follow the international standards and recommendations set by these organisations nor provide scientific evidence to support its measures.

63. *Does China plan to contemplate a process towards imposing import conditions generally accepted by the international standard setting bodies?*

Answer: OIE is the only international animal health standardizing organization which WTO recognized. OIE standards are the basis of Members animal disease prevention and control activity and the trade of live animal or animal oriented product. However, China would like to point out that Members take risk management measures based on OIE standards, risk analysis and Members own conditions. Therefore, if Members SPS measures are not exactly the same with OIE standards, it doesn't mean that they are violating OIE principles. Members, including the U.S. and the EU, are not completely implementing OIE standards. For example, according to OIE Terrestrial Animal Health Code, the trade of cooked poultry is safe regardless of a country's avian influenza or Newcastle disease situation. Nevertheless, the EU only imports Chinese cooked poultry from Shandong province, and the ban of Chinese cooked poultry remains in the U.S.

Especially, with regard to China's animal health policy, the European Union is concerned about the Chinese interpretation of OIE standards on BSE. The OIE provides for conditions under which beef and other bovine products can be safely traded from all countries. Most EU countries have now been classified by the OIE as countries with "negligible risk" or "controlled risk".

During its TPR in 2010, China replied to the EU's question above that China would like to make active cooperation and exchanges with the EU in the spirit of scientific, pragmatic and friendly cooperation. The EU has actively given all information on EU beef safety measures and BSE prevention and control systems. Despite of those exchanges and technical cooperation, China has not started to process the applications for beef and bovine products from the EU Member States.

64. *When would China allow the imports of beef and other products from EU Member States, in line with the OIE classification of which China is a Member? Alternatively, could China justify, by scientific reasons, any restrictions on the products that under the OIE list can be safely traded? Could China indicate when will it fulfil its obligation in line with the SPS Agreement to start processing applications for beef and bovine products from the EU Member States?*

Answer: China is a country free of BSE, and therefore has taken serious, scientific and prudent policies in the prevention and control of BSE. China attaches much importance to the issue of EU beef export to China, and has noted the efforts EU has made in controlling the BSE. China would like to make active cooperation and exchanges with the Member State concerned in the spirit of scientific, pragmatic and friendly cooperation on the premise of safety. China would seek solution to the problem based on full knowledge of EU beef safety measures and also BSE prevention and control systems.

WTO Secretariat's report, page 51, para. 103

The Secretariat's report indicates that under the various administrative measures for inspection, quarantine and supervision of different products, a country or region that wishes to export food product to China for the first time must be assessed by AQSIQ. After both parties have signed a protocol for inspection and quarantine, exports from the country or region by food producers that are registered with AQSIQ can start.

The EU wishes to express concerns on principles and approaches, already raised in our bilateral SPS contact in this respect. Each Member State has to negotiate specific protocols and certificates with China for each type of agricultural product with China despite the fact that the EU has a fully harmonised legislation for animal health, plant health and food safety. The slow progress of negotiations of SPS protocols and the slow progress for inspections limit market access of EU products to China, especially for meat and for fruit and vegetables. In addition, import conditions in the health certificates negotiated with China vary from one Member State to another Member State despite the fact that animal health status or plant health status would be similar. This actually leads to non-harmonised import conditions from the Chinese side and therefore does not follow the spirit of SPS Agreement.

65. *Could China elaborate on how it intends to accelerate these bilateral SPS negotiations with individual Member States in order to avoid undue procedural delays, as mentioned in Annex C in the SPS Agreement? Could China also elaborate how it intends to harmonise its import conditions for third countries for animal and plant health requirements, to make the requirements more transparent and to ensure that they are consistent?*

Answer: China has inspection and quarantine access procedures for meat products. The inspection and quarantine access procedures of meat products are the following:

- *Exporting country should submit written application of meat product to AQSIQ. China decides whether to initiate access procedures depends on the exporting country's epidemic situation. If initiate, AQSIQ will give the exporting country The Health Management System Evaluation Questionnaire for Countries Exporting Poultry, Pork, Bovine, Mutton, Venison to China;*
- *Exporting country should submit relevant technical information;*
- *China will conduct risk analysis and assessment of technical information provided by exporting country. If the risk of the animal oriented product is acceptable, China will send experts to do on-site inspection in the exporting country;*
- *The two sides consult the texts of bilateral inspection and quarantine protocol and sign upon consensus, as well as conform the texts and sample of sanitary certificate.*

Foreign enterprises exporting animal oriented products should register according to the requirements of Administrative Measures for Registration of Overseas Manufacturers of Imported Food. Exporting country should provide information, such as the types of products and annual production capacity, of enterprises registered and located in China to AQSIQ. Enterprises registered and located in China are allowed to export to China after they are listed in The Catalogue of Countries or Regions Allowed to

Export Meat Products and The Corresponding Types and Usages and published on the website of AQSIQ.

Importers in China should have qualification of importing meat products according to Administrative Measures for the Inspection, Quarantine and Supervision of Entry-Exit Meat Products. After exporting country completes the procedures above, Importers in China apply to import meat products from registered exporting country's enterprises, obtain License of Animal and Plant Quarantine Enter into China, and import product following quarantine requirements. When products arrive at China's port, inspection and quarantine organs at ports will conduct inspection and quarantine. Besides, meat products export to China must comply with international wild animal protection rules.

China needs to point out that we have received applications from dozens of countries and has been evaluating them in chronological order. The two sides should actively cooperate to finish the whole procedure. The progress speed depends on the timing and completeness of the information provided by the exporting country.

(d) Labelling

WTO Secretariat's report, page 52, para. 109

The Secretariat's report states that "Labelling requirements are maintained under the Standardization Law, the Law on Product Quality of 1993 (as amended), and the Food Safety Law of 2009. Under these laws, all products sold in China must have Chinese language labels. The label must state, *inter alia*, name, specification, net weight, date of manufacture, component or ingredient list of the product, the manufacturer's name, address and contact information, country of origin, quality guarantee period, product standard code and storage conditions, common name, and production licence of food additives."

66. *Will China provide a sufficient transition period for the coordinated implementation of all labeling standards being revised and under revision?*

67. *Will China increase local inspection authorities understanding of the labeling regulatory requirements and encourage communication between different local bodies (AIC, CIQ, TSB) when an issue of compliance arises?*

Answer to 66 & 67

In 2011, China made and revised 2 food labeling national standards, both of which are important general labeling standards. One is National Food Safety Standard Pre-packing Food Labeling General Rule (GB7718-2011) issued by the Ministry of Health on 20 April 2011 and implemented on 20 April 2012. The other is National Food Safety Standard Pre-packing Food Nutrition Labeling General Rule (GB28050-2011) issued by the Ministry of Health on 12 October 2011 and will be implemented on 1 January 2013.

China implements the same administrative policy to import and domestic pre-packing food. For example, from 20 April 2012, every import pre-packing food is inspected according to the requirements of GB7718-2011.

The same paragraph also states that "country of origin" is a compulsory element of the label on imported products.

68. *Can China confirm that the indication of a completed Customs Union, such as "European Union"/ "EU" is accepted for the purposes of origin labelling on imported products? If not, why not?*

Answer: Please refer to the official website of the Ministry of Health <http://www.moh.gov.cn/publicfiles/business/htmlfiles/wsb/index.htm> and the TBT/SPS Enquiry Point http://www.tbt-sps.gov.cn/service/Pages/TBT_enquirepoint.aspx.

(viii) Government procurement

WTO Secretariat's report, pages 53-56

69. *How does the Government guarantee that domestic and foreign bidders alike have access to the information relating to procurement opportunities? Does China consider setting up information portals, covering procurement both at the central and the provincial level and publishing contract notices for individual tendering procedures?*

Answer: The Ministry of Finance specifies www.ccgp.gov.cn as the website to publish national government procurement information. The governments at provincial level have also established their own local government procurement portals, which have achieved interoperability with www.ccgp.gov.cn. Government procurement information at these websites is completely open and free.

70. *When will China adopt the measures for the definition of domestic products? In this context, will China consider treating equally goods produced in China by Chinese-owned companies and goods produced in China by foreign invested companies?*

Answer: The Chinese government will strive to introduce the Measures for Administration of Government Procurement of Domestic Products within 2012. At present, the Chinese government treats products from Chinese-owned enterprises and foreign-invested enterprises equally in the procurement process.

71. *How does the Chinese Government ensure uniform enforcement of legislation governing public procurement nationwide?*

Answer: Government Procurement Law is the main law governing China's government procurement activities, applicable to the procurement activities with fiscal funds conducted by state organs, institutions and social organizations at all levels.

WTO Secretariat's report, page 53, para. 111

Currently, there remains a significant difference between China's domestic procurement regulations and the provisions of the GPA. A substantial part of the existing regulatory framework is not in line with the overarching GPA principles of competition, transparency, integrity, and sufficient remediation. Moreover, some local and sector specific regulations dilute or contradict the expected application of the BL, which calls for open bidding and equal competition.

72. *Do the Chinese authorities envisage streamlining the legal framework for public procurement in line with GPA principles and international best practices and remedying existing inconsistencies between the two procurement-related laws*

Answer: China drew on the WTO Government Procurement Agreement (GPA) and the United Nations Model Law on Public Procurement in the process of China's government procurement

legislation. At present, all government procurement laws and regulations follow the principles of openness, fairness and impartiality, to ensure fair competition, transparency, integrity and full relief in the procurement activities. China's government procurement activities are mainly governed by the Government Procurement Law and the Bidding Law. At present, the relevant departments of the Chinese government are revising the regulations on the implementation of Government Procurement Law based on the opinions and suggestions of all sides. From the current draft, the regulations on the implementation of Government Procurement Law have achieved convergence with the regulations on the implementation of Bidding Law to some extent.

Public procurement under both China's Government Procurement Law and the Tender and Bidding Law continues to discriminate against foreign enterprises in China. The qualification requirements imposed by Chinese laws are very difficult to fulfil for foreign companies and constitute important barriers to market access. Although some foreign goods and services are routinely procured by China, non-discriminatory access for foreign bidders, goods and services should be extended.

73. What concrete legislative and administrative measures does China consider adopting to ensure a level playing field and equal treatment for wholly Chinese-owned enterprises and FIEs?

Answer: The requirements on the qualifications of the suppliers in China's Government Procurement Law are basic requirements. The law does not set market barriers to foreign-invested enterprises. The Chinese government treats products from Chinese-owned enterprises and foreign-invested enterprises equally in the procurement process.

WTO Secretariat's report, page 56, para. 127

Despite the commitment that the indigenous innovation policy will not be linked to government procurement on both central as well as local governments, foreign-invested companies continue to experience that local governments have implemented and compiled their own local catalogues. Products of FIEs that are not included in these catalogues seem likely to be discriminated against in government procurement bidding procedures. Some regions have started issuing procurement certificates which would allow or require a company/bidder to be prequalified prior to entering into the actual bidding process itself.

74. Could China describe how it ensures de-linking indigenous innovation policies from government procurement at the local level?

Answer: On 17 November 2011, the General Office of the State Council issued a notice requiring the local governments and relevant departments to abolish the provisions stipulating that innovation policy is linked to preferential government procurement in their normative documents since 1 December 2011. China's innovative products have no longer been linked to preferential government procurement.

75. Can China in particular clarify whether local authorities are still allowed to draft local innovative procurement catalogue and whether the certificate of prequalification for these catalogues authorities are recognized nationwide across China?

Answer: On 17 November 2011, the General Office of the State Council issued a notice requiring the local governments and relevant departments to abolish the provisions stipulating that innovation policy is linked to preferential government procurement in their normative documents since 1 December 2011. China's innovative products have no longer been linked to preferential government procurement.

WTO Secretariat's report, page 56, para-s 128-130

Although there has been progress in the different offers (last offer November 2011), the EU notices the limited coverage of sub-central entities and services (including construction services) the absence of proposed commitments on SOE and exclusion of several key sectors; and systemic far-reaching carve out and extremely high contract value thresholds.

76. Does China intend to submit a third revised market access offer in the coming months? If so, what are the main improvements considered?

Answer: The Chinese government will submit a new comprehensive revised offer before the final meeting of WTO Government Procurement Committee in 2012.

77. Is China ready to consider including state owned companies in its market access offer for GPA accession?

Answer: China's state-owned enterprises are independent market players which operate independently and assume sole responsibility. Procurement activities of state-owned enterprises are the day-to-day business activities of enterprises, and the government does not interfere with these activities. Therefore, the procurement activities of state-owned enterprises do not fall into the scope of government procurement. At present, the Chinese governments offer mainly covers the procuring entities within the scope set forth in the Government Procurement Law.

(2) MEASURES DIRECTLY AFFECTING EXPORT
(viii) Export finance, insurance, and guarantees

WTO Secretariat's report, pages 61-63, paragraphs 154-165

The Secretariat's report provides information on the activities if the Export-Import Bank of China and of SINOSURE.

78. Apart from the EXIM Bank and SINOSURE, does China have any other agencies or instruments providing financing linked to exports or similar external economic activities? In the affirmative case, how do they operate?

Answer: In addition to the Export-Import Bank, other commercial banks can also carry out export credit business. Commercial banks follow the principle of market-oriented operation. The EU has taken note with great interest of the announcements by China and the US following Vice-Premier Xi's visit to Washington in February 2012 and following the Strategic and Economic Dialogue of 3 and 4 May 2012 that China and the US intend to create an international group of major export credit providers to work on international guidelines on export credits, with a view of creating a new agreement by end 2014.

79. Could China elaborate further on this initiative?

Answer: The intention to create an international group of major export credit providers to work on international guidelines on export credits has not yet entered into the negotiations stage. The Export-Import Bank of China organized a bilateral technical exchange between Sino-US official export credit agencies in February and April this year, respectively. The participants included the Export-Import Bank of China, China Export & Credit Insurance Corporation, the US Export-Import Bank and the US Department of Treasury. The two sides only exchanged views on export credit business at the technical level, did not mentioned any issue on export credit policies.

WTO Secretariat's report, pages 62, paragraph 161

The Secretariat's report states "The authorities have indicated that, although China is not a participant in the OECD Arrangement on Officially Supported Export Credits, the EXIM Bank in practice "refers to the Arrangement for key conditions of issuing export credit and is generally consistent with the basic framework of the Arrangement", and that "its lending interest rate is either a fixed one taking reference from OECD-released CIRR or a floating rate which is a reconciled London Inter Bank Offered Rate (LIBOR)". As of the end of 2010, 55.35% of EXIM Bank on-balance lending was in renminbi, and the remaining 44.65% in foreign currencies. The authorities indicate that financial institutions set their own renminbi lending rates subject to a lower limit, which is 0.9 times the PBC benchmark rate."

80. *Which are the OECD Arrangement's "key conditions" of issuing export credits to which EXIM Bank refers in practice?*

Answer: Although China is not a participant in the OECD Arrangement on Officially Supported Export Credits, the key conditions of issuing export credit of the EXIM Bank in practice are similar to the key conditions set forth in the Arrangement. The key conditions on advances, financing ratio, repayment period, principal and interest payment of the EXIM Bank refers to the key conditions set forth in the Arrangement, and the fixed interest rate of foreign currency loans of the EXIM Bank also refers to the OCED commercial reference rate.

81. *As regards lending at floating interest rates, how does EXIM Bank benchmark the rate it applies against the market? Of which elements is the "reconciled LIBOR" composed?*

Answer: China Export-Import Bank mainly raises credit funds by issue bonds in the market, so the rate is determined on the basis of debt issuance costs as regards lending at floating interest rates. The reconciled LIBOR is mainly composed of the cost of capital, loan costs, tax costs, and risk compensation.

(3) MEASURES AFFECTING PRODUCTION AND TRADE

(ii) Subsidies and other government assistance

(a) General features

WTO Secretariat's report, pages 68-69, para-s 189-194

82. *Has China undertaken any distinction in the design and application of its subsidy and other support schemes regarding the beneficiaries and in particular their status as SOEs, FIE or foreign enterprises? What are the eligibility criteria for the potential beneficiaries?*

Answer: At present, China does not undertaken any distinction in the design and application of its subsidy and other support schemes regarding the beneficiaries and in particular their status as SOEs, FIE or foreign enterprises.

83. *In what manner will FIE and other foreign enterprises established in China obtain access to receive support to e.g. subsidies for the stimulation of technological research and development performed in China?*

Answer: Please refer to our subsidy notification G/SCM/CHN/123, G/SCM/CHN/155 and G/SCM/CHN/186 for detailed information, such as item 1, 2, 3, 4 etc. of G/SCM/CHN/155 and G/SCM/CHN/186.

84. *How is coordination undertaken between national and sub-national subsidy schemes? Is there a national approval system for sub-national support schemes and how is it designed and carried out?*

Answer: Local finance is in responsible for local government. Schemes at local level do not need the approval from the central finance.

WTO Secretariat's report, pages 68-72, para-s 189-209

The Secretariat's report states that "The use of subsidies and other government assistance appear to be an important feature of China's trade policy making./".

85. *In this context, could China provide overview on:*

a. *the subsidy/support/grant/incentive schemes that China has for its industrial production and services sectors, including the legal basis, form, amount or budget and where possible the recipient of the subsidy granted by the government or any public body.*

Answer: Please refer to China's subsidy notification G/SCM/CHN/123, G/SCM/CHN/155 and G/SCM/CHN/186 for detailed information

b. *the public authorities that have the authority to allocate (and the procedures for) budget to provide financial support to industrial production and services sectors as well as an overview over the authorities that administer such support schemes (paragraph 191).*

Answer: Authorities responsible for finance and other authorities that are in relation with the budget.

c. *the industrial revitalisation plan, including the budget allocated and actually disbursed (paragraph 194).*

Answer: Please refer to our government report of last TPR for detailed information of industrial revitalization plan. Budget allocated to major specific programs under the plan, such as home appliances going to the countryside etc, were available in our replies to members, for example US, in the last TPR. You may also refer to report on the implementation of central and local budget submitted by Ministry of Finance to our national people's congress these years.

d. *the National Medium-and-Long-Term Development Plan for renewable energy, including the budget allocated and actually disbursed (paragraph 195).*

Answer: China supports the development of renewable energy through the renewable energy fund. This fund contained sub-arrangements including for examples the golden sun demonstration project and the project for application of solar photoelectric technology in housing construction etc, and the fund involved also transfer payment to provincial governments. China will work on notification of this fund in the course of extending the notification to local subsidy programs.

e. *the complementary assistance programmes for renewable energy, including the budget allocated and actually disbursed (paragraph 198).*

Answer: China has no idea of what EU mean by complementary assistance.

f. *the cars listed in the promotion catalogue (paragraph 200).*

Answer: Drawing on the promotion experience and practices of other countries, China has begun new-energy cars promotion in the public service sectors of 25 pilot cities and private sectors of 6 pilot

cities. This promotion includes energy-saving cars under the Energy-saving Product People Benefiting Project Energy-saving Vehicles (PVs with a capacity lower than 1.6 liters) Promotion Catalogue and new-energy cars under the Recommended Models Catalogue for the Energy-saving and New-energy Vehicles Promotion Pilot Project. Currently, no imported models are listed in the two catalogues due to the following reasons. First, most imported cars are with capacities larger than 1.6 liters, and foreign automobile enterprises have not applied to enter the catalogues; second, the technology of new-energy cars is not mature enough and the performance of such cars need to be improved during the pilot project. Imported new-energy cars are not included in the catalogues for now to ensure safety and reliability.

g. the remaining measures referred to in 205 to 209.

Answer: Please refer to our subsidy notification G/SCM/CHN/123, G/SCM/CHN/155 and G/SCM/CHN/186 and domestic support notification for agriculture. We believe members have not really looked into our notification.

WTO Secretariat's report, page 68 and 69, para-s 189 and 192

The Secretariat's report refers to China's latest notification to the WTO on subsidies (2009 notification). In this respect, and also referring to 189, the EU remains concerned about China's record to date, in notifying its subsidies in the area of trade in goods under the SCM Agreement. In October 2011, the US activated the provisions of Article 25.10 of the SCM Agreement, whereby they brought to the attention of China, the latter's failure to notify all relevant subsidies to the WTO. Following this action on the part of the US, under the provisions of Article 25.10 of the SCM, China should have notified promptly the alleged subsidies in question. It is regrettable that to date this has not been done in a satisfactory manner.

The lack of notification by Members not only undermines the rights of other members but also ignores the obligations imposed by the SCM Agreement. The fact that China, which is a country with a very significant share of world trade with many subsidy programmes at both central and sub-central level, has failed to notify fully its subsidies is all the more serious.

China has, in the SCM Committee, acknowledged the importance of the notification obligations of the SCM Agreement. However, the EU regrets to see that this statement is not supported by concrete actions on China's part. In the meeting of the SCM Committee in October 2011, China stated that it had produced a complete and comprehensive notification of the programmes at central level and that it would work towards incorporating local programmes. While China did make a notification in October 2011, this was neither timely nor complete and covered only a limited number of programmes at central government level and then only for the years 2007 and 2008. The deadline for the most recent notification exercise under Article 25.1 of the SCM Agreement was 30 June 2011. Almost a year has passed since that deadline and China still has not filed any notification of its subsidy programmes, either central or local, for the years 2009 and 2010. The EU is aware that China has previously stated in the SCM Committee that the analysis of the various programmes to determine whether or not they are subject to notification is a time consuming exercise, however the EU does not consider this in itself a reason to renege on the notification obligations that apply to all Members. In this context the EU would also like to note that the notification of a program does not prejudice the status or effects of the measure itself nor does it confirm that it amounts to a specific subsidy. The EU would therefore urge China to avoid any further delays and to comply with its obligations under the SCM Agreement by filing a complete and up-to-date notification as quickly as possible.

86. Can China indicate when it will provide a complete notification to the WTO?

Answer: Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work towards incorporating local subsidies in its future notifications. As to the 2009-2011 notification, it will not be too difficult if covering only central programs. However if local programs are to be incorporated, it will be a different case. In any case, China will accelerate its efforts for a new notification.

(d) Assistance to small and medium-sized enterprises

WTO Secretariat's report, page 71, para-s 201-203

87. *Could China elaborate on whether the aid schemes referred to in paragraphs 201-203 are available to all SME established in China?*

Answer: please refer to items, such as 47. 48. 49 in our subsidy notification G/SCM/N/155/CHN and G/SCM/N/186/CHN for detailed information of aid programs for SMEs.

(v) State-owned enterprises, private enterprises and corporate governance

WTO Secretariat's report, pages 73, 75 and 76, para-s 219, 225, 227 and 229

The Secretariat's report states that state-owned enterprises and monopolies benefit from lower cost and have better access to capital.

88. *Could China provide an overview on the support given to such entities and in particular what the situation is if they make losses?*

Answer: China is committed to creating a fair competitive market environment for enterprises of various ownership types, and the Chinese laws treat enterprises of various ownership types equally. The state-owned enterprises are market entities and legal entities which operate independently and assume sole responsibility, so they do not enjoy preferential credit, tax, and regulatory policies.

WTO Secretariat's report, pages 73, 76 and 77, para-s 219, 229, 232 and 233

The Secretariat's report describes the situation of the private sector.

89. *What measures have been taken or are planned in the future to support the development of the private sector and, in particular, their access to capital? What measures have been taken or are planned in the future to remove other entry barriers for private sector companies?*

Answer: The Chinese government attaches great importance to supporting the development of the private sector and consider it an important measure to uphold and improve the basic socialist economic system and improve the socialist economic mechanism. In recent years, the State Council successively promulgated a series of policies and measures to encourage and promote the non-public economic development. Among them, the important ones are the "Opinions of the State Council on Encouraging, Supporting and Guiding the Private and other Non-public Economic Development" introduced in 2005 (Guo Fa [2005] No. 3), "Opinions of the State Council on further Promoting the Development of SMEs" introduced in 2009 (Guo Fa [2009] No. 36), "Opinions of the State Council on Encouraging and Guiding the Healthy Development of Private Investment" introduced in May

2010 (Guo Fa [2010] No. 13), and "Opinions of the State Council on further Supporting the Healthy Development of Small and Micro Enterprises" introduced in 2012 (Guo Fa [2012] No.14). The local governments and the relevant departments under the State Council promptly formulated rules, policies and measures for the implementation of these opinions according to the requirements of the State Council. These policies and measures played an important role in expanding the scope of market access of private enterprises and creating a good environment for private enterprise development. For the next step, the authorities will promptly implement and continue improving the rules, policies and measures for the development of private investment, and create a favourable policy and public opinion environment for the development of private investment.

(a) Reform of state-owned enterprises

WTO Secretariat's report, page 75, para. 225

The Secretariat's report states that "The NDRC, in line with the SASAC, supports national champions and promotes the reform of key industries, such as automobiles and steel, via industrial policies to improve the competitiveness of the dominant SOEs".

90. *Could China describe the referred measures which are taken to improve the competitiveness of the dominant SOEs?*

Answer: The State-owned Assets Supervision and Administration Commission legally performs the duties of a capital contributor, and is in no event provide economic support jointly with the National Reform and Development Commission.

WTO Secretariat's report, page 75, para. 226

The Secretariat's report notes that "SOE dominance is to be maintained in industries related to "vital interests of national economy" and national security."/".

91. *Could China explain its definition of "vital interests of national economy" and "national security" in this context and which sectors that relates to?*

Answer: It relates to the important industries and key fields where the state-owned capitals concentrate, which mainly refers to industries involving national security, major infrastructure and industries that provide important public utilities and services.

Non-public-sector enterprises

WTO Secretariat's report, page 76, para. 231

According to Secretariat's report, "Measures related to the new 36-clauses on private access to the sectors in which SOEs are dominant are not applicable to FIEs or foreign investors."

92. *Could China indicate the reasons for not including FIEs or foreign investors in the measures related to the new 36-clauses on private access to the sectors in which SOEs are dominant?*

Answer: The investment access of FIEs and foreign investors shall comply with the Guideline Catalogue of Foreign Investment Industries and other related provisions. The Some Opinions of the State Council on Encouraging and Guiding the Sound Development of Private Investments (Guo Fa [2010] No. 13) promulgated in May 2010 is applicable to private investments. The Rules on the Definition and Statistics Scope of Private Fixed-Assets Investments promulgated by the National Bureau of Statistics in January 2012 stipulates that private fixed-asset investments refer to

investments in construction or purchase of fixed assets by collectively, privately or individually-owned domestic enterprises and public institutions as well as their holding enterprises and units within the territory of China.

WTO Secretariat's report, page 77, para. 232

The Secretariat's report notes that "Private enterprises may face less favourable environment than SOEs, //".

93. *Could China explain the way in which private enterprises face a less favourable environment than SOEs and whether it has any intentions in changing this situation?*

Answer: During the review, the Chinese government has formulated and implemented a series of policies and measures to promote the development of domestic private enterprises and to constantly improve the environment for domestic private enterprises. The Some Opinions on Encouraging and Guiding the Sound Development of Domestic Investments (the Opinions) was promulgated in May 2010, specifying that private capital is encouraged to invest in industries and sectors that are not explicitly prohibited by laws and regulations, such as infrastructure, public utility, national defence and science and technology as well as finance, culture, education, sports, medical care and other service industries. The Opinions also propose to regulate and establish investment access thresholds and create a market environment for various types of ownership to compete fairly and access the market equally. Currently, implementing rules for private capital to enter into relevant sectors are being formulated without losing any time and will be promulgated in succession in 2012 according to the timetable determined by the State Council.

WTO Secretariat's report, page 77, para. 233

According to Secretariat's report state-owned commercial banks and joint-stock commercial banks are required to provide financial services to SMEs.

94. *Could China provide information on such "system"? How is this implemented and monitored?*

Answer: Please refer to the Some Opinions on Further Doing a Good Job in Providing Financial Services to Small- and Medium-sized Enterprises (Yin Fa No. 93 of 2010).

WTO Secretariat's report, page 77, para. 235

The Secretariat's report describes preferential tax treatment granted to SMEs.

95. *Could China explain how preferential tax treatment granted to SMEs compares to the taxation of SOEs?*

Answer: China treats enterprises of different ownership equally when formulating and implementing its tax policies. Preferential tax treatment is available in our subsidy notification G/SCM/CHN/155 and G/SCM/CHN/186, such as item 29.

(vi) Competition and consumer protection policy
(a) Legislative and institutional framework

WTO Secretariat's report, page 78, para-s 239 and 240

The Secretariat's report describes China's legislation concerning competition.

96. *How does China balance the principles referred to in paragraph 240 in view of the fact that the AML does not take precedence over competition-related legislation?*

Answer: China has multiple laws and regulations regulating market economic activities. Each law or regulation has its own application and supplements each other so as to mutually promote the sound development of Chinese socialist market economy. Different laws and regulations are subject to the principle that superior law takes precedence over inferior law and new law takes precedence over old law when they are applied.

WTO Secretariat's report, page 78, para. 242

The Secretariat's report states that "Under Article 7 of the AML, the State protects the "legitimate business operations" of firms in industries that are vital to the national economy and national security where the state-owned economy is dominant, and in the industries of exclusive trading. It also states that the State will supervise and regulate the above-mentioned firms' operations and the prices of the goods and services they supply, to protect consumers' interests and to promote technology progress. This is apparently a compromise between industrial policies and competition policy. "

97. *How does China weigh the policy considerations referred to in Article 7 of the AML and what measures does it take to protect the "legitimate business operations" of the firms referred to?*

Answer: Article 7 of the AML stipulates that the State protects the legitimate business operations of firms in industries that are vital to the national economy and national security where the state-owned economy is dominant and in industries that legally implement exclusive operation and sale, and the State legally supervises and controls the business operations of and prices of the goods and services of said firms so as to protect consumers rights and interests and promote technology progress. As competition in above-mentioned industries are restricted, there is indeed a necessity for the State to strengthen supervision and control of the operators business operation, such as implementing government pricing or government-guided prices in accordance with the provisions of the Price Law; according to the requirements of deepening the reform of petroleum, telecommunication, civil aviation, postal services, tobacco and salt industries and public utilities, pushing forward state-owned assets restructuring and forming a competitive market situation, guiding and promoting the competition among business operators and promoting technology progress in said industries; legally investigating and penalizing abuse of market dominance by operators that impairs consumers interests.

WTO Secretariat's report, page 78, para. 243

The Secretariat's report informs about the enforcement of competition legislation.

98. *Could China provide a description of the coordination procedures and mechanisms among the bodies involved in the formulation and enforcement of China's competition policy?*

Answer: Enforcement of competition legislation in China is shared by three agencies, coordinated and "guided" by the Anti-Monopoly Commission under the State Council. The Anti Monopoly Bureau of the MOFCOM is responsible for anti-trust reviews. The Price Supervision and Anti Monopoly Bureau of the National Development and Reform Commission is the authority over price-related violations of the rules against monopoly agreements and abuse of market dominance and of administrative power. The Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of the State Administration for Industry and Commerce (SAIC) enforces the Anti-Unfair Competition Law on issues related to monopoly agreements, abuse of market dominance, and abuse of administrative powers (excluding price-related monopolies). China continued to develop its capacity on competition enforcement during the review period.

WTO Secretariat's report, page 78, para. 244

The Secretariat's report informs that "In addition to administrative measures, parties injured by violations of anti-monopoly provisions may take their cases to the courts."

99. *What measures does China take to promote private litigation regarding Anti-Monopoly Law issues? What competition advocacy initiatives is China taking?*

Answer: Since the implementation of the AML, the MOFCOM and other AML enforcement bodies has attached great importance to the propaganda and training of the AML to improve the anti-monopoly legal sense of governmental departments, enterprises and the general public, which mainly include organizing AML training classes in various forms each year, publishing AML reading materials, actively launching international exchanges, and strengthening law enforcement capacity development.

WTO Secretariat's report, page 78, para. 245

China is becoming one of the large competition jurisdictions in the world, and its authorities will be involved in most multinational transactions and enforcement actions. The European Union is therefore very interested in knowing more about the Chinese enforcement system and building close ties with its Enforcement Agencies with a view to build a strong enforcement partnership.

100. *Could China provide the following information:*

a. *What initiatives could China envisage to take to further improve efficiency of international cooperation on competition policy and enforcement, e.g. in relation to the fight of cartels and the designing of compatible remedies in merger review cases?*

Answer: China has always endeavouring to strengthen cooperation and communication with international enforcement bodies and has begun to carry out close exchange and cooperation with AML enforcement bodies of other countries and regions immediately after the AML came into effect. The major forms of exchange and cooperation include mutual visits, jointly convening relevant seminars, participating in related international conferences, entering into cooperation MOUs, etc. Currently, the NDRC, MOFCOM and SAIC have entered into anti-monopoly cooperation MOUs respectively with the Department of Justice and the Federation Trade Commission of the U.S., the Office of Fair Trading of the U.K. and the Korean Fair Trade Commission. Currently, China is discussing with the AML enforcement bodies of the EU, Japan and some other countries and regions on the cooperation MOUs.

b. *Ad 260: Under what conditions can MOFCOM exchange information with other competition authorities? What are the limits and what are the possibilities in practical terms?*

Answer: To the extent of the anti-monopoly information exchange and cooperation mechanism framework established by MOFCOM and some jurisdictions and on the condition of compliance with law and maintenance of confidentiality, MOFCOM exchanged information with related jurisdictions on cases of concentration of undertakings jointly reviewed by them and has achieved great effect. Whether exchange of case information is practicable depends on the specific circumstances of the cases, whether there is a bilateral cooperation mechanism, confidentiality requirement, legal provisions of the related jurisdictions and their willingness to cooperate, etc.

c. *What mechanisms are China envisaging to apply with a view to actively cooperate and consult other competition authorities with a view to seek to ensure that the timing of interventions coincide with interventions in other jurisdictions?*

Answer: China has begun to carry out close exchange and cooperation with AML enforcement bodies of other countries and regions immediately after the AML came into effect. The major forms of exchange and cooperation include mutual visits, jointly convening relevant seminars, participating in related international conferences, entering into cooperation MOUs, etc. China has entered into anti-monopoly cooperation MOUs with the Office of Fair Trading of the U.K. and the Korean Fair Trade Commission. Currently, China is discussing with the AML enforcement bodies of the EU, Japan and some other countries and regions on the cooperation MOUs.

d. How does China consider dealing with conflicting decisions on remedies in merger review cases? What type of procedures would China consider appropriate to resolve such issues?

Answer: The impact of the same case of concentration of undertakings on competition may not be the same in different countries. Each jurisdiction has the independent right to determine a case, including imposing remedial measures in a case. The remedial measures are usually proposed by the applying party, and the MOFCOM may, following evaluation, approve with restrictive conditions such application if it deems the remedial measures being applied for may reduce the adverse influence of concentration of undertakings on competition. MOFCOM is willing to exchange relevant information with other jurisdictions on the condition that attention to the competition on the Chinese market is resolved

e. Is China envisaging to increase transparency in its enforcement actions e.g. in terms of a higher level of publication of decisions?

Answer: Article 44 of the AML explicitly stipulates that AML enforcement bodies shall legally render decisions and may make public the same to the society in the event they deem the suspected monopoly acts constitute real monopoly acts after investigation and verification. This is conducive to the protection of the public's right to know and conducive to giving play to the oversight role of public opinion. In 2011, NRDC investigated and penalized a series of cases, such as the case of abuse of market dominance by two medicine enterprises in Shandong province.

f. Could China envisage starting to publicise the reception of merger review notifications as is e.g. the practice in the EU?

Answer: MOFCOM has made public to the society the decisions on prohibition of concentration of undertakings and the decisions on imposition of restrictive conditions on concentration of undertakings in a timely manner in accordance with the provisions of the AML.

g. Could China explain how its pre-notification consultations structured and implemented in practice?

Answer: In accordance with the provisions of the Measures for Notification of Concentration of Undertakings, prior to filing an official notification, operators participating in the concentration may apply for consultations with the MOFCOM in relation to issues concerning notification of the concentration. Consultations shall be applied in a written form. Practice shows that pre-notification consultations may help the notifying party to provide complete and legally compliant notification materials and make good preparations for the registration and review of the concentration in a timely manner.

h. A number merger review cases end up in a 2nd (and 3rd) phase and still be accepted. Could China please provide statistics on this and an indication on the reasons leading to this?

Answer: Since 2008, the number of concentration of undertakings cases accepted by MOFCOM has constantly increasing. MOFCOM strengthens law enforcement capacity development, actively enhance case handling efficiency, and tries and closes all cases within the time limit stipulated by laws with limited case handling resources. MOFCOMs enforcement work is highly appraised and recognized by all walks of life in and outside of China.

Administrative monopolies

WTO Secretariat's report, page 82, para. 255

The Secretariat's report states that "In terms of judicial remedies, it was not clear to the Secretariat whether the Anti-Monopoly Law or the Administrative Litigation Law will be applied in the event of administrative monopoly. No case has been registered in the courts against administrative monopoly since promulgation of the AML."

101. *Could China elaborate further on its practice for the application of the AML to administrative monopolies? If there have not yet been any cases, could China explain the reason for this and whether such cases are under way?*

Answer: When administrative organs and organizations authorized by laws and administrative regulations to manage public affairs exercise administrative power, they shall not abuse their administrative power or exclude or restrict competition by violation of laws or regulations, nor shall they abuse their administrative power to formulate any provisions that exclude or restrict competition. Any violator shall be ordered by the superior organ to make rectification, and the principal directly in charge and other directly responsible persons shall be imposed on sanctions in accordance with the laws. AML enforcement bodies may propose their suggestions on the handling thereof to the relevant superior organs.

Anti-trust review

WTO Secretariat's report, page 82, para. 256

The Secretariat's report states "Under Chapter 4 of the Anti-Monopoly Law, all merger transactions above a certain threshold are subject to prior anti-trust review coordinated by MOFCOM. Between 2008 and 2011, MOFCOM received 382 cases for review, of which 371 were unconditionally cleared, 10 were cleared subject to conditions, and 1 case was rejected. Data on cases withdrawn by applicants were not made available to the Secretariat."

102. *Could China provide the following information:*
a. statistics regarding nationality of the parties to its merger review cases (approvals, prohibitions, remedies imposed?)

Answer: MOFCOM has made public to the society the decisions on prohibition of concentration of undertakings and the decisions on imposition of restrictive conditions on concentration of undertakings in a timely manner in strict accordance with the provisions of the AML. Please visit the MOFCOM website to search case announcements for the details.

- b. list of cases in which China has issued prohibition decisions or imposed remedies? Could China include the names of the parties to these cases or as a minimum their nationality?*

Answer: From 2008 to 2011, MOFCOM has issued prohibition decisions on one case – Coca Colas acquisition of Huiyuan, and approved with conditions ten cases, i.e., InBevs acquisition of Anheuser-Busch, Acquisition of Lucite by Mitsubishi Rayon, GMs acquisition of Delphi, Pfizers acquisition of

Wyeth, Panasonic acquisition of Sanyo, Novartis acquisition of Alcon, Uralkalis merger of Silvinit, Penelopes acquisition of Savio Textile Machinery, acquisition of Samsungs HD driving business by General Electronic (China), China Shenhua Coal to Liquid and Chemical Co., Ltd. and Seagate Technology Company. Please visit the MOFCOM website to search case announcements for the details.

c. list of cases which China approved and include the names of the parties to these cases or as a minimum their nationality?

Answer: MOFCOM has made public to the society the decisions on prohibition of concentration of undertakings and the decisions on conditional approval of concentration of undertakings in a timely manner in strict accordance with the provisions of the AML.

d. a description of its decision-making process in merger review cases? E.g. at what level is the decision taken?

Answer: During the anti-trust review of concentration of undertakings, MOFCOM may solicit opinions from relevant parties in light of the actual needs based on review of the written notification materials and may hold forums, hearings, give out questionnaires and invite experts to give demonstrations, etc. when necessary. A decision is made independently and legally by taking into account the information given by various parties and in light of the evaluation of the impact of concentration of undertakings on market competition. The major flows of the review are:

- (1) Pre-notification consultation;
- (2) Decision on case registration;
- (3) Preliminary evaluation of the impact on competition;
- (4) Formulation and Implementation of the preliminary investigation plan;
- (5) Finding out the core issue of competition;
- (6) Decision on implementing further review;
- (7) Rendering a decision on further review and formulation of the further review plan;
- (8) Evaluation on impact on competition;
- (9) Decision on imposition of restrictive conditions; and
- (10) Announcement of the review decision.

(c) Mergers and acquisitions
National security review

The Secretariat's report states that "Acquisitions of domestic enterprises by foreign investors are regulated by the Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, last revised in June 2009. According to Article 31 of the Anti-Monopoly Law, acquisitions by foreign investors are subject to national security reviews in addition to anti-trust reviews, if the acquisitions are deemed to be related to national security."

103. *Could China please provide details on how the national security review measures are implemented?*

Answer: In order to promote the sound development of acquisition by foreign investors, the Circular on Establishing a Security Review System for Merger and Acquisition of Domestic Enterprises by Foreign Investors was promulgated by the general office of the State Council in February 2011 based on the deep research and demonstration and in light of the internationally accepted practice and experience, which explicitly specifies the scope, content, work mechanism and procedures of security review in foreign merger and acquisition cases, establishes a sound, uniform and standard security review system for foreign mergers and acquisitions, and better the system of foreign investment laws and regulations in China.

WTO Secretariat's report, page 84, para. 266

The Secretariat's report notes that activities subject to national security review are either defence-related or related to the acquisition of enterprises related to national security in the sectors of key agricultural products, key energy and natural resources, key infrastructure, key transportation, and key machinery manufacturing. This definition of national security goes beyond international practice.

104. *Could China clarify and preferably exemplify cases where acquisitions in relation to key agricultural products, key energy and natural resources, key infrastructure, key transportation, and key machinery manufacturing could be related to issues of national security? The currently existing list of "key sectors" is very vague. Could China thus make this more concrete?*

Answer: There is no uniform definition of national security on the international level currently. China will focus on the impact of a foreign M&A on the national defense, stable operation of national economy, the basic living order of the society, etc. when judging whether it threatens national security. With respect to the stability of national economy, we mainly take into account the effective operation of the economic system. With respect to the basic living order of the society, we mainly consider that the basic public services in the people's life may not be affected.

105. *The review also stipulates that it could be applied retroactively if the scope of business of a merged entity changes. Could China clarify whether this could mean that a company may face disinvestment after years in business because its business activities are then deemed to fall under national security? How does China intend to ensure this provision does not lead to legal uncertainty?*

Answer: In accordance with relevant provisions of China on foreign M&A security review, when foreign investors merge or acquire domestic enterprises, which fall into security review scope, the investors shall file an application to the MOFCOM. Foreign investors shall abide by Chinese laws and regulations and bear corresponding legal liabilities when making investment in China.

WTO Secretariat's report, page 85, para. 272

The Secretariat's report notes that three cases have been taken to national security review since March 2011.

106. *Could China inform what the sectors were that these reviews took place in, as well as to the outcome?*

Answer: These three M&A cases have all passed the security review. China will publish relevant information in light of the progress of the foreign M&A security review system since its establishment.

107. *Will China publish annual reports on the details and functioning of the national security review?*

Answer: Since the foreign M&A security review is still at an early stage, no annual report concerning national security review has been published by now.

(viii) **Intellectual property rights**
 (a) **Industrial property**
Patents

WTO Secretariat's report, pages 87-91

The Secretariat's report describes the patent system.

108. *Does the Chinese government foresee fines or any penalty against patentees whose patents have been invalidated for lack of quality?*

Answer: Currently China has no provision of imposing fines or any penalty against patentees whose patents have been invalidated.

Trade marks

WTO Secretariat's report, pages 91-93

Cancellation actions are rejected most of the time because of the relative ease for the defendant in proving the he has actually used the registered mark.

109. *Does China have any plans to make the review of evidence submitted by the trademark registrant more exhaustive and comprehensive?*

Answer: Over the years, SAIC attaches great importance to the application for canceling trademark registration. In strict accordance with the relevant provisions of the Law of Trademark and its Implementation Rules, China has been making exhaustive and strict review of evidence submitted by the trademark registrant.

Due to the length of Court proceedings holders of registered trademarks are often obliged to co-exist with infringers for a long time. When assessing the likelihood of confusion, the Courts are taken into this period to reject the offense and impose the cohabitation.

110. *What measures does the Chinese Government intend to take to ensure a proper protection of trademarks and in particular of well-known trademarks?*

Answer: Due to the length of Court proceedings holders of registered trademarks are often obliged to co-exist with infringers for a long time." This is a problem existing in all the countries.

In the future, the industrial and commercial authorities will continue to strengthen building a system and a mechanism of guarantee for registering, using, protecting and administering trademarks. It will work hard to combine day-to-day supervision with special law-enforcement activities, link administrative with criminal law-enforcement activities, coordinate registering, using, protecting and administering trademarks, and establish a long-term mechanism of protecting trademarks in line with law and in a regular and efficient way.

There are cases reported by companies about "bad faith" application/registration of several trademarks in China by Chinese entities.

111. *How does the Chinese Government intend to prevent such cases in the future? What are the legal tools a foreign company may use to prevent the bad faith registration of its trademark in China?*

Answer: The third amendment to the Law of Trademark, which is now underway, fully considers the problem of trademark preemptive registration and makes corresponding provisions. SAIC will continue to closely examine the trademark application and reject the bad-faith application/registration of trademarks in accordance with law, severely deal with cases of bad-faith application/registration and expose some of them, and continue to effectively check the acts of bad-faith application/registration of trademarks.

Any foreign company may handle the case of bad-faith registration of trademark through trademark opposition or dispute procedures in accordance with the Law of Trademark and its Implementation Rules, or handle it through judicial proceedings in accordance with the relevant provisions in China's civil procedural laws.

112. *Can the final judgment that orders the modification of a company name that infringed previous IPR be enforced 15 days after being notified?*

Answer: In accordance with the relevant stipulations in the current laws and regulations on the administration of registering the names of enterprises, such as Administrative License Law, Company Law, Regulations on Registration Administration of Companies, Provisions on Administration of Enterprise Name Registration, where an enterprise intends to alter its name, it shall apply to the registration authority for modification of registration; neither judicial authority nor administrative authority has the right to initiate the procedure of compulsory alteration of an enterprise's name, or substitute the relevant enterprise to determine the change of its name, or determine a name for an enterprise.

(d) Enforcement

WTO Secretariat's report, page 95, para. 321

The Secretariat's report states that "During the last TPR of China, a number of its trading partners expressed concerns about the lack of effective enforcement of intellectual property rights, particularly at the regional and local levels. China was urged to step up its efforts in enforcing IPR protection, including greater and effective customs control and criminal prosecution."

113. *In the framework of the steps undertaken by China in order to improve the enforcement of intellectual property rights, is there any specific measure related to GIs protection?*

Answer: China strictly protects all kinds of intellectual property rights on an equal footing. There is no specific measure with regard to GIs protection

114. *What steps is China taking to ensure that the criminal penalties for IPR infringement are punitive (i.e. significantly exceed the value of the products infringed), deterrent (i.e. highly likely to be imposed), and swiftly enforced?*

Answer: The Chinese laws stipulate severe punishment for IPR-related crimes. The People's Court strictly gives penalty for IPR-related crimes it handles in strict accordance with laws and relevant judicial interpretations, including imprisonment penalty and property penalty, so as to ensure that the accused receive the punishment corresponding to his/its crime. For relevant stipulation on fines and the payment of fines, please refer to Interpretation of the Supreme People's Court and the Supreme People's Procuratorate Concerning Some Issues on the Specific Application of Law for Handling Criminal Cases of Infringement upon Intellectual Property Rights (II). In addition, according to the Criminal Law, all money and property illegally obtained by a criminal shall be recovered, or compensation shall be ordered, and the possessions of the criminal that are used in the commission of the crime shall be confiscated.

115. *Can Chinese Government ensure consistency between local trade fair regulations with state trade regulations in order to guarantee that the lack of effective judicial verdict against an exhibitor in a former fair will not prevail the legitimate IPR holder to go against the same exhibitor in a new fair, especially if both fairs are only few months apart?*

Answer: Please clarify what lack of effective judicial verdict means in the question. If it refers to the situation that a case is in court proceeding and has not been concluded with an effective judicial verdict, according to Article 17 and 20 of Measures for the Protection of Intellectual Property Rights in Exhibitions, in the event that a dispute between a right holder and an exhibitor is under judicial proceeding, if the right holder complains and requests for administrative remedy against the same exhibitor in a new exhibition, local IPR office and administration for industry and commerce would not accept the complaint and take actions.

WTO Secretariat's report, Tables III.11 and III.12, page 86 and 95

The Secretariat's report in Tables III.11 and III.12 gives an overview about intellectual property rights application in 2009-10 and about intellectual property enforcement 2008-10.

116. *Could China indicate in which entry of these tables are included GIs? Is it possible to have specific figures for GIs in relation to these tables?*

Answer: According to statistical data, in the special campaign cracking down on IPR infringements and manufacturing and selling counterfeit and shoddy goods from October 2010 to June 2011, the industrial and commercial authorities nationwide put on file for investigation and dealt with 648 cases related to GI infringements.

IV. TRADE POLICIES BY SECTOR

(5) AGRICULTURE

(i) Agriculture in China

WTO Secretariat's report, table IV.1, page 99

Note 3 to Table IV.1 in Secretariat's report states that "In 2009, data for agriculture and forestry were adjusted according to the new Products Catalogue for Statistics".

117. *Could China provide more information on how the adjustments resulting from the new Products Catalogue for Statistics affect the data for agricultural products?*

Answer: Both in the new Products Catalogue for Statistics applied since 9 February 2010 and the new Industrial Classification for National Economic Activities applied since 1 November 2011, the collection of wild plants is diverted from agriculture into forestry. At the same time, the collection of nuts including walnut, chestnut, etc. and seasonings like Sichuan pepper and star anise is diverted from forestry into agriculture. For the sake of comparability, adjustment was accordingly made on the 2009 production values for agriculture, forestry, livestock and fishery respectively. The value of agriculture production 2009 was modified from 3,061.11 billion yuan to 3,077.75 billion yuan while the value of fishery production was modified from 235.94 billion yuan to 219.3 billion yuan. The sum of values of agriculture, forestry, livestock and fishery remained unchanged.

(ii) Agriculture policies

WTO Secretariat's report, page 102, para. 10

The Secretariat's report describes agriculture policy related objectives in China's 12th Five-Year Plan (2011-2015), including "Other measures set out in the plan include increased minimum purchase prices for key grains, and improving temporary purchase and storage of bulk agricultural commodities."

118. *How much are the minimum purchase prices envisaged to increase and for which products?*

Answer: In order to prevent the excessive price fall and protect farmers interests, the Chinese government will continue on the implementation of minimum grain purchase policy of rice and wheat in the main producing areas during the 12th Five Year Plan. When setting the annual minimum purchase price of rice and wheat, the government will take factors like costs of food production, supply and demand condition and market prices into consideration. The price level will increase in accordance with the rise of costs.

WTO Secretariat's report, page 103, para. 14

The Secretariat's report states that apart from minimum purchase prices for rice and wheat, China also uses government temporary purchasing and stockpiling for some other commodities.

119. *Could China explain how the temporary purchasing is applied and how it differs from purchasing at minimum prices for rice and wheat? What commodities are concerned by temporary purchasing?*

Answer: Interim purchasing and storage policy applies also to cotton and sugar in addition to rice and wheat.

120. *How are the prices at which products are bought into temporary stockpiling determined?*

Answer: Interim purchasing price is set according to the costs to farmers of growing grain with reference to market price.

121. *How is government temporary purchasing accounted for in China's domestic support notifications?*

Answer: Issues relating to stockpiling have been addressed when China prepared its domestic support notification.

122. *Could China provide information on quantities which were bought into temporary stockpiling since 2006?*

Answer: Rice, wheat, cotton, sugar were subject to interim purchasing and storage. All relevant data are available in China's regular agriculture notifications.

(a) Import measures
Insurance programmes

WTO Secretariat's report, page 104, para. 24

According to the Secretariat's report, "In response to the very low insurance coverage for farming in China and the high degree of risk of drought or flooding, a pilot insurance scheme was introduced in 2007 with geographical coverage limited to six provinces. Coverage had been extended to 28 provinces by end 2010. Insurance premiums are subsidized by the central and local governments with farm households paying the balance of about 20-30%."

123. *Has the coverage of insurance programmes been further extended since end 2010?*

Answer: Since 2007, China's total accumulated premium income from agricultural insurance in five years has been over 60 billion yuan, an average annual growth rate of 85%. In 2011, China's premium income from agricultural insurance reached 17.38 billion yuan, an increase of 28.1% on year-on-year basis, covering 652.3 billion yuan for agricultural risk. Since 2011, China's agriculture insurance coverage continues to expand.

In 2012, the central government incorporated the sugar crop into the premium subsidies range, up to 15 varieties financed by the central budget.

124. *Could China provide information on detailed criteria under which the insurance payments are granted?*

Answer: According to Methods on the Management of the Insurance Premium of Farming Subsidies from Central Finance (Cai Jin [2008] 27), when it comes to farming, the insurance amount will be the direct materialization costs produced during the growing period of the insurance subject matter. In actual operation, the local insurance amount varies, and will generally be lower than the direct materialization costs.

According to Methods on the Management of the Insurance Premium of Aquaculture Subsidies from Central Finance (Cai Jin [2008] 27), when it comes to aquaculture, the insurance amount of subsidies to insurance will be determined in accordance with the physiological value of the insured individual (normally includes the purchase price and rearing costs). When it comes to the approach to assessing damages, there are differences at local level. Many local authorities will compare the insurance amount of the insured livestock with the market value in the event of the accident in order to determine the amount of compensation.

Input subsidies

WTO Secretariat's report, page 105, para-s 25-30

The Secretariat's report describes China's input subsidies.

125. *How is the Comprehensive Subsidy on Agricultural Inputs notified in China's domestic support notifications?*

Answer: The comprehensive subsidy for agricultural inputs is a support measure under amber box for non-product-specific, within the *de minimis* limits.

126. *Could China explain the important increase in spending for the Comprehensive Subsidy on Agricultural Inputs (paragraph 25)?*

Answer: Comprehensive Subsidy on Agricultural Inputs is provided in order to compensate the increasing expenses for farmers caused by the price hikes of agricultural inputs. The amount of this subsidy is determined by the effect caused by the price hike. Recent years, the price of main agricultural inputs is rising significantly. Therefore, the amount of the Comprehensive Subsidy on Agricultural Inputs has increased accordingly.

127. *How is the New Variety Extension Payment scheme notified in China's domestic support notifications?*

Answer: China has notified crop seed subsidies as product-specific amber box support measures, and the support level is within the *de minimis* range. There has already been existing level of each product-specific amber box support in China's notification.

128. *Could China provide information on the individual amounts of subsidies paid under the 'New Variety Extension Payment' for the eligible products since 2006?*

Answer: China has notified crop seed subsidies as product-specific amber box support measures, and the support level is within the *de minimis* range. There has already been existing level of each product-specific amber box support in Chinese bulletin.

129. *Could China provide information on the total spending on the different types of input subsidies described in paragraphs 25-30 since 2006?*

Answer: Relevant data is included in the communications on domestic support to agriculture that China notified to the WTO. In the communications, there has been relevant data in the input subsidies of non-product-specific amber box support.

130. *How is the subsidy for purchases of agricultural machinery included in China's domestic support notifications?*

Answer: China notified the subsidy for purchasing agricultural machines as a support measure under amber box for non-product-specific, within the *de minimis* limits.

Internal price supports

WTO Secretariat's report, page 106, para-s 31-34

The EU notes that, according to the information in the Secretariat's report, Chinese government purchases of different commodities are aimed at supporting domestic prices.

131. *Could China complement the information in the report with information on public stockholding for food security purposes undertaken by the authorities and notified in domestic support notifications under the relevant paragraph of Annex 2 of the Agreement on Agriculture?*

Answer: The relevant data has been provided to the WTO during Committee of Agriculture regular meeting about the situation, and there is no new data.

WTO Secretariat's report, page 106, para. 31

The Secretariat's report states that "In addition to border measures that, to some extent, protect the internal market from competition from imports, China has a number of programmes that support

domestic prices. Minimum purchase prices for rice and wheat are set each year by the National Development and Reform Commission. Although the prices have been rising each year (Table IV.6), the purchase price for rice has usually been below the world market price. //".

132. *Could China indicate quantities which were bought by the authorities under the minimum prices for wheat and rice in the years presented in Table IV.6?*

Answer: The relevant data has been provided to the WTO during regular communications of the situation, and there is no new data.

133. *Are the minimum purchase prices quoted in Table IV.6 applied in a uniform manner in all principal grain producing areas in China?*

Answer: Minimum Purchasing Policy applies only to principal growing areas of wheat and rice.

134. *Could China confirm that wheat and rice are the only products subject to minimum purchase price? Has corn ever been included in this system?*

Answer: China has introduced the minimum purchase price system on wheat and rice in their principal growing areas respectively since 2004. No other grains have ever been covered by this system.

WTO Secretariat's report, page 106, para. 33

The Secretariat's report states "In addition to the Minimum Purchase Prices Scheme, the State takes other measures to adjust the supply and demand of certain agricultural products, such as purchasing and stockpiling on an ad hoc basis, and stock releasing for sugar cane and sugar beet, soybeans, maize, rapeseed, and cotton. The main distributors of grains are state-trading enterprises, such as Sinograin, which purchase from producers, and sell to processors through weekly auctions. In order to reduce demand and prices for grains, the State decided in November 2010 to restrict auctions to flour millers, feed millers, and livestock producers. According to the authorities, purchases and sales from the national grain reserves by the State Administration of Grain take place at market prices."

135. *Could China explain how the "other measures to adjust the supply and demand of certain agricultural products" described in the first sentence of paragraph 33 are accounted for in China's domestic support notifications?*

Answer: These issues have been addressed when China prepared its domestic support notification.

136. *Could China confirm whether the ad hoc purchasing and stockpiling referred to in para. 33 is the same measure as the temporary purchase and storage referred to in paragraph 10? If this is not the case, please explain both measures and list products eligible.*

Answer: With regard to cotton, the ad hoc purchasing and stockpiling referred to in para. 33 is the same measure as the temporary purchase and storage referred to in paragraph 10. However, sugarcane and sugar beets are not subject to ad hoc purchasing and stockpiling.

137. *How is the stock releasing for sugar cane and beet operated?*

Answer: There are no reserves of sugarcane and sugar beets, so the problem of stock releasing for sugar cane and beet does not exist.

WTO Secretariat's report, page 106, para. 34

According to the Secretariat's report, "For sugar cane, provincial governments administer and set purchase prices. The purchase price varies from one province to another but has increased steadily over the past six years and is now about 500 per tonne. The Government and local authorities hold stocks of sugar, with purchases and sales aimed at stabilizing prices based on decisions from the National Development and Reform Commission. For the year ending 30 September 2010, 1.71 million tonnes were auctioned from State sugar reserves."

138. *Could China explain how the purchase prices and the auction prices for sugar cane mentioned in paragraph 34 relate to market prices?*

Answer: The purchasing prices of main producing areas of sugarcane are set by provincial authorities in accordance with actual situations. Issuance of sugar will adopt the method of competitive bidding and its final scale price will still be decided by the market.

139. *How is the purchasing and stocking of sugar as described in paragraph 34 accounted for in China's domestic support notifications?*

Answer: China is still in coordination with competent authorities to provide responses to the question.

(d) Support levels

WTO Secretariat's report, page 107, para. 39

The Secretariat's report informs that "Most support notified as being in the Green Box is provided for general services, where infrastructure and other general services together represent nearly half of the total. While expenditure under all headings has increased (except for financial assistance to low-income households), it has been particularly rapid for compensation for losses due to natural disasters and for direct payments to farmers (which were introduced in 2004) (Chart IV.2(a))."

140. *Could China provide more detailed information on the type of measures which are classified under general services? In particular, the EU would be interested to know examples of activities supported under infrastructural services, and other general services.*

Answer: The general services provided by the Government includes research, pests and diseases control, training services, extension and advisory services, inspection services, marketing and promotion services, infrastructural service and other general services. The infrastructure service includes flood control projects, drainage and irrigation facilities, roads in rural areas, small-sized water conservancy facilities, soil and water conservation works. Other general services include expenditures on the running and operation of agriculture-related administrative and service agencies and their personnel expenses.

WTO Secretariat's report, page 110, Table IV.7

Table IV.7 gives an overview about Total producer support estimate and single commodity transfer values for selected commodities, 2002-10.

141. *Could China explain the reasons behind the sudden increase in product support estimate for pig meat between 2007 and 2008?*

Answer: The price of pig meat increased significantly in 2007. Therefore, Chinese government implemented some support policies in order to stabilize the price. These support policies are in line with WTO rules.

(5) SERVICES

(i) Overview

WTO Secretariat's report, page 121

With regard to construction services, not specifically mentioned in the report, China is one of the biggest and fastest growing construction market and very competitive in construction services, but only allows limited market access foreign service providers.

142. *Does China intend to further open this sector to foreign participation?*

Answer: We believe that the opening-up of service industry among WTO Members will benefit the further development of trade in services and we are willing to participate in competition with the broader world. China is willing to discuss further market liberalization on a reciprocal basis with other WTO Members in the market access negotiations under the Doha Agenda.

Also professional services are not specifically mentioned in the Secretariat's report.

143. *With regard to professional services, could China explain:*

a. *Is China considering removing restrictions which prevent foreign law firms from advising on Chinese law and harmonising the treatment of foreign and domestic law firms with respect to operating in China?*

Answer: Like in many other WTO Members, foreign law firms are not permitted to practice domestic law in China. China has liberalized the legal service sector according to its accession commitments and will continue such liberalization. Foreign law firms could provide the service that China has committed when accessing WTO in the form of representative office.

b. *What is the timetable for harmonising the treatment of foreign and domestic holders (and issuers) of professional service qualifications, e.g. engineers, accountants, auditors, actuaries, and architects?*

Answer: First, with respect to the issue of mutual recognition of professional technical qualifications: Professional technical qualifications are professional qualifications set by the State for special occupations and are also administrative measures commonly adopted by various countries in the world. Due to the difference in the administrative system, economic and social development and culture, the standards and requirements of the same type of qualification also vary greatly, therefore, the precondition for harmonising the treatment of foreign and domestic holders of professional service qualifications is the mutual recognition of corresponding qualifications. By now, no government of any EU member has proposed to China to launch research on the mutual recognition of relevant professional technical qualifications. China is willing to exchange information with the EU on the mutual recognition of professional technical qualifications.

Secondly, with respect to the registered practice between China and the EU: on the one hand, since there is no professional qualification mutually determined and recognized by bilateral or multiple governments, there is no position to consider the issue of harmonising registered professions; on the other hand, personnel who have acquired relevant professional qualifications may start practice only after they have gone through registration with the competent authority. Such registration is mainly undertaken by relevant industrial administrative departments under the State Council or the legally

authorized units, for example, the registration of registered architects is undertaken by the Ministry of Housing and Urban-Rural Development.

Thirdly, with respect to the issue of professional technical titles: in China, professional technical titles are the qualifications to undertake corresponding professional technical positions in enterprises and public organizations, which do not equal to professional access qualifications. Other countries do not have similar professional technical qualifications. Therefore, it is difficult to discuss the issue of harmonising. However, foreigners who have acquired the Chinese employment permit may obtain relevant qualifications to take corresponding positions through the national uniform professional examinations and the employers may select and employ personnel to take professional technical positions depending on their needs, such as economist, accountants, actuaries, auditors, IT software engineers, etc.

(ii) Financial services

(a) Banking

Licensing requirements and procedures

WTO Secretariat's report, pages 126-127, para-s 111-116

As the Secretariat's report points out, the licensing requirements and procedures are very divergent and there is no umbrella license or single point of contact in China for financial institutions.

144. *In this regard, could China provide information:*

a. *Are there any advances in speeding up and making more transparent the approval process (CBRC, PBOC, SAFE, CSRC)?*

Answer: Pursuant to Administrative Licensing Law, Securities Law, Securities Investment Fund Law, the approval process and time limit for processing the applications for establishing the securities company and fund management company are specifically stipulated. From March 2010, the CSRC disclosed the status of application acceptance and verification on its official website, and the specific verification process for establishing fund management companies are also publicized by the CSRC in this April. In sum, the approval process is already transparent enough.

b. *What are the possibilities of increasing cooperation among the different regulatory bodies and creating a government authority to coordinate the different offices, and in particular has China considered establishing a single point of contact?*

Answer: China attaches great importance to the regulatory cooperation among the different regulatory bodies. After several years efforts, the relevant authorities have already set up a coordination system based on the principle of division with individual responsibility and mutual coordination, to facilitate the regulatory cooperation in the financial industry, which can be summed up as follows:

First, we have established a regulation and coordination system at the level of the State Council and senior financial supervisors have researched, discussed, analyzed and demonstrated major urgent, important and strategic events and issues in the macro-economy and finance sectors, effectively facilitating the information communication, coordination and cooperation among various financial regulators.

Second, the financial regulators at various levels have signed memorandum of understanding on regulation cooperation. In June 2003, the Memorandum of Understanding on the Regulatory and Supervisory Responsibilities was signed by the CBRC, the CSRC and the China Insurance Regulatory Commission (CIRC), and the Memorandum of Understanding on Strengthening In-depth Cooperation

and Inter-industry Regulation Cooperation in Banking and Securities Industries was signed by the CBRC and the CIRC in 2008.

Third, we promote information sharing. In 2005, the CBRC, the CSRC, the CIRC and the People's Bank of China jointly set up a system of financial statistical information and sharing, and formulated the Interim Measures of the CBRC, the CSRC, the CIRC and the People's Bank of China for Information Sharing which stipulates the contents, ways, working mechanism and the responsibilities of all departments concerned of information sharing. The dispatched organs in various regions under the CBRC and the Peoples Bank of China established an information sharing mechanism in 2009.

Nevertheless, we are fully aware that the issue of regulation coordination and cooperation remains a worldwide regulatory difficulty. The Chinese financial regulators will, based on existing achievements, further strengthen the building of various coordination mechanisms, boost the cooperation among all parties concerned and facilitate the steady development of financial industries.

c. Has China considered reviewing the Prudential Ratios (CBRC) so assets and liabilities can be compared with the same tenor?

Answer: China is still in coordination with competent authorities to provide responses to this question.

d. Does the Chinese government plan to implement any advance in the area of increasing foreign debt quota?

Answer: China is still in coordination with competent authorities to provide responses to this question.

e. Can the five-year transition period for the Loan-to-Deposit Ratio Requirements start from the date of incorporation for each bank?

Answer: The five-year transition period for the Loan-to-Deposit Ratio Requirements start from 2007.

WTO Secretariat's report, page 127, para. 115

During the last TPR in 2010, China announced that the financial regulatory authorities still needed time to evaluate the result of the pilot of allowing commercial banks to establish fund management companies before deciding on what is the next step for the further liberalization of this business.

145. *Have the Chinese Authorities assessed the situation and when is China going to allow foreign banks to establish fund management companies?*

Answer: Currently, some commercial banks are allowed to establish fund management companies on a pilot basis. The financial regulatory authorities still need time to evaluate the result of the experiment and the current market situation before deciding on what is the next step for the further liberalization of this business.

Foreign banks

WTO Secretariat's report, page 128, para. 121

According to Art XVI.2 (f) of GATS, quantitative limitations on foreign ownership need to be listed. China has not listed foreign equity caps for financial institutions; however, as confirmed during last

TPR by China, no single foreign financial institution may own more than 20% of the equity of a Chinese financial institution.

146. *When is China planning to eliminate the violation of its WTO commitments and permit full foreign ownership of Chinese banks?*

Answer: According to China's Services Schedule, qualified foreign financial institutions are allowed to establish wholly foreign-owned banks, including subsidiaries and branches. However, China did not make commitments on the acquisition of existing domestic banks by foreign financial institutions. Nevertheless, China has decided to allow foreign investors to acquire equities of Chinese-funded banks up to a certain level on the voluntary basis. According to the Measures on Administration of Equity Investment of Overseas Financial Institutions in Chinese-funded Financial Institutions, the percentage of equity investment of a single overseas financial institution in a Chinese-funded financial institution may not exceed 20%. This practice is not in violation of China's WTO commitment.

Furthermore, China's banking market is still under-developed. With the international financial crisis not being out of the scene, we have to be cautious in further liberalizing China's banking market. On the other hand, such measure is within the meaning of the prudential measures provided for in the Annex on Financial Services under the GATS, the implementation of which is for the purpose of the protection of investors, depositors and ensuring the integrity and stability of the financial system.

Another important issue not directly mentioned in the report, but raised during the previous TPR is the fact that China has introduced a requirement for IT-onshoring (all data handled by the bank needs to be physically kept and processed in China) for commercial banks. This requirement goes considerably beyond the category of "settlement and clearing services for financial assets", which China's had not committed and is covered by China's GATS commitments on data transfer and processing.

147. *When is China planning to eliminate the violation of its WTO commitments and allow data transfer and processing other than settlement and clearing services for financial assets?*

Answer: Pursuant to the Article XIV of GATS, WTO Members shall be entitled to adopt and enforce related laws and regulations for the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts, subject to the consistency with the provisions of GATS and the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services. This practice is not in relation of China's WTO commitment.

In consideration of individual privacy, data protection and financial information security as well as the prudential requirements on regulators, China has formulated related policies to attach great importance to and stipulate specific requirements on information security, data confidentiality and other issues. For instance, the Electronic Payment Guidelines (No. 1) (Announcement of the People's Bank of China, [2005] No.23), the Guiding Opinions of the Peoples Bank of China on Further Strengthening Insurance of Information Security of Banking Financial Institutions (Yin Fa [2006] No.123), the Notice of China Banking Regulatory Commission on Solely Foreign-funded Banks and Sino-foreign Equity Joint Banks to Engage in the Bank Card Business (Yin Jian Fa [2007] No. 49) and other rules and regulations explicitly stipulate requirements on establishing data systems within China by the institutions engaged in domestic bank card business. Therefore, the policies on establishing important financial data processing systems within China have been explicit and consistent, without any change. At the same time, the requirements on establishing data systems within China have equally applied to Sino-funded and foreign-funded institutions, and there have been no discriminatory treatment to foreign-funded banks.

(b) Securities**Regulatory and legislative framework****(c) Insurance****Regulatory and legislative framework**

WTO Secretariat's report, pages 133 and 136, para-s 146 and 159

During the last TPR, China explained that further assessment of the market situation of the insurance brokerage sector is necessary to further liberalise the market.

148. *Has China carried out this assessment and is China considering lifting the limits for foreign invested brokerage and fund management?*

Answer: With regard to the elimination of limitations on the business scope of foreign-invested insurance brokerage companies, except for brokerage services for large scale commercial risks, international marine, aviation, and transport insurance, and reinsurance, China did not make any other commitments on insurance brokerage services. At the current stage, China is not in a position to make further commitments in this regard.

With regard to the elimination of limitations on the foreign equity ownership in fund management companies, according to China's WTO commitments, foreign services suppliers are permitted to establish joint-ventures with foreign investment up to 33% to conduct domestic fund management business. Within 3 years after China's accession, foreign equity ownership could be increased to 49%. China has fully implemented the aforementioned commitments.

In order to realize good corporate governance, secure the checks and balances among the shareholders, avoid the creation of one dominant shareholder and maintain the independence of the companies, it is appropriate for China to limit the shares held by foreign shareholders in a joint-venture fund management company to no more than 49% of the total. Furthermore, according to relevant regulations, even though a fund management company is wholly Chinese owned, the largest shareholder shall not have more than 49% of the total share. In this respect, foreign investors are treated equally. Currently, we have no plan to change the policy.

(iii) Telecommunications**(a) Market structure**

WTO Secretariat's report, page 137, para. 167

149. *While the main Chinese telecommunication companies are majority state owned, how does China ensure regulators to be independent from the operators?*

Answer: As early as in 1998 when it was established, the former MII separated itself structurally and financially from all the telecommunications operators and services suppliers in the Chinese market. The newly established MIIT, which is the successor of the MII, resumes the role of an independent regulator. MIIT complies with the requirements of independent regulator as provided for in the Reference Paper. Although the main telecommunication companies are majority state owned the government does not intervene the management and operation of these companies

(b) Regulatory regime

WTO Secretariat's report, page 141, para.

The Secretariat's report describes the basic telecommunication market.

150. *Could China provide information whether there is any intention to open the market also for foreign investments and service provider in the near future?*

Answer: China has liberalized the telecommunication services sector in line with its WTO commitments. China has made substantial commitments in the basic telecommunication sector, and the level of commitments is relatively higher in the developing Members. It is our position that further liberalization of telecommunication services sector is subject to the DDA negotiations.

WTO Secretariat's report, page 141, para. 185

According to the Secretariat's report, China has issued two new regulations, No. 187, 2009 and No. 48, 2011 regarding interconnection.

151. *Could China elaborate what type of protective measures of network architecture on the interconnection between networks the basic telecom services operators are supposed to apply?*

Answer: To protect the network architecture, MIIT has adopted many measures. For example, it requires the basic telecommunications services providers establish the gateways between networks in pairs. Through protecting the network architecture, the quality of network communication could be enhanced, and all the consumers would benefit from better quality of communication.

152. *Could China elaborate more specifically the aim of the Measures on Supervision and Administration of Interconnection Quality between Internet Backbone Networks - how exactly is the processing of interconnection regulated and smooth interconnection between internet backbone networks guaranteed?*

Answer: To enable the Internet users to benefit more from Internet and effectively protect their rights, MIIT attempts to secure the quality of Internet communication through various measures. In terms of networks interconnection, MIIT monitors the communication quality of interconnection and then gets the real time information. So MIIT can direct the basic telecommunication enterprises expand their capacity in time to satisfy the demands of Internet users on interconnection visit.

WTO Secretariat's report, page 143, para. 189

The Secretariat's report states that "Internet providers are subject to several layers of regulation. //".

153. *Could China describe in details the several layers of regulation Internet providers are subject to (especially with emphasis on foreign funded)?*

Answer: The Chinese government regulates the Internet in accordance with relevant laws and regulations. Since 2000 China has enacted a series of laws and regulations concerning Internet regulation, including the Decision of the National People's Congress Standing Committee on Guarding Internet Security, Regulations on Telecommunications of the People's Republic of China, and Measures on the Administration of Internet Information Services, which stipulate the legal responsibilities of each kind of Internet service providers.

China always adopts the opening-up policies and is willing to share with the world the opportunities that come along with the development of the internet in China. The Chinese government has always honoured the rules of the WTO and accession commitments, protected the legitimate interests of the foreign enterprises in China, and provided sound services for the foreign enterprises to do business in China. However, any foreign companies doing business in China shall comply with the Chinese laws, respect China's national conditions and traditional morals, and be subject to the regulation of competent authorities in China.

With regard to foreign companies entry into China's internet market, Regulations on Telecommunications of the People's Republic of China, Measures on the Administration of Foreign Investment in Telecommunication Enterprises, Measures on the Administration of Internet Information Services, and Measures on the Administration of Internet Press Information Services have stipulated the relevant requirements. Those foreign companies, which comply with the Chinese laws and regulations and then obtain the relevant qualifications, may provide Internet services in China.

WTO Secretariat's report, page 145, para. 202

With regard to the licensing process for value-added telecommunication services:

154. *Could China share the numbers of application at every stage of the procedure?*

Answer: According to China's accession commitments, foreign investment in value-added telecommunication services shall be no more than 50%. China progressively liberalizes the telecommunication services market in line with its WTO commitments. So far 26 foreign enterprises have applied for licenses of providing value-added telecommunication services and then submitted qualified documents. All of them have obtained the business licenses.

155. *At which step are the most applications denied? Following its experience of the last few years, could China elaborate on the main grounds for the refusal of licence for the provision of value-added telecommunication services?*

Answer: According to China's accession commitments, foreign investment in value-added telecommunication services shall be no more than 50%. China progressively liberalizes the telecommunication services market in line with its WTO commitments. So far 26 foreign enterprises have applied for licenses of providing value-added telecommunication services and then submitted qualified documents. All of them have obtained the business licenses.

(iv) Transport

(c) Air transport

WTO Secretariat's report, page 154, para. 246

156. *Could China clarify the following questions on the provision of computer reservation system services:*

a. *Under the current legal regime do foreign CRS require an approval to provide their cross-border services (mode 1) to Chinese and foreign airlines and their sales agents?*

Answer: According to China's accession commitment, Foreign CRS could provide cross-border service in three ways listed below:

- a. foreign CRS, when having agreements with Chinese aviation enterprises and Chinese CRS, may provide services to Chinese aviation enterprises and Chinese aviation agents by connecting with Chinese CRS,

- b. Foreign CRS may provide services to representative offices and sales offices established in the destination cities in China by foreign aviation enterprises which have the right to engage in business according to the bilateral aviation agreements.
- c. Direct access to and use of foreign CRS by Chinese aviation enterprises and agents of foreign aviation enterprises are subject to approval of the General Administration of Civil Aviation of China (CAAC).

As regard to the issue of direct access to and use of foreign CRS by agents of foreign aviation enterprises referred in China's commitment, CAAC is in the process of drafting and reviewing the Provisional Approval and Administrative Measures on the Direct Access and Usage of Foreign Computer Reservation System by Foreign Aviation Enterprises Sale Agents within China, and the draft of this Measure has been submitted to the CAAC for final approval.

b. Do foreign CRS need a licence to participate in IATA's Billing and Settlement Plan (BSP)?

Answer: Billing and Settlement Plan (BSP) is the system set up by IATA for aviation enterprises and sales agents using neutral ticket to realize sales and settlement. The application of CRS service providers to participate China BSP system shall be processed by Chinese BSP Council according to the relevant rules.

c. If a licensing requirement for foreign CRS exists, what are the conditions to be fulfilled?

Answer: Please refer to the answer for question (a). China didn't make any commitment for foreign enterprises to establish commercial presence in China when acceding WTO, and CAAC hasn't received any establishment application from foreign CRS.

d. On what basis (legal reference) were Chinese airlines required to ask permission to directly use foreign CRS? When was this requirement abolished?

Answer: In China's accession commitment, direct access to and use of foreign CRS by Chinese aviation enterprises are subject to licensing of the General Administration of Civil Aviation of China (CAAC), and this licensing requirement was abolished in November 2002.

e. When will the new regulations be enacted? Will the new regulations be accompanied by implementing rules and, if yes, when would these enter into force?

Answer: CAAC has begun drafting and reviewing the Provisional Approval and Administrative Measures on the Direct Access and Usage of Foreign Computer Reservation System by Foreign Aviation Enterprises Sale Agents in China, and this Measure has stepped into the phase of legislative review since August 2011. Currently, the draft of this Measure has been submitted to the CAACs board of administration affairs for further review, and after the approval, the Measure will be finally promulgated.

In order to facilitate the issue of this Measure and increase its operability, CAAC is working hard on drafting relevant technical standards and operational requirements, so as to facilitate foreign CRS to build systems containing sales agency information related to booking and billing, flight information and passenger information. All the above mentioned standards are expected to be accomplished in the second half of this year.

f. Since Chinese airlines can directly access and use foreign CRS, does this mean that foreign CRS do not need any further operating license?

Answer: The providing of CRS service is under the authority of several relevant administrations. CAAC is the competent authority on CRS service market, besides, the relevant electronic information affairs are regulated by information department, the relevant information security affairs are regulated by public security department, and the relevant registration, supervision and tax collection affairs for CRS enterprises are respectively regulated by the SAIC, tax administration and etc.

(v) Tourism

(b) Trade regime

WTO Secretariat's report, page 165, para. 306

With regard to tour operators on outbound travel services, China has become one of the world's fastest growing markets in the world. Currently, the participation of the foreign investment in this sector is limited to few joint ventures only, which are operating on pilot basis.

157. *Is China considering a review of the operation of this sector and more specifically providing national treatment for foreign and domestic tour operators engaged in outbound tourism in China?*

Answer: The three foreign travel agencies licensed by China to provide the outbound tourism services for residents of mainland China on a pilot basis have not started group travel business yet. The National Tourism Administration will consider whether to expand pilot range further, basing on the evaluation and analysis of the said three agencies operation status after they provide the outbound tourism services.

(vii) Postal and courier services

WTO Secretariat's report, pages 167-168

158. *As regards postal and courier services, could China explain:*

a. *how and in which aspects it plans further clarifying the scope of exclusive rights by postal enterprises?*

Answer: As prescribed in the Postal Law, the delivery services of correspondence within the scope provided by the State Council are reserved to the Chinese postal authorities.

The Legislative Affairs Office of the State Council is studying and formulating the Regulation of Business Scope Reserved to Postal Enterprises by the State Council for the time being.

b. *In particular, can China confirm that commercial documents are not considered to be covered under correspondence (letters)?*

Answer: Please clarify the definition of commercial documents. The Postal Law has provided clear definition of correspondence, and does not allow foreign express delivery enterprises to engage in domestic express delivery services for correspondence. As prescribed in the Article 84 of the Postal Law, correspondence means letters and post cards. Letters mean sealed information carrier delivered to particular personnel or organization in sealed form according to name and address, not including books, newspapers and journals.

c. *Can China clarify the conditions of the Universal Service Fund?*

Answer: The universal postal service fund is an important system set up by the Postal Law. As prescribed in the Article 17 of the Postal Law, the state establishes universal postal service fund. The

specific measures on the levy, usage, supervision and management of the universal postal service fund are formulated by the Department of Finance and other related departments of the State Council, which will be submitted to and come into force after the approval. The specific measures are still under study.

d. Can China explain how it plans to ensure that the measures taken to ensure security and fight against counterfeited products, including the rules on CCTV monitoring and new customs procedures do not create unnecessary burden and that business secrecy is ensured to the information gathered by the authorities?

Answer: The Postal Law and the Supervisory and Administrative Measures for the Safety of Postal Industry provide the specific measures to guarantee the safety of the postal industry, which require the express delivery enterprises to take technical measures to supervise the pick-up, sorting, transport and delivery and so on. This is the basic requirement to ensure smooth and safe delivery, which will not impose unnecessary burden on the enterprises.

Chinese law will protect the legal right of foreign express delivery enterprises, such as the commercial secrets, as long as they engage in the express delivery services legally in China. The State Post Bureau issued the Administrative Measures for the data of the Postal Market Regulatory Information System in 2011, and thereby put it in force, which further defines the responsibility of postal authority at various levels on data management and safety.

(viii) Distribution services

WTO Secretariat's report, pages 168-169

As regards retail services, China continues to implement restrictions on number of retail outlets for wholly foreign owned companies selling certain products, including petrochemicals.

159. *Is China considering removing this limitation?*

Answer: China has already liberalized its retailing market in accordance with the relevant WTO accession commitments. As for further opening up of the retail outlets for wholly foreign owned companies selling certain products, the relevant authorities will study the feasibility then decide the measures of next step.

HONG KONG, CHINA

Question 1, page 123, para 104

Financial Services

We note from the Secretariat report that foreign investors have been allowed to establish wholly owned personal consumption finance companies since 12 February 2010. Foreign investment in personal finance was allowed only in the subsector of auto loans previously, through establishment of wholly owned or joint-venture auto-finance companies.

How many wholly owned personal consumption finance companies have been established by foreign investors since 2010? Please also share with us the scope and details of this liberalization.

Answer: Since 22 July 2009, foreign financial institutions, with presence in China for more than two years, have been allowed to become principal investors (up to 100% ownership) of a consumer

finance company, in accordance with the Administration Measures for the Pilot Programme of Consumer Finance Companies (CBRC Decree 2009/3). As per the Administration Measures for the Pilot Programme of Consumer Finance Companies (CBRC Decree 2009/3), the principal investors of a consumer finance company must satisfy the following conditions: (1) more than 5 years of business experience in consumer finance; (2) gross assets not less than ¥ 60 billion (or equivalent value in other convertible currencies) at the end of the most recent year; (3) continuously making profits in the most recent 2 consecutive fiscal years; (4) no record of major violations in the most recent 2 years; (5) legal investment capital, i.e. loans or trusted funds are allowed; (6) guarantee for a 3-year lockup period of equities of the consumer finance company in question; (7) healthy corporate governance, and risk management; and (8) meet other compliance standards.

At the end of 2010, there were four consumer finance companies, including one fully foreign-owned company and two joint ventures. The four consumer finance companies are: Bank of Beijing Consumer Finance Co. Ltd (wholly owned by Bank of Beijing); Bank of China Consumer Finance Co. Ltd (jointly owned by Bank of China, Brilliance Group, and Shanghai Lujiazui Finance & Development Co. Ltd); Sichuan Jincheng Consumer Finance Co. Ltd (joint-owned by Bank of Chengdu and Hong Leong Bank, Malaysia); and PPF Consumer Finance Co Ltd (wholly owned by PPF Group, Cze).

Question 2, page 154, para 246

Air Transport

A new draft regulation is being prepared with the aim to clarify the conditions of authorization by the Civil Aviation Administration of China(CAAC) for direct access to and use of foreign Computer Reservation Systems by Chinese aviation enterprises and agents of foreign aviation enterprises.

We are interested to know the scope and details of the draft regulation, the latest legislative process, and its implementation schedule.

Answer: Civil Aviation Administration of China(CAAC) has begun drafting and reviewing the Provisional Approval and Administrative Measures on the Direct Access and Usage of Foreign Computer Reservation System by Foreign Aviation Enterprises' Sale Agents within China, and this measure has stepped into the phase of legislative review since August 2011.

During the process of reviewing, CAAC widely solicited opinions from related parties more than once. In August 2011, November 2011 and February 2012, in forms of soliciting writing opinions, convening regulation reviewing meeting, and organizing face to face communication, CAAC absorbed the views from International Aviation Association, EU Chamber of Commerce, international airlines councils in China, international airlines, foreign computer reservation system service providers and other relevant domestic organizations.

At present, the draft of this Measure has been submitted to the CAAC for final approval, and the Measure will be finally promulgated after the approval.

Question 3, page 177, para 360

Logistics Services

The Chinese Government is promoting the application of uniform logistics-related technical standards across the country. In this connection, under the National specific Programme for Logistics Standardization, 22 national logistics standards and more than 20 logistics industrial standards have been issued in 2010.

How are these technical standards implemented in the industry? Will these technical standards be one of the registration criteria with corresponding authorities?

Answer: Special Plan for National Logistics Standard was drafted under the lead of Standardization Administration of the People's Republic of China (SAC), all technical standards in the plan are organized and implemented according to the Law of Standard of PRC. Both of the national logistics standards and industry logistics standards suggested in the Special Plan are recommendatory standards, which are encouraged to be adopted voluntarily by enterprises in China. Technical standards do not involve registration-related issues.

INDIA

Part I: QUESTIONS REGARDING THE SECRETARIAT REPORT

Page 69 (Para 191)

China provides different forms of assistance to qualified projects under its torch programme at the central as well as sub-central level. The TPR Report by the Secretariat provides a web-link for the details of this project, but the relevant webpage is in Chinese and the English version does not open.

Question 1

Could China provide details of benefits provided by the Central government and the supplementary financial assistance provided by the authorities at the local level under its torch programme aimed at promoting new and high technologies?

Answer: The Torch Program is in nature general science and technology input. Detailed information please refers to the official website of Ministry of Science and Technology.

Could China also provide a list of sectors/industries benefitting under the torch programme and the criteria for determining the same.

Answer: The list for the programs under the torch program is available on the website <http://www.most.gov.cn/bszn/new/hj/jgcx/201111/P020111108366088590198.pdf>.

Page 69 (Para 195-198)

China provides different forms of assistance to its renewable energy sector.

Question 2

Could China provide details of the following:

1. Benefits provided under the National Medium-and-Long-term Development Plan for Renewable Energy, 2007 and the Golden Sun Demonstration Project to developers/manufacturers/distributors or any other key participant in the renewable energy sector; viz grants, rebates, local component requirement, etc.

Answer: Golden Sun Demonstration Project is a program under Renewable Energy Fund, which contained sub-arrangements and involved also transfer payment to provincial governments. Therefore, it was too complicated to be incorporated in China's submitted subsidy notification. China

will work on notification of this fund in the course of extending the notification to local subsidy programs.

2. *Complementary assistance programmes for renewable energy at the sub-central government level*

Answer: Please refer to the answer to the above question.

Page 70 (Para 199-200)

China's central government provides lump sum grants to consumers who buy new energy-saving or new-energy cars listed in a promotion catalogue.

Question 3

Could China provide details of assistance provided to the automotive sector, especially in relation to new energy-saving or new-energy cars, both at the central and sub-central government level?

Answer: In January 2009, the Ministry of Finance and the Ministry of Science and Technology jointly issued the Notice on Carrying out Energy-Saving and New Energy Vehicle Demonstration and Promotion Pilot Work (Caijian No.[2009] 6), and launched the energy-saving and new-energy vehicle demonstration and promotion project in Beijing and 13 other cities to financially encourage the promotion and use of energy-saving and new energy vehicles in public transportation, rental service, sanitation and postal and other public service areas. Subsidies will be provided for units that will promote and purchase energy-saving and new energy vehicles.

In May 2010, the Ministry of Finance, Ministry of Science and Technology, Ministry of Industry and Information Technology and National Development and Reform Commission jointly issued the "Notice on Extending the Promotion of Energy-Saving and New Energy Vehicle in Public Services (Caijian No. [2010] 227). It stipulated that on the basis of the existing 13 pilot cities, seven other cities will be added including Tianjin.

In May 2010, the Ministry of Finance, the National Development and Reform Commission and the Ministry of Industry and Information Technology jointly issued the "Promotion and Implementation Rules and Regulations for the Fuel-Efficient Cars Categorized in Benefiting People Project of Energy-Saving Products (1.6 liters and below passenger cars) (Caijian No. [2010] No. 219). Since June 2010, the National Development and Reform Commission, the Ministry of Industry and Information Technology and the Ministry of Finance have publicized seven promoting Catalogues of the fuel-efficient cars in the category of the Benefiting People Project (1.6 liters and below passenger cars). The central government will give each consumer a subsidy of 3000 yuan who buys fuel-efficient cars mentioned above. The payment will be made in the sale to consumers by the manufacturers.

In May 2010, the Ministry of Finance, the Ministry of Science and Technology, the Ministry of Industry and Information Technology and the National Development and Reform Commission jointly issued the "Notice on the Subsidy Pilot on the Purchase of New Energy Vehicles by Private Consumers (Caijian No. [2010] No. 230). The pilot subsidy management will be implemented in line with the Pilot Financial Assistance Fund Management Tentative Measures for Private Purchase of New Energy Automobiles issued alongside the notice.

2. *Could China also provide the list of companies that have benefited under this?*

Answer: The list of companies that benefit from People-benefiting Project of Energy-saving Product is publicized in all together seven batches on the website of National Development and Reform Commission (NDRC). Please refer to <http://www.sdpc.gov.cn/zcfb/zcfbgg/default.htm> for detailed information.

Page 15 (Para 22)

The 12th Five-Year Plan (covering 2011-15) places emphasis on exports and inward foreign investment but also on imports and outward foreign investment. In this context, China aims to stabilize exports, expand imports, and thus reduce the trade surplus. The authorities intend to achieve this objective through import facilitation measures, as well as further preferential trading agreements 2011-2015.

Question 4

China's trade policy objectives, as elaborated in Part XII of the 12th Five Year Plan, are to be achieved through import facilitation measures and more PTAs. Could China elaborate on proposed import facilitation measures? Specifically, what are the measures being considered? What is the timeframe for introducing such measures?

Answer: China will make the following efforts to promote trade facilitation:

- (a) to strengthen cooperation with the Customs of other countries in the aspects of mutual recognition of supervision, mutual assistance of law enforcement and exchange of information, so as to reduce unnecessary duplication of regulation and inspection, and facilitate enterprises and goods to enter each other's markets.
- (b) to further promote the construction of "great Customs clearance" at port, give full play the role in electronic port, and deepen the link between the port inspection departments and the related domestic government departments to improve the efficiency of the port clearance.
- (c) to maintain closer partnerships with the business sector, implement the concept of knowing the goods by understanding enterprises, strengthen law-abiding management for enterprises, and facilitate Customs clearance for highly creditable enterprises.
- (d) to make reform on classification clearance of Customs and paperless clearance operations, implement the 7 x 24 hours in advance clearance system in Customs located in the port and Customs areas under special supervision, implement the clearance facilitation measures of advance declaration, mass declaration and security clearance to optimize the Customs processes and simplify regulatory supervision of clearance procedures.
- (e) to actively promote the facilitation of processing trade for domestic market, and to promote the construction of trading platform for domestic market.

Page 46 (Para 85)

There are four levels of standards in China: national, trade, local and enterprise standards.

In the absence of national standards, trade standards or local standards for certain products, the enterprises producing such products may formulate their own standards as the basis for organizing production. Where there are already national, trade or local standards, enterprises are encouraged to formulate and apply enterprise standards that are stricter than the corresponding standards.

Question 5

1. What is the rationale for enterprise standards in China?

Answer: Article 6 of the Standardization Law of PRC stipulates that in case there is no national or trade standard, enterprise standard shall be formulated and followed in production. All enterprises registered in China shall formulate enterprise standards in line with the Standardization Law above.

Enterprise standard is the standard that harmonizes technical requirements, management requirements and working requirements within enterprises. It also serves as the guideline for production and business activities. Enterprises are encouraged to actively adopt international standards and advanced standards abroad.

2. *How are such standards (even if formulated by state-owned or state-controlled enterprises) distinct or different from private standards?*

Answer: please give the definition of private standard.

3. *While enterprises may formulate or apply their own standards in the absence of national, trade or local standards for the purpose of organizing production what is the purpose of encouraging enterprises to formulate or apply their own standards that are stricter than pre-existing national, trade or local standards?*

Answer: Enterprises are encouraged to formulate enterprise standards that are stricter and apply these standards to enterprises, aiming at promoting technical advance, improving product quality, and achieving innovative development.

Page 93 (Para 308-310)

China protects GIs under Trademark law and can be registered at various locations. China is also known to have used specific geographical names in generic sense. There are certain products that are protected as GIs in other countries but are named as generic products in China. E.g. Kanjeevaram silk sarees of India are a registered GI in India but the name is learnt to have been used in producing silk textiles in China and exported as well.

Question 6

China is requested to provide details of the procedure by which foreign GIs can be protected in China and right holders be able to enforce their rights.

Answer: SAIC, MOA and AQSIQ are the three government agencies responsible for GI protection in China. Foreign right holders may register their GIs with the above agencies for protection in China. To register GIs with SAIC, pursuant to the Trademark Law and its implementation regulations, a foreign right holder shall authorize a certified trademark registration agent in China to apply for the registration of a collective or certification trademark for the corresponding GI. Once the application is approved and the collective or certification trademark is registered, the foreign right holder obtains the right to the exclusive use of registered trademark of the GI in China. The procedures for registration with MOA and AQSIQ are in formulation.

Regarding the enforcement of rights, once any infringement is found, right holders may report it to the state or local administration for industry and commerce and request them to investigate and punish wrongful acts. At the same time, the state and local administrations for industry and commerce would also investigate and punish infringements of legitimate GI rights on their own initiative. Besides, right holders may also protect their rights through judicial proceedings by launching a lawsuit against infringers.

Page 96 (Para 323-324)

Customs in China is empowered to detain IPR infringing goods on application by rightholders irrespective of whether the goods have been registered with the Customs.

Question 7

China may kindly explain the procedure by which export of infringing goods can be prevented by the Customs at the instance of the right holders, especially when the right holder is not Chinese

Answer: According to The Regulations on Customs Protection of Intellectual Property Rights, where any imported or exported goods are found suspect of infringing an IPR, the customs shall immediately notify the right holder of such suspected infringement in writing. In the event that the right holder files an application in conformity with the provisions of Article 13 of the Regulations and provide a security pursuant to Article 14 of the Regulations within 3 working days from the date of service of the notification, the Customs shall detain the suspected infringing goods, notify the right holder of such detention in writing and serve a Customs detention receipt on the consignee or consignor. The Customs shall not detain the goods in case the right holder fails to file an application or provide a security within the specified period. Please refer to Article 4, 12 and 16 and Chapter II of the Regulations for details.

Page 5 (Para 14)

Item: I. Economic Environment; Structural Policies I.

Input prices (such as energy, water, and land) have also been regulated and kept low

Question 8

Could China indicate whether each input is made available at the same regulated price to all enterprises across the board?

Answer: In China, input prices have not been regulated and kept low as described in the Secretariat Report. At present, more than 95% prices of our goods and services have been liberalized and fixed by the market, including the vast majority of means of production such as coal and metal ores. As for the very limited number of resource products that implement the government pricing or government guidance prices, their prices basically reflect the domestic cost of production and market supply and demand situation. With regard to the input products that implement the government pricing or government guidance pricing, we implement a uniform pricing policy to all enterprises in the industry, regardless of their ownership or scale.

Page 71 (para 206)

Item: Trade Policies and Practices by Measures; Measures affecting Production and Trade; Subsidy and Other government Assistance

Issue stated: China notified a number of measures to assist research and development; most of them involved preferential tax treatment.

Question 9

Could China state whether all enterprises across the board are eligible for receiving assistance for research and development? If not, could China indicate the criteria for determining eligibility of

enterprises for receiving assistance for research and development? Is any sector specifically excluded from receiving assistance under research and development?

Answer: All enterprises in China are eligible for receiving assistance for research and development. Please refer to our subsidy notification G/SCM/N/155/CHN and G/SCM/N/186/CHN for the detailed information of assistance and criteria for enterprises.

Page 72 (para 211)

Trade Policies and Practices by Measures; Measures affecting Production and Trade; Industrial policies

Issue stated: Under the 2009 programme, sector-specific policies were issued to boost development of the ten sectors.

Question 10

Could China specify the ten sectors selected under the 2009 programme for boosting development?

Answer: Please refer to footnote 184 on page 95 of the Secretariat report. The ten sectors include nine manufacturing sectors (iron and steel, automobiles, shipbuilding, petrochemical industry, textiles and clothing, light industry, non-ferrous metals, equipment manufacturing, electronics and information industry); and one services sector (logistics).

Part II: QUESTIONS REGARDING THE GOVERNMENT REPORT

Page 11 (Para 28)

Accelerating the development of the service sector.

Question 11

In China the demand for IT and medical services is growing fast. What are the plans to follow an open policy for import of services in the IT and medical sector to meet the demands.

Answer: China has made substantial commitments in the sectors related to IT services when it acceded into the WTO. It is our position that further liberalization in the field of IT services is subject to the DDA negotiations.

On 28 January 2011, the State Council released the Notice on Several Policies on Further Encouraging the Development of Software Industry and Integrated Circuit Industry, (Guofa[2011]No.4), stating clearly the favourable policy for IT service, including outsourcing IT R&D and application business to specialized companies; currently, China is drafting policies on promoting service outsourcing, such as the Guidelines to Increase Import and Promote Balanced Foreign Trade, and the Outline on the Development of China's International Service Outsourcing Industry (2011-2015). As an integral part of service outsourcing, IT service is supported by policies at both import and export ends.

In November 2010, General Office of the State Council issued Advices on Further Encouraging and Guiding Social Capital to establish Medical Institutions. This Advice explicitly presented the guidelines and policy measures to accelerate the development of private medical institutions, among which one important measure is opening up of medical service market, encouraging and guiding foreign capital to establish medical institutions. This Advice also pointed out that, Catalogue for the

Guidance of Foreign-Invested Industries shall classify the foreign-invested medical institution in forms of joint venture and cooperative enterprise from restrained category to permitted category. Currently, all relevant provincial administration have begun to scheme effective implementation of this policy, and detailed rules for the implementation and supporting documents are expected to unveil soon.

According to CEPA and ECFA, since 1 January 2011, service providers from the Hong Kong and Macao Special Administrative Regions have been permitted to establish subsidiary hospitals in the provinces and municipalities of Shanghai, Fujian, Guangdong, Hainan and Chongqing. Service providers from Chinese-Taipei also have been permitted to establish subsidiary hospitals according to rules in the provinces and municipalities of Shanghai, Jiangsu, Fujian, Guangdong and Hainan on a pilot-project basis. Since 1 April 2012, pilot project of the Hong Kong and Macao Special Administrative Regions to establish subsidiary hospitals in mainland China will be extended to all provincial capitals and municipalities.

During the "Twelfth Five-Year" period, China will further liberalize medical service market, and allow the establishment of wholly-foreign-owned medical institutions.

Page 16 (Para 57)

Reform of social security and medical healthcare systems

Question 12

What is the National and state level policy for procuring generic medicine for the hospitals particularly in the new rural cooperative medical care system?

Answer: According to the Working Rules for Centralized Procurement of Drug for Medical Institution (Weiguicaifa [2010] No. 64), non-profit medical institutions sponsored by country government and SOEs must participate in the collective procurement of pharmaceuticals. Other institutions are encouraged to participate in the activity. The Working Rules are intended to achieve online government-led collective procurement of pharmaceuticals participated by provincial, district and city-level medical institutions. Medical institutions and pharmaceutical manufacturer must, when buying and selling pharmaceuticals, use provincial, district and city-level non-profit platform for the procurement, and they are subject to unified organization, platform and regulation.

What level of government (central/sub-central, or relevant private associations) holds the authority to import generic medicine for state owned hospitals? Do the hospitals have the authority to procure medicine themselves?

Answer: Article 39 of the Drug Control Law of the People's Republic of China states that examination of drugs to be imported shall be organized by the drug regulatory department under the State Council. A drug may be imported only upon approval granted after the confirmation that it conforms to the quality specifications and is safe and effective is affirmed through examination, and an import drug license shall be issued. Article 10 of the Drug Registration Regulation states that in making application for an imported drug registration, the legitimate foreign drug manufacturer shall use its office in China, or authorized an agent in China to handle the application. As to small amounts of drugs be imported for urgent clinical needs of medical institutions or for personal medication, formalities for import shall be completed in accordance with the relevant regulations of the state.

Part III: OTHER QUESTIONS

Service related Questions

Question 13

China is requested to provide update on the Joint Circular (Notice No. 618) posted 15 November 2009 to implement an Indigenous Innovation Product Accreditation system, the implementation of which would make it virtually impossible for any foreign supplier to participate in the Chinese government procurement market. Does this relate to only the IT/ITeS sector or to other service sectors as well? In addition to the Joint Circular (Notice No. 618) posted 15 November 2009, does China have any other policy which bans use of foreign software by the Chinese government?

Answer: on 17 November 2011, the General Office of the State Council issues a document, requiring local governments at all levels to stop their local practice regarding innovation policy linked to preferential government procurement, starting from 1 December 2011. The relevant departments of the Chinese government also issued notice, announcing the end of implementation of Accreditation and Management Measures on National Independent Innovation Products (Trial), Notice on Carrying out Accreditation of National Independent Innovation Product in 2009 (Notice 618), Administrative Measures on Budgeting for Government Procurement of Self-innovated Products, Evaluation Measures on Indigenous Innovative Products for Government Procurement, and Administrative Measures on Government Procurement Contracts relating to Self-innovated Products. Currently, China's self-innovative product is no longer linked to preferential procurement policy. There are no other policies on prohibiting the Chinese government to use foreign software.

Question 14

What are the specific types of legal entities permitted under China's autonomous policy regime for foreign IT/BPO companies and foreign IT/BPO education/training companies?

Answer: According to China's laws and regulations, foreign IT/BPO companies and foreign IT/BPO education/training companies may establish the following types of legal entities in China: equity joint venture enterprises, wholly foreign-owned enterprises, and contractual joint ventures.

Question 15

Is there a law in China that categorises Call Centers (which would come under Other Business Services CPC 8790) as Value Added Telecom firms mandating call centres to require a license similar to that required for provision of telecommunication services?

Answer: According to Catalogue of Telecommunication Business Classification call center business is subject to the second category of value-added telecommunication business. For those call center services suppliers, it is necessary for them to obtain the license of value-added telecommunication business if they intend to do business in China.

Question 16

With regard to provision of accounting and architectural services, is it mandatory to maintain all accounts in Chinese language / use only Chinese characters in architectural drawings?

Answer: For the language requirement of accounting services, Article 22 of Accounting Law explicitly stipulated that, in China, accounting records should be recorded in Chinese. In a national minority autonomous region, the commonly used local national minority language may be used

simultaneously. One additional foreign language may be used in the accounting records of foreign invested enterprises, foreign enterprises and other foreign organizations in China.

For the language requirement of architectural drawing, according to the requirement of Provisional Administrative Rules on the Foreign Enterprises Engaging in Construction Project Design Activities in China, the Chinese-foreign cooperative design documents submitted to relevant administrations should be recorded in Chinese.

According to the requirements of the Interim Provisions on the Administration of Foreign Enterprises Engaging in Construction Project Designing Activities within the People's Republic of China (Jianshi [2004] No.78), the Chinese-foreign cooperative design documents subject to the review of the Chinese government shall be provided in Chinese version.

Question 17

Is there a law in China banning foreign educational institutions from offering education services through mode 1 (such as via satellite networks)?

Answer: We made no commitment on educational services in mode 1 mainly for the following reasons: the lack of comprehensive evaluation and effective supervision at present on the quality of remote education services offered by foreign educational institutions through mode 1 (such as via satellite networks), and it is also difficult for relevant WTO Members to guarantee or monitor the educational quality. It is hard to protect the consumers' right effectively once any quality problem occurs.

Taxation System for Diamond imports in Shanghai Diamond Exchange

Question 18

Will China explain exactly the way tax involving VAT is calculated in Shanghai Diamond Exchange?

Answer: Please refer to the Notice of the Ministry of Finance, General Administration of Customs and State Administration of Taxation on Adjusting Taxation Policy of Diamond and Shanghai Diamond Exchange (Caishui [2006] No. 65) for detailed information of calculation.

Question 19

Why is it that the loose diamonds are quarantined in China for 3 to 4 days before getting released in the market?

Answer: Because Chinese authorities issue license for imported diamond according to the requirement of Kimberley Process.

Question 20

It is India understanding that it is beneficial for the diamond traders to import the diamonds into China via Hong Kong, China than directly into China and that it is due to certain NTBs. Will China explain its position?

Answer: China has eliminated all the NTBs in compliance with our WTO accession commitment in 2005. Chinese quarantine authorities issue license for imported diamond according to the requirement of Kimberley Process

INDIA - SECOND SET OF QUESTIONS

Part I: QUESTIONS REGARDING THE SECRETARIAT REPORT

Page 59 (Para 142-144)

Paragraphs 142-144 of the Secretariat Report describe China's Tax Rebates on exports.

Question 1

How the rates for VAT rebate are determined? How the VAT rebate on exports is practically implemented? At what stage the VAT rebate is allowed, what are the documents prescribed for claiming VAT rebate and how it is ensured that the VAT rebate is based on actual VAT paid?

Answer: Tax rebates for exports are determined as stipulated. Chinese authorities for tax administration are in charge of tax rebates. One can apply for the rebate once the goods leave our border after customs declaration by submission of related documents, such as VAT invoice, export declaration etc. Tax rebates are given to the applicants based on the above-mentioned documents, which ensures that the rebate is based on the actual VAT paid.

Page 61-63 (Para 154-165)

Paragraphs 154 to 165 describe China's policy and procedures relating to export finance, insurance and guarantees.

Question 2

How are the lending rates to exporters determined by the EXIM Bank?

Answer: the RMB loan rate offered by the Export-Import Bank of China follows the loan rate regulated by the PBOC. For loans of foreign currencies, based on the interest rate policy of the PBOC, fixed interest rate is determined with reference to CIRR of the OECD, with additional plus points, while float interest rate is determined on the basis of the LIBOR, together with additional plus points.

Whether the lending rate is different for different class of borrowers, and if so an illustrative list of different class of borrowers may be provided?

Answer: the specific interest rate in the Export-Import Bank of China is set by incorporating such factors as capital cost of foreign currency, market price, customer credit rating, country risk level.

During the period under review what was the lending rate for export credit finance for exports in general and for different class of borrowers?

Answer: The specific interest rate in the Export-Import Bank of China is set by incorporating factors like capital cost of foreign currency, market price, customer credit rating and country risk level.

Whether the EXIM Bank makes decisions regarding lending rates based on market principles? Whether the EXIM Bank makes profits from its operations relating to export credit finance?

Answer: The specific interest rate of the Export-Import Bank of China is set by incorporating factors like capital cost of foreign currency, market price, customer credit rating, country risk level. The Bank follows the principle of proper profit with secured capital and achieves sustainable development by relying on its own business operation in recent years.

Whether there are commercial banks, other than official export credit agency, which provide export credit finance for export purposes? And if so details of such commercial banks may please be provided.

Answer: Other commercial banks can also provide export credit business.

Whether the above commercial banks provided export credit finance during the period under review and if so what was the lending rates to exporters?

Answer: Commercial banks also provide export credit finance during the review period. The lending rates of commercial banks are based on market conditions.

INDONESIA

I. ECONOMIC ENVIRONMENT DEVELOPMENTS IN TRADE AND FOREIGN DIRECT INVESTMENT

Nevertheless, frictions remain with some of China's main trading partners over the levels of their bilateral trade balances with China. When measured by traditional trade statistics, which attribute the entire commercial value of an exported good to the last country of origin in the global supply chain, China continues to have particularly large bilateral trade deficits with some Asian economies, notably Chinese Taipei, Korea, and Japan, from which it imports components for its export processing activities, and large bilateral trade surpluses with the United States and the EU, to which it exports final products. (Document: WT/TPR/S/264, page 9, para 20)

Question:

1). Related to the trade of China government, either export or import frequently recorded any differences in the trade balance, so it is questionable what methods that are used in the recording of export or import data?

Answer: Statistics by China Customs has been derived by comprehensively implementing the concepts and definitions for trade statistics of goods by the UN (IMTS2010), taking into the calculation of foreign trade the goods entering into or leaving China's customs territory and causing an inventory variation of material resources within borders. Imported goods are taken into statistics according to their CIF while exported goods according to FOB. Import is taken into statistics by country of origin while export by country of final destination, with country of departure and country of arrival as supplemental information. China Customs collects, gathers, revises, compiles and releases data on a calendar month basis and the released data may be altered due to data correction. Please look for more information in the Customs Statistics Ordinance of the People's Republic of China and the Regulations on Customs Statistics of the People's Republic of China.

China has become an important source of FDI. In 2010, it ranked fifth in the world, with outward FDI of US\$68 billion, up 20% from 2009. The Government continues to encourage Chinese companies to invest abroad, in energy, raw materials, agriculture, manufacturing, services, and infrastructure. (Document: WT/TPR/S/264, page 10, para 25)

Question:

2). China sees Indonesia as 3 G namely as a good friend, good neighbour and good partner, in this regard what's the commitment of China to increase investment in Indonesia?

Answer: Relevant departments of Chinese government such as the Ministry of Commerce have made a top priority the promotion of investment in Indonesia. A memorandum to establish a joint investment promotion committee was signed in 2006 between the Ministry of Commerce and Indonesian Ministry of Trade and three meetings have so far convened in order to jointly promote the two-way investment. At the same time, the Ministry of Commerce with other departments in 2011 issued the Industrial Guideline for Foreign Investment in Various Countries which has carried special introductions to the developing goals of major industries in Indonesia, prioritized industrial fields and key development areas, which has helped Chinese enterprises to understand the developing needs of Indonesian industries and hereby to make investment in Indonesia. Besides, guidebooks for investment and cooperation in Indonesia have continuously been released, which has helped the enterprises to get a better knowledge of the investment environment in Indonesia. What shall be noted is that the foreign investment made by Chinese enterprises is a market behaviour and that the government is not in the position to make a commitment about whether to increase investment. However, it is our belief that the enterprises will make right decisions as long as the relevant departments can make concerted efforts to build a sound external environment or to provide an ideal investment environment for the enterprises. (Department of Outward Investment and Economic Cooperation)

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

TRADE POLICY OBJECTIVES

According to the Report of the Secretariat, China aims to stabilize exports, expand imports, and thus reduce the trade surplus. The authorities intend to achieve this objective through import facilitation measures, as well as further preferential trading agreements. (Document: WT/TPR/S/264, page 15, para 22)

Question:

3). *Regarding to China's objectives mentioned above, Indonesia would like to know the implementation in detail since the bilateral trade balance is unbalanced in favour of China.*

Answer: There is a discrepancy in the bilateral trade statistics between China and Indonesia. According to the statistics by the Chinese side, the bilateral trade balance was unbalanced in favour of Indonesia in 2011. Although there are discrepancies existing in statistics between the two countries, China will not deliberately seek a trade surplus and will instead be willing to make a concerted effort with Indonesia to advance the development of bilateral trade. It is our wish that the Indonesian government, industrial associations and enterprises could actively participate in such large-scaled expositions as the China Import and Export Commodity Fair and the China - ASEAN Expo where the publicity of the products shall be strengthened in order to further enlarge the Chinese market and expand the export to China.

RECENT DEVELOPMENTS IN FDI POLICY

As Stated in Secretariat's report, China eliminated preferential treatment to FDI projects in regard to the enterprise income tax, except for some "grandfathering" of incentives during a five-year transition period. (Document WT/TPR/S/264, page 18 para 38)

Question:

4). *What are the kinds of some "grandfathering" businesses fields? and how many incentives given by the authority (Government) during a five-year transition period for such some "grandfathering"?*

Answer: The State Council issued the Circular of the State Council on the Implementation of the Transitional Preferential Policies on Enterprise Income Tax (Guo Fa [2007] No. 39) upon the implementation of the Enterprise Income Tax Law, according to which enterprises enjoying the preferential policies with regard to enterprise income tax under the former tax laws, administrative regulations and documents with the effects of administrative regulations shall be subject to a transition under the following measures:

1. Enterprises which enjoy the preferential policies of low tax rates in the past shall be gradually transited to be paying the tax at the statutory rate within 5 years from 1 January 2008. To be specific, enterprises enjoying an enterprise income tax rate of 15% will be paying the tax at a rate of 18% in 2008, 20% in 2009, 22% in 2010, 24% in 2011 and 25% in 2012, and enterprises enjoying an enterprise income tax rate of 24% in the past will be paying the tax at a rate of 25%.

2. Enterprises which enjoy such preferential policies of tax reduction and exemption with the fixed term as 2-year exemption and 3-year half deduction and 5-year exemption and 5-year half deduction in the past are entitled to the original preferential policies based on the original rules and the original preferential years after the implementation of the new tax law on 1 January 2008 except that the preferential term shall begin from 2008 if the enterprises have not actually enjoyed the original preferential policies due to the failure to make profit.

Since 1 January 2011, foreign investors have been "permitted" to invest in health care services in China on a pilot-project basis; previously, they were listed in the "restricted" category. (Document WT/TPR/S/264, page 18 para 39)

Question:

5). *Please explain further why health care services were listed in the restricted category area and philosophical background to lift it up as an open foreign direct investment?*

Answer: In China, many service sectors have been undergoing gradual liberalization, including medical service. In November 2010, General Office of the State Council issued Advices on Further Encouraging and Guiding Social Capital to Establish Medical Institutions. This Advice explicitly presents the guidelines and policy measures to accelerate the development of private medical institutions, which is beneficial for the increase of medical resource and the expansion of medical service supply, and finally achieve the goal of satisfying the peoples need for medical service from different levels, building industry competitive mechanism, improving efficiency and quality of medical service, and improving medical service system. The Advice clarified that opening up of medical service market, encouraging and guiding foreign capital to hold medical institutions are measures of great importance.

Recently, revised Catalogue for the Guidance of Foreign-Invested Industries which formally implemented in 30 January 2011 has classified the foreign-invested medical institution in forms of joint venture and cooperative enterprise from restrained category to allowed category.

**III. TRADE POLICIES AND PRACTICES BY MEASURE
CUSTOMS PROCEDURES, VALUATION, AND RULES OF ORIGIN**

According to the Report of the Secretariat, China has adopted a "single window" project, which is intended to realize data sharing for customs clearance, including data exchange concerning cross-border RMB settlement, and on-line audit. Customs has also promoted cooperation with the customs authorities in China's FTA partners, mainly in electronic networking with regard to preferential certificates of origin, and customs data exchange system, with the European and the Russian Customs, respectively. (Document: WT/TPR/S/264, page 25, para 7)

Question:

6). *Indonesia would like to acquire more detailed information on China's single window project. Please explain further China's single window project related to realize data sharing for customs clearance, including data exchange concerning cross-border RMB settlement, and on-line audit.*

Answer: The Chinese government has set up a China E-Port Platform for relevant departments to exchange electronic data for customs clearance. Take the data exchange concerning cross-border RMB settlement for example, China Customs exchanges the electronic data of customs declaration to the Central Bank via China Electronic Port Platform, and the Central bank then compares the electronic data of customs declaration with the data regarding the cross-border trade collection and payment of enterprises, which helps to examine the authenticity of the trade with cross-border RMB settlement and prevent and control risks.

7). *As a reminder, Indonesia proposed bilateral cooperation on the certification and verification of Certificate of Origin Form E under the ACFTA through electronic arrangement (online). The proposal was rejected by China due to the absence of an integrated system in China. Therefore, with regard to the latest development, Indonesia would like to request China to reconsider the proposal in order to achieve a balanced bilateral trade.*

Answer: In regard of the Internet linked inspection and online verification of the Certificate of Origin Form E under the ACFTA proposed by Indonesia, China has not yet received any formal written proposal from Indonesia.

STANDARDS AND OTHER TECHNICAL REQUIREMENTS

According to the WTO Secretariat's report, there are four levels of standards in China: national, trade, local and enterprise standards. If there are no national standards for technical requirements that need to be standardized for certain trades throughout the country, trade standards may be formulated. Trade standards become null and void automatically after the corresponding national standards enter into effect. In the absence of national standards or trade standards, local standards may be formulated on safety and sanitation requirements for industrial goods that need to be unified in the provinces, autonomous regions, and municipalities directly under the Central Government. Local standards become null and void automatically after the corresponding national standards or trade standards enter into effect. (Document: WT/TPR/S/264, page 46, para 85)

Question:

8). *China has recently imposed a national standard for nitrate content in Bird Nest products (30 ppm). Please explain further detailed information on the examination method taken by China and whether China took into account the international standard on nitrate content in food products in determining the national standard.*

Answer: CAC and other developed countries have so far not imposed a standard for nitrate content in Bird Nest products. In 2011, the incident of Red-blooded Swallow Nest happened in China and in order to address the relevant issues regarding the Bird Nest products contaminated by nitrate, our ministry, with the experts from the Malaysian Ministry of Health, imposed a temporary standard for limited nitrate content in the edible Bird Nest products after jointly assessing the risk, taking into consideration the consumption of Bird Nest products by Chinese residents, their diet structure and the processing technique of Bird Nest products and referring to as references the relevant data regarding nitrate by JECFA. The examination method is implemented according to the Determination of Nitrite and Nitrate in Food GB5009.33-2010 as a national food safety standard.

INTELLECTUAL PROPERTY RIGHTS

Regarding to Secretariat's report that Intellectual property rights in China are enforced by two means: administrative actions, and judicial measures. Administrative actions consist of mediation by the authorities, involving a large number of agencies. Judicial actions are taken through the public security authorities, procuratorial organs, and the courts. (Document WT/TPR/S/264, page 95, para 322) (WT/TPR/S/264, 95, 322)

Question:

9). *China has shown progress in terms of enforcement of intellectual property rights. China has issued a number of laws, regulations, and departmental rules on IPRs protection have been promulgated or amended since 2009. These include the Copyright Law, the Implementation Regulation of the Patent Law, and the Regulation on Custom Protection of Intellectual Property. China intends to promote its campaign for tackling IPR infringement. According to Secretariat's Report, IPRs in China are enforced by two means: administrative actions and judicial measures. Judicial actions are taken through the public security, procuratorial organs and the courts. Please explain further about the main difference of the public security, procuratorial organs and the courts and how these things can be encouraged for IPRs enforcement in China.*

Answer: In the tackling of IPR infringement and of manufacturing and selling counterfeit and shoddy goods, the public security is mainly responsible for transferring to the procuratorial organs the suspected criminal cases accepted and cracked after them being transferred by administrative departments, the procuratorial organs on one hand, exert a supervision on the administrative acts by administrative departments of transferring cases to the public security and also on the receiving acts by the public security of transferred cases by administrative departments, while on the other hand, approve the arrest of and bring in indictments against the suspects transferred by the public security, and the courts are responsible for trying the suspected criminal cases prosecuted by the procuratorial organs.

In order to mobilize all social forces for them to participate in the IPR protection, the Chinese government has adopted a series of measures. Firstly is to ascertain the responsibilities of local governments. Relevant responsibility of the person liable will be called to account upon a proposal of IPR infringement or of manufacturing and selling counterfeit and shoddy goods. The combat against IPR infringement and manufacturing and selling counterfeit and shoddy goods will be taken into consideration when appraising the achievements of local governments and the effect of social management and comprehensive control. Secondly is to intensify the responsibilities of enterprises as legal entities. The building of an honesty and credit system shall be enhanced, and the market mechanism of upholding integrity which leads to gain and discarding dishonour which leads to loss shall be established. Thirdly is to encourage the wide participation of public. The cases reported and complaints raised by the public shall be investigated into and dealt with in a timely manner. A rewarding system for making a report or lodging a complaint has been implemented in some fields, and for example, one report of an illegal compact disk production line by the public will result in a one-time reward of 300,000 RMB for the reporter by the Chinese government.

IV. TRADE POLICIES BY SECTOR AGRICULTURE

According to the Report by Secretariat related to domestic support, purchases of agricultural machines are also subsidized at rates between 20% and 30% of the sale price. In 2008, the scheme was extended to cover the whole country. The local authorities are responsible for running the scheme and deciding what machines are covered pursuant to a catalogue of agricultural machines issued by the

central government. The amount provided for the purchase of agricultural machines has increased steadily, from 2 billion in 2007 to 15.5 billion in 2010. (Document WT/TPR/S/264, page 105, para 30)

Question:

10). *Regarding to China's input subsidies, the data from Secretariat's report shows that there is an increase in subsidy provided by Government for purchasing agricultural machines from 2 billion in 2007 to 15.5 billion in 2010, in three years China has provided a significant number of subsidy of to purchase of agricultural machines. How does China adjust its policy to be in line with Agreement of Agriculture particularly on Article 6 regarding to Domestic Support Commitments to avoid trade distorting effects?*

Answer: The subsidy provided by Government for purchasing agricultural machines is a support measure under amber box for no product-specific, instead of product-specific. China implements the support measure under amber box for no product-specific within the *de minimis* limits, few distorting effects on trade will be produced.

According to the Report by Secretariat related to Domestic Support, that is internal price supports for agricultural inputs. China has protected the internal market from competition from imports through a number of programmes that support domestic prices. Minimum purchase prices for rice and wheat are set each year by the National Development and Reform Commission. In addition to the Minimum Purchase Prices Scheme, the State takes other measures to adjust the supply and demand of certain agricultural products, such as purchasing and stockpiling on an ad hoc basis, and stock releasing for sugar cane and sugar beet, soybeans, maize, rapeseed, and cotton. (Document WT/TPR/264, page 106, para 31 and 33)

Question:

11). *Could China clarify deeper the policy of minimum purchase prices for certain products?*

Answer: The prices of agricultural products have become fully formed by market in China. In order to prevent the price from an excessive drop and to protect the interests of farmers, the Chinese government has implemented the policy of minimum purchase price for the two major grain rations: rice and wheat, in their main producing regions. Besides, the purchase price for sugar cane in its main producing regions shall be determined by the provincial governments based on the practical situation.

Generally speaking, the farmers will sell the food grain, whether rice, wheat sugar cane or others, with prices fluctuating in response to market conditions with no interference from the government. When the actual prices of rice, wheat and sugar cane in their main producing regions drop sharply and below the minimum purchase prices, the farmers can sell the foodgrain to the enterprises designated by the government according to the minimum purchase prices in order to reduce the loss brought about by price drop.

MANUFACTURING

Related to the policy to develop manufacturing machineries automatically, in this case MIIT is responsible for developing industrial strategies, making industry plans and standards, and monitoring the operations of the industry. (Document: WT/TPR/S/264, page 118, para 77).

Question :

12). *Please explain what are the products which have fulfilled the industrial standards, and what methods or means that are used by Chinese government in implementing the industrial standard?*

Answer: The Chinese government has made a top priority the standard making and promotion. Firstly is to strengthen the publicity of the standard, encourage and support the local responsible departments of trade, industrial associations, standardizing bodies and professional institutions to actively carry out the publicity of the standard and the training of standardization. Secondly is to enhance the benchmarking and standardization of enterprises, guide the enterprises to set up a system with the technical standard as the core, industrial standard as the main part and the administrative standard as the support, enhance the benchmarking and standardization in such sectors as R&D and manufacturing, and promote the organic integration of standardization and enterprises management. Thirdly is to guide the local responsible departments of trade to strengthen their steering and training of enterprises according to relevant requirements, expand the support to enterprises reaching the set standard, advance the standardization of industry and improve the product quality.

INDONESIA - ADDITIONAL QUESTIONS

III. TRADE POLICIES AND PRACTICES BY MEASURE

Customs procedures, valuation, and rules of origin

F. China's main legislation and procedures on customs clearance has remained unchanged since its previous Review in 2010. Customs is in charge of administering and enforcing customs legislation. Consultations with the private sector (domestic or foreign) on matters related to customs procedures are conducted through direct communications with private enterprises and various chambers of commerce, and through public hearings; information on customs procedures are available through notices, publications, official websites, and enquiry points. (Document: WT/TPR/S/264, page 24, para 1 and 4)

Question:

6). *Indonesian exporters up until now still experiencing difficulties in exporting goods to China due to the complex import procedures. This condition is a barrier for Indonesia China trade performance. Could China in this case provide clear and detailed customs procedures for exporting countries?*

Answer: Please refer to the official website of General Administration of Customs of China, <http://www.customs.gov.cn/publish/portal0/>.

Import Prohibitions and Licensing

H. According to the Report of The Secretariat, China maintains import prohibitions on grounds of public interest, environmental protection, or in accordance with international commitments. The Report further explained that imports may also be prohibited on grounds of animal, plant, or human health and safety, in accordance with Article 16 of the Foreign Trade Law and Article 4 of the Regulations for the Implementation of the Law on the Entry and Exit Animal and Plant Quarantine (Document: WT/TPR/S/264, page 33 and 34, para 36 and 39)

Question:

9). *In applying measures regarding an import to China which failed to meet the requirements, does MOFCOM or other relevant ministries able to provide clear information upon the related exporters, e.g. company name, address, contact number, shipping line, batch no, etc?*

Answer: Chinese Ministry of Commerce and related authorities publicizes the Catalogue of Commodities Forbidden to Import. Ministry of Agriculture publicizes import ban when there is outbreak of diseases. General Administration of Quality Supervision, Inspection and Quarantine also publicize the information when imported goods do not meet the specific inspection and quarantine requirements. These provisions are clear and transparent.

That information is crucial for exporting countries in order to process the case and to prevent similar measures in the future.

10). *Could AQSIQ provide notice to the exporting countries prior to the above measures, and allow sufficient period of time in order to make clarification with interested parties and related institution in exporting countries?*

Answer: Please refer to the answer to the above question.

11). *Could China provide a transparent and clear guidance regarding the regulation on import prohibition?*

Answer: Chinese Ministry of Commerce and related authorities publicizes the Catalogue of Commodities Forbidden to Import. Ministry of Agriculture publicizes import ban when there is outbreak of diseases. General Administration of Quality Supervision, Inspection and Quarantine also publicize the information when imported goods do not meet the specific inspection and quarantine requirements. These provisions are clear and transparent.

Standards And Other Technical Requirements

I. According to the WTO Secretariat's report, there are four levels of standards in China: national, trade, local and enterprise standards. If there are no national standards for technical requirements that need to be standardized for certain trades throughout the country, trade standards may be formulated. Trade standards become null and void automatically after the corresponding national standards enter into effect. In the absence of national standards or trade standards, local standards may be formulated on safety and sanitation requirements for industrial goods that need to be unified in the provinces, autonomous regions, and municipalities directly under the Central Government. Local standards become null and void automatically after the corresponding national standards or trade standards enter into effect. (Document : WT/TPR/S/264, page 46, para 85)

Question:

13). *How the exporters might access or find out about which standards are applied to their export products to China since the entry point of Indonesia exports to China may vary?*

Answer: Basic information on current national standards can be found at the website of SAC.

14). *For the China's standards that are not notified to the WTO, could China informed them to the exporting countries embassy, consulate or mission in China or is it possible to informed it in the China's official websites?*

Answer: Basic information on current national standards can be found at the website of SAC.

JAPAN

REPORT BY THE SECRETARIAT (WT/TPR/S/264)

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) INSTITUTIONAL AND LEGAL FRAMEWORK

(i) Transparency

(Question 1: Paragraph 4, page 11)

The government of Japan is informed that enforcement of laws at short notice in China very often causes confusion for companies and results in cost increases in order to address compliance with laws within a short period. Japan recognizes the necessity of appropriate measures to be taken by China, such as the introduction of opportunities to let companies know details of a law with sufficient time prior to its enforcement. Japan would like to take this opportunity to ask if China has any plan to establish general rules on get-acquainted period prior to enforcement of its laws and regulations. Japan also would like to learn China's view with respect to this.

Answer: China has strictly honored WTO agreements and its WTO commitments since its accession to WTO, and released all trade-related laws, regulations and rules at least 30 days prior to their enforcement for comments by any individuals, enterprises and other WTO Members. In addition to this commitment, China has also made great efforts in improving legislation transparency. Since 2008, public opinions have been solicited for all draft administrative laws and regulations except those to be kept secret in accordance with law on the <http://www.chinalaw.gov.cn> and public opinions have also been solicited for all department draft regulations on these departments websites or <http://www.chinalaw.gov.cn>. All parties including foreign enterprises and individuals can propose opinions and suggestions. These two major measures have also helped enterprises and individuals timely understand and get familiar with laws, regulations and rules.

(ii) Central-provincial relationship

(Question 2: Paragraph 18, page 14)

(1) In China, the interpretation of implementation measures of laws and regulations often varies across regions or depending on each official's judgment. In addition, in some cases, detailed rules and measures are not made in time when enforcing laws and regulations. Japan would like to take this opportunity to know China's view.

Pursuant to Article 42 of the Legislation Law of the People's Republic of China, power of law interpretation is vested with the Standing Committee of the National People's Congress. As stipulated in Article 47 of the Legislation Law, the legal interpretation by the Standing Committee of the National People's Congress has equal effect with laws. According to Article 31 of the Ordinance Concerning the Procedures for the Formulation of Administrative Regulations, administrative regulations to be further clearly defined or be added with supplementary provisions shall be interpreted by the State Council, and the interpretation of administrative regulations shall have equal effect with the administrative regulations. Pursuant to Article 33 of the Ordinance, if the legal organs of the peoples governments of provinces, autonomous regions and municipalities directly under the Central Government and relevant departments under the State Council request the legal organ of the State Council to give interpretations for issues concerning the specific application of and regulations during administration work, the legal organ of the State Council may research and give reply; for

significant issues, it may propose opinions and give reply after the opinions are submitted to and approved by the State Council. According these provisions, China has unified interpretation of laws and regulations and there are no different interpretations across regions or depending on each officials judgment. The necessity to make supporting detailed rules and measures for a specific law or regulation depends on the implementation of such law or regulation, so it is unnecessary to formulate supporting detailed rules when the law or regulation has detailed provisions and is implemented smoothly. All relevant departments attach great importance to laws and regulations needing detailed implementing rules and demand that such detailed rules are implemented at the same pace with the laws and regulations as far as possible.

(2) In China, Japanese enterprises often receive verbal answers from the authorities to their written applications and questions. To address this issue, replies in written form from the authorities would be desirable so that the relevant authorities and enterprises can efficiently cope with an issue over different interpretations. Japan would like to know China's view on this.

Answer: According to the Legislation Law of the People's Republic of China and the Ordinance on the Archivist Filing of Regulations and Government Rules, when any social organization, enterprise, business organization or citizen believes that administrative and local laws and regulations, regulations on the exercise of autonomy, separate regulations or rules conflict with the Constitution or national laws, it can propose review suggestions in writing to authorities responsible for archivist filing review. Currently, filing review authorities at all levels give replies in writing to most written review suggestions in accordance with laws, regulations and relevant official documents.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Customs procedures, valuation, and rules of origin

(Question 3: Paragraph 1, page 24)

According to the Secretariat report, China's main legislations and procedures on customs clearance have remained unchanged since 2010. However, different interpretations of relevant legislations and HS codes by each Customs are causing confusions frequently when importing/exporting goods (e.g. different HS code to the same product). Japan asks China to make sure that the unified administration of the legislations of the customs clearance be secured at all Customs and would like to know what kind of measures it can take.

Answer: The consistency of commodity classification is a problem obsessing the Customs of all countries and many factors can result in inconsistency in classification, of which inaccurate declaration and incomplete information are the major ones that lead to inconsistent classification. The Chinese Customs has always been committed to improving the accuracy and consistency of the commodity classification law enforcement. The Chinese Customs determines the classification of goods in accordance with the provisions of Customs Import and Export Tariff of the People's Republic of China and the Annotations on Commodities and Articles under the Customs Import and Export Tariff, and has adopted many measures such as standardizing declaration, follow-up sample verification, information technology support systems as well as pre-classification and other means to enhance the consistency of classification law enforcement.

In addition, in recent years the Chinese Customs has done a vast amount of hard work in legislation to promote unified law enforcement: first, the Chinese Customs has established a relatively sound basis system for law enforcement which is composed of 2 laws, 16 administrative regulations, 117 rules and regulations, nearly 1,000 announcements of the General Administration of Customs, as well as other regulatory documents. Second, we compiled the Standardized Norms of the Customs Practice which has become an important means of enhancing unified law enforcement of Customs. Third, we have

strengthened filing on record for review of the normative documents of Customs directly under the General Administration of Customs to guarantee the unified basis for law enforcement of Customs nationwide.

In addition, in the summer of 2010, Customs suddenly decided that all exports to Japan go through an unpacking inspection. While the inspection no longer takes place, Japan wishes to ask China for the explanation of the criteria of the decision as they were unclear.

According to what we have learned, in 2010 the Chinese Customs did not require that all exports to Japan must go through an unpacking inspection.

(Question 4: Paragraphs 1-9, page 24-25)

Thanks to the various efforts made by the Chinese Government, the efficiency and quality of customs clearance have largely improved. Nevertheless, there are still some problems arising from complicated procedures such as taking a long time to identify HS codes when importing products even though the company had a license for the expedite import system, as well as complicated export/import controls on bonded raw materials at Customs, Japan, therefore, would like to ask China whether it has any plan to simplify these procedures.

Answer: First of all, it is recommended that the Japanese side make clear the meaning of the license for the expedite import system. Secondly, companies have the obligation to correctly declare the tariff codes to Customs; therefore, whatever products they may import companies need to identify the tariff codes of imported goods, and to identify HS codes when importing products mentioned in this question is a necessary procedure for Customs clearance. Thirdly, currently Customs exercises bonded management for raw materials of processing trade, and except for prohibited and restricted commodities we have no import/export control over other commodities.

(vi) Contingency trade measures

(Question 5: Paragraphs 48-67, page 36-42)

1. *It has been pointed out by various WTO Members at various opportunities such as TRM at the AD committee that China's AD investigations are often not undertaken in a manner consistent with the AD agreement in terms of transparency and due process, for example, with respect to the initiation and subsequent investigation, dumping margin calculations, and the examination for the determination of injury.*

2. *Relating to these points, Japan would like to ask two questions regarding the AD investigation on certain high-performance stainless steel seamless tubes imported from Japan.*

(a) *In the application which was the basis for the initiation of this investigation, the applicant did not use official Chinese statistical data but used that of some unknown third party where the interested parties could not check its credibility. That China has initiated the investigation based on such an application that did not have sufficient evidence is thought to be inconsistent with Articles 5.2 and 5.3 of the AD agreement. Could China please explain this?*

Answer: The preliminary determination of this case was made on 8 May 2012. The investigating authority decided in the preliminary determination that the applicant had made their best efforts to provide adequate evidence to initiate the investigation. During 20-day comment period the investigating authority did not receive any comment from Japanese government regarding this issue.

(b) *As end user's state, the products imported from Japan are clearly different from the domestic products in China in terms of quality and safety and therefore hardly compete with each other. Nonetheless, that China treats these products as like products and is conducting injury examination could be inconsistent with Article 3 of the AD agreement. Could China please explain this?*

Answer: The preliminary determination of this case was made on 8 May 2012. After conducting examination and review, the investigation authorities believe that the scope of investigated products should be determined in accordance with the descriptions of investigated products and relevant indicators specified in the Announcement. Steel tube products of S304H, HR3C and other types by Japanese enterprises are consistent with relevant descriptions on C, Cr, Ni and Nb contents, tensile strength, yield strength and other basic physical and chemical characteristics and technical indexes as well as major functions stated in the Announcement. The differences among these types are normal differences among like different types of the similar product. There is no essential difference between these products by Japanese products and the products of same specifications by Chinese enterprises in terms of basic physical and chemical characteristics, technical index, external appearance, production process, raw material, production equipment, usage, marketing channel and customer group. Therefore, in the preliminary determination, the investigation authorities decided to temporarily deny the proposal to exclude the products of S304H, HR3C and other types from investigated products. The investigation authorities didn't receive any comment on the preliminary determination from the Japanese Government during 20-day comment period after the verdict was made public.

(vii) Standards and other technical requirements

(a) Standards and technical regulations

(Question 6: Paragraph 80, page 45)

What is the content of Administrative Measures for Mobile Smart Terminals currently being implemented? What kind of certification has to be obtained when manufacturing and selling smart phones under this measure? Is it going to make public consultation before being published? Also, was there any TBT notification beforehand in terms of the content of certification? If so, which notification is applied? If not, what is the reason for that?

Answer: MIIT formulated Notice on Strengthening Network Access Management of Mobile Smart Terminals (the Administrative Measures for Mobile Smart Terminals by EU, and thereafter called Notice) to protect user information and users legitimate rights, safeguard network information security and promote healthy development of the internet industry, which is commonplace among different economies.

The Notice is formulated in line with Telecommunications Regulations of PRC and Rules on Network Access of Telecommunication Equipment, aiming at complementing and perfecting current network access management of mobile smart terminals and establishing new supervision framework and management system. No new certification and administrative approval is added.

In drafting the Notice, opinions from enterprises both home and abroad and relevant organizations are taken into account. MIIT is planning to solicit public opinions online.

No new certification is added and MIIT is discussing the possibilities of TBT notification.

(Question 7: Paragraph 80, page 45)

1. *In December 2009, "Administration of Cosmetics Application Acceptance was published, in which requirements for documents necessary for a new cosmetic ingredient was outlined.*

2. *In May 2011, Guidance for new cosmetic ingredients application (free translation of Chinese original title) was published in which an ingredient was stipulated as necessarily having the form of a single molecule, and not a complex, nor a mixture.*

3. *However, this new Guidance contains a lot of undefined terms, and as a result, the new ingredients examination has been delayed for over 2 years, and almost all applications have been returned and rejected. This policy is considered to be trade-restrictive rather than having the intended effect: to improve public hygiene by ensuring the safety of new ingredients.*

Based on the above, we would like you to clarify the following points:

(a) *There are many cosmetic raw materials such as plant extracts which are distributed in the form of a mixture or complex containing solvents. They are formulated as they are supplied. Safety is duly evaluated even in the case of extracts including solvents, etc., however in Article 3(2) 2 (2) of the guidance it is stipulated that the raw material should not be a mixture or a complex. While technically unavoidable solvents, stabilizers, carriers are excluded from this scope which, stated simply, should mean that an evaluation of safety is required to transport a single molecule in China. If these lines are designed to be interpreted as such, we would like to urge China to explain this requirement based on scientific grounds; why a safety evaluation is necessary with a single (isolated) molecule, and to show issues which have resulted from safety evaluations carried out on non-isolated substances.*

(b) *Japan considers that there is a need to expand upon and clarify the stipulation in Article 3, implementing detailed rules for this article. We would like to urge China's comments on this matter.*

Answer: As Japan has raised this issue for a third time, China suggest experts from Japan could have bilateral exchanges with China to better clarify technical details.

The following is the written reply from China to the issues raised by Japan at the 56th WTO/TBT meeting:

Applicants who provide materials involved with confidential IPR information shall make this point clear in application.

Whether technical problems on natural ingredients and formula ingredients will be resolved depends, and bilateral technical exchanges are encourages with SFDA. <http://123.127.80.6/enterprise/index.jsp>

According to SFDA regulations, applicants can log onto the following website to check the status of evaluation of applied new ingredients via usernames and passwords: <http://123.127.80.6/enterprise/index.jsp>.

(Question 8: Paragraph 80, page 45)

It is recognized that 3GPP has approved ZUC as China's 4G LTE encryption algorithm and China is currently preparing an amendment of relevant laws and regulations. We would like China to explain what procedure is required when China's authority conducts a test and a certification. Also, we would like to know the schedule regarding planning the relevant laws and regulations.

Answer: The Ministry of Industry and Information Technology has issued the Technical Requirements for ZUC-based LTE Terminals and Network Equipment and the project for testing methods of communication industry standards, and started the transformation of ZUC algorithm from an international standard to a domestic standard. The China Communications Standards Association is responsible for the formulation of related standards. In addition, at the request of the domestic and

foreign enterprises, ZUC algorithm has been included in the TD-LTE scale technical test. Currently, relevant organizations can obtain ZUC related technical documents via the following link (www.dacas.cn; www.ccsa.org.cn; www.dacas.cn/zuc10). All organizations are subject to the relevant provisions of the State Cryptography Administration when developing, manufacturing and selling ZUC-based products.

(Question 9: Paragraph 85, page 46)

1. *In China, there are not only national standards, but also professional and local standards, which are established by each department of standardization administration under the State Council or the local government, respectively. Regarding the non-national standards, Japan would like to know what kind of measures the central government has taken:*

(1) *to fulfill the obligation under Article 2 of the TBT Agreement in respect of the professional standards, and*

(2) *to meet the obligation under Article 3 of the TBT Agreement in respect of the local standards.*

2. *Specifically, in regard to local governments, how has the central government fulfilled its obligation under paragraph 1 of Article 3 of the TBT Agreement, which stipulates that members shall take such reasonable measures as may be available to them to ensure compliance by such bodies with the provisions of Article 2?*

Answer: Article 6 of the Standardization Law of the People's Republic of China stipulates that Where, in the absence of both national and trade standards, safety and sanitary requirements for industrial products need to be unified within a province, an autonomous region or a municipality directly under the Central Government, local standards may be formulated. Local standards shall be formulated by departments of standardization administration of provinces, autonomous regions and municipalities directly under the Central Government and reported to the department of standardization administration and the competent administrative authorities under the State Council for the record, and shall be annulled on publication of the national or trade standards. Based on the requirements of WTO/TBT, China will further enhance the notification of local mandatory standard.

(Question10: Paragraphs 86-87, page 46)

The government of Japan is informed that the application of mandatory standards in China often causes confusion. The confusion seems to be due to the different mandatory standards by the central and local governments, and non-identical application of the standard at different sites even if the standard is identical. Japan would like to know how the central government has taken measures to eliminate these standard application gaps between the different sites and to strengthen cooperation between central and local government.

Answer: Refer to the answer of question 9.

(Question 11: Paragraph 88, page 47)

Japan welcomes China's continual efforts to further enhance transparency in its standardization process and SACs announcement that China allows foreign-owned companies established in China to participate as voting members in technical committees responsible for the promulgation of national standards. In this respect, Japan would like China to provide detailed information on the procedures and administrative rules for the participation of foreign-owned companies in technical committees and to indicate the way to access the relevant documents.

Answer: Enterprises both home and abroad shall apply for membership in line with Regulations on National Standardization Technical Committees ([2009] No. 3). The detailed procedures are the following:

One, experts from enterprises fills in Registration on Membership of National Standardization Technical Committees.

Two, enterprises send letters, together with the filled Registration on Membership of National Standardization Technical Committees to the technical committee to recommend their experts.

Three, the secretariat of the technical committee review the quality of the experts and finish the internal procedures for approval according to the rules of that committee.

Four, the technical committee submit the application to industry authorities, who will submit to SAC for approval after they agree. For technical committees directly under SAC, the application shall be submitted to SAC for approval. In principle, the membership of a technical committee is allowed change once a year.

Five, for those applications in line with Registration on Membership of National Standardization Technical Committees and approved by SAC, the technical committee shall issue Letter of Appointment.

Registration on Membership of National Standardization Technical Committees and Registration on Membership of National Standardization Technical Committees can be downloaded from the website of SAC http://www.sac.gov.cn/bzhgl/gnbzh/zyjswyh/gzzd_634/201012/t20101220_64623.htm

(b) Product certification

(Question 12: Paragraph 96, page 49)

China mentioned that foreign certification bodies could acquire qualification for the CCC system through inter-government agreement in the previous Trade Policy Review. As this description still is not clear enough, we would like to learn actual examples of foreign-based certification bodies as well as laboratories and we also would like to know China's policy regarding the issue.

Answer: China has signed consignment agreements with 19 overseas certifying bodies (located in Europe, America, Japan and other economies) for follow-up inspections of 3C certification over factories abroad. CNCA accept the inspection reports and results of these bodies.

(viii) Government procurement

(Question 13: Paragraph 116, page 54)

According to paragraph 116 of the Report by the Secretariat, the Chinese Government explains that it does not consider procurement by SOEs as government procurement, because their daily operations are not controlled by the Government. Japan would like China to further explain their status of not being controlled by the Government, in terms of: (1) laws, regulations or administrative procedures applied to these SOEs; (2) the SOEs authority vested in them for the purpose of performing functions of a governmental character; (3) Governments share in the SOEs capital and voting rights; (4) Governments involvement in appointment of the SOEs directors and managers; (5) Governments involvement in the SOEs operations or business decisions; (6) the SOEs accountability to the Government in respect of its expenditures or profitability; (7) the SOEs financial dependence on Government; (7) exclusive rights granted by Government to the SOEs.

Answer: China's state-owned enterprises are applied to civil and commercial legal systems, including the Law of the People's Republic of China on the State-Owned Assets of Enterprises, the Company Law of the People's Republic of China, the Accounting Law of The People's Republic of China and the Securities Law of the People's Republic of China. (2) The Chinese state-owned enterprises are independently operated market players and they do not perform government functions. (3) In accordance with relevant Chinese laws, the state-funded enterprises refer to a wholly state-owned enterprise or company with the state being the sole investor, or a company in which the state has a stake, whether controlling or non-controlling. The Chinese state-owned enterprises are independent market players with legal personality, and the Chinese government exercises the shareholders (contributors) rights over state-owned enterprises according to law and does not intervene in enterprises independent operations. (4) In accordance with the Company Law and other relevant laws, the Chinese government exercises the shareholders (contributors) rights over state-owned enterprises through meetings of shareholders or board of directors, and does not intervene in the independent operations of SOEs. (5) In accordance with the provisions of relevant laws, administrative regulations and articles of association of companies, the state-owned enterprises pay taxes and turn over the profits to the government. For questions (6) and (7), the Chinese government does not provide financial, taxation, credit, exclusive rights or other policies more favorable than other types of companies to SOEs.

To sum up, procurement by China's state-owned enterprises is an operating behavior of the company which is not intervened by the government and therefore it does not fall into the category of government procurement.

(Question 14: Paragraphs 117 and 118, page 54)

(1) Japan would like China to reform or stipulate its main laws regulating China's government procurement procedures, including the Government Procurement Law, ensuring non-discriminatory treatment of foreign suppliers and foreign goods and services in a compatible manner with the GPA. Please indicate China's view in regard to its time schedule.

Answer: China's government procurement follows the principle of being open, fair and impartial, and we treat products made by Chinese and foreign companies as equals.

(2) Japan would like China to establish procurement-related laws and regulations as early as possible in order to have transparent normative guidelines on the relevant procedures. And it requests China to ensure a sufficient consultation process prior to their establishment with foreign suppliers. When will China enact draft procurement regulations?

Answer: The legislative Affairs Office of the State Council is now working on the draft of the regulation with reference to the opinions of various organizations and individuals.

(Question 15: Paragraph 121, page 55)

As for construction services, Chinese Construction Law imposes a minimum professional staff requirement and a minimum registered capital requirement, among others, on foreign enterprises, associated with a qualification certificate, which in effect limits the access of foreign contractors into the government procurement market in China. Japan would like to know the number of foreign contractors that have a Super Grade certificate. Japan would also like to know the future possibility of relaxation of these requirements, i.e. the minimum registered capital requirement, which China mentioned in the past Transitional Review Mechanism.

Answer: The Chinese Construction Law and the Regulations on the Administration of Foreign-invested Construction Enterprises explicitly stipulate that the same qualification standards are equally applicable to foreign-invested and domestic-invested construction enterprises. They also impose equal requirements on registered capital and registered professional staffs. China has always strictly abided by the accession commitment in this sector.

After the re-examination and review on Super Grade certificates, Up till now, no foreign contractor obtains a Super Grade certificate.

China believes that registered capital constitutes the basic condition for a company to operate and undertake legal responsibilities and is of important significance in maintaining corporate operation and development and the stable order of construction market. It doesn't plan to cancel or lower the requirement for registered capital.

(Question 16: Paragraph 121, page 55)

The difficulty for foreign personnel to get a constructor (jian zao shi) license is also an obstacle for foreign contractors to enter into the Chinese government procurement market. Could China show how many foreigners have passed an exam and received a constructor license? Also, could China show the number of constructors working for foreign firms? Is there a possibility to extend the transitional policy on the provisional qualification of constructor for persons who were qualified project managers, which is supposed to end in February 2013?

Answer: According to Article 34 of the Provisional Rules on Qualification System for Constructors, upon the approval by relevant authority under the State Council, those foreign professionals and professionals of Hong Kong, China, Macao, China and Chinese Taipei who are allowed to conduct management of construction projects in China may participate in the qualification exam for constructors and apply for registration. Up till now, there has been no foreign professional who participated in the exam.

Temporary Practicing Certificate for Class-I Architect will be abolished on 27 February 2013 according to the Supplementary Notice on Relevant Issues Concerning the Transition from Qualification Management System for Project Managers of Construction Companies to Qualification System for Constructor. China will decide on the extension of transitional policy according to the market situation by then.

(Question 17: Paragraph 125, page 55)

According to paragraph 125, imports used for procurement purposes require approval from the Ministry of Finance, or its corresponding departments at the local level. Please explain the purpose and the details of the procedure of the approval.

Answer: The purpose of the approval procedure is to standardize governments behavior of procuring imported products rather than restricting the procurement of imported products. For more information, please refer to the Administrative Measures for the Government Procurement of Imported Products.

(Question 18: Paragraph 127, page 56)

(1) According to paragraph 127, the authorities maintain that there is no longer any condition attached to government procurement regarding "indigenous innovation". With regard to this statement, please confirm that Article 11 of the Administrative Measures on the Management of Government Procurement Contracts for Innovative Products and Articles 5 and 15 of the Administrative Measures on Government Procurement of Imported Products, which were effective as

of September 2008, are no longer effective and no similar provisions are in effect at the national or local level.

Answer: Confirmed.

(2) Could China confirm that it will not introduce preferential government measures for indigenous innovation either at national level or at regional level? Japan also requests further information on the current status.

Answer: On 7 November 2011, the General Office of the State Council issued a document which explicitly required that from 1 December 2011 measures of linking innovation-related policies with preferential government procurement policies in normative documents of the local people's governments and other relevant departments will be in valid. China's indigenous innovation is no longer tied to favorable government procurement policies.

(Question 19: Paragraph 120, page 55 and footnote 115, page 53)

Paragraph 120 indicates that the thresholds for central government procurement for 2011-12 are 1.2 million for goods and services and 2 million for construction projects. Meanwhile, footnote 115 indicates the threshold for procurement under the central budget in 2011 was 500,000 for goods and services and 600,000 for construction projects. Please explain the difference between these two descriptions.

Answer: 500,000 and 600,000 refer to the amount of standard that must be procured in accordance with the Government Procurement Law. And procurement worth 1.2 million for goods and services and 2 million for construction projects should be done by public bidding

(2) MEASURES DIRECTORY AFFECTING EXPORTS

(iii) Export taxes

(Question 20: Paragraph 138, page 58)

China has been levying export taxes on fertilizers and their raw materials since 2008 (110% maximum including special export tax in 2011). The Government of Japan has made several inquiries regarding China's future plans for eliminating these export taxes on these items in TRM and TPR; however, the Government of Japan has not received any concrete explanation from China. Please explain how this is consistent with the commitment to abolish export taxes in accordance with Section 3, Article 11 of China's WTO accession protocol, since the products are not listed in Annex 6 of the protocol.

Answer: China's export administration on a few products are for the purpose of protecting environment, protecting human, animal or plant life or health, conserving exhaustible natural resources, or protecting national security. Such measures do not constitute arbitrary discrimination, or disguised restriction on international trade, and are fully consistent with WTO rules.

(iv) Tax rebates on exports

(Question 21: Paragraph 143, page 59 and Paragraph 174, page 65)

Even under the new Law on Value Added Tax, export companies continue to be obliged to bear the cost caused by a low VAT rebate rate for purchase. As this rebate rate is often changed without prior notice, companies face difficulties in handling subsequent confusion in their budgetary and financial management. How does China plan to improve this situation?

Answer: China adjusts its export tax rebate policies according to legal procedures and sets a certain period of time for public notice before issuing and implementing such policies.

(vi) Export prohibitions, restrictions, and licensing

(Question 22: Paragraph 146, page 59)

(a) In March 2006, the Ministry of Commerce of China announced the export prohibition rule on natural sand. On 5 January 2007, China declared its intention to enforce the rule effective from March 2007.

(b) China explains that the purpose of the prohibition is to conserve natural resources, and that the production and consumption of natural sand are also restricted in parallel with the export prohibition. Has China published the explanation about its restrictive measures including legislative measures and quantitative restrictions on domestic production and consumption of natural sand.

Answer: To control the damages to river channels and marine ecological environment caused by exploitation of natural sand resources, since 2002, relevant Chinese authorities have successively adopted a series of measures, such as strictly controlling reclamation of land from sea, suspending the issuance of natural sand exploitation license, prohibiting sea sand exploitation and strictly control of river sand exploitation among others, to strengthen measures on the exploitation, production and administration of natural sand. In order to coordinate domestic administration policies for natural sand, MOFCOM and the General Administration of Customs jointly issued the [2006] No. 87 Announcement to officially implement the administrative measures on prohibiting natural sand export starting 1 March 2007.

(c) Does China consider that this export restriction is consistent with the WTO rules?

Answer: Natural sand export restriction is the extension of domestic exploitation administration measures in the trade link and is consistent with the WTO rules. In addition, China reported this export restriction to the WTO as required.

(Question 23: Paragraph 148, page 60)

Japan understands that China has been implementing an export licensing on coal exports. While a sufficient number of export licenses used to be issued in terms of China's export amount of coal, the number of issuance has been decreasing in the last few years, and therefore Japan is concerned that this trend might hamper the trade flow of coal. Please explain how China justifies the export licensing on coal under the GATT.

Answer: In recent years, the total amount of coal export quotas has decreased while maintaining a stable level. However, this is not the reason for the reduction of China-Japan coal trade, in fact, in recent years China exercised the safe production control on coal which reduced the coal production capacity and as a result, companies resources for export have decreased. In addition, the sustained and stable economic growth in China has made the domestic coal prices higher than the international market for a long time, and price factors played a role in the decrease of coal export.

In addition, Japan understands that China has raised export taxes on coking coal and has newly levied taxes on steam coal and anthracite since August this year, while China committed to eliminate export taxes for items except for those which are listed on Annex 6 in China's Protocol to the Accession. Please explain how China justifies its export taxes under its commitment upon accession.

Answer: China's export tax measures is consistent with the WTO rules.

Please describe any plans to review the export licensing measures and imposition of export taxes on coal.

Answer: There is no plan about this at present.

(3) MEASURES AFFECTING PRODUCTION AND TRADE

(iv) Price Control

(Question 24: Paragraphs 212-216, pages 72-73)

Please explain whether there are any measures that control prices of goods at the custom houses. If so, would China enumerate the goods, subject to such measures?

Answer: The custom houses in China determine the duty-paid prices of goods on the basis of their transaction prices in accordance with the Customs Law of the People's Republic of China, the Regulations of the People's Republic of China on Import and Export Duties, the Measures of the Customs of the People's Republic of China for the Assessment of Dutiable Value of Import and Export Goods (hereinafter referred to as Measures) and other laws and regulations. The above laws and regulations, especially the Measures, clearly defined the methods and procedures for customs to assess the value of import and export goods, and their legislative principles are in line with the relevant provisions of the WTO Valuation Agreement and taking full consideration of actual conditions of trade. In recent years, China's Customs also follows the World Customs Organization (WCO) to promote the concept of risk management and assess the price risk of import and export goods. This is no such as thing as control prices of goods.

(vii) Intellectual property rights

(Question 25: Paragraph 277, page 86 and Paragraph 292, page 90)

The Secretariat Report notes that the Guidelines for Competition against Abusing Intellectual Property Rights are still being drafted. Japan is interested in these guidelines, so Japan would appreciate the provision of the current version of the guidelines as they are.

Answer: In line with China IPR Protection Action Plan, the competent department(s) will draft anti-monopoly guidelines regarding the abuse of IPR in accordance with the stipulations of IPR protection. However, it will take some time to draft such guidelines. As China's relevant departments are now studying and drafting the guidelines, there is not a specific timetable for the promulgation of such guidelines.

(Question 26: Paragraph 278, page 87 and AII.1, Page 190)

In regard to the amendment to the law dealing with intellectual property stipulated in paragraph 278, Table AII.1 lists the amendment made to the Regulations on the Administration of Technology Import and Export. Under this amendment, Article 24(3) does not seem to have been amended. This article limits parties from freely negotiating the terms of the contract because there is no provision stipulating except as otherwise agreed upon by the parties () as stipulated in Article 353 of the Contract Law. We kindly request China to confirm whether there is any plan to amend Article 24(3) to fix the abovementioned discrepancies with the Contract Law. We also request that China confirm whether there is any plan to amend Article 27, which also differs from Article 354 of the Contract Law and limits parties from freely negotiating the terms of the contract.

Answer: According to Article 355 of the Contract Law of the People's Republic of China, where the relevant laws or administrative regulations provide otherwise in respect of technology import/export contracts or in respect of patent contracts or contracts for patent application, such provisions shall prevail. Therefore, there is no conflict between relevant provisions of the Regulations on the Administration of Technology Import and Export and the Contract Law.

(Question 27: Paragraph 289, page 90)

The Secretariat Report notes that based on the amendment made in December 2010, "if indigenous intellectual property rights are transferred or licensed to foreign parties, the transfer or license is subject to the Regulation on the Administration of Technology Import and Export". Please advise what amendments/revisions were made in December 2010. It is our understanding that these types of requirements, i.e. those imposed on indigenous intellectual property rights, still exist in the Regulations on the Administration of Technology Import and Export revised in December 2001.

Answer: According to the Decision of the State Council on Abolishing and Amending Some Administrative Regulations issued on 8 January 2011, technologies with one of the circumstances stipulated in Articles 16 and 17 of the Foreign Trade Law provided in the Articles 8 and 31 of the Regulations on the Administration of Technology Import and Export is amended into technologies with one of the circumstances stipulated in Article 16 of the Foreign Trade Law. Pursuant to the Article 2 of the Regulations on the Administration of Technology Import and Export, technology import and export refer to technology transfers via trade, investment or economic and technological cooperation from overseas countries to China or from China to overseas countries, including transfer of patent right, transfer of patent application right, license for patent exploitation, know-how transfer, transfer of technology service and technology transfers in other forms. Therefore, the transfer of intellectual property rights or license for the implementation of intellectual property rights from China to overseas countries shall be subject to relevant provisions specified in the Regulations on the Administration of Technology Import and Export.

(Question 28: Paragraph 298, page 91)

According to the draft revision of the Trademark Law (Article 32), the proposed amendment prescribes that during the examination, when the State Trademark Office determines that a trademark application contains specific issues for which more explanation or amendment/correction may be needed, the Office shall send a written document of examination to the applicant and request the applicant to explain or correct the issues within 30 days of receipt of the document. In this regard, what types of situation do you envision to determine that there are issues for which more explanation or amendment/correction is needed for the application? In addition, is there any plan to provide applicants with relevant opportunities for submitting opinions and/or amendments against reasons for refusal by examiners in terms not only of those cases for which explanation or correction is required by examiners but also all other cases?

Answer: The written document of examination system stipulated in Article 32 is designed to make it convenient for the State Trademark Office to understand the relevant information of the trademark application or provide the State Trademark Office with the opportunities to correct some mistakes. China is considering making further provisions on the specific applicable procedures in the Regulations on the Implementation of the Trademark Law after widely soliciting public opinions.

(Question 29: Paragraph 298, page 91)

According to the draft revision of the Trademark Law (Article 37), the proposed amendment suggests that a time period for filing an appeal against a decision by the Trademark Office to refuse registration to the Trademark Review and Adjudication Board should be extended from 15 days to

30 days. However, considering the time taken to conduct a translation process, etc., Japan is concerned that the time period of 30 days could be still too short for overseas applicants. In this connection, is there any plan to further extend the time period?

Answer: With respect to the time limit for refusing review application, China needs to consider guaranteeing that trademark applicants can better exercise their right of refusing review while guaranteeing the timeliness of trademark registration application. A too long time period for refusing the review application will delay the affirmation of ownership of trademark registration application and cause adverse impacts on the trademark applicant. The 15-day time period stipulated in the existing Trademark Law basically meets the requirements of most applicants. In full consideration of the situations of overseas applicants, it is appropriate for the proposed amendment of the Trademark Law to suggest a 30-day time period for filing an appeal against a decision by the Trademark Office to refuse registration to the Trademark Review and Adjudication Board. Up till now, China has no plan to further extend the time period.

(Question 30: Paragraph 298, page 91)

Is there any plan to protect marks of retailers as service marks in Class 35 of the Nice Classification?

Answer: As what are provided directly by retailers to consumers are tangible commodities instead of service, Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks (Nice Agreement) does not include retail industry into the scope of service trademark protection. Therefore, like other member states where Nice Agreement is applicable, China does not accept the application for registering retail service trademarks for the time being. Whether or not China will accept the application for registration is still under research.

(Question 31: Paragraph 301, page 92)

Japan highly appreciates China's efforts to enhance the protection of well-known trademarks outside China, for example, the creation of a database of foreign well-known trademarks. However, it still appears that there are many malicious applications and trademarks registered of well-known Japanese trademarks or Japanese geographic names of origins and trademarks. Could China provide Japan with information on further steps which are presently planned to solve the current situation?

Answer: As what Japan mentions, China has attached great importance to the protection of foreign well-known trademarks in China and their appellations of origin. First, Chinese Trademark Law stipulates explicit provisions on the protection of well-known trademarks and geographical indications. Second, China has strictly prohibited malicious registrations of others well-known trademarks and appellations of origin and adopted corresponding measures, such as implementing advance investigation and case-combination investigation, properly reducing the burdens of persuasion on the owners of the trademark or appellation of origin maliciously registered in review of adjudication on opposition and dispute cases and comprehensively applying legal terms and provisions to intensify efforts in crackdown on malicious registrations. At the same time, the Trademark Review and Adjudication Board will strengthen the research in business theory and empirical study, establish and improve a long-term mechanism to address malicious trademark registrations under existing legal framework, and protect the legitimate rights and interests of the owners of Chinese and foreign well-known trademarks.

(Question 32: Paragraph 304, page 92)

According to the WTO Secretariat Report, SAIC announced that it had a plan to shorten the time required to complete the procedure for trademark reviews and dispute settlement to 20 months. We

would appreciate if China could show how it would be implemented? Also, could China provide us with information on plans to further shorten this time frame, if any?

Answer: In recent years, in order to shorten the time of trademark reviews and dispute settlement, the Trademark Review and Adjudication Board has adopted a series of measures: firstly, recruiting auxiliary staffs for trademark review to expand the trademark review team; secondly, optimizing the procedures of case handling and improving automatic management level; and thirdly, scientifically quantifying the target tasks and reasonably allocating existing human resources to increase the number of cases that can be concluded. Thanks to these efforts, the trademark review period is successfully controlled within 20 months or so. Due to increasingly growing trademark review applications, the Trademark Review and Adjudication Board will further enhance these measures to ensure not to extend the trademark review period.

(Question 33: Paragraph 310, page 93)

The Secretariat Report notes that GIs registered with the AQSIQ or Ministry of Agriculture are protected permanently. On the other hand, Article 22.1 of the TRIPS Agreement defines GIs as "indications which specifically identify a good as originating in the Members territory, or in a region or locality in that Members territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin." This definition suggests that there could be cases when GIs, after they have once satisfied the specific definition, might end up not satisfying that definition at a later date. In such cases, would GIs that have once been registered with the AQSIQ or Ministry of Agriculture still be permanently protected?

Answer: As for the geographic indication of farm produce, according to Article 13 of Procedures for the Geographic Indication of Farm Produce: The certificate of registry of the geographic indication of farm produce shall be permanently effective. Under the following conditions, the holder of the certificate of registry shall propose a modification application in accordance with the prescribed procedures: (i) there is an alternation of the holder of the certificate of registry or of the legal representative; (ii) there is a variation of territorial scope or a transformation of the according natural ecological environment. Article 18 stipulates that the Ministry of Agriculture shall nullify the certificate of registry of the geographic indication and make an announcement to the public if the farm produce with the registered geographic indication or the holder of the certificate of registry cannot be in conformity with Article 7 (about the produce conditions) or Article 8 (about the conditions on applicant) of this Procedures.

Therefore, on the definition and effective duration of the geographic indication, between the Procedures for the Geographic Indication of Farm Produce and TRIPS agreement exist no contradiction.

(Question 34: Paragraph 312, page 93)

Please indicate any governmental measures to prevent trademark violations by domestic companies.

Answer: The Chinese trademark law system gives equal protection for both Chinese and foreign registered trademarks enjoying exclusive right of trademark use in China. Neither domestic companies nor foreign companies shall infringe upon the exclusive right of trademark use of others. According to relevant provisions specified in the Trademark Law, any person can report or complain any infringement upon the exclusive right of trademark use to local industrial and commercial administration and local industrial and commercial administration may also initiatively investigate and punish such infringement in line with their responsibilities and authorities. In addition, a trademark owner may directly file a lawsuit to the peoples court when his right is infringed upon.

(b) Copyright and related rights**(Question 35: Paragraph 313, page 93)**

The draft amendment of Copyright Law was publicized in last March, and Article 46 of the amendment stipulates A record producer other than a copyright holder of a musical work may produce a phonogram using the musical work without authorization of the copyright holder after the expiration of a period of three months from the first date of release of the musical work. In this Article, the exclusivity period of the copyright holder is set at only three months, and the record producer is not obliged to consult with the copyright holder before production. Please explain the consistency between Article 46 and related international laws, Paragraph 1 of Article 13 of the Berne Convention, and Article 9 and 13 of TRIPS.

Answer: Article 13 of the Berne Convention allows the member country to prescribe reservations and conditions for the author of the musical work on the exclusive recording right, but this reservation shall not infringe on the authors right to obtain a just reward prescribed by responsible authorities. Article 46 of the draft amendment of Copyright Law allows other record producer to produce other phonogram using the musical work of the copyright holder after the expiration of a period of three months from the first date of release of the musical work; Article 48 stipulates the Copyright Administrative Department of the State Council shall be responsible for setting a pay standard and request the user to pay the author remuneration based on the standard within the first month after the musical work being produced into other phonogram. Therefore Article 46 of the draft amendment of Copyright Law is completely consistent with Article 13 of the Berne Convention, and Article 9 and 13 of TRIPS.

In addition, it is our understanding that the scope of a musical work mentioned under Article 46 of the amendment is limited to those recorded on a commercial phonogram and sold in China for the first time. In this regard, Japan requests China to clarify whether our understanding is correct.

In the draft amendment of Copyright Law there has been no stipulation about the conditions on the first released phonogram.

(Question 36: Paragraph 322, Table III.12, page 95)

In Table III.12, the number of cases transferred to judicial agencies by the administrative authorities still remains at a low level compared to the number of administrative actions. Could China explain its own understanding of the reason regarding this situation?

Answer: The main reasons for the great difference between the number of administrative actions and the number of cases transferred to judicial agencies are as follows: China has adopted a binary punishment model of administrative penalty and criminal penalty against legal violations; administrative law enforcement authorities give administrative sanctions or penalties to the parties of minor legal violations in accordance with relevant laws and administrative regulations; serious illegal violations meeting the standard of criminal prosecution are transferred to the judicial agencies by the administrative law enforcement authorities for criminal sanctions or are directly filed and investigated by criminal judicial agencies, resulting in great difference in the number of administrative penalties and the number of criminal penalties. Chinese measures and administrative penalties are equal to the penalties for minor offences or police offense by foreign countries, and no criminal prosecution doesn't mean appeasement and light punishment for legal violations. Chinese criminal legislation and judicial agencies have imposed strict penalties against criminal acts.

(Question 37: Paragraph 322, Table III. 12, page 95)

In Table III.12, there are no data regarding the number of criminal prosecutions, while there are data regarding administrative actions and civil cases. Could China provide Japan with the data regarding criminal prosecutions?

Answer: China is still in coordination with relevant agencies to provide response to this question.

(Question 38: Paragraph 322, Table III. 12, page 95)

With regard to Table III.12, there are no data regarding the enforcements based on the Anti-Unfair Competition Law made by the administrative authority. Could China provide Japan with the data regarding such administrative enforcements?

Answer: The Chinese industrial and commercial authorities investigated and handled 2,750, 2,864 and 2,391 cases of counterfeiting the specific name, package and decoration of well-known commodities as well as 2,109, 1,760 and 888 cases of using the names of other companies or the names of other people in 2008, 2009 and 2010 respectively.

(Question 39: Paragraph 322, Table III. 12, page 95)

We highly appreciate China's effort to encourage rights holders' actions against IPR infringements. Could China provide us with information on whether or not the results of administrative enforcements are furnished to relevant rights holders by each authority in China?

Answer: First of all, China's public security has made a top priority the exchange and cooperation with IPR holders and now has established a regular exchange mechanism with foreign-funded enterprises. Local public security organs have also in succession established such a mechanism.

The results of administrative enforcements will also be furnished to relevant right holders by regulators of IPR varieties. Take trademark for example, the administrative authorities for industry and commerce will in accordance with the law inform the right holder of the result after the case being investigated and prosecuted if the right holder lodges a complaint of trademark infringement. The right holder can apply to relevant administrative authorities for industry and commerce for information disclosure according to the Information Disclosure Ordinance of the Government of the People's Republic of China and other relevant stipulations if there is a report or the case is investigated and dealt with ex officio by the administrative authorities for industry and commerce on their own initiative. At the same time, according to Article 27 of the Regulations of the People's Republic of China on the Customs Protection of Intellectual Property Rights, a customhouse shall notify the IPR holder about relevant information of the goods with IPR infringement after it confiscates such goods.

(Question 40: Paragraph 328, page 97)

The WTO Report makes mention of a regular mechanism to enforce IP protection against Internet violation. Could China provide Japan with more details of this mechanism?

Answer: In November 2011, in order to accelerate the establishment of a long-term mechanism, the State Council printed and issued the Opinions on Further Intensifying Efforts in Cracking down on Infringements of Intellectual Property and Manufacturing and Selling of Forged and Substandard Commodities, and normalized crackdown on infringements of intellectual property and manufacturing and selling of forged and substandard commodities. The State Council established a leading group headed by Vice Premier Wang Qishan and involving 26 departments for campaigns of cracking down

on infringements of intellectual property and manufacturing and selling of forged and substandard commodities nationwide, and the office of the leading group is set up at MOFCOM. The leading group researched and deployed campaigns of cracking down on infringements of intellectual property rights quarter by quarter and listed network infringements as priorities into the key tasks for nationwide campaigns of cracking down on infringements of intellectual property and manufacturing and selling of forged and substandard commodities in 2012, the key work arrangement for the first and second quarters of 2012 and the action plan for China's intellectual property protection in 2012.

(Question 41: Paragraph 331, page 97)

In regard to the judicial interpretations regarding the liability of Internet infringement facilitators which China had prepared, has the Chinese Supreme Court announced the judicial interpretations? If yes, what do the interpretations state?

Answer: The Chinese Supreme Court has not yet announced the judicial interpretations regarding the civil wrongs of Internet infringement facilitators, where the relevant stipulations in the General Principles of the Civil Law of the People's Republic of China and the Tort Liability Law of the People's Republic of China are applicable.

In regard to criminal infringement, according to the Views on Several Issues Regarding the Application of Laws on Handling Criminal Cases of IPR Infringement publicized in 2011, those who know others are committing crimes of IPR infringement but still assist them with Internet access, trust server, network storage space, communication transfer channel, charge collection and disbursement and settlement are considered as committing joint crimes of IPR infringement. The Views is a regulatory document with a property of judicial interpretation.

IV. TRADE POLICIES BY SECTOR

- (1) AGRICULTURE**
- (ii) Agricultural policies**
- (d) Support levels**

(Question 42: Paragraph 39, page 107)

According to Chart IV.2 (a), the amounts of Public stockholding for food security purposes have been increasing from 2005 to 2008. Could China show the target stock amount by item? Please provide Japan with the actual stockpile amounts, purchase prices and purchase amounts by the authorities for the past 5 years.

Answer: The relevant data has been notified in China's domestic support notification on agriculture to the WTO.

(Question 43: Paragraph 31, page 107 and Chart IV.2, Page 108)

According to paragraph 31, Minimum purchase prices for rice and wheat are set each year by the National Development and Reform Commission. Does the figure of Public stockholding for food security purposes stated in Chart IV.2(a) include the purchase and storage cost of rice and wheat for public stock holds in detail?

Answer: China is still in coordination with relevant agencies to provide response to this question.

(4) MANUFACTURING
(ii) Selected subsectors

(Question 44: Paragraph 79, page 118)

Performance requirements on local content or technology transfers still remain as impediments for foreign investors in China. In particular, Japan is concerned that China's requirements imposing such technology transfer by the Access Regulations for New-Energy Vehicle Manufacturers and Products violate China's commitment in Paragraph 7.3, Part I of the China's Protocol of Accession and Paragraph 203 of the China's Working Party Report. Does China consider these requirements are consistent with China's commitment in Paragraph 7.3, Part I of the China's Protocol of Accession and Paragraph 203 of the China's Working Party Report?

Answer: The development of new-energy vehicles has been phased at technology R&D and early industrialization and such vehicles have to be technically and economically validated via demonstrative operation with relevant technical standard system established and unceasingly perfected. To grasp core technology is critical to ensuring vehicle quality, achieving good demonstration effect and protecting consumers' rights and interests. The technology of the new-energy products is multi-levelled and multi-faceted and China has not imposed a mandatory requirement on foreign investors for technology transfer, only requiring the manufacturers in China to understand and grasp the fundamental principle, structure, function and performance requirement of the technology for new-energy vehicles and to make improvements based on the actual running conditions. China has encouraged a fair competition in the field of new-energy vehicles and the access regulations are applicable to both domestic- and foreign-investment enterprises, with no special restriction on foreign ones. It is our understanding that the requirement to grasp the core technology is consistent with our commitment in China's Protocol of Accession.

(5) SERVICES
(ii) Financial Services
(a) Banking

(Question 45: Paragraph 101, page 122)

According to footnote 80, the operation to clean-up loans to the local government financing platform started. Please provide more details about this.

Answer: To prevent fiscal and financial risks and maintain sustainable economic development and social stability, in June, 2010, the State Council released The State Councils Notice on Enhancing Administration of Local Governments Financing Platform Companies (Guofa [2010] No. 19), an overall arrangement was made to intensify the administration of local governments financing platforms. According to this arrangement, the debts of platform companies in various regions and their amount of debts are verified, and results at the current stage have been achieved thanks to effective measures taken to regulate and administrate the financing platform companies. As a result, the rapid expansion of these platforms are effectively contained, credit management of banks and financial institutions over financing platform companies is intensified, and illegal guarantee and commitment of government institutions are basically suppressed.

(Question 46: Paragraph 110, page 125)

Please provide more information on the latest progress as to approximately when the deposit insurance scheme is scheduled for introduction.

Answer: As for the deposit insurance scheme is concerned, the relevant regulatory authorities still in the process of study, there is no specific timetable for its introduction at this stage.

(Question 47: Paragraph 113, page 126)

Japan understands that the ratio of outstanding loans to deposits may not exceed 75%. Banks in China have to lower the loan-deposit ratio within 75% by 2011. Japan would like China to provide details on the progress.

Answer: China is still in coordination with relevant agencies to provide response to this question.

(Question 48: Paragraph 121, page 128)

Regarding paragraph 121 on page 128 of the Secretariat's Report stating that no single foreign financial institution may own more than 20% of the equity of a Chinese financial institution, Japan would like to know how this restriction of foreign equity participation can be justified in light of China's schedule of commitments.

Answer: According to China's services schedule, qualified foreign financial institutions are allowed to establish wholly foreign-owned banks, including subsidiaries and branches. However, China did not make any commitments on the acquisition of existing domestic banks by foreign financial institutions. Nevertheless, China allows foreign investors to acquire equities of Chinese-funded banks up to certain level. According to Measures on Administration of Equity Investment of Overseas Financial Institutions in Chinese-funded Financial Institutions, the percentage of equity investment of a single overseas financial institution in a Chinese-funded financial institution may not exceed 20%.

China's banking sector is still under-developed. Such measure is also in line with the prudential measures provided for in the Annex on Financial Services under the GATS to protect investors and depositors and ensure the integrity and stability of the financial system.

(Question 49: Paragraph 158, page 135)

Japan understands that foreign insurance companies are required to have a separate license for every province. It would appear that insurance companies can provide, other than re-insurance products, guarantee insurance and credit insurance without their local branch offices. Japan would like to know if there is the possibility for this to be deregulated.

Answer: Provisions and limits on the cross-province businesses of insurance companies are stipulated in Articles 41 and 42 of the Provisions on the Administration of Insurance Companies. Up till now, China doesn't plan to adjust such provisions for prudential considerations.

(Question 50: Paragraph 158, page 135)

According to explanatory note 143, Exemptions are given to insurance companies engaged in co-insurance business. Japan would like China to clarify the meaning of co-insurance business as it is used here.

Answer: According to the Notice on Relevant Issues Concerning Large Commercial Insurance Business and Master Policy Business (Bao Jian Fa [2002] No. 16, co-insurance refers to insurances made by two or more insurance companies and their branches (excluding different branches of one same insurance company) by sharing one same insurance contract, one same insurance subject, same insurance responsibilities, same insurance period and same insurance premium.

(iii) Telecommunications

(Question 51: Paragraph 178, page 140)

Japan recognizes that the minimum registered capital on telecommunications operators is quite expensive. In particular, it is not reasonable to apply the same system without separating between equipment-based operators and resale-based operators considering the total necessary amount for operation. We had asked the reason for the expensive minimum registered capital for entering the resale-based business, but no specific answers were provided by the Chinese side. Thus, Japan would like China to explain the reason above and the future possibility of abolishing or relaxing this provision. We especially would like to know the reason why there are no plans to change the provision on minimum registered capital in the telecommunications law currently under consideration.

Answer: For the time being, resale-based business is considered by China as a mode of service provision instead of a defined tele-service, therefore a separate operation licence of tele-service will not be issued for it. China has noticed the concern some WTO Members have had toward the resale-based business and is now studying the relevant issues.

China has seriously studied the request that some WTO Members would like China to relax the provision on minimum registered capital and already revised in September of 2008 the Provisions on Administration of Foreign-invested Telecommunications Enterprises where the registered capital of foreign-invested basic telecommunications business has been decreased by 50%.

With a vast territory and a huge population, China needs to enormously financial input in order to back up the large-scaled investment in network creation

(Question 52: Paragraph 178, page 140)

Expecting the early establishment of the telecommunications law, Japan would like China to explain the planned schedule for the legislative process, enforcement and draft law outline. Japan would appreciate China's specific explanation regarding the impact of this law enforcement on the content of China's schedule in the WTO.

Answer: At present, the Legislative Affairs Office of the State Council of China is reviewing and researching the relevant issues on Telecommunication Law. There is no time schedule for public comment solicitation on the draft.

(Question 53: Paragraph 182, page 141)

What is the definition of value added telecommunication services in 2011 Catalogue for the Guidance of Foreign Investment Industries? In particular, Japan would like to know how call center business and data center business are classified in the Catalogue.

Also, how is this classification applied in China's schedule in the WTO? Is there any difference between the contents of the schedule and the description of the index?

Answer: The definition of value added telecommunication services, classification of specific businesses and how this classification is applied in China's schedule in the WTO shall be executed according to the Telecommunications Regulations of the People's Republic of China.

In order to effectively implement the Reply by the General Office of the State Council on Encouraging the Service Outsourcing Industry to Speed up Its Development (No. 692010 of the State

Office) and the Reply by the General Office of the State Council on Agreeing to Simplify the Approval Procedure for Business Pilot of Foreign Offshore Call Centre (No. 1272010 of the State Office), in 2010, the Ministry of Industry and Information Technology removed the foreign equity limit imposed on offshore call centre pilot projects and made the pilot projects open to foreign investment. The model regions include the 21 demonstration cities of service outsourcing such as Beijing, Tianjin and Shanghai.

(Question 54: Paragraph 182, page 141)

Japan recognizes that MIIT has announced to make an overall study and research on how to enhance private companies entry into the telecommunications business. Within the study and research, is MIIT going to examine the issue regarding foreign investment in the telecommunications business? Moreover, does China have any plan to deregulate foreign investment regulation of the telecommunications business? If it is the case, please explain the schedule for the deregulation.

Answer: The Ministry of Industry and Information Technology has been actively studying the relevant issues so as to better implement the Several Opinions of the State Council to Encourage and Guide the Healthy Development of Private Investment (No. 13 [2010] of the State Council).

China has earnestly fulfilled its commitment made when entering into WTO to open the telecommunications market to foreign investment, and the further opening of telecommunications business will be negotiated in the Doha Round.

(Question 55: Paragraph 182, page 141)

Please show exhaustively laws and regulation, licenses, qualification and terms and conditions required when a foreign company does design, construction or interior work for data centers.

Answer: The business of Internet data centre is to provide a value-added telecommunication service. The Telecommunications Regulations stipulate that an operation license of value-added telecommunication business shall be obtained with the relevant communication management department. Article 8 in the Management Measures of Operation Authorization of Telecommunication Business (No. 5 Ministerial Order of Industry and Information Technology) specifies the application materials for an operation licence of value-added telecommunication business.

(Question 56: Paragraph 204, page 145)

Japan had received China's answer in the last review that the details of the service scope target in universal service was under consideration. The report says that the planned universal service fund has not yet been established. Please inform us of the progress for the examination, especially for the scope of service and operators, and the future plan for the fund establishment. Also please explain the schedule for the fund establishment.

Answer: We are still in the process of research the scope and the target of the universal service fund, and there is no timetable on the establishment of the universal service fund.

- (iv) **Transport**
(a) **Maritime transport services**

(Question 57: Paragraph 205 , page 145)

The Secretariat notes that "In 2010, around 90% in volume of China's international cargo was carried by sea." on Page 145. What is each percentage of the other transportation modes such as air, rail and road transport in total international cargo from/to China?

This report indicates the volume of inland waterways, air, rail, and roads, but these figures include domestic cargo.

Answer: In 2010, the volume of international cargo carried by air via Chinese airlines was 1.926 million tons.

In 2010, the volume of international cargo carried by road between China and its neighbouring countries was 29.63 million tons.

In 2010, the volume of export cargo carried by rail is 55.8 million tons.

(Question 58: Paragraph 208, page 146)

Please inform Japan of the structures of the Chinese flag-of-convenience ship program such as:

- i) *Differences between normal Chinese flagged ships and Chinese flag-of-convenience ships*

Answer: Normal Chinese flagged ships refer to those ships only under the national flags of PRC while Chinese flag-of-convenience ships generally refer to those ones possessed by Chinese enterprises or natural persons but registered overseas and under foreign flags.

- ii) *Details of tax incentives*

Answer: Notice on the Implementation of the Duty-Free Rating Policy for the Special Case of Chinese-Funded International Shipping ([2007] No. 18) was publicized in 2007 by The Ministry of Transport, where the duty-free policy for special cases has been adopted and the Chinese-funded foreign international shipping vessel has been encouraged to transform to be with a Chinese citizenship status under the national flag of PRC but still engaged in international voyage. The conditions on the vessels applicable to this policy have been defined and those Chinese-funded foreign vessels qualified shall be exempted from tariff and importation value added tax and can register to obtain a Chinese citizenship status.

- iii) *period of the new five-year plan (ex. 2016-2020)*

Answer: There is no plan for the period from 2016 to 2020 at present.

- iv) *Total numbers of both normal Chinese flagged ships and Chinese flag-of-convenience ships*

Answer: Don't have the number.

(Question 59: Paragraph 213, page 147)

Based on the interim provisions on examination and approval of wholly-foreign-owned shipping companies, some wholly-foreign-owned shipping companies (hereinafter referred to as the

companies) are permitted to establish in China with their implementation of limited scope of services as follows:

1. *Accepting cargo booking*
2. *Endorsing BL*
3. *Collecting ocean freight*
4. *Signing contracts of transportation*
for ships which the parent company owns or operates.

Answer: Japan would like to know China's view regarding possible enlargement of scope of their services including husbanding activities, issue of Delivery Orders, etc. in view of smooth services to their customers.

China promulgated and implemented in 2000 the Interim Measures for the Examination and Approval of Wholly Foreign-owned Shipping Companies. It permitted foreign shipping companies registered in the countries that had signed bilateral intergovernmental maritime agreement with China to establish wholly foreign-owned shipping companies in China. The scope of operation of wholly foreign-owned shipping companies is limited to: collecting cargo, signing and issuing bills of lading, settling freight, and signing service contracts for the vessels owned or operated by their parent companies, namely the foreign shipping companies that invested and established such wholly foreign-owned shipping companies. As to the administration of wholly foreign-owned shipping companies, such matters were listed in the list of exemptions to the commitments to the trade in services. At present, China does not have any plan for further opening up in this area.

Based on specific regulations of inter-governmental bilateral maritime agreement, there is the possibility for wholly-foreign-owned shipping companies from specific countries/areas to expand the operating scope in China.

(c) Air transport

(Question 60: Paragraph 243, page 154)

China's GATS commitments on aircraft repair and maintenance require an economic needs test. However, in four FTAs (with ASEAN, Chile, New Zealand, and Singapore), the requirement for an economic needs test is suppressed. Japan would like to know the concrete criteria of the test, and whether it has actually been carried out in any case.

Answer: When examining and approving the establishment of foreign-invested aircraft repair and maintenance enterprises, CAAC will fully consider the market demand for aircraft repair and maintenance. Since China's accession into WTO, CAAC has not approved any application filed by foreign investors to establish an aircraft repair and maintenance enterprise for the reason of economic needs.

(d) Rail transport services

(Question 61: Paragraph 270, page 159)

The Secretariat notes that the system is to be reformed with a view to separating the regulatory functions from the operational functions. The rail price-setting mechanism will be further reformed as will the mechanisms for investment in and financing of rail construction and for the subsidization of public rail transport services. Japan would like to know the time table for these reforms, and whether there are any particular leading policies of foreign countries to be modelled.

Answer: The revolution of China's railway industry is promoted steadily.

- (v) **Tourism**
(b) **Trade regime**

(Question 62: Paragraph 308, page 165)

According to the Report by the Secretariat, the results of the pilot program which allows Sino-foreign joint venture travel agencies to handle the business of outbound tourism for residents of China's mainland will be evaluated, and if deemed successful, permission to conduct business for the outbound tourism of residents of China's mainland will be extended to other foreign travel agencies. With regard to this pilot program, Japan would like China to explain the following points:

- (1) *What do the results of the pilot program indicate? And what is the definition of success for the results?*

Answer: China is still in coordination with relevant agencies to provide response to this question.

- (2) *In Japan, there is no restriction on foreign travel agencies and many of them handle the business of outbound tourism for Japanese. From the view point of the principle of reciprocity and equity, restrictions on foreign-funded travel agencies in China should be relaxed immediately. Does China have any intention to deal with the restrictions?*

Answer: China is still in coordination with relevant agencies to provide response to this question.

(viii) Distribution services

(Question 63: Paragraph 326, page 168)

Please indicate the turnover and employment, the share in total GDP and share of total employment as well as the 10-year transition from now of the distribution sector (wholesale/retail).

Answer: For the detailed information of distribution sector, please see the following table:

Year	Turnover (100 million RMB Yuan)	Percentage of GDP (%)	Number of Employment (10,000)	Percentage of total Employment (%)
2002	27,860	27.2	733.0	6.7
2003	37,693	32.3	628.1	5.7
2004	44,840	32.8	586.7	5.3
2005	56,589	31.0	544.0	4.8
2006	64,326	30.7	515.7	4.4
2007	75,040	30.4	506.9	4.2
2008	91,199	30.3	514.4	4.2
2009	105,413	31.4	520.8	4.1
2010	139,350	35.0	535.1	4.1
2011	163,284	34.6	n.a.	n.a.

(viii) Distribution services**(Question 64: Paragraph 328, page 169)**

Please indicate whether the sale or purchase of any goods is subject to exclusive rights for domestic companies or to a limitation on the number of distributors. If so, please provide information, including items, legal basis and any recent modifications.

Answer: Refer to the restricted regulations to foreign investors in Catalogue for the Guidance of Foreign Investment Industries.2011. The Catalogue was published in 24 December 2011 and entered into force in 30 January 2012.

(Question 65)

The Regulations on publication administration were revised in March 2010. Under the new regulations, Japan would like China to confirm that wholly foreign-owned firms will be able to import publications. Furthermore, Japan would like China to confirm foreign equity restrictions, if any.

Answer: Article 42 of the Regulations on Publication Administration stipulates the conditions for establishing units to be engaged in importing and exporting publications. Any unit to be engaged in publication import business should meet these conditions and file an application in accordance with legal procedures.

The Audiovisual products importation rule was revised in April 2011. Under the new rule, Japan would like China to confirm that wholly foreign-owned firms will be able to import Audiovisual products. Furthermore, Japan would like China to confirm foreign equity restrictions, if any.

Answer: Article 9 of Audiovisual Products Importation Rule stipulates the conditions for establishing units to be engaged in importing audiovisual products. Any unit to be engaged in import business of audiovisual products should meet these conditions and file an application in accordance with legal procedures.

(Question 66)

Regarding the importation of motion pictures for theatrical release, only management units designated by the State Administration of Radio, Film and Television are permitted for import, and management units without designation are not permitted. Subject to the DSB Recommendations, China is requested to amend the Regulations on the Administration of Movies 21 December 2009, and Japan would like to know when China intends to amend the regulation. Furthermore, Japan would like to confirm whether wholly foreign-owned firms will be allowed to import motion pictures for theatrical release after the amendment.

Answer: Since its accession to the WTO, China has strictly followed its commitments in the area of film. The channel for overseas films entering into China market is open and smooth. In accordance with its accession commitments, China revised its Regulations on the Administration of Films in 2001. Specific provisions were made on film importing. The business of film importing shall be operated by film importing operation entities designated by the administrative departments of radio, film and television of the State Council. Without such designation, no entity or individual shall operate in the business of film importing.

REPORT BY CHINA (WT/TPR/G/264)

II. ECONOMIC AND TRADE ENVIRONMENT AND MACROECONOMIC POLICY DIRECTION

- (3) Accelerating the development for intellectual property rights protection**
- (iii) Intensifying efforts for intellectual property rights protection**

(Question 67: Paragraph 32, page 11)

Paragraph 32 of the Report by China mentions China's nation-wide government campaign in intellectual property rights protection. Could China provide us with information on its measures to accelerate the local authorities' administrative actions or to enhance their capacity?

Answer: In November 2011, the State Council printed and issued the Opinions on Further Intensifying Efforts in Cracking down on Infringements of Intellectual Property and Manufacturing and Selling of Forged and Substandard Commodities to explicitly propose to establish and improve an incentive and restraint mechanism of cracking down on infringements of intellectual property and manufacturing and selling of forged and substandard commodities and establish and improve a supervision and assessment system. China incorporates campaign of cracking down on infringements of intellectual property and manufacturing and selling of forged and substandard commodities into the government performance assessment system and then into the scope of assessment on social administration and comprehensive governance, and gradually carries out supervision and inspection step by step. Regions with prominent issues of infringements of intellectual property and manufacturing and selling of forged and substandard commodities are urged to strengthen law enforcement and make rectifications within the given period of time. Moreover, more efforts should be made to intensify administrative supervision and accountability and strictly hold the responsible persons of local governments and relevant regulators accountable for any regional and systematic infringement of intellectual property or manufacturing and selling of forged and substandard commodities caused by negligence in the performance of duties.

III. Trade and Investment Development and Related Policies

- (3) Opening the Utilization of Foreign Investment Through Further Opening Up**
- (ii) Opening up more fields to foreign investment**

(Question 68: Paragraph 95, page 23)

Japan understands that the opening up of compulsory third party auto liability insurance to foreign funded non-life insurance companies has been made possible by the revision of the law on 1 May 2012. Japan would like to know the concrete schedule or procedure of the CIRC approval under this law.

Answer: Based on China's WTO commitments, CIRC has actively advanced the opening up of compulsory liability insurance for motor vehicle traffic accidents. With regard to specific implementation, CIRC will review the applications filed by Chinese-funded and foreign-funded insurance companies in a fair and equal manner in accordance with the relevant conditions specified in the Regulations on Compulsory Traffic Accidents Liability Insurance for Motor Vehicles.

REPUBLIC OF KOREA**PART I: Questions Regarding the Secretariat Report****II. Trade Policy Regime: Framework and Objectives****Page 11 (Para 4-5)**

We welcome China's continued efforts to improve transparency. The Secretariat report, however, notes that many aspects of China's trade and investment policy regime remain complex and opaque, leaving scope for administrative discretion and corruption.

Question 1

Does China agree with the Secretariat's assessment regarding transparency? What specific plans does China have to reduce the scope for administrative discretion and corruption?

Answer: Having entered into WTO, China has complied with WTO rules and abided by its commitments. China has made great efforts to improve transparency, to which it will continue to dedicate itself.

Corruption is a universal problem against which countries all over the world have been committed to fighting, so has the Chinese government which has consistently adopted a highhanded policy in dealing with corruption and struck it with heavy blows. We will further rectify, cancel and adjust the administrative examination and approval items, perfect and strictly enforce the setting and implementation system of such items, and enhance the supervision on approval right. We will also advance the market-oriented reform of public resources, improve transparency and promote fair competition. What's more, we will continue to deepen the reform of fiscal management system for better public supervision. Furthermore, we will make it a long-term fundamental work to combat corruption and build a clean government in a down-to-earth manner, intensify the fight against some outstanding problems to make sure that the leading cadres are clean, honest and self-disciplined and strictly examine and deal with corruption cases, taking strong measures against corruption cases and corrupt elements.

Page 14 (Para 15)

The Complaint Coordination Office for Foreign-invested Enterprises and the National Complaint Centre for Foreign-invested Enterprises under MOFCOM supervise and handle complaints from foreign-invested enterprises that consider their rights have been impaired by the authorities.

Question 2

Could China please provide data on actual complaints which were not made available to the Secretariat?

Answer: National Complaint Centre for Foreign-invested Enterprises under MOFCOM has, for the past two years, received in total 11 complaints, in a written form or via telephone, from foreign-invested enterprises or individuals, all of which have been appropriately dealt with according to the relevant provisions in the Interim Measures for Handling Complaints from Foreign-invested Enterprises.

Page 14 (Para 16)

According to the Secretariat report, a pilot program to establish "administrative reconsideration commissions" was launched in 2008 in several regions including Beijing.

Question 3

Could China please explain the effect of the pilot program to establish "administrative reconsideration commissions" since 2008? Are there any plans to extend this program to other regions?

Answer: More than 3 years has passed since the pilot program to establish "administrative reconsideration commissions" was launched, and significant effects have been achieved since then. Firstly, social forces such as experts and scholars have been introduced into case trials, which have improved the transparency and fairness in handling the cases of administrative reconsideration. Secondly, more efforts have been put into error correction during administrative reconsideration and the proportion of corrected cases via repeal, modification and illegitimacy confirmation increased significantly in some of the regions where the program has been launched. Thirdly, administrative reconsideration has played a greater role in settling disputes and there has been a general number increase of the administrative reconsidered cases accepted in the regions where the program has been launched, with more administrative disputes being settled via administrative reconsideration. For the moment, the pilot program to establish "administrative reconsideration commissions" has been launched or is going to be launched by 19 provincial governments at the provincial level or in some of the cities and counties within its jurisdiction area.

Pages 14-15 (Paras 19-20)

The Secretariat report states that coordination between the agency at the central level and its counterparts at the local level remains weak, raising issues of policy coherence. The report also states that provincial protectionism may result in barriers to internal trade and investment. Provincial protectionism may affect foreign-invested enterprises and international trade as well as internal trade and investment. Foreign enterprises have had some difficulties due to regulatory opaqueness and inconsistency.

Question 4

What efforts could be made by the Chinese Government to ease these difficulties for foreign investors in China or foreign export companies?

Answer: In order to ensure a unification of legal system, China has established a filing and reviewing system of laws and regulations, which has been clearly defined in the Legislation Law made in 2000, Record Ordinance of Laws and Regulations made in 2001 and the Decision of the State Council on Strengthening the Law-based Administration by Municipal and County Governments publicized in 2008. Agencies at all levels responsible for recording shall seriously perform their duties and review and rectify the violation of the provisions of upper laws by laws and regulations and regulatory documents and the incoherence and incoordination between different laws. In order to discard local protectionism and to establish and perfect a national-unified, standardized and orderly market system of fair competition, the State Council made in 2001 the Provisions of the State Council on the Prohibition of Regional Blockade in Market Economic Activities and seven departments with the Ministry of Commerce included jointly issued in 2004 the Circular on Clearing up the Regulations of Regional Blockage in the Activities of Market Economy, via the latter of which local governments have been organized to clear up the provisions hindering the free flow of goods and factors and making legal the regional blockade. In the future, the Chinese government will intensify publicity to

let laws and regulations be widely known to the public and strengthen the training to local government departments for professional skill improvement so as to enhance the transparency of policies and consistency in policy implementation. In addition, the Chinese government will reinforce the communication with foreign-funded enterprises and address in a timely manner their reasonable concerns, in a way to provide more thoughtful and convenient services to investors and foreign-funded enterprises.

Page 16 (Para 25)

China became a WTO Member on 11 December 2001. It is not a party to the Pharmaceutical Agreement.

Question 5

Is China considering acceding to the Pharmaceutical Agreement? If so, what is the timeframe that China is considering? Are there any difficulties that are hindering China from joining the agreement?

Answer: China is not yet in the position to consider this issue.

Page 16 (Para 27)

China has submitted a number of notifications during the period under review, including notifications on agriculture, services, technical regulations, regional trade agreements, and intellectual property legislation (Table AII.2). A total of 482 notifications were registered during January 2010 to February 2012, including a new notification on subsidies adopted for 2005-2008. Nonetheless, in some areas (e.g. state trading), notifications are considerably out-dated or overdue.

Question 6

Could China please explain why in some areas notifications are considerably out-dated or overdue?

Answer: The state trading regime of China, including the products covered and the STR enterprises did not have significant changes except that a couple of products were no longer subject to state trading administration. Besides, for a few products subject to state trading, some statistics required in the notification are not produced officially in China. In view of these, China did not submit its state trading notification. That said, if members expect China to submit the notification despite of the few changes, China will try to submit the notification as soon as possible.

Page 17 (Para 30)

The authorities consider that regional trade agreements serve as a complement to the multilateral trading system while China pursues its opening-up policy; in regard to FTAs/RTAs, China maintains that it follows the principle of inclusiveness and openness. According to the Secretariat report, China's commitments to eliminate tariffs in its RTAs are based on reciprocity rather than a general policy of openness in its RTAs. Despite China's perspective on the RTAs, there is concern that various RTAs at their different levels of openness could undermine the multilateral trading system aimed at broader economic integration.

Question 7

Could China please provide its opinion on the above assessment in light of its RTA experience?

Answer: China believes that to promote rule-based trade liberalization, the role of the multilateral trading system is dominant, irreplaceable. Regional trade arrangements, in the form of WTO Plus, help to enhance the intra-regional trade liberalization and economic cooperation between the members. While committing to the multilateral trade system and its rules as the cornerstone of its foreign economic and trade relations, China believes as always that regional trade agreements serve as a complement to the multilateral trading system in pursuing its opening-up policy.

Page 18 (Para 39)

Since 1 January 2011, foreign investors have been "permitted" to invest in health care services in China on a pilot-project basis; previously, they were listed in the "restricted" category.

Question 8

Could China please elaborate on the details of this policy change, including a comparison between this policy and China's GATS commitments? Are there any plans to expand the pilot projects? Would China consider further FDI liberalization in health care services?

Answer: In the year of 2011, Ministry of Health of the People's Republic of China issued the Notification about the Adjustment of Approval Authority on Chinese-foreign Joint Venture and Cooperative Medical Institutions, to delegate the approval authority for the establishment of Chinese-foreign joint venture and cooperative medical institutions to provincial public health administrations, which greatly simplifies the approval procedure intensively.

According to CEPA and ECFA , since 1 January 2011, service providers from the Hong Kong and Macao Special Administrative Regions have been permitted to establish subsidiary hospitals in the provinces and municipalities of Shanghai, Fujian, Guangdong, Hainan and Chongqing. Service providers from Chinese-Taipei also have been permitted to establish subsidiary hospitals according to rules in the provinces and municipalities of Shanghai, Jiangsu, Fujian, Guangdong and Hainan on a pilot-project basis. Since 1 April 2012, pilot project of the Hong Kong and Macao SARs to establish subsidiary hospitals in mainland China will be extended to all provincial capitals and municipalities.

In China's accession commitment, foreign service suppliers are permitted to establish joint venture hospitals or clinics with Chinese partners, and foreign majority ownership is permitted. In contrast, the above-mentioned pilot-project allows wholly-foreign-owned enterprises under specific conditions.

China will consider the possibility of further liberalization in medical service market based on the assessment on the operation of the pilot project.

Page 21 (Para 48)

FIEs in the encouraged category may import capital equipment duty free. All foreign-invested enterprises may enlarge their scope of business, subject to approval. Foreign investment in the restricted category may be permitted, subject to approval, if export sales are over 70% of total sales of the product.

Question 9

Could China please explain why all the foreign-invested enterprises in the restricted category have to export over 70% of total sales? What is the basis for the 70% criteria?

Answer: This provision doesn't mean the foreign-invested enterprises in the restricted category have to export over 70% of total sales. The foreign-invested enterprise shall have the freedom to decide whether to sell its products on the Chinese market or get them exported.

Page 21 (Para 51)

Applications for permitted and encouraged industries valued at over US\$500 million (US\$100 million for restricted industries), after examination by the NDRC, are submitted for verification to the State Council.

Question 10

Could China explain why applications are submitted for verification to the State Council after examination by the NDRC? Does it mean applications are reviewed twice before approval? Are there any cases where applications were rejected during the verification process at the State Council?

Answer: In order to improve the efficiency of the examination and approval of foreign investment projects, the central government and local government have different authority for the approval of foreign investment projects based on the total amount of investment. Applications for permitted and encouraged industries valued at over US\$500 million (US\$100 million for restricted industries), after examination by the NDRC, are submitted for verification to the State Council, which does not mean the projects will be reviewed twice before approval.

Page 22 (Para 53)

Foreign investment in China can be made in renminbi (RMB). Except for investments valued at 300 million or more or in industries that require approval from MOFCOM, the authorities at the provincial level may complete the approval procedure similar to that for investment in foreign currencies. Foreign investments with RMB are not allowed "directly or indirectly" in equities and financial derivatives, except those used for strategic investment in listed companies.

Question 11

Are there any plans to gradually extend Renminbi Qualified Foreign Institutional Investors (RQFII) status to foreign financial institutions, which is currently allowed exclusively for Hong Kong-based institutions?

Answer: In 2011, the CSRC issued Measures for Pilot Domestic Securities Investment Made by RMB Qualified Foreign Institutional Investors of Fund Management Companies and Securities, which set up a pilot programme for the use of RMB funds raised in Hong Kong, China by the subsidiaries of domestic fund management companies and securities companies in Hong Kong, China to invest in the domestic securities market. Currently, the CSRC is still in the process of evaluation for this pilot programme, the next steps of opening up will be based on the evaluation result.

Page 22 (Para 55)

FDI in the form of mergers and acquisitions (M&As) of enterprises is subject to anti-trust reviews. Also, FDI involving M&A with Chinese domestic enterprises is subject to national security reviews, if the FDI is related to defence, or is deemed to have influence on national security, such as controlling firms engaged in key commodities (e.g. agriculture, energy, and natural resources), key infrastructures, key transports, and key equipment manufacturing with essential technologies. However, there is concern that anti-trust reviews can be used as means to protect domestic industries. Some argue that the rejection of the application by Coca-Cola to merge with Hui Yuan can be

interpreted as refusal of foreign capitals which intend to merge with representative Chinese enterprises.

Question 12

Could China please provide its opinion on the above-mentioned concern?

Answer: National security reviews of foreign capitals which intend to merge with Chinese enterprises are implemented in many countries worldwide, which is also a normal practice of review and will not affect the opening-up policy that has long been upheld by China. The review of undertaking concentration and the national security review are two different but parallel review mechanisms, the former of which belongs to the category of competition policy while the latter of which is implemented for security reasons. The Ministry of Commerce shall mainly take into consideration the competitive factors in its review of undertaking concentration with the FDI related to national security being dealt with by the department of national security review in accordance with the law.

The Ministry of Commerce rejection of the application by Coca-Cola to merge with Huiyuan according to the Law on Anti-Monopoly was based on a consideration of market competition in the purpose of maintaining an effective competition in the fruit-based beverage market of China, promoting and safeguarding the development and growth of juice enterprises in fair competition, and advancing the formation of a mechanism for developing the superior and weeding out the inferior in the juice market and the transformation of economic growth mode. The decision for this individual case will not influence or change the foreign investment policy of China.

Page 23 (Para 57)

The State Council supports FIEs to be listed, and/or to issue corporate bonds on Chinese market. It also continues to "guide" financial institutions to enhance credit supports to FIEs.

Question 13

Could China please provide the details of the measures in terms of supporting FIEs for financing?

Answer: At present, China's banking sector implements the same treatment to foreign companies and domestic companies in terms of financing and judges financing conditions according to project prospects and risks. There does not exist differentiated limits in regulators. In general, as for the appropriate enterprises with good credit quality, stable management and reasonable capital uses, whether foreign or domestic, financial institutions will provide financial services to them in accordance with commercial principles.

III. Trade Policies and Practices by Measure

Page 37 (Para 54)

A suspended/terminated investigation may be resumed if the exporter violates the price undertaking, or if China's MOFCOM considers it necessary for other reasons.

Question 14

Could China please explain what other reasons may lead to the resumption of a suspended/terminated anti-dumping investigation?

Answer: According to the Interim Rules on Anti-dumping Price Undertakings, if the Ministry of Commerce considers it to be against the public interest of China to continue the implementation of price undertakings, it shall repeal the decision to accept the price undertakings and resume the anti-dumping investigation in accordance with the law.

Page 38 (Para 60)

China's anti-dumping law requires consideration of public interest in investigations but appears to lack clear-cut guidance on this issue.

Question 15

Could China please provide its plan to make the guidance clearer?

Answer: In its anti-dumping investigation, the investigating authorities will provide ample opportunity for various interested parties with involved producers and exporters, the government of the involved country, upstream and downstream enterprises and relevant industry associations included to air their opinions via public hearings and statements of opinions and will also take into serious consideration their comments so as to ensure an objective, just and fair investigation.

Page 39 (Para 62)

Article 56 of the AD regulations provoked questions and concerns from Members in the October 2002 meeting of the WTO Committee on Anti-Dumping Practices.

Question 16

Does China have a plan to remove Article 56 from the AD Regulation which authorizes certain corresponding measures in retaliation?

Answer: For the moment, China hasn't a plan to revise AD Regulations.

Page 42 (Para 70)

The CV Regulation does not specifically provide for proceedings to refund final duties, and there are no published rules regarding sampling. There are no further details in the CV Regulation regarding "new shipper" reviews.

Question 17

How is China going to address certain issues such as refunds of final duties, sampling, or new shipper reviews not yet regulated in the existing CV rules?

Answer: China has adopted a very cautious attitude toward investigations into trade remedy, especially those into countervailing and there have been so far 4 cases of countervailing investigation. As for certain issues not yet regulated in the existing countervailing rules, China will deal with them based on the actual conditions of individual cases and referring to as references the rules for anti-dumping investigations and will ensure the investigation complying with countervailing laws of China and the Agreement on Subsidies and Countervailing Measures of WTO. In its real practice, China will also borrow ideas from WTO Members that have abounded experiences in countervailing investigation. China will revise and perfect its relevant laws, regulations and department rules in due course and enact new procedural regulations regarding countervailing investigation based on the demand of increasing development and in light of the practical need of countervailing investigation.

Page 48 (Paras 93-96)

Under the Regulations on Certification and the Measures for the Administration of Compulsory Product Certification, the China National Certification and Association Commission (CNCA) under AQSIQ is responsible for the administration, organization, and implementation of compulsory product certification in China. Products listed in the Compulsory Product Certification Catalogue may not be sold or imported into China unless they have China Compulsory Certificates (CCCs) and carry CCC marks. Applications for CCC certification must be made to a designated accredited certification body (ACB).

Question 18

Regarding CCC certification, is China willing to permit the participation of conformity assessment bodies located in the territories of other countries as stipulated in Article 6.4 of the WTO TBT Agreement?

Answer: According to Article 6.4 of the WTO/TBT Agreement, members are encouraged to permit participation of conformity assessment bodies located in the territories of other Members. China has signed entrustment agreements with 19 overseas certifying bodies (located in Europe, America, Japan and other economies) for follow-up inspections of 3C certification over factories abroad. CNCA accept the inspection reports and results of these bodies.

Page 53 (Para 111)

Related institutional adaptations, including training of central and local government personnel to implement the GPA, are also in progress. The lack of experts seems to be one of the challenges in China's government procurement.

Question 19

Could China please explain in detail the training of central and local government personnel to implement the GPA?

Answer: Since the end of 2007 when China initiated the negotiation to enter into GPA, the Chinese government has every year organized the training of central and local government personnel to implement the GPA, and also for many times jointly offered training courses and held seminars with GPA participants such as the USA and EU and the WTO Secretariat.

Page 53 (Para 113)

According to data provided by the authorities, the total value of government procurement increased to 842.2 billion in 2010, up from 599.1 billion in 2008 (Table III.6); it accounted for 2.1% of GDP (2% in 2008). However, on average, sources indicate that government procurement in developed and developing countries accounts for 10-15% of GDP. The authorities maintain that this small percentage is mainly because the data cover only procurement by government departments, institutions, and public organizations using fiscal funds, for goods, construction, and services listed in the Centralized Procurement Catalogue.

Question 20

Could China please define or specify what the authorities mean? Could China also provide information on the institutional framework of governmental procurement?

Answer: The authorities refer to the Ministry of Finance. According to the government procurement law, the financial departments of people's governments at various levels are responsible for the supervision and regulation of government procurement and shall perform their bounden duties in accordance with the law.

Page 54 (Paras 115-116)

Decentralized purchasing may be carried out by the procuring agency itself, or through some centralized procurement agencies. The Government does not consider procurement by SOEs as government procurement.

Question 21

Could China please explain the role of the central government and its influence on local government procurement and SOE procurement? Please explain to which extent the central government is involved in SOE procurement. Could China provide the statistical data on SOE procurement? Is there any plan to include additional SOEs as procuring entities to the GPA?

Answer: SOEs in China are independently operated market players who assume sole responsibilities for their profits or losses. Procurement by SOEs is their own business practice which the government does not interfere. Therefore, procurement by SOEs shall not be considered as government procurement and China hasn't any statistical data on SOE procurement. For the time being, China's revised offer only covers the entities defined by the government procurement law.

Page 54 (Para 118)

Under the Government Procurement Law, the Government is, in principle, required to procure domestic goods, projects, and services. However, in some cases exceptions are allowed.

Question 22

Could China provide cases of procurement from foreign sources?

Answer: According to the regulations in the government procurement regime of China, if a purchaser cannot acquire within Chinese territory or cannot acquire with reasonable commercial terms the products he needs to procure or if there is an actual need as otherwise provided in laws or regulations, the purchaser can make procurement from imported products. As for the departments of central government, part of their high-end instrument and equipment for scientific research, instrument and equipment for an exclusive use of quality inspection and professional camera equipment has been procured from imported products based on actual demands.

Page 55 (Para 123)

Procuring entities must announce government procurement and bidding information in media designated by the Ministry of Finance in "a timely and standard manner" to ensure transparency and fair competition. Suppliers, if unfairly excluded from procurement processes or treated in a discriminatory way, may complain to the procuring agency, appeal to the Government Procurement Division of the Ministry of Finance, or subsequently file a complaint with a court. The authorities state that the Government collects no data regarding the number of complaints.

Question 23

1) *Could China please specify what kinds of media are used for these types of announcements and how?*

Answer: The central government procurement information is published on the media designated by the Ministry of Finance, including www.ccgp.gov.cn, China Government Procurement News, China Government Procurement Magazine, and China State Finance. The local-level government procurement information is published on the media designated by provincial governments.

Bidding information shall be released by the purchaser or authorized procurement agency in the media designated to announce government procurement information. The purchaser or procurement agency shall publish the government procurement information in a standard and timely manner according to the laws and administrative regulations regarding government procurement.

2) *Could China provide the statistical data regarding announcements of procurement information?*

Answer: More than 770,000 announcements of government procurement information were released in 2010.

3) *Does the Chinese Government have any requirements for announcing government procurement and bidding information in official journals or media?*

4) *Could China outline if there are regulations that mandate the revealing of the contents of a bid in the Official Journal?*

Answer to question 3) and 4): The Ministry of Finance has made the Administrative Measures for Announcement of Government Procurement Information and the Administrative Measures for Bidding for Goods and Services via Government Procurement, both of which have made specific provisions on the scope and content of the announcement of government procurement information. (Please look for more detailed information on www.ccgp.gov.cn.)

Question 24

1) *Does China have an organization which handles the complaints from processing government procurement in the provinces?*

Answer: According to the Measures for Processing Supplier Complaint of Government Procurement, the financial department of the local people's government at the county level and above shall be responsible for processing the supplier complaint of local government procurement.

2) *How long does it usually take for a complaint to be processed at the procuring agency, at the appellate body of the Government Procurement division of the Ministry of Finance, and at the court of law?*

Answer: The supplier can query the purchaser in a written form within seven working days after he knows or should know that his rights and interests are infringed. The purchaser shall make a reply in written form within seven working days once he receives the written query from the supplier.

The supervision and regulation department for government procurement shall make a decision within thirty working days after receiving the complaint and shall inform the complainant and parties concerned in a written form.

If the complainant refuses to accept the decision made by the supervision and regulation department for government procurement or the supervision and regulation department for government procurement doesn't process the complaint within the time limit, the complaint may apply for an administrative reconsideration according to law or lodge an administrative appeal to court. The court will hear the case in line with the legally prescribed procedures.

3) *Can a company file a complaint after the contract has been awarded?*

Answer: Yes.

Page 56 (Para 129)

Carrying this process forward, toward the end of 2011, China submitted to the GPA Parties its "second revised coverage offer". While the offer has not yet met all of the expectations of the existing Parties, it must nonetheless be said that it responded importantly to requests made to China by the Parties by offering, for the first time, significant proposed coverage of procuring entities at the sub-central (provincial/municipal) government level, in addition to the central government level. Across the membership of the GPA, Parties are now pressing for further movement by China to include greater coverage of entities at the central and sub-central government level, coverage, for the first time, of state-owned enterprises (SOEs) and other improvements.

Question 25

Could China please explain what would be the Chinese Governments next step for accession to the GPA? What are the issues being discussed regarding further movement by China to include greater coverage of entities?

Answer: The Chinese government will submit a newly revised comprehensive offer before the last meeting of the Committee on Government Procurement of WTO to convene in 2012. For the moment, the Chinese government is making an evaluation of the feasibility to improve the offer factors, making an effort to create conditions for extending the offer coverage.

Page 60 (Para 147)

Rare earth has been subject to export quota and license since 1999. The authorities believe that these export restrictions could help conserve natural resources or protect the environment. The Secretariat questioned the economic effectiveness of these measures in its report for the last trade policy review of China.

Question 26

Could China please confirm the economic effectiveness of these measures?

Answer: China's export administration on rare earth is for the purpose of protecting environment and conserving exhaustible natural resources rather than pursuit for economic effectiveness.

Page 75 (Para 226)

It is understood that China is in the ongoing reform process regarding SOEs. There is an argument that China needs to limit the range of industries and sectors which are too broadly defined in terms of maintenance of SOE dominance. There is a suggestion that China define a more clear state-

ownership policy regarding the disposal of SOEs' non-tradeable shares, and private participation through SOE equity diversification.

Question 27

Could China please provide its opinion on the above assessment and suggestion?

Answer: One of the important contents of the SOEs reform in China is to continue to optimize the layout and structure of the state-owned economy. For the moment, the proportion taken by the state-owned capital in the general competitive fields is gradually decreasing, and more state-owned capital is invested into the industry related to national security, the field of major infrastructure and the industry to offer important public goods and services.

Since 2006 when the reform of equity division of listed companies was carried out, the non-trading shares held by all the institutional shareholders with government shareholders included have been able to be traded, with the market-based circulation not being hindered. According to the statistics, by the end of 2011, the average shareholding ratio of the government shareholders from the listed companies held by the central enterprises and their sub-enterprises has decreased to 48%. During 2007-2011, there have been 4,147 cases of open transfer of state-owned property right via property rights transaction market by central enterprises, 69% of which have been taken over by private capital and foreign capital. The Guidance on Actively Introducing Private Investment into the Restructuring of State-Owned Enterprises publicized in 2012 emphasizes that the government shareholders when transferring their shareholding of the listed companies via an open call or a block trade or transferring their state-owned property right via a public bid on the property rights market, shall not set additional terms with respect to the capital conditions of the potential private investment subject, which fully reflects that all kinds of investment subjects will be equally treated.

Pages 93-94 (Paras 307 and 316)

Parallel imports are not addressed in the legislation on trademarks, and it is not clear to the Secretariat whether they are prohibited/allowed. The authorities state that no case of parallel imports has been brought to their attention. Parallel imports are not covered in the current copyright legislation, and the authorities maintain that they are not prohibited.

Question 28

Are parallel imports allowed under the legislations on trademarks and copy rights? Could China please provide its opinion on the view that it should be clarified in the relevant regulations whether they are allowed or not?

Answer: In respect of trademark, the current Trademark Law does not have provisions concerning parallel import. In respect of copyright and related rights, parallel import is prohibited in the current Copyright Law.

Page 97 (Para 328)

In addition to ad hoc campaigns, clear rules and fully implemented procedures will play more important roles in protecting IPRs. A key task under the Promotion Plan for National Intellectual Property Strategy 2011, is the establishment of a long-term mechanism on IP protection, in particular a regular mechanism to enforce IP protection against internet violation.

Question 29

Could China please explain more specifically a long-term mechanism on IP protection, in particular a regular mechanism to enforce IP protection against internet violation?

Answer: In November 2011, the State Council issued the Opinions on Further Cracking Down on Infringements of Intellectual Property Rights and the Production and Sale of Counterfeit Commodities. A leading group was established to crack down infringements of intellectual property rights and manufacturing and selling of counterfeit commodities. The group, headed by Vice Premier Wang Qishan, involves 29 government agencies and has an office in the Ministry of Commerce. Crackdown on infringements of intellectual property rights and manufacturing and selling of counterfeit commodities came into a regular stage.

The leading group studies and arranges crackdown of infringement of IPRs on a quarterly basis. Online infringements and violations, as the key part of crackdown, is listed in the 2012 Elements of National Work for the Crackdown on IPR Infringement and Manufacturing and Selling of Counterfeit Commodities, the key work in quarter one and two, and the 2012 China IPR protection scheme.

In addition, the Leading Group Office for the Special Campaign of Combating Online Infringement and Piracy has also been established to carry out special actions.

Page 97 (Para 329)

It is reported that the leadership structure of this specific campaign will be made permanent, as regular IPR enforcement in China. A vice-Premier will take on the role of overseeing IPR enforcement. Officials at the provincial level are also expected to be more proactive in enforcement as such enforcement effort will be taken into account in their performance evaluations.

Question 30

Is there any other specific regulation that forces provincial officers to be more proactive in the enforcement of IPRs? Is there any kind of cooperation mechanism between provinces to enforce IPRs?

Answer: In November 2011, the State Council issued the Opinions on Further Cracking Down on Infringements of Intellectual Property Rights and the Production and Sale of Counterfeit Commodities, explicitly specifying that a restraint and incentive mechanism for crackdown on IPR infringement and counterfeit products and a supervision and evaluation system should be established and improved. Crackdown on IPR infringement and counterfeit products is included in the governments' performance evaluation system, which is supervised and inspected level by level. Areas where have outstanding infringement and counterfeit products cases should be urged to strengthen law enforcement and be ordered to rectify within a specified time limit. Heads of local government and responsible administrative authorities will be held accountable and punished for regional and systematic IPR infringement situations in the area.

China encourages all local areas to proactively explore law enforcement collaboration mechanisms. By now, seven regional trademark administrative enforcement collaboration networks have been established across the country. All provinces, autonomous regions and municipalities directly under the Central Government have been included in relevant trademark protection collaboration networks. Meanwhile, the competent patent and copyright authorities of all provinces have proactively participated in various campaigns and strengthened their cooperation based on their respective functions under the coordination of the State Council.

IV. Trade Policies by Sector **(1) Agriculture**

Pages 104 (Paras 21-22)

The VAT rebate rate on exports of most agricultural products is currently 5%. Exports of rice, maize, cotton, and tobacco are through state-trading enterprises. Although China has notified the WTO that it does not provide export subsidies for agricultural products, it is engaged in programs such as VAT rebates that encourage exports.

Question 31

Isn't there any possibility that this may hinder trade or come under the category of actionable subsidies? Could China please confirm that the Chinese Government has been paying state-trading enterprises various subsidies? If so, are they consistent with relevant WTO rules?

Answer: The tax rebate on exports of agricultural products does not exceed the tax collected, which doesn't constitute subsidy and will not hinder trade. The operations of state-trading enterprises are all normal commercial operations based on the market conditions. Chinese government does not provide subsidies specifically to state-trading enterprises.

Pages 104-106 (Paras 23-34)

China is enforcing various subsidy policies such as direct payment, input subsidies and minimum purchase prices scheme in order to encourage food production and improve producer incomes.

Question 32

Are there any cases in which the subsidies are mutually overlapping? In addition, is there any problem with subsidies for farms that may vary due to differences in policies and systems between the central and local governments? In particular, are there any cases to which the Aggregate Measurement of Support (AMS) in the WTO Agreement on Agriculture might be applicable?

Answer: Regarding the relevant support data of all kinds related to enhance farmers production capacity and raise farmers' income, such as direct payments, production subsidies and the minimum purchase price, we have, in accordance with the classification rules of the green box and amber box of the WTO Agreement on Agriculture, notified to the WTO. The data notified is the full aperture nationwide, including the support fund from both the central government and local governments.

Pages 106 (Para 31)

In addition to border measures that, to some extent, protect the internal market from competition from imports, China has a number of programmes that support domestic prices. Minimum purchase prices for rice and wheat are set each year by the National Development and Reform Commission. The Chinese government is involved in grain purchasing to maintain the prices and is raising minimum purchase prices year after year. There is criticism that China's agricultural support measures distort trade.

Question 33

What is the Chinese government's response to such criticism?

Answer: Since the accession to the WTO, China has earnestly fulfilled our commitments. Related border measures are consistent with China's commitment. Grain price support measures are also within the scope of our commitment, and in terms of practical condition, there have been no trade-distorting cases. Since 2004, China's prices of agricultural products have been fully liberalized by the market. In order to prevent excessive price decrease and to protect the interests of farmers, China implements the policy of the minimum grain purchase to rice and wheat, in the main producing areas. Under normal circumstances, farmers independently sell their food, following the market, and the state does not intervene with the market. When actual selling prices for rice, wheat and sugar cane in main producing areas fell considerably and even lower than the minimum purchase price, farmers could sell food, at the minimum purchase price, to the government-designated companies, avoiding reducing losses brought about by food prices fell.

Page 107 (Para 38)

The most recent notification on domestic support to the Committee on Agriculture was in October 2011 for the calendar years 2005-08. It is pointed out that China does not disclose its subsidy systems in a transparent manner, given the fact that it has notified the WTO of its subsidies only twice in 2006 and 2011, and that the substance of the notifications is insufficient. Also, China has notified subsidies by the central government level only.

Question 34

Could China please explain why the Chinese government does not disclose subsidies provided by local governments?

Answer: Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work towards incorporating local subsidies in its future notifications. Although at this stage it is still difficult to propose a timetable, China will accelerate its efforts in this regard.

Page 108 (Chart .2)

(b) Amber Box support in China

Non-product specific support significantly increased in 2008. It seems that this is probably due to increases in input subsidies.

Question 35

What is the reason for the increase of the non-product specific support in 2008 by more than five times compared to 2006?

Answer: The increase for non-product specific support in 2008 was mainly due to the considerable increase of Comprehensive Subsidy on Agricultural Inputs

(4) Manufacturing

Page 119 (Para 85)

The authorities expect the Development Fund for Electronics (IT Fund) to enhance its support to core technology development.

Question 36

Could China please explain the details of the IT Fund in terms of supporting measures? Can the foreign-invested enterprises (FIEs) also be the beneficiaries of the IT Fund?

Answer: Please refer to item 87 of our subsidy notification G/SCM/N/186/CHN for the detailed information of the IT fund.

(5) Services

Page 139 (Para 173)

For value-added telecommunication services, commercial presence is allowed in the form of joint venture, with foreign investment limited to 50%. Although most of the world's largest economies allow full market access in the value-added telecommunication services market, China still maintains 50% foreign equity limitation in this market.

Question 37

What is the rationale for maintaining this restriction? Are there any plans to ease the restriction?

Answer: According to China's accession commitments, foreign investment in value-added telecommunication services shall be no more than 50%. China progressively liberalizes the telecommunication services market in line with its WTO commitments. So far 26 foreign enterprises have applied for licenses of providing value-added telecommunication services and then submitted qualified documents. All of them have all obtained the business licenses without being denied.

At present, China has no plan to ease this restriction.

Page 142 (Para 186)

China maintains various regulatory measures regarding internet services. Internet service providers (ISP) in China are required to obtain a license, which is in itself a serious market access barrier, but what is more, such licenses are obtained from separate government authorities. Complex regulations and legal hurdles discourage market entry and create uncertainty to service suppliers.

Question 38

Is there any plan to integrate China's complex regulatory regime and establish or designate a unified authority to deal with internet regulations?

Answer: China is of the view that the license requirement to Internet services providers is not a serious market access barrier since it is necessary for regulatory authorities to effectively regulate the Internet industry in China.

The Chinese government regulates the Internet in accordance with relevant laws and regulations. Since 2000, China has enacted a series of laws and regulations concerning Internet regulation, including the Decision of the National People's Congress Standing Committee on Guarding Internet Security, Regulations on Telecommunications of the People's Republic of China, and Measures on the Administration of Internet Information Services, which stipulate the legal responsibilities of each kind of Internet service providers.

Internet regulation is a process of continuous practice, and the Chinese government is determined to further improve its Internet regulation work.

Page 165 (Para 306)

The commitments also include a mode 3 national-treatment restriction, whereby joint-venture and wholly foreign-owned travel agencies are allowed to engage in outbound tourism activities i.e. to organize tours or to book trips for Chinese citizens travelling abroad. In China's mode 3 limitations on market access restriction of the Travel Agency and Tour Operator Services (CPC 7471) under the GATS commitments, there is the provision of annual world-wide turnover exceeds US\$40 million for foreign services suppliers in the form of joint venture travel agencies and tour operators in the holiday resorts designated by the Chinese government and in the cities of Beijing, Shanghai, Guangzhou and Xi'an.

Question 39

What are the main reasons for putting this limitation on mode 3?

Answer: The said limitation has been removed.

PART II: Questions Regarding the Government Report

II. Economic and Trade Environment and Macroeconomic Policy Direction

Page 11 (Para 32)

From October 2010 to June 2011, the Chinese Government launched a special enforcement campaign nationwide aiming at cracking down on infringing IPRs and manufacturing and selling counterfeit commodities. A leading group headed by Vice Premier Wang Qishan and involving 26 government agencies was established for the campaign, and Premier Wen Jiabao convened the national video conference on IPRs protection and enforcement to give assignments. Based on the results of the campaign, in November 2011, the State Council issued the Opinions on Further Cracking Down on Infringements of Intellectual Property Rights and Manufacturing and Selling of Counterfeit Commodities, and decided to establish a permanent leading group to improve further the long-term mechanism for protection of IPRs. The leading group is headed by Vice Premier Wang Qishan and involves 29 government agencies, indicating that the government regards crackdown on infringements of intellectual property rights and manufacturing and selling of counterfeit commodities as a long-term task and will never slacken its efforts.

Question 40

We welcome that Chinese governmental organizations and relevant institutions have been making efforts to reinforce IPRs through special campaigns in China. However, so far, IPR holders have to petition for specific remedies to a range of different enforcement organizations according to the right in question. Is the Chinese government planning to establish and manage an institute which could cover both patents and trademarks?

Answer: China will continue to advance its administrative system reform, but could not provide more information on this specific issue at present.

Question 41

We appreciate the Chinese government's efforts to enhance the protection of IPRs. However, the number of cases of counterfeited goods and the damages from these infringements have been on the rise. Could China please provide its opinion on this situation?

Answer: From September 2010 to June 2011, the State Council launched a nationwide special campaign to crack down IPR infringement and manufacturing and selling of counterfeit products, in which a batch of serious criminal cases has been investigated and adjudicated.

After the special campaign, the intensity of crackdown work remains unchanged. At the same time, the construction of the long-term IPR protection mechanism has been advanced step by step. The feedbacks from IPR holder and surveys by local authorities as well as statistics from administrative enforcement authorities, public security organs, procuratorates and courts all indicate that there is a substantial decrease in the number of cases concerning manufacturing and selling of counterfeit products.

It should be noted that IPR protection and crackdown on IPR infringement and manufacturing and selling of counterfeit products is a tough and complicated task that will last for a long time. It is a task faced by both China and the rest of international community. Therefore, global efforts shall be made for IPR protection.

Page 12 (Para 33)

In 2010 and 2011, China amended a number of laws and regulations concerning IPRs, including for example the Copyright Law and Regulations on the Customs Protection of Intellectual Property Rights. The Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security released the Opinions on Certain Issues Concerning Application of Law in Handling Criminal Cases Related to the Infringement of Intellectual Property Rights, providing more explicit guidance for criminal enforcement issues and improving the connection between administrative enforcement and criminal justice.

Question 42

In the Chinese patent law amended in 2008, there is no clause that imposes criminal responsibility on a person who has infringed on patent rights. Is there any plan to amend the law and include a criminal responsibility clause?

Answer: There is no plan to amend Patent Law to include a criminal responsibility clause in respect of patent infringers.

Question 43

It is understood that the principal policies related to IPRs in China are established by the central Chinese government and implemented by local governments. Does China have any specific enforcement plans for IPR protection at the local government level?

Answer: The central government makes nationwide work arrangement based on the outstanding issues of IPR protection in China. Local governments formulate and implement corresponding work

plans according to the nationwide arrangement and their actual circumstances. At present, local industrial and commercial administrations have established leading groups for the crackdown on IPR infringement and counterfeit products to formulate local implementing schemes and key work arrangements in light of their local circumstances.

III. Trade and Investment Development and Related Policies

Page 23 (Para 91)

The Opinions also proposed to diversify approaches and means for utilization of foreign capital, and encouraged foreign investors to participate in the restructuring, transformation and reorganization of domestic enterprises by way of merger and acquisition. Reform of foreign investment regime should be deepened to sort out administrative licensing and further improve transparency. Investment promotion should be strengthened and investment facilitation be enhanced, so as to further improve the investment environment.

Question 44

Given the Chinese government's foreign investment policy, could China please provide information on the specific advantages for foreign investment companies moving to the western region as well as specific policies for these companies?

Answer: The vast western part of China is endowed with rich resources and a large laboring population, with a low labor cost and a certain industrial foundation and being even closer to the mainland China market. The infrastructure in the western part has for the past several years been greatly improved, the environmental protection has been enhanced and the comprehensive investment environment has been hugely refined.

From 1 January 2011 to 31 December 2020, foreign-funded enterprises in western regions belonging to the category encouraged by the State enjoy a 15% for enterprise income tax.

According to the Provisions on Guiding Foreign Investment, any project in line with the Catalog of Priority Industry for Foreign Investments in Central and Western Areas shall enjoy the preferential policy of the encouraged foreign-invested projects, the imported self-used equipment within the total amount of investment being exempted from customs duties within the policy scope.

Page 23 (Para 93)

The newly amended Catalogue listed a total of 473 items, among which 354 items belonged to the encouraged category, an increase of 3 items from the previous Catalogue; 80 items fell into the restricted category, a decrease of 7 items from the previous Catalogue; and 39 items were classified as the prohibited category, 1 item less than in the previous Catalogue. At the same time, the new Catalogue also cancelled equity restrictions in some fields. As a result, equity requirements for 11 items in the encouraged and restricted categories disappeared after the amendment.

Question 45

Could China explain why manufacturing of complete automobiles is removed from the "encouraged" category while LCD panels, which is higher than sixth generation, is included in the category?

Answer: For the moment, the major foreign automobile manufacturers have entered into China and China has become the largest producing and selling country of automobiles worldwide. The production capacity surplus has already showed up in the manufacturing of complete automobiles

while the manufacturing and R&D of key parts (such as engines, drive assembly and gear-box) has remained to be weak. Therefore, this movement of the manufacturing of complete automobiles from "encouraged" category to "permitted" one and the inclusion of key parts of new-energy automobiles into the "encouraged" category shall show a consistent stand of China in promoting energy saving and emission reduction and achieving a low-carbon development by properly guiding the orientation of foreign investment.

The Korean side may have misunderstood the relevant statements regarding the flat-panel display in the Industrial Catalog Guiding Foreign investment (revised in 2011). In the Industrial Catalog the flat-panel display in the "encouraged" category is referred to as flat-panel displays such as TFT-LCDPDPoled and the manufacturing of the display materials(except the TFT-LCD glass substrate of the 6th generation and below) with no restriction on the generation of LCD panel. The main reason for why China has encouraged the foreign investment to be oriented toward the TFT-LCD glass substrate of the generation higher than sixth lies in a gross lack of domestic supply of the glass substrate of the generation higher than sixth.

Page 23 (Para 95)

In the financial services sector, investment in China's interbank RMB bond market by overseas commercial banks and central banks has been steadily advanced, and detailed rules are being drafted on the opening-up of the compulsory third party auto liability insurance to foreign-funded non-life insurance companies.

Question 46

It is understood that only central banks which have a currency swap arrangement with China and RMB clearing banks can invest in China's interbank RMB bond market. Is there any plan to ease this limitation?

Answer: In August 2010, the PBC issued Notice on Issues Related to the Pilot Program of Allowing Overseas RMB Clearing Banks and Other Two Types of Institutions to Make RMB Investments in the Inter-bank Bond Market (PBC document [2010], No 217), which allowed overseas central banks or monetary authorities, the RMB business clearing banks in Hong Kong, China and Macao, China and overseas banks which participate cross border trade of RMB settlement business, to invest interbank bond market with the RMB funds raised from monetary cooperation between central banks, cross border trade and RMB business investment. In December 2011, the CSRC, PBC and the State Administration of Foreign Exchange jointly issued Measures for Pilot Domestic Securities Investment Made by RMB Qualified Foreign Institutional Investors of Fund Management Companies and Securities, allowed the use of RMB funds raised in Hong Kong, China by the subsidiaries of domestic fund management companies and securities companies in Hong Kong, China to invest in the domestic securities market. By the end of this May, 83 overseas institutions were allowed to enter into the interbank bond market, and the types of those institutions include central banks or monetary authorities, international financial institutions, settlement banks from Hong Kong, China and Macao, China, overseas participated banks, overseas insurance companies, funds management companies and RQFII securities companies.

PART III: Other Questions

Question 47

Could the Chinese government outline its e-procurement system if it is established?

Answer: China's online government procurement system has been implemented within a broader range and its systematic functions have been gradually improved after several-years exploration and practice. For the time being, China's e-operation has covered the whole process of government procurement, helping to realize an effective linkage between budget making, procurement implementation, assets management and treasury concentrated payment. To be more specific, the system has included into its coverage the procurement process of procurement budget, procurement plan, procurement procedure, contract signing, fund payment and credibility record, the database management of suppliers, reviewing experts, product information and agencies, and functions such as e-auctioning, on-line information enquiry and real-time e-monitor.

At the central level, the concentrated release of nation-wide government procurement information has been realized, and the statistical system of a nation-wide unified government procurement information and the administrative and trading system of reviewing experts, agencies, plan management and e-tender for the government procurement of central authorities have been established. At the local level, most local governments have studied and built their own online government procurement systems with the basic functions of information release, expert selection and bidding document downloading realized. Some places have set up the e-systems with more comprehensive functions covering government procurement administration and all aspects of transactions.

Question 48

With interest in the environment increasing, many countries have begun to give greater consideration to environmental issues in public procurement.

Has China recently introduced new regulations with environmental considerations (e.g. environmental performance requirements, environmental labeling, etc.) for green procurement? Does China have green procurement targets at the central and provincial levels, such as those found in the EU?

Answer: In order to achieve the goal of energy saving and environmental protection in government procurement set in the Government Procurement Law of the People's Republic of China, the Ministry of Finance established in 2004 and 2006 the nation-applicable government procurement regimes of energy-conserving products and environmentally-labeled products respectively, including the authenticated energy-conserving products and environmentally-labeled products into the government procurement list and giving them priorities or to be purchased on a mandatory basis. At this stage, the central level and provincial level have not yet set up specific goals for environmental-friendly procurement shares.

MALAYSIA

GOVERNMENT REPORT

Page 10 (Para 21)

Expanding domestic demand, particularly consumer demand, is essential to long-term steady and robust economic development in China. It is a long-term policy that the Chinese Government will adhere to. In 2010, the Chinese Government continued to implement consumption stimulus programs such as the programs for rural residents to purchase home appliances and motor vehicles and motorbikes, for people to trade in old motor vehicles and home appliances for new ones, and for use of energy-efficient products. The Chinese Government also continued to improve the consumption environment and expand consumption in new areas by measures such as upgrading rural and community commercial facilities, promoting consumption facilitation and encouraging credit

consumption. In the meantime, in view of the fact that some of the programs introduced in the course of addressing the international financial crisis were to be phased out, introduction of new policies for promotion of consumption was under study to facilitate and benefit people, with the general policy direction being green, low carbon, energy saving and environment protecting.

Questions:

1. *Could China provide further details on the stimulus program for rural residents to purchase home appliances, motor vehicles and motorbikes and for people to trade in old motor vehicles and home appliances for new ones?*

Answer: The program for rural residents to purchase the motor vehicles was carried out from 1 March 2009 to 31 December 2010, and the program for them to purchase motorbikes started on 1 February 2009 and will end on 31 January 2013, both aiming at facilitating the rural residents purchase on the minibuses, mini-trucks, light-duty trucks or motorbikes by offering subsidies.

The program for the rural residents to purchase home appliances was tried out in 2007. It had come to an end by the end of 2011 in three provinces of Shandong, Henan, and Sichuan, and the city of Qingdao. And it will expire by the end of January of 2013 in other regions. The subsidy covers 12 varieties in 9 categories, subject to adjustment as required.

The program for auto replacement was carried out from 1 June 2009 to 31 December 2011. The medium, light, and mini trucks that meet the service life requirements and some of the medium buses declared worthless for replacement in advance as stipulated, can enjoy the government subsidy. The yellow label cars declared worthless for replacement in advance are also entitled to subsidy.

The home appliances replacement was started in June 2009 in 9 provinces and cities, such as Beijing, Shandong, and Fuzhou. From 2011 on, it was carried out nationwide, and ended on 31 December 2011. The program aims at stimulating consuming demand, promoting the efficiency of energy consumption and conservation for sustainable development, and reducing environmental pollution.

2. *How does China ensure the WTO compliance of the above measure, particularly with respect to Article III of GATT?*

Answer: The above-mentioned measures aim to stimulate consumption, especially in rural areas. The subsidies incurred go directly to the consumers. Therefore, the subsidies do not belong in WTO requirements on subsidies. Still, the products covered in the program include domestic and overseas brands, which do not violate WTO rules concerned as it conforms to GATT Rule 3 on national treatment.

Page 11, Para 30, 31

Strengthening intellectual property rights (IPRs) protection has always been an important part of the work of the Chinese Government to accelerate the construction of an innovative country. China has gone through a course of IPRs protection in 30-odd years which took several hundred years in developed countries, and has achieved remarkable accomplishments. However, due to the contemporary conditions of China as a large developing country, infringements of IPRs still exist, which disturb the order of market economy and disrupt competitiveness and innovation enthusiasm of enterprises.

Since the last review, with respect to IPRs protection, the Chinese Government on the one hand has concentrated efforts on strengthening enforcement to solve prominent problems, carrying out special

campaigns of cracking down on infringements and counterfeits. On the other hand, it has advanced the construction of long-term mechanism for IPRs protection and actively fostered favourable legal environment, market environment and social environment.

Question:

1. *Could China provide some information on the effectiveness of the initiatives undertaken by the Government to strengthen intellectual property rights (IPRs) protection.*

Answer: From October 2010 to June 2011, a campaign was effectively carried out to crack down the infringements of IPRs and producing and selling of fake or inferior quality products. In the period 156,000 such cases were registered, totaling 3.43 billion yuan. 9,135 such manufacturing spots were destroyed. And 329 key areas and markets were rectified. 29,000 suspects detained were involved in 13.11 billion yuan worth of law violation. Among 2,895 procuratorial arrests involving 5,336 people, 2,176 were filed a lawsuit. The law court accepted 2,492 cases, 1,985 of which brought in verdict. Through the campaign the infringements of IPR and selling and manufacturing of fake and inferior quality products were contained, with the market order and business environment obviously improved.

Page 12 (Para 34)

The Chinese Government also carried out a series of publicity activities concerning IPRs protection, including exhibitions on the achievements of the special campaign on cracking down on infringements of intellectual property rights and manufacturing and selling of counterfeit commodities and the nationwide Intellectual Property Rights Protection Week in 2010 and 2011, in a bid to further raise the awareness of IPRs protection in the society, to mobilize the general public to support and participate in IPRs protection, and to create a sound public opinion environment and favourable social conditions for the building of an innovative country.

Question:

1. *It is noted that China is giving priority to effective IPR protection and enforcement. Could China provide some details on its innovation related policies and criteria tied to those policies (technology transfer, must the IPR be developed in China etc.) as well as China's measures related to compulsory licensing of patents?*

Answer: China's independent innovation products do not have to do with the preferential policies of government procurement. In addition, the Chinese government does not stipulate that IPRs development location and ownership be the precondition for government procurement.

Page 13 (Para 37)

For industries seriously damaging resources and environment and already having surplus production capacities, the access standards in respect of technology, production scale, ecological protection, energy conservation and consumption reduction and safety production were further raised. More strict protective exploitation policies and environment protection standards were adopted on non-renewable resources such as bauxite, tungsten, antimony, tin and rare earth, and the total exploitation and production volumes were strictly controlled, in order to protect resources and ecological environment and promote reasonable and efficient exploitation and utilization.

Question:

1. *Could China give some examples of industries that are seriously damaging resources and environment?*

Answer: According to the Notice of the Ministry of Environmental Protection on Environmental Protection Inspection of IPO Enterprises and Enterprises Applying for Refinancing issued in 2003, the Notice on Further Specifying on Environmental Protection Inspection of Heavy Pollution Industry Enterprises Applying for IPO or Refinancing issued in 2007, and the Classified Administrative Catalogue of Environmental Protection Inspection of the Public Enterprises issued in 2008, 16 industries of thermal power generation, iron and steel, cement, electrolytic aluminium, coal, metallurgy, chemical industry, petrochemical industry, construction material, brewery, pharmaceuticals, fermenting, textile, hide processing and mining are listed as heavy pollution industries. Some of the enterprises in the industries lack necessary pollution treatment facilities, and violate stipulations in discharge of wastes, which not only waste our limited resources, but also pose threat to the environment.

Take rare earth industry for example. Much of energy is wasted in the production. In order to protect the resources and environment, the Chinese government has taken more rigid protective development measures and eco-environmental protection standards. In February 2011, the Ministry of Environmental Protection issued the Rare Earth Industry Waste Discharge Criteria. It issued the Measures on Strengthening Rare Earth Mine Ecological Protection and Recovery on July 2011. In the future the Chinese government will take stricter ecological and environmental standards and put pollution discharge under sever control to reduce the ecological damage.

Page 13 (Para 38)

The sound development of agriculture and rural areas is of great significance to the long-term steady and sustainable economic and social development in China. The Chinese Government will, in accordance with the requirements on narrowing the gap between urban and rural areas and improving the balance between urban and rural development, continue the implementation of the "pay-back" policies and further strengthen the support for agriculture, rural areas and farmers so as to constantly promote agricultural modernization in the course of industrialization and urbanization, improve production and living conditions in rural areas, increase incomes of farmers, consolidate and strengthen the foundation for the development of agriculture and rural areas and create conditions for sustainable, rapid and coordinated economic and social development.

Questions:

1. *Could China provide some clarification on the pay-back policy especially on how it is implemented and its success thus far in achieving its objectives?*

Answer: With the accelerated industrialization and urbanization in China, more support and protection has been delivered to the agriculture to achieve the coordinated development of industry and agriculture, for the shift of policies from agriculture feeding industry to industrial nursing the agriculture.

The central government started the experimental reform of rural taxes and administrative charges at of 2000 in Anhui province, eliminating the rural administrative charges, capital raising, readjusting the agricultural taxation policies, and reforming the regulations on the application of the charges withdrawn and retained at the village level. In 2003, the reform went underway nationwide. And 2004 witnessed more vigorous reforms, with tax on agricultural specialty products (excluding leaf

tobacco) exempted. The agricultural tax had been gradually lowered and was finally exempted in 2006.

The central government has undertaken to reform the town and township mechanism, rural compulsory education, the county and township financial administration system, and collective forest ownership, so as to explore a long effect mechanism to prevent the rebounding of farmers' burden. At the same time, leftover problems concerning the farmers' burden should be duly resolved, by reforming national farms taxation and charges, relieving the burden of the rural residents around the Great Lake region. The government shall effectively reduce regional and administrative burden on farmers. The left over debts of the rural compulsory education should be resolved to unravel the village debt chains. Financial bonus and subsidies should go down to the village level for public welfare, to find out a new mechanism of rural public welfare. All these have contributed to relieving the farmers' burden.

Page 14 (Para 45)

Supporting the development of SMEs, especially small low-profit enterprises, is an important part of the work of the Chinese Government to promote the common development of economic entities of diverse forms of ownership. In addition to the structural tax reductions in favour of small low-profit enterprises, the Chinese Government expanded the funds for promoting the development of SMEs. It will also continue making efforts in broadening financing channels of SMEs, gradually expanding the size of issuance of collection notes, collection bonds and short-term financing bills by SMEs, and actively and steadily introducing private equity investments and other financing vehicles.

Question:

1. *Could China provide some clarification on the tax structure for small low-profit enterprises and also the funds and programs to further promote SMEs.*

Answer: As for the tax structure for small low-profit enterprises: increase the VAT and business tax threshold; the policy that small low-profit enterprises pay the business income tax by half will be in effect until the end of 2015, together with wider coverage. The pilot projects to replace business tax with VAT will be accelerated in order to eliminate repeated taxation in service field. Taxation reforms will be deepened to improve the structural tax cuts policies, and taxation systems will be probed into to support the development of small and micro businesses.

As for the funds for the small and medium size enterprises: 15 billion yuan allocated from central revenues will be in place in 5 years for the establishment of the development fund for small and medium size enterprises; 3 billion will be in place in 2012, coming from central fiscal budget, fund profits, donations, etc. The fund aims to direct the local governments, VC, and other social capital for support of SMEs at their early stage. Donations to the funds are encouraged. Enterprises that donate no more than 12% of their annual profit and individuals who donate less than 30% of their taxable income enjoy pre-tax cost deduction.

Page 15 (Para 50)

Reform of the taxation system continued to advance quickly over the past two years. On 1 December 2010, the urban construction and maintenance tax and the education surcharge began to be applied equally for Chinese and foreign-invested enterprises and individuals. The taxation system for Chinese and foreign-invested enterprises and individuals in China was thus finally unified. In 2011, the municipalities of Shanghai and Chongqing launched the pilot program of collecting real estate tax on individual properties. In 2012, new vehicle and vessel tax and tonnage tax were implemented.

Question:

1. *Could China provide some details on the urban construction and maintenance tax, the education surcharge and the new vehicle and vessel tax and tonnage tax?*

Answer: For the detailed information, please refer to Law of the Peoples Republic of China on Vehicle and Vessel Tax, Provisional Regulations of the People's Republic of China on City Maintenance and Construction, Decision of the State Council on Amending the Interim Provisions on the Collection of Educational Surcharges, and Notice of the State Council on Extending the Urban Maintenance and Construction Tax and Educational Surcharges from Chinese to Foreign-funded Enterprises and Citizens.

Page 16 (Para 58)

In the reform of medical and healthcare system, new breakthroughs have also been achieved. Nearly 1.3 billion people have subscribed to either the basic medical insurance for urban workers, or the basic medical insurance for non-working urban residents, or the new rural cooperative medical care system, covering more than 95% of all the urban and rural residents. The national system for basic drugs is largely in place, the primary-level medical and healthcare system improved, and progress has also been made in providing equal access to basic public health services.

Question:

1. *Could China provide further clarification and details on the national system of basic drugs?*

Answer: The essential drugs are those medicines which can meet the basic need of medical health with proper dosage forms and priced at reasonable levels and with their supplies safeguarded and being able to be fairly acquired by the public. The grass-roots health-care institutions sponsored by the government shall all be equipped with and prescribe essential drugs which other types of medical institutions shall also prescribe these drugs complying with relevant provisions.

According to the Guiding Opinion for Establishing and Regulating the Procurement Mechanism of Essential Drugs by the Government-run Primary Health-care Institutions (Guo Ban Fa [2010] No. 56), the procurement of essential drugs shall be centralized at the provincial level and handled online, with the procurement policy being adopted of syncretism between bidding invitation and procurement implementation, dosage-based price, double-envelop system, centralized payment and whole-process monitor. The principle of high quality being given a priority to and price being reasonable shall be adhered to and the security and effectiveness of essential drugs and also their timely supply shall be ensured.

Page 23 (Para 90)

In April 2010, the State Council issued the Opinions on Further Improving the Use of Foreign Investment. In light of the requirements to accelerate the transformation of the economic development pattern and to realize sustainable, steady yet robust economic development, the Opinions proposed to open up more areas to foreign investment and to optimize foreign investment structure. Foreign investments are encouraged to go to high-end manufacturing, high and new technology industries, modern services, new sources of energy and energy-saving and environment protecting industries. They are encouraged to move to central and western regions with increased investment and to develop in these regions labour intensive industries meeting environment protecting requirements.

Question:

1. *Could China give some examples of high-end manufacturing industries and modern services?*

Answer: For instance, space craft manufacturing and internet shopping.

Page 21 (Para 84)

With respect to investment, China is changing from focusing primarily on absorbing foreign investment to attaching importance to both inward and outbound investment. China has long been one of the major destinations for foreign direct investment. In comparison, China's outbound investment is still at an inception stage. However, it has also registered rapid growth. At the end of 2009, China's cumulative outward direct investment accounted for 1.3% of the global total. At the end of 2010 it went up to 1.6%, showing a momentum of steady growth. "Going global" of Chinese enterprises is the natural result of the development of economic globalization. It satisfies the enterprises' own needs to further develop, and reflects also the requirement of further reform and opening up of the Chinese economy.

Question:

1. *Could China share whether there are any incentives/initiatives provided under the Go Out Policy to encourage outbound investment?*

Answer: In order to deepen the reform of the management system for foreign investment, boost the facilitation of outbound investment and encourage enterprises to go out, the Ministry of Commerce issued the Management Methods of Investment Overseas in May 2009; in February 2011, the State Development and Reform Commission issued the Notice on Enforcement of Authority Approval of Outbound Investment Programs.

SECRETARIAT REPORT

- II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES**
- (2) DEVELOPMENT AND ADMINISTRATION OF TRADE POLICIES**
- (3) TRADE AGREEMENTS AND ARRANGEMENTS**

Page 17, Para 35

China is pursuing negotiations or undertaking joint-studies on possible RTAs/FTAs with: Australia; Norway; Switzerland; Iceland; the Gulf Co-operation Council (GCC); India; the Republic of Korea; SACU (individually); and the Republic of Korea and Japan (for a future tripartite agreement).

Question:

1. *Could China provide further explanation on the tripartite agreement with Republic of Korea and Japan, particularly on its possible scope and coverage?*

Answer: According to the conclusions and recommendations of the Joint Study Report, China, Japan and Korea FTA negotiations will include trade in goods, trade in services, investment and other issues.

Page 16 (Para 32)

China has concluded two new FTAs since 2009, i.e. the free-trade agreement with Costa Rica (signed April 2010, entered into force August 2011), and the Cross-Straits Economic Cooperation Framework Agreement (ECFA) with Chinese Taipei (signed June 2010, entered into force September 2010). The two agreements were the object of early announcements to the WTO.

Question:

1. *Does China have any plans to expand the connectivity of ECFA to other existing regional trade arrangements?*

Answer: On 29 June 2010, ARATS and SEF signed the Cross-strait Economic Cooperation Framework Agreement (ECFA), which marks the cross-strait economic relations entered a new historical stage of institutionalized cooperation. Both sides are engaging to promote the ECFA follow-up consultations. The two sides have basically agreed on cross-strait investment protection and promotion agreement, which is expected to be signed during the eighth round of talks. Negotiations on cross-strait trade in services are in full swing and progress has been made. Negotiations on trade in goods has been put on the agenda and process will be accelerated. The two sides will promote the signing of the ECFA follow-up agreements by adhering to the principle of first comes, first signed and implemented.

(4) FOREIGN INVESTMENT REGIME

Page 19, Para 41

Since 6 April 2010, the Government has encouraged foreign-invested enterprises (FIEs) in joint ventures with Chinese enterprises or research institutes to participate in government-funded projects under the "national technology development programme" and the "innovation capacity-building programme".³ The national technology development programme and the innovation capacity-building programme are subsidy programmes managed by NDRC with the aim of promoting innovation. The programmes are open to enterprises and research institutes. Upon approval of projects put forward by enterprises, NDRC grants subsidies that partially cover the cost of innovation activities. Since 31 August 2010, some manufacturing subsectors (e.g. textiles and apparel, toys, and domestic appliances) and banking services in the central and western regions have been classified as "encouraged", in accordance with the State Council's Guiding Opinions on Central and Western Regions' Receipt of Industrial Transfers.⁴ This reclassification will be reflected in the next revision of the Catalogue of Advantaged Industries for Foreign Investment in Central-Western China.

Questions:

1. *Could China provide an indication as to when China will be announcing the Catalogue of Advantaged Industries for Foreign Investment in Central-Western China.*

Answer: In light of Several Opinions of the State Council on Further Doing a Good Job in the Utilization of Foreign Investment, the Ministry of Commerce and National Development and Reform Commission have jointly launched the amendment to the Catalogue for the Guidance of Foreign Investment Industries. The draft for new version catalogue has been basically completed with opinions solicited from the public. About 300 public opinions have been submitted in response to the solicitation notice published in the official website of the Legislative Affair Office of the State

³ Certain Opinions on Further Improving the Use of Foreign Capital (State Council's Circular 2010/9).

⁴ State Council Circular 2010/28, 31 August 2010.

Council on 1 April 2011. In the next stage, the new version catalogue will be amended based on the public opinions and promulgated upon approval by the State Council.

2. *What are China's plan in promoting investment in the Western region?*

Answer: In August 2010, the State Council issued certain guiding opinions on the central and western regions receipt of industrial transfers. The opinions point out that efforts should be made to make use of the industrial basis and advantages in labour force and resources in mid-west China to receive, transform and develop labour-intensive industries, to guide the orderly relocation and scientific continuation of the industries, and to grant necessary policy supports.

3. *Could China provide more information on the development of strategic industries in the Western region (which China will be formulating), and areas where Malaysia can cooperate?*

Answer: At present, China is engaged in making the Catalogs of Advantageous Industries of Foreign Capital Investment in the Middle and Western Areas of China. According to the Provisions on Guiding the Orientation of Foreign Investment, any foreign capital investment project covered in the Catalog will enjoy the favorable treatment in the "encouraged category. Foreign capital investment enterprises set up in the Western China will have their business income taxes reduced to 15% from 1 January 2011 to 31 December 2020.

Malaysian investors can find business opportunities in the middle and western areas of China, following the two Catalogs.

III. TRADE POLICIES AND PRACTICES BY MEASURE

Page 25, para 10

China's preshipment inspection (PSI) requirements have remained unchanged since 2010. The requirements, which are defined in the revised Implementing Regulations of the Law on Import and Export Commodity Inspection, are intended to: protect public health; improve the phytosanitary situation; protect the environment; and prevent counterfeit goods from entering the country. PSI requirements have not been notified to the WTO.

Question:

1. *What are the latest requirements for China's PSI?
When does China propose to notify the requirements to the WTO Secretariat?*

Answer: Currently, China is applying PSI only to imported solid waste and alike that can be used as raw materials. For details please refer to Chapter four of the Measures for the Inspection, Quarantine, Supervision and Administration of Imported Solid Waste That Can Be Used as Raw Materials (Decree No. 119 of the General Administration of Quality Supervision, Inspection and Quarantine).

When does China propose to notify the requirements to the WTO Secretariat?

Answer: China already reported its Measures for the Inspection, Quarantine, Supervision and Administration of Imported Solid Waste That Can Be Used as Raw Materials to WTO/TBT Commission on 19 June 2009, with G/TBR/N/CHN/649 as the report number.

Page 34, Para 42

In 2010, 87 tariff lines (at the HS 8-digit level) were subject to non-automatic import licensing (down from 95 in 2009); the lines cover ozone-depleting substances (with a view to meeting requirements of the Montreal Protocol on Substances that Deplete the Ozone Layer), and specific old mechanical and electronic products (aimed at protecting public interests, the environment, and consumer health and safety). Second-hand/used mechanical and electrical products (HS 84194010 and 84194020) were removed from the list on 1 January 2011. Applicants must apply for an import permit prior to applying for an import licence. The criteria for approving the import permit are contained in Measures on Administration of Import License for Goods (MOFCOM Decree No. 27 of 2004, G/LIC/N/1/CHN/5), Administrative Measures for the Import of Key Used Electromechanical Products (MOFCOM, GAC and AQSIQ Decree No. 5 of 2008, G/LIC/N/1/CHN/6), and Working Rules on Issuance of Import License (MOFCOM Circular Shang Pei Fa 360/2007). Import permits are issued by the Ministry of Environmental Protection or MOFCOM, depending on the product. Once the permit is obtained, a licence will be granted automatically by MOFCOM to the importer. The licence is valid throughout the calendar year, and may be extended once, for a maximum of three months.

Questions:

1. *Further to the elimination of non-automatic import licensing on several products in 2010, does China have any plans to further reduce the use of non-automatic licensing restrictions?*

Answer: China is still in coordination with relevant agencies to provide response to this question.

2. *What steps are being taken by the Government to ensure that China's import licensing requirements are simple and transparent in line with the commitments under the Import Licensing Agreement of WTO?*

Answer: China's import licensing procedure is regulated in accordance with the Import Licensing Agreement of WTO, so it is consistent with the certain requirements.

**1. MEASURES DIRECTLY AFFECTING IMPORTS
(VI) CONTINGENCY TRADE MEASURES**

Page 36 (Para 49)/ Page 44 (Para74)

When the anti-dumping/ Safeguard investigation involves agricultural products, the injury investigation is conducted jointly by MOFCOM and the Ministry of Agriculture.

Question:

1 *Could China clarify the role and function of the Ministry of Agriculture in conducting the investigation? Is there any authority/power given to Ministry of Agriculture?*

Answer: According to the *PRC Anti-dumping Regulation*, Ministry of Commerce is responsible for the investigation and confirmation of damages. As for domestic damages caused by anti-dumping cases concerning agricultural products, a joint investigation will be co-conducted by the Ministry of Commerce and the Ministry of Agriculture.

Page 36 (Para 52)

China's anti-dumping system includes a range of mechanisms to provide interested parties access to information, and rights of participation.

Question:

1. *Could China clarify if all public information, including the official finding reports published by MOFCOM, are available in English and the other languages in which they are made available?*

Answer: Chinese is the working language for investigating antidumping in China. All the official documents issued by the Ministry of Commerce, including the findings, are in Chinese, without editions of other languages.

Page 37 (Para 54)

During the investigation, the exporter may offer price undertakings to MOFCOM and MOFCOM may suggest price undertakings to an exporter.

Question:

1. *Has MOFCOM implemented any price undertakings in any investigation?*

Answer: In quite a few antidumping cases, the Ministry of Commerce accepted the price undertakings application from stakeholders, without imposing antidumping duty. For example, the antidumping case involving the cold roll stainless steel plate made in Japan and South Korea, the antidumping cases of PVC imported from USA, South Korea, Japan, Russia and Chinese Taipei, chloroform imported from EU, South Korea, USA and India, and hydrazine hydrate from France, furan powder from EU and USA, and acetone from Chinese Taipei.

2. *If so, could MOFCOM explain how effective are these price undertakings in narrowing the effect of dumping to the domestic industry?*

Answer: According to the price undertakings agreement, the interested parties undertake to import to China at a price not lower than the negotiated price so as to prevent the underpriced import from impairing the domestic industries

Page 38 (Para 55)

MOFCOM will engage in sampling when the number of exporters, producers, types of products or transactions is so large that it would be unduly burdensome and prevent timely completion of the investigation. In the case of numerous producers, the authorities will select samples for investigation and a reserve list from among the exporters and producers that have registered to participate in the investigation.

Question:

1. *Could China explain what are the criteria adopted in selecting registered exporters and producers for participation in the investigation for sampling?*

Answer: Please refer to <http://gpj.mofcom.gov.cn/>

According to the Interim Regulations of AD investigation Sampling, China's investigating authority normally adopt two methods to sample. One is to select several enterprises with largest export volume, and the other to adopt statistically feasible methodology.

Page 44 (Para 77)

Final safeguard measures may not remain in place for more than four years, except under special circumstances.

Question:

1. *Could China explain what is the extension period for application of a safeguard measure under special circumstances? How many extension could be considered under this provision?*

Answer: Article 26 of the PRC Safeguard Measures Regulation stipulates that the safeguard measures stay in effect for no more than four years. However, they may be extended if following requirements are met:

1. the safeguard measures remain necessary in preventing or remedying severe damage;
2. evidence shows that domestic industries concerned are under readjustment;
3. obligations of public notification and negotiation have been fulfilled;
4. The extended measures are no stricter than beforehand.

In spite of these, any safeguard measure should stay in effect within ten years, including the extension.

Page 44 (Para 78)

There is no appeal against decisions taken by the authorities.

Question:

1. *Could China explain how it deals with disputes raised by other affected countries on decisions taken by the Authority if there is no provision for appeal?*

Answer: Since the last review, China has not launched safeguard measure investigation. And in practice, no interested parties challenge the safeguard measures. According to Article 32 of the PRC Safeguard Measures Regulation, the Ministry of Commerce takes charge of undertaking negotiations, notifications and dispute settlement thus aroused.

Page 46, Para 85

There are four levels of standards in China: national, trade, local and enterprise standards. Under the Regulations for the Implementation of the Standardization Law, in formulating national standards, the competent standardization administration department under the State Council is responsible for making plans, organizing drafting, examining and approving, numbering and issuing national standards. If there are no national standards for technical requirements that need to be standardized for certain trades throughout the country, trade standards may be formulated. Trade standards become null and void automatically after the corresponding national standards enter into effect. In the absence of national standards or trade standards, local standards may be formulated on safety and sanitation requirements for industrial goods that need to be unified in the provinces, autonomous regions, and municipalities directly under the Central Government. Local standards become null and void automatically after the corresponding national standards or trade standards enter into effect. In the absence of national standards, trade standards or local standards for certain products, the

enterprises producing such products may formulate their own standards as the basis for organizing production. Where there are already national, trade or local standards, enterprises are encouraged to formulate and apply enterprise standards that are stricter than the corresponding standards.

Questions:

1. *Could China clarify what is defined as enterprise standards and the role of enterprise standards in harmonising duplication of existing standards?*

Answer: Enterprise standard is the standard that harmonizes technical requirements, management requirements and working requirements within enterprises. When no national or local standard exists, enterprise standard shall be formulated and followed in production. When national, trade or local standards already exist, enterprises are encouraged to formulate and apply higher enterprise standards.

Page 59 (Para 142 143)

(iv) Tax rebates on exports

142. Excise tax is fully rebated on exports.

143. VAT may be rebated on exports, although the rebate rates are, by and large, lower than the VAT rates actually paid. The difference between the two rates constitutes a levy on exports, which may in turn constitute assistance to downstream processing of the products affected, and could affect China's terms of trade

Question:

1. *Could China elaborate how its VAT rebates on exports are consistent with the WTO Agreement on Subsidies and Countervailing Measures?*

Answer: VAT rebates on exports are internationally practiced. China's general rebate level is actually lower than the export taxation, as China cannot afford higher rebates financially. We hold that the idea that the difference between the rebates and the taxation encourages the downstream processing of products concerned is one-sided and lacks strong theoretical and practical support. In the meantime, China's VAT rebates on exports do not violate the stipulations of ASCM, WTO.

(3) MEASURES AFFECTING PRODUCTION AND TRADE

(vii) Intellectual Property Rights

Page 95, para 321

During the last TPR of China, a number of its trading partners expressed concerns about the lack of effective enforcement of intellectual property rights, particularly at the regional and local levels. China was urged to step up its efforts in enforcing IPR protection, including greater and effective customs control and criminal prosecution.

Questions:

1. *How does China ensure the protection of IPR at its regional and local levels?*

Answer: The so-called comment on China's poor enforcement of IPRs protection lacks sound evidence.

In November 2011, the State Council issued the Measures on Further Fighting against Infringement of IPRs and the Production and Sale of Counterfeit and Shoddy Commodities, stipulating that executive enforcement in regions with serious problems concerned should be strengthened within required time limit for concrete effect. Administrative supervision and accountability should also be upgraded. Local authorities will be held responsible, due to improper execution, systematic infringement of IPRs and producing and selling of fake and inferior commodities.

Each year, the member departments of the National Leading Panel against the Infringement of IPRs and Producing and Selling of Fake and Inferior Products undertake to check on the local governments to guarantee the smooth implementation of the tasks assigned by the central government.

2. *Could China provide examples of laws, regulations and/or guidelines that have been issued and enforced to coordinate the enforcement between the agencies?*

Answer: The Chinese government encourages coordinated law enforcement. At present, many effective trial measures have been carried out by the executive law enforcement departments, public security departments, and procuratorial organs to crack down violation of IPRs and producing and selling of fake and inferior products. Such regulations fall into two main categories: one covering specifying and promoting interdepartmental cooperation, such as the regulation on the cooperation between the customs and public security departments, the other promoting and strengthening the linking up of executive enforcement to the penal judicature, such as the measures co-issued by the Supreme People's Procuratorate, Ministry of Public Security and so on, are aimed at strengthening the linking up of executive enforcement and penal judicature.

IV. TRADE POLICIES BY SECTOR **(5) SERVICES**

Page 144 (Para 195)

1. *The activities of internet content providers are regulated by different regulations issued by specialized authorities depending on the nature of the services provided.*

Question:

1. *Could China provide some clarification on the activities of internet contents providers that are regulated and the regulation and regulating authority for each of those activities?*

Answer: Internet publications are regulated by GAPP. The Interim Provisions on the Administration of Internet Publication (No.17 by GAPP and MII) have clarified the definition of internet publication, stipulated the approval prerequisites for internet publication business, and the documents and data required for submission, rights and obligations of internet publishers, as well as their legal liabilities for any unlawful acts.

The production, edition, integration and supply to the public of audio and video programs through internet, as well as uploading services, are regulated by the competent department of broadcasting, film and TV under the State Council, covering such aspects as the industrial development of internet audio and video service, the regulation, content provisions and security supervision.

MEXICO

1. *Could China give an update of the current state of implementation of its Authorized Economic Operator Program, as well as the relevant publications/websites indicating the applicable requirements for applicants?*

Answer: It would be helpful if Mexico can further explain the meaning of Authorized Economic Operator Program. We cannot understand what it refer to.

2. *Is China making any additional effort to provide us with figures on the magnitude of support provided and also with information on subsidies and other government assistance provided at a provincial level?*

Answer: Use of subsidies and other government assistance is an important feature in trade policies of many WTO Members. Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work towards incorporating local subsidies in its future notifications. As to the 2009-2011 notification, it will not be too difficult if covering only central programs. However if local programs are to be incorporated, it will be a different case. In any case, China will accelerate its efforts for a new notification.

I. ENTORNO ECONÓMICO

2) POLÍTICAS ESTRUCTURALES

3. *What concrete efforts will China take during the next years in order to accelerate its transition into a market economy?*

Answer: The 16th National Congress of CPC in 2002 announced that China had put in place an initial system of socialist market economy. In 2003, the Third Plenary Session of the 16th CPC Central Committee issued the Decision of the Central Committee of the Communist Party on Issues Concerning the Perfection of the Socialist Market Economy System, setting up goals and tasks to perfect the socialist market economy system. Since then, China has built up the framework of the socialist market economy system and entered the new stage of perfecting the system.

II. RÉGIMEN DE POLÍTICA COMERCIAL: MARCO Y OBJETIVOS

1) MARCO INSTITUCIONAL Y JURÍDICO

i) Transparencia

b) Consultas con el sector privado, con inclusión de los procedimientos de aviso y formulación de observaciones

En el **párrafo 11** se infiere que de conformidad con la Legislación relacionada con la transparencia y los procedimientos para la formulación de reglamentos, cuando se elaboran proyectos de reglamentos administrativos o de normas de los ministerios del Consejo de Estado y de los gobiernos locales, deben recabarse numerosas opiniones de las autoridades competentes, de otras organizaciones y de los ciudadanos, particularmente con respecto a las principales cuestiones abordadas en los reglamentos. (...) Si el reglamento o las normas están "directamente relacionados con los intereses inmediatos de los ciudadanos, las personas jurídicas u otras organizaciones", (...) la autoridad redactora deber publicar esos reglamentos o normas para que el público pueda formular observaciones sobre ellos; también puede celebrar audiencias públicas.

4. *México desea saber si está previsto invitar a la celebración de esas audiencias públicas a los inversionistas extranjeros afectados y en su caso que mecanismos se utilizan para transmitir a estos inversionistas la fecha, la hora, el lugar y los temas propuestos para las audiencias públicas.*

Answer: According to Article 15 of Regulations on Procedures of the Rules Formulating, the drafting units shall hold the hearings openly and publicize their time, location and content 30 days earlier. If foreign investors consider that their interests are related to the administrative regulations, they can apply to the organizers of the hearings to participate, following the procedures required by the notice of the hearings.

En el **párrafo 12** las autoridades chinas sealan que se han celebrado "audiencias de expertos" sobre todas las leyes y reglamentos relacionados con el comercio en proceso de redacción.

5. *México está interesado en conocer la participación de los inversionistas extranjeros afectados en las consultas, si el público puede consultar las actas de las audiencias y cuáles son las medidas adoptadas recientemente para mejorar la transparencia respecto a los resultados de estas audiencias.*

Answer: Regulations for the Disclosure of Government Information of the PRC does not list transcripts of hearings as information which administrative organs should release on their own initiative. According to Article 13 of the Regulations, citizens, legal persons and other organizations can go to authorities concerned for government information concerned. Foreign investors can follow the procedures set by the Regulations and apply to authorities concerned for the transcripts of hearings.

- 4) **RÉGIMEN DE LA INVERSIÓN EXTRANJERA**
- i) **Evolución reciente de la política de inversión extranjera directa**
- ii) **Marco normativo**

En el **párrafo 44** la Secretaría menciona que las autoridades chinas señalaron que en ciertos sectores los inversores extranjeros también pueden tener participación en las empresas controladas por el Estado. México desea saber:

- 6. *Cuáles son los sectores en los que los inversionistas extranjeros pueden participar?*
- 7. *Cuáles son los requisitos para participar?*
- 8. *Existen límites máximos a la participación extranjera? Si la respuesta es afirmativa, cuáles son esos límites de participación?*

Answer: For questions 6-8, Chinese laws equally treat foreign-invested enterprises of all ownerships and there is no special provision on foreign investment in state-owned enterprises (SOEs). SASAC examines and reviews issues concerning foreign investment introduction involved by restructuring and reorganization of SOEs mainly in accordance with the Catalogue for the Guidance of Foreign Investment Industries promulgated by the NDRC and MOFCOM. The Catalogue formulates equity share restrictions on foreign investors by industry rather than enterprises type. Foreign investors may make investments by referring to the above provisions.

El **párrafo 45** refiere que la actual Guía para las industrias con inversión extranjera, que entró en vigor el 30 de enero de 2012, recoge en una lista las ramas de producción que clasifican los proyectos de inversión extranjera en cuatro categorías.

- 9. *Podrían las autoridades chinas informar si en el listado de proyectos alentados se incluyen reas sectoriales orientadas a la prestación de servicios medio ambientales?*

Answer: According to the Provisions on Guiding the Orientation of Foreign Investment, foreign investment projects under one of following circumstances are listed as encouraged foreign investment projects: projects for new agricultural technology and comprehensive agricultural development and for industrial construction in energy, transportation and key raw materials; projects of new high technology, advanced applicable technology which can improve performance of products, save energy and raw materials, and increase tech-economic efficiency of enterprise or produce new equipments or new materials that meet the demands of the market but the domestic production capacity is deficient; projects that meet the demands of the market, and can promote the quality of products, enter into emerging markets or improve the international competitiveness of the products; projects adopting new technology and equipments for conservation of energy and raw materials, comprehensive utilization of resources and renewable resources, and for prevention of environment pollution; and projects that can make full use of the man power and resource advantages in the mid-west regions and are in accordance with the states industrial policies.

10. *Podrían proporcionar el sitio web oficial donde pueda ser consultado el listado en idioma inglés?*

Answer: To this day, no official site in English is available.

El **párrafo 47** del informe de la Secretaría señala que en general, los proyectos de la categoría "alentada" son los que utilizan mejor tecnología y son menos contaminantes, mientras que los proyectos "restringidos" y "prohibidos" son los que utilizan tecnología obsoleta, sobre explotan recursos naturales escasos y tienden a dañar el medio ambiente. Los límites al capital extranjero suelen ser complejos, varían de una rama de producción a otra y no están necesariamente relacionados con la categoría.

11. *Agradeceremos que China, proporcione detalles sobre el criterio utilizado para establecer los límites al capital extranjero en los sectores de servicios y aclare cuales son las medidas adoptadas recientemente para mejorar la clasificación de los proyectos de inversión extranjera.*

Answer: China always attaches great importance to development of services industry and takes a positive position on liberalization of trade in services.

On 24 December 2011, the Chinese government issued a revised Catalogue for Guidance of Foreign Investment, which has been implemented since 30 January 2012. This revised Catalogue for Guidance of Foreign Investment aims to enlarge the opening-up in services sectors, and encourages foreign enterprises to invest in the modern services industry. For example, it classifies the foreign-invested medical institutions and financial leasing companies into permitted category instead of restricted category.

III. POLITICAS Y PRACTICAS COMERCIALES, POR MEDIDAS

vi) Medidas comerciales especiales

12. *Podría proporcionar una liga donde la legislación vigente sobre Antidumping, Salvaguardias y medidas compensatorias pueda ser consultada en inglés?*

Answer: Please refer to <http://gpj.mofcom.gov.cn/static/bi/bi.html/1>.

13. *Cuál es el porcentaje de representatividad mínimo necesario para que se dé inicio a una investigación?*

Answer: About Anti-Dumping and Anti-Subsidy investigations, the application shall be considered to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25% of total production of the like product produced by the domestic industry.

En el párrafo 69 señala que de conformidad con los artículos 35 a 37 de las Normas provisionales del MOFCOM sobre la iniciación, antes de decidir iniciar una investigación el MOFCOM invitar al Gobierno a celebrar consultas para aclarar el asunto y buscar una solución mutuamente aceptable.

14. *Podría proporcionar ejemplos de soluciones acordadas?*

Answer: Currently, China has launched four anti-subsidy investigations against other countries. Before the four investigations were put on file, Chinese investigators invited governments of countries concerned to negotiate.

vii) Normas y otras prescripciones técnicas

a) Normas y reglamentos técnicos

15. *Podría proporcionar una liga donde la legislación vigente pueda ser consultada en inglés?*

Answer: The English version of basic information for national standards can be found at the SAC website.

En el párrafo 85 señala que existen cuatro niveles de normas en China (nacional, comercial, local y empresarial)

16. *Los 4 niveles de norma son notificados a la OMC?*

Answer: Currently, compulsory national standards are notified to the WTO. SAC is not involved in the submitting procedure of trade, and local standards, thus no data is available.

17. *Existe una base de datos en inglés donde puedan consultarse dichas normas?*

Answer: The English version of basic information for national standards can be found at the SAC website.

Párrafo 96. Reconocimiento de laboratorios

18. *Cuenta China con reconocimiento de laboratorios fuera de su territorio?*

19. *Qué se necesita para solicitar dicho reconocimiento?*

Answer: At present, China cannot designate overseas labs as 3C-designated labs by following Chinese laws and regulations, taking into account of difficulties in tracing responsibilities and practices in EU. EU labs have been widely participating in 3C certification via multilateral/bilateral channels.

20. *China reconoce como equivalentes los reglamentos técnicos de otros pases? En caso afirmativo, favor de dar ejemplos.*

Answer: At the multilateral level, CNCA, on behalf of China, joins a multilateral recognition systems and commits to recognize testing results that are under the mutual reorganization scheme. For example, China is a formal member of IECEE CB and participates in the recognition plan over 12 categories (which cover all electric and electronic products under 3C scheme), and China is among the members that joined the most recognition plans in IECEE CB. All IECEE CB testing reports issued by foreign labs will be recognized under 3C scheme.

At the bilateral level, the Regulations on Certification and Accreditation of PRC stipulates that international mutual recognitions shall be conducted under the framework signed between CNCA or authorized organs of the State Council and foreign counterparts. Following the above, CNCA signed MOUs with 11 foreign counterparts, and China signed Mutual Recognition Agreement in Testing and Certification with New Zealand. Foreign testing/certification bodies can cooperate with domestic 3C certifying bodies in line with agreements/MOUs signed to accept and recognized each other's results.

c) Medidas Sanitarias y Fitosanitarias

En el párrafo 102 menciona China que en el Comité de Medidas Sanitarias y Fitosanitarias de la OMC, otros Miembros han manifestado preocupaciones comerciales respecto de medidas adoptadas por China. En relación con la preocupación específica manifestada por México sobre la regulación sanitaria GB 2757 XXXX que regula los niveles de Metanol de diversas bebidas alcohólicas entre ellas del Tequila mexicano indicar:

21. *Cuándo se adoptó y a través de qué instrumento la legislación sanitaria de referencia?*
22. *Cuál es el nivel de Metanol aplicable al Tequila que impone dicha regulación?*
23. *Cuáles son los argumentos científicos que se tomaron como base para limitar el nivel de Metanol en las bebidas alcohólicas, específicamente del Tequila?*
24. *Se ha realizado un análisis de riesgo que apoye la imposición del límite de niveles de Metanol del Tequila en dicha regulación sanitaria?*
25. *Prevé dicha regulación otorgar un periodo de transición para aplicar a los Miembros su regulación sanitaria, y en su caso cuál es el periodo?*

Answer: (21-25) The Ministry of Health has been communicating with Mexican Embassy in China about the Hygiene Standard for Distilled Spirits. The Ministry of Health reiterated many times the reason why we set up methanol limit and Mexico has expressed its understanding. Mexican Embassy in China has organized enterprises to apply for the importation of food without national food safety standard with National Center for Health Inspection and Supervision. It will allow the importation of the product after the examination of the application. We are preparing the notification of The Hygiene Standard for Distilled Spirits and Integrated Alcoholic Beverages to the WTO. There will be 6-month transitional period.

2) MEDIDAS QUE AFECTAN DIRECTAMENTE A LAS EXPORTACIONES

ii) Subvenciones a la exportación

26. *Does this statement cover any type of financial contribution?*

Answer: Please specify what the statement means.

27. *How do you make sure that provincial authorities are not granting prohibited export subsidies?*

Answer: The subsidy policies made by local governments should be consistent with the policies made by central government. Chinese government is studying the issue of subsidy notification of local governments, and China will accelerate its efforts for it.

iii) Impuestos a la exportación

28. *In light of the Appellate Body findings that export tariffs are prohibited and not justifiable under any exception, will China modify its policies?*

Answer: China will evaluate WTO's decision on raw material seriously, and continue to administrate resource products in accordance with WTO rules, to realize sustainable development.

vi) Prohibiciones, restricciones y régimen de licencias de exportación

29. *In light of the AB findings in the raw materials case, will China modify its current practices?*

Answer: China has expressed its intention to implement the WTO ruling in DBS meeting. China will evaluate WTO's decision on raw material seriously, and continue to administrate resource products in accordance with WTO rules, to realize sustainable development.

ii) Subvenciones y otras ayudas gubernamentales

30. *Is China making any additional effort to provide us with more information on subsidies and other government assistance?*

Answer: Use of subsidies and other government assistance is an important feature in trade policies of many WTO Members. Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work towards incorporating local subsidies in its future notifications. As to the 2009-2011 notification, it will not be too difficult if covering only central programs. However, if local programs are to be incorporated, it will be a different case. In any case, China will accelerate its efforts for a new notification.

iv) Controles de precios

31. *Se ha estimado si el mecanismo de control de precios descrito en el párrafo 214 distorsiona la eficiencia de los mercados mencionados?*

Answer: After years of market-oriented reform of price, the prices of more than 95% of commodities and services are now market-regulated in China, which means that the basic role of market mechanism in the allocation of resources has been brought into full play. The government only guides or fixes the prices for the following commodities and services: a very small number of commodities that have a vital bearing on the development of the national economy and the well-being of the people; a small number of commodities for which resources are scarce; commodities placed under natural monopoly; important public utilities; and important public welfare services. Basically, government regulation of prices reflects domestic production cost and market supply and demand. This mechanism is similar to that of other market economies, combining the requirements of market economy and the efficiency of the market.

v) Empresas estatales, empresas privadas y gestión empresarial

El **párrafo 222** habla de la reforma de las empresas estatales y menciona que algunas empresas estatales se constituyeron en sociedades o pasaron a cotizarse en bolsa.

32. *México desea saber cuáles son los requisitos para que la inversión privada, incluida la extranjera, pueda participar en el capital de esas empresas, toda vez que La SASAC se propone diversificar la estructura de propiedad de las empresas estatales que no cumplan los requisitos necesarios para la cotización en bolsa.*

Answer: The investment access of FIEs and foreign investors shall comply with the Guideline Catalogue of Foreign Investment Industries and other related provisions. The Some Opinions of the State Council on Encouraging and Guiding the Sound Development of Private Investments (Guo Fa [2010] No. 13) promulgated in May 2010 is applicable to private investments. The Rules on the Definition and Statistics Scope of Private Fixed-Assets Investments promulgated by the National Bureau of Statistics in January 2012 stipulates that private fixed-asset investments refer to investments in construction or purchase of fixed assets by collectively, privately or individually-owned domestic enterprises and public institutions as well as their holding enterprises and units within the territory of China.

En el párrafo 225 señala que la NDRC, en colaboración con la SASAC, presta su apoyo a las empresas líderes nacionales.

33. *Se ha estimado el efecto que tiene en los precios de los bienes o servicios apoyar a firmas dominantes?*

Answer: The support for the development of SOEs is substantiated with industrial policies which guide them to participate actively in the market competition and raise their competitiveness. The support for SOEs will not bring harm to the market-regulated price mechanism. Commodity prices are formed through full competition in the market.

vi) Política de competencia y protección de los consumidores **Política de competencia**

34. *Se ha considerado reducir la tasa promedio arancelaria NMF para incentivar la entrada de productos importados que generen mayor competencia en el mercado interno?*

Answer: There is no such plan now.

35. *Cuáles son los mecanismos de cooperación transfronterizos tienen las agencias que vigilan el proceso de competencia en China?*

Answer: Since the implementation of the Anti-Monopoly Law, China has started close exchanges and cooperation with anti-monopoly law enforcement agencies of other nations and regions in the form of exchange visits, holding seminars jointly, participation in relevant international meetings and signing MOUs. Currently, National Development and Reform Committee, Ministry of Commerce and General Agency of Administration for Industry and Commerce have signed anti-monopoly MOUs with the United States Department of Justice and Federal Trade Commission; National Development and Reform Commission has signed anti-monopoly MOUs with the Office of Fair Trading of UK and South Korea Fair Trade Commission. Negotiations are under way with anti-monopoly law enforcement agencies of EU, Japan and other nations and regions to discuss MOUs.

36. *Qué limitantes tiene la legislación en materia de competencia en China para sancionar cárteles internacionales que afecten sus mercados?*

Answer: Please refer to <http://fldj.mofcom.gov.cn/>

37. *Cómo se determina en la práctica que una empresa tiene posición dominante? Qué tipo de evidencia puede ser utilizada para demostrarlo?*

Answer: Refer to Article 18 and 19 of Anti-monopoly Law of the People's Republic of China.

38. *Tienen las autoridades de competencia atribuciones para implementar visitas de verificación sorpresivas?*

Answer: For Article 39 of Anti-monopoly Law of the People's Republic of China. When conducting investigations, the antimonopoly execution authorities can take the following measures, (i) enter the premise or other related places of the undertakings being investigated; (ii) request the undertaking concerned, interested parties and other relevant organizations or persons being investigated to explain related circumstances; (iii) exam, copy related documents and materials of the undertakings, interested parties and other relevant organizations or persons being investigated, such as certificates, agreements, accounting books, letters and telegraphs of business, electronic data and so on; (iv) seal up or detain related proofs; (v) inquire about the bank account information of the undertakings concerned. Taking the measures stipulated above, shall be reported in written form to the chief person in charge of the antimonopoly execution authorities, and be approved.

39. *Se ha considerado introducir sanciones más severas (incluyendo sanciones penales) como medida para disuadir acuerdos horizontales anticompetitivos (fijar precios, limitar la producción, coordinar posturas o abstenerse de participar en licitaciones públicas, y segmentar mercados)?*

Answer: In case there exists monopoly agreement and is implemented by the undertakings in violation of this law, the antimonopoly execution authorities shall order the undertakings to cease such act, the illegal gains shall be confiscated, and a fine between 1% and 10% of the turnover in the preceding year shall be imposed; If the monopoly agreement is not implemented, a fine below 500,000 Yuan shall be imposed.

The antimonopoly execution authorities shall consider the nature, degree and time of duration of the violation, to decide concrete amount of fine.

40. *Existe un programa de clemencia para agentes económicos/asociaciones industriales que denuncien su participación en cárteles?*

Answer: Refer to Article 45 and 46 of Anti-monopoly Law of the People's Republic of China.

41. *Cómo es el proceso de revisión judicial sobre las decisiones de la autoridad de competencia?*

Answer: According to the provisions of Law of the People's Republic of China on Administrative Penalty, before deciding to impose administrative penalties, administrative organs shall notify the parties of the facts, grounds and basis according to which the administrative penalties are to be decided on and shall notify the parties of the rights that they enjoy in accordance with law. An administrative organ, before making a decision on administrative penalty that involves ordering for suspension of production or business, rescission of business permit or license or imposition of a comparatively large amount of fine, shall notify the party that he has the right to request a hearing; if the party request a hearing, the administrative organ shall arrange for the hearing. Before imposing a heavier administrative penalty for an illegal act which is of a complicated or grave nature, the leading members of an administrative organ shall make a collective decision through discussion

42. *Se ha determinado si los mecanismos de asignación de contratos públicos previenen colusión entre competidores al considerar elementos facilitadores como: ofertas conjuntas sin restricciones; frecuencia y fragmentación de las licitaciones; publicación de posturas; precios de referencia altos; restricción a posturas extranjeras?*

Answer: According to Article 2 of Anti-monopoly Law of the People's Republic of China, the monopolistic conducts in economic activities within the Peoples Republic of China, and the conducts outside the territory of the Peoples Republic of China if they eliminate or have restrictive effect on competition on the domestic market of the PRC, should be under the Anti-monopoly Law of the People's Republic of China.

En relación a los acuerdos monopolísticos (párrafo 249)

43. *Cómo se determina que un intercambio de información entre competidores es legítimo/debe ser sancionado?*

Answer: According to Article 13 of Anti-monopoly Law of the People's Republic of China, any following agreements among the undertakings competed with each other shall be prohibited: (i) fix, or change prices of products; (ii) limit the output or sales of the products; (iii) allocate the sales markets or the raw material purchasing markets; (iv) limit the purchase new technology or new facilities, or the development of, new products or new technology; (v) jointly boycott transactions; (vi) other agreements identified by antimonopoly execution authorities.

Sobre monopolios administrativos descritos en el párrafo 253,

44. *Cómo funciona el proceso de revisión judicial en casos en los que se investiga a autoridades gubernamentales?*

Answer: Refer to Article 51 of Anti-monopoly Law of the People's Republic of China.

45. *Cuáles son las principales labores de abogada implementadas por las autoridades de competencia de China para promover la política de competencia entre sus autoridades gubernamentales?*

Answer: The State council has set up the Anti-Monopoly Commission which is in charge of organizing, coordinating and guiding the anti-monopoly work. The Ministry of Commerce is in charge of the Commissions day-to-day operation.

Each year, the Ministry of Commerce and other anti-monopoly law enforcement agencies organize Anti-Monopoly Law promotion and training activities, inviting relevant authorities to participate in order to raise the law awareness of government agencies in the field of anti-monopoly. Currently, China's efforts concerning anti-monopoly law enforcement have been widely recognized in the international community and become one of the most important anti-monopoly jurisdictions in the world.

Protección al consumidor

46. *El apartado (vi Política de competencia y protección de los consumidores) del capítulo III no desarrolla nada sobre la política pública de protección al consumidor. Cuál es la razón de ello?*

Answer: China is still in coordination with relevant agencies to provide response to this question.

47. *El reporte se refiere a los planes de expandir el consumo interno a través de estímulos al consumo. En este escenario, qué medidas prevé el gobierno chino para fortalecer a las autoridades de protección al consumidor ante la posibilidad de incrementos en las violaciones a los derechos de los consumidores por parte de los proveedores?*

Answer: China is still in coordination with relevant agencies to provide response to this question.

48. *China comenzó a instrumentar un programa de mejora en la calidad de los productos a ser exportados. Este país ha jugado un papel importante en los recientes retiros de productos que no eran seguros para el consumidor. Qué medidas se adoptarán a fin de mejorar sustancialmente la seguridad de los productos a fin de salvaguardar la salud y la vida de los consumidores chinos y los del resto del mundo?*

Answer: China is still in coordination with relevant agencies to provide response to this question.

49. *Cuál es el papel que juegan las autoridades de protección al consumidor en el desarrollo de estándares técnicos y obligatorios, as como en el proceso de certificación de los productos?*

Answer: (48-49) According to the Food Safety Law of People's Republic of China and its implementation regulations, the competent authorities are systematizing food standards, and in the process of defining the standards, the competent authorities should take seriously the opinions of consumers and consumer protection agencies and invite public comments in standard planning, project planning and drafting. When drafting the 12th Five Year Plan for National Standards on Food Safety, the competent authorities have invited China Consumers Association to participate in drafting and issued a written request for comments. The aforementioned measures have fully ensured the consumers right to know, to participate and to supervise.

vii) Derechos de propiedad intelectual (DPI)

En la estrategia nacional para el combate a la piratería y la coordinación con las agencias nacionales

50. *Cuál es el papel que el gobierno chino considera deben jugar los consumidores en el combate a la piratería y las violaciones a los derechos de propiedad intelectual?*

Answer: In cracking down on piracies and other cases related to IPR infringements, consumers are playing a critical role. If customers are of strong IPR awareness and reject piracies and other IPR infringing products, the acts of IPR infringements will be checked once and for all, otherwise, the judicial punishments, no matter how strict they are, will not stop the risk takers from taking actions. China adopts various means to popularize the IPR-related knowledge related to consumers, and prescribes in the laws that anybody may, in case of discovering infringements on trademarks, report or lodge complaint to the industrial and administrative authority.

4) SECTOR MANUFACTURERO **ii) Subsectores seleccionado**

51. *Will China continue with its effort to reduce production capacity?*

Answer: China's determination to crack down on IPR infringements and the acts of manufacturing and selling counterfeit and substandard commodities is beyond doubt.

52. *If this effort is real, why is the production capacity in a continuing rise?*

Answer: Seen from the suspected criminal cases of IPR infringements and manufacturing and selling counterfeit and shoddy goods investigated and handled by the public security authorities from January to April 2012, the number of such cases was drastically reduced compared with that of the cases handled during the special campaign launched from October 2010 to June 2011 in terms of the number of enterprises reporting the cases and the average amount of money involved in the cases. This shows that the lawbreakers receive heavy blow in their capabilities of infringing upon IPR or manufacturing and selling counterfeit and shoddy goods and other law-breaking acts. It must be pointed out that, however, with the development of science and technology, the law-breakers are engaged in more diversified and complex illegal acts, so we must intensify our efforts to crack down on law-breaking acts, and maintain high pressure on fighting against the acts of manufacturing and selling counterfeit and shoddy commodities.

5) SERVICIOS

i) Panorama general

En el **párrafo 95** del Informe de la Secretaría, por ejemplo, señala que el Gobierno chino aplica una política general de apertura gradual, progresiva y administrada, con miras a promover el desarrollo mediante una estrategia que redunde en beneficio de los proveedores de servicios tanto nacionales como extranjeros. Sin embargo, observamos que el informe del Gobierno chino menciona que se han propuesto una serie de directrices y medidas orientadas al desarrollo de sectores específicos tales como los servicios médicos, servicios de alta tecnología, servicios de ahorro de energía, logística, servicios de contabilidad, servicios de limpieza, comercio electrónico, transporte fluvial, etc. (párrafo 28, página 11 del reporte presentado por China).

53. *Tomando en cuenta la importancia de los servicios en la economía de China, qué estrategia tiene China para acelerar el desarrollo y el acceso al mercado de otros sectores de servicios, tales como la educación, los servicios jurídicos y los servicios de minera?*

Answer: In the year of 2010, China has signed the Agreement of Mutually Recognition of Qualifications Diplomas and Degrees for Students Further Study with Mexico and the Agreement of Mutually Recognition of Qualifications and Degrees of Higher Education with Latvia. So far, China has signed mutual recognition of academic degrees agreements with 38 countries or regions, as well as the regional conventions with other Asia and Pacific regions on recognizing the qualifications, diplomas and degrees of higher education with 19 countries including Australia, Indonesia, South Korea and Russia. These agreements would play an important role in promoting services trade liberalization and creating new market access in many services sectors in the future.

ii) Servicios financieros

a) Sistema bancario/Bancos extranjeros

En el **párrafo 120** se hace referencia a que los bancos financiados exclusivamente con capital extranjero y los bancos conjuntos chinos y extranjeros pueden realizar las mismas operaciones comerciales que los bancos comerciales chinos, tanto en moneda nacional como en divisas. Sin embargo, las sucursales de bancos extranjeros no pueden emitir tarjetas bancarias; las autoridades sostienen que estas restricciones se han adoptado por motivos cautelares y consideran que son práctica habitual en muchos otros países. Las sucursales de bancos extranjeros solamente pueden recibir depósitos a plazo no inferiores a 1 millón de yuanes cada uno de ciudadanos chinos dentro de China (...).

54. *Teniendo en cuenta este tipo de restricciones para las sucursales de bancos extranjeros, México está interesado en conocer cuál es la política de China para alentar a los bancos de capital extranjero para establecerse y poner en marcha sus negocios en la parte central y occidental de China.*

Answer: In principle, the Chinese Government encourages foreign banks to operate in the central and western regions of China, and the specific supporting policies are still under formulation.

vi) Servicios relacionados con el medio ambiente

a) Estructura del mercado

Párrafo 314. El reporte de la Secretaría sugiere que debido al crecimiento de este mercado el Gobierno realice grandes inversiones en el periodo entre 2011-2015 (...), y que aplique (para los servicios ambientales en general) una política destinada a atraer inversores privados y extranjeros con el fin de diversificar el tipo de operador, promover la conversión en servicios de mercado e importar las tecnologías más avanzadas.

55. *En qué subsectores y en qué modalidades se permitir la participación de capital extranjero en servicios relacionados con el medio ambiente?*

Answer: China has made substantial commitments in many sub-sectors of the environmental services sector, only excluding environmental quality monitoring and pollution source inspection services. Under Mode 3, foreign services suppliers are permitted to provide services in the form of joint ventures, with foreign majority ownership permitted.

The revised Catalogue for Guidance of Foreign Investment classifies some environmental services items into the encouraged category, including the manufacturing of solid waste disposal equipments and the manufacturing of water pollution prevention and control equipment, and the construction and operation of waste water and solid waste disposal factories.

Párrafo 319. De acuerdo con el informe de la Secretaría, según los compromisos contrados por China en la OMC, en el modo 3 (presencia comercial), los proveedores extranjeros sólo pueden participar en servicios ambientales en forma de empresas conjuntas, aunque el inversor extranjero puede poseer una participacin mayoritaria. En la práctica, ya hay empresas de propiedad exclusivamente extranjera que se dedican a los servicios de evaluación del impacto ambiental.

56. *México desea saber si dentro de la política general de apertura gradual de China se encuentra previsto permitir que empresas de propiedad totalmente extranjera (titularidad exclusiva) participen en otros subsectores y en su caso, en qué subsectores se les permitir participar.*

Answer: China is in the process of open its environmental services gradually. In fact, in addition to environmental impact assessment services, the waste water disposal service is also open to the wholly foreign owned enterprises. Furthermore, in the FTA between China and ASEAN, China has made further commitments in environmental services. For example, wholly foreign owned enterprises are permitted under Mode 3.

With regard to other services sectors, the revised Catalogue for Guidance of Foreign Investment has shown the tendency that China will further open up in the services industry.

MEXICO - SECOND SET

Propiedad intelectual:

1. *De conformidad con el párrafo 275, podría comentar de que manera serán evaluados los resultados de la Estrategia Nacional de Propiedad Intelectual?*

Answer: The assessment of the implementation results of national IPR strategy mainly focuses on whether the results meet the requirements and objectives set in the Outline of the National Intellectual Property Strategy. Please login the website at http://www.gov.cn/zwgk/2008-06/10/content_1012269.htm for the full text of the Outline.

2. *De acuerdo con la experiencia de China, podría enlistar los beneficios obtenidos de la utilización de Sistema de Madrid en el registro internacional de marcas.*

Answer: Since 2005, China has been the country with the largest number of applications designating that country for territorial extension under the Madrid International Trademark Registration System. Under this system, China has been one of the top countries in terms of the number of applications submitted by that country's enterprises, and it is also the developing country with the largest number of applications. The Madrid international trademark registration not only facilitates foreign enterprises' entry into China's market, but also greatly facilitates Chinese enterprises' access into international markets. It plays a positive role in promoting the rapid and sound development of China's economy.

3. *De acuerdo con lo señalado en el párrafo 287, cuál es el argumento legal que respalda la realización del llamado examen de confidencialidad en la solicitud de patente y como se determina el denominado contenido sustancial?*

Answer: The confidentiality examination is conducted according to Article 4 and 20 of the Patent Law and Article 7 and 8 of the Implementation Regulations of the Patent Law.

4. *Qué es lo que debe entenderse por emergencia nacional, situación extraordinaria o situación de interés público, en los casos en que sea concedida una licencia obligatoria.*

Answer: Article 31(b) of TRIPS reads ...This requirement may be waived by a Member in the case of national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. The provisions in Article 49 of Patent Law is consistent with TRIPS.

5. *Según lo que se menciona en el párrafo 302, cuales son los elementos que la Junta de Apelación considera para determinar un registro abusivo.*

Answer: In reviewing a case, the trademark review and adjudication board will, based on the evidences provided by the applicant, determine that a trademark registration constitutes "bad-faith registration" if such registration conforms to any situation defined in the Articles 13, 15 and 31 of the currently effective Law of Trademark. Such determination will be based on many elements, such as the "degree of being known" of the preemptively registered trademark, the relationship of the domicile of the registrant and that of the preemptively registered trademark, the relationship between the registrant of the trademark and the right holder of the preemptively registered trademark, whether the trademark applied for registration and the preemptively registered trademark constitute the consumer confusion, the association between the use of the product whose trademark is applied for registration and the use of the product whose trademark is preemptively registered.

Compras de gobierno:

1. *Respecto al párrafo 115 del Reporte de la Secretaría, podría aclarar si el Catálogo de Contratación Centralizada (Centralized Procurement Catalogue) es público? De ser as, dónde se puede consultar?*

Answer: The content of China's Centralized Procurement Catalogue is public, please refer to www.cccp.gov.cn.all. All the provincial governments have established local government

procurement website, and have realized the inter-connection with the central government procurement website.

2. Podría explicar cuáles son los criterios para incluir bienes, proyectos y servicios en el Catálogo de Contratación Centralizada?

Answer: In Accordance with the Government Procurement Law of People's Republic of China.

3. *Dónde se pueden consultar los umbrales para las contrataciones descentralizadas referidas en el párrafo 115 del Reporte de la Secretaría?*

Answer: Please refer to <http://www.ggj.gov.cn/>.

4. *Podrá mencionar el marco normativo que regula las contrataciones de las Empresas del Estado (SOEs) en China?*

Answer: There are no similar regulations about it.

5. *Respecto al párrafo 118 del Reporte de la Secretaría, podría señalar las condiciones bajo las cuales los oferentes extranjeros pueden participar en el sistema de contratación pública de China?*

Answer: China has not been a party of GPA, and there are no related regulations about that.

6. *En relación con el párrafo 123 del Reporte de la Secretaría, podría enumerar los medios designados por el Ministerio de Finanzas para anunciar convocatorias de contratación pública?*

Answer: The Ministry of Finance specifies www.ccgp.gov.cn as the official website for government procurement information publishing. All the provincial government has established the local government procurement website, and to realize the inter-connection with the central government.

7. *También sobre el párrafo 123, cuáles son las sanciones previstas por el gobierno de China en caso de detectar un trato discriminatorio contra los oferentes extranjeros?*

Answer: China has not been a party of GPA, and there are no related regulations about that.

8. *Existe un sistema electrónico de contratación pública en China? En caso de no haberlo, qué planes existen para implementarlo?*

Answer: The electronic system of Government Procurement in China has realized some functions; however, the system is still under establishment.

NEW ZEALAND

PART 1: QUESTIONS REGARDING THE SECRETARIAT REPORT

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Measures Directly Affecting Imports

(i) Customs procedures, valuation, and rules of origin

Section III, paragraph 6 of the Secretariat report states that in 2010, the average time for customs clearance for imports was longer (15.5 hours) than in 2008 (14.1 hours).

Question:

1. *Can China explain why the clearance times are increasing and what systems are being put in place to increase the efficiency of customs clearance?*

Answer: China's import facilitation measures include:

- (a) Strengthen cooperation with the Customs of other countries in mutual recognition of Customs control, law enforcement mutual aid and exchange of information, to facilitate enterprises and goods entering each other's markets.
- (b) Further promote the large-scale simplification of Customs clearance procedures, give full play to the role of the E-Port, strengthen ties and coordination with the port inspection departments and the relevant domestic government departments, improve the efficiency of the port clearance.
- (c) Further deepen partnership with the business community, enhance corporate compliance administration, and facilitate Customs clearance of the high credit enterprises.
- (d) Implement the reform regarding classification for imported and exported goods and the paperless clearance reform, implement Customs clearance facilitation measures, optimize customs processes, simplify clearance procedures.

WT/TPR/S/264 Page 25, para 7 257

Section III, paragraph 7 of the Secretariat report notes that China Customs is promoting cooperation with the customs authorities in China's FTA partners, mainly in electronic networking with regard to preferential certificates of origin, and customs data exchange system, with the European and the Russian Customs, respectively.

Question:

2. *What have been China's experiences in electronic networking with regard to preferential certificates of origin, and customs data exchange system?*

Answer: Currently, China Customs exchanges electronic data with regard to CEPA certificates of origin and ECFA certificate of origin with the Hong Kong and Macao Special Administrative Regions, Chinese Taipei and other relevant departments. Only the contents of the certificate of origin are required to be electronized, the manual or electronic signature of the exporter is not required. No such requirement is imposed on the Customs data exchange between China and the European Union & Russia either.

(iii) Indirect taxes affecting imports

WT/TPR/S/264 Page 33, para 34

Section III, paragraph 34 of the Secretariat report states that current VAT rates are 17% or 13% for most goods.

Question:

3. *Could China please provide information on why the divergence in VAT rates between 13% and 17% exists, and, in particular, the reasons behind the divergence of rates for raw and processed agricultural products?*

Answer: 13% VAT falls ultimately on consumers. Most roughly processed agricultural products including fresh agricultural products are consumed by people for their daily life. As a result, a lower VAT rate (13%) for these products will help reduce peoples living burdens.

(vii) Standards and other technical requirements

WT/TPR/S/264 Page 51, para 124

Section III, paragraph 104 of the Secretariat report states that the Catalogue of Entry-Exit Commodities Inspected and Quarantined by Entry-Exit Inspection and Quarantine Organs covers goods subject to inspection and quarantine, including processed food and beverages as well as semi-processed products and raw materials and foods, such as meat and vegetables.

Question:

4. *Could China please provide information on what the process is for determining which products undergo entry-exit inspection, and provide some examples of products not in the Catalogue that can be subject to spot checks?*

Answer: A product is corresponding to a single product code during inspection. If the product code is listed in The Catalogue of Entry-Exit Commodities Inspected and Quarantined by Entry-Exit Inspection and Quarantine Organs, the corresponding product needs to be inspected and quarantined. According to the product code listed in different categories of inspection and quarantine in the Catalogue, a product can be subjected to different regulatory inspections, such as Commodity Inspection, Plant or Animal and Its Oriented Product Inspection, Food Hygiene Supervision and Inspection, Sanitary Inspection and Commodity Entry Validation Inspection.

According to Article 4.2 of the Regulations for the Implementation of the Commodity Inspection Law, Entry-Exit Inspection and Quarantine Organs perform random inspection to entry-exit commodities outside of statutory inspection based on state regulations. In 2012, Entry-Exit Inspection and Quarantine Organs will perform entry-exit inspection to 74 product codes within 4 categories. For example, we perform random entry inspection to product of code 610442000 cotton, knitted or crocheted dress and 4413000000 laminated wood; perform random exit inspection to product of code 2917320000 dioctylphthalate and 84146010 range hood (refers to the cover with maximum horizontal side length not exceeding 120cm, with a fan).

(2) Measures Directly Affecting Exports

(iii) Export Taxes

WT/TPR/S/264 Page 58, para 137-141

Section III, paragraph 136 of the Secretariat report notes that China has eliminated export duties on 17 tariff lines from January 2010, and reduced interim export duty rates on 21 tariff lines, including for some fertilizer products. New Zealand welcomes both the elimination of export duties by China and the reduction of interim rates.

Question:

5. *Would China be able to provide information on the criteria for adjusting special export duties, including seasonal duties, from time to time, and adjusting the list of commodities affected by such measures, as mentioned in paragraph 140 of the of Secretariat report?*

Answer: Special export duties are formulated in accordance with Article 4 of the Regulations of Import and Export Duties of PRC. For its scope of application, please refer to the Notice of the State Councils Commission of Customs Duties on Implementation Plan of Customs Duties 2012.

IV. TRADE POLICIES AND PRACTICES BY SECTOR

(2) Fisheries

(i) Fisheries in China

WT/TPR/S/264 Page 111, para 49

Section IV, paragraph 49 of the Secretariat report provides details on a range of fishing data.

Question:

6. *Can China provide an update on progress toward its plan to reduce the number of vessels? What policies does China have in place to move toward this target?*

Answer: In November 2003, the Ministry of Agriculture laid down the "Opinions on the Implementation of Marine Fishing Vessel Reduction System from 2003 to 2010". There are three specific measures. First, it requires the coastal local governments to make plans on the reduction of the number of fishing vessels and the power in accordance with the "dual control" indicators issued by the state, to strengthen the administration in fishing vessel building approval, inspection, registration, licensing and other aspects, and to implement the "fishing vessel inspection regulations" and fishing vessel decommissioning system. Second, it requires the coastal local governments to implement the regulations on fishing license issuers and issue fishing licenses in strict accordance with the "provisions on the administration of fishing license". Third, it requires the coastal local governments to vigorously promote the process of fishermen job transfer. At present, thanks to the efforts of the central government and local governments at different levels, the number of Chinese marine fishing vessels is reduced gradually.

(ii) Fisheries Policy

WT/TPR/S/264 Page 113, para 56

Section IV, paragraph 56 of the Secretariat's report refers to the 2006 Action Plan to encourage oceanic and transoceanic fishing.

Question:

7. *Can China provide details on measures taken under the 2006 Action Plan to speed up the development of distant water fishing?*

Answer: First, China joined all high seas regional fisheries management organizations, participates in the assessment of the rational use of high seas fisheries resources and the development of the quota plan of high seas fishery resources, to ensure that the maximum reasonable catch is not exceeded. Second, to ensure the strict implementation of the fisheries management regulations of the regional fisheries organizations, China has invested a lot of manpower, material and financial resources to improve the means of supervision, to strengthen supervision on the operations of China's fishing

vessels on the high seas and their catch, to combat illegal, unregulated and unreported (IUU) fishing to the greatest extent, and to effectively fulfill China's obligations as a state member.

WT/TPR/S/264 Page 113, para 58

Section IV, paragraph 58 of the Secretariat report refers to support to the fisheries sector.

Question:

8. *Can China provide a summary of the types of government support available to the fisheries sector, including the value of recent expenditure and an outline of any changes planned under the 12th Five year plan?*

Answer: China attaches great importance to the principle of transparency and has made our best efforts in fulfilling transparency obligation. Nowadays, members are conducting negotiations to strength the fisheries subsidies disciplines, including the notification regulation. China is willing to provide relevant information once such disciplines agreed upon by members.

III. TRADE POLICIES BY SECTOR

(1) Energy

(i) Policy objectives for the sector

WT/TPR/S/264 Page 114, para 61

New Zealand welcomes the high priority on renewable energy as part of the 12th Five-Year Plan for Energy Technology, underlined in section IV, paragraph 61 of the Secretariat report.

Question:

9. *Will implementation measures for the plan be made publically available, and when is the new Energy Law expected to be completed?*

Answer: The draft of Energy Law is being amended by the Legal Affair Office of the State Council, via further survey, argumentation and recommendation collection. There is not a specific timetable for the promulgation of Energy Law.

NORWAY

Question 1 (sent May 22nd) - Chapter III.1.(vi) Contingency trade measures:

The secretariat's report, in paragraph 57, points to the fact that China presently does not examine whether an antidumping duty below the dumping margin would be sufficient to eliminate the material injury caused by dumping.

Will China consider applying the lesser duty rule in order to make sure that an antidumping measure introduced by China solely is a measure to counter unfair trade, and not potentially contains a protectionist element when the calculated and applied dumping margin exceeds the injury margin?

Answer: Like most WTO Members, the China's Anti-dumping Law does not have any provision on lesser duty rule. China does not investigate the injury margin nor does it apply the lesser duty rule in practice, which, however, does not affect the investigation authority of China to conduct anti-dumping

investigation and take corresponding measures in an objective and fair manner in accordance with law.

Question 2 - Report of China:

The report by the Government of China states in paragraph 108. Rules negotiation is an important element of the DDA. It should contribute to further clarifying and improving the WTO rules, tightening disciplines on investigation in trade remedy, increasing transparency, and preventing and reducing the abuse of trade remedy measures, especially the abuse by developed members against developing ones.

Please explain why China find a particular need to preventing and reducing the abuse of trade remedy measures, especially the abuse by developed members against developing ones? Should not all abuse be condemned and eliminated, regardless of the source of the abuse?

Answer: According to WTO statistics, developed members were the major users of trade remedy measures from 1995 to 2011. As the most affected member of trade remedy measures, China is in the position that all members, regardless of developed members or developing members, should restrain from using trade remedy measures, especially for trade protectionism purposes.

Question 3 - Report of China:

According to paragraph 83 of the Report of China The Chinese Government has continued its efforts to improve facilitation of trade and investment in terms of procedures and formalities for Customs clearance, quarantine and quality inspection. We acknowledge these efforts, but at the same time would point out that there are still certain challenges to be met regarding a uniform, transparent, proportional application of procedures and formalities.

What further efforts are the Chinese authorities considering in order to further improve the facilitation of trade and investment?

Answer: China will make the following efforts to further improve the facilitation of trade:

1. Strengthen the cooperation with the customs of various countries in mutual recognition of supervision, mutual assistance in law-enforcement and mutual information exchange and reduce unnecessary repeated supervision and inspection to facilitate enterprises and goods to enter the market of each other;
2. Further push forward the construction of broad customs clearance ports, give full play to the role of E-ports, deepen the contact and collaboration with the inspection departments of the ports and national governmental authorities and improve the customs clearance efficiency.
3. Further establish a closer partnership with the business sector, implement the idea of from enterprises to goods, strengthen legal compliance management and provide clearance convenience to enterprises that have good credit standing.
4. Promote a reform of classified clearance and non-paper customs clearance, implement a 7/24 appointment clearance system at ports and customs of regions subject to special supervision, implement advance declaration, collective declaration, inspection and release by guarantee and other clearance convenience, optimize the processing flows of the customs, and simplify the supervision and clearance formalities.
5. Actively facilitate the domestic sale of processing trade products and promote the construction of a domestic sale trading platform.

Question 4 - Chapter III.1. Measures directly affecting imports:

We understand that it is a requirement for importation in to China that the CR-number (Customer Registration Number) is provided on the consignment before it departs the country of origin. Usual practice in most other countries is that this CR-number may be provided at a later stage for instance in a customs warehouse.

Is this a mandatory requirement? If so, what is the legal basis for it, and could China please explain the rationale for such a requirement.

Answer: We have no idea of what CR-number here refers to. Could Norway please further clarify the concept of CR-number?

Question 5 - Chapter III.1. Measures directly affecting imports:

A number of our economic operators report customs-related problems regarding (expedited) shipments of spare parts, servicing equipment etc. Often it is a case of time critical shipments where the spare parts etc are necessary for the smooth operation of economic operators, especially in small and medium-sized enterprises.

Is this an issue Chinese authorities is aware of and are there any plans to address these concerns among economic operators?

Answer: China is not clear about the above-mentioned customs-related problems encountered by Norwegian economic operators. Could Norway please specify the problems or seek help from related Chinese authorities through Norwegian Embassy in China.

Question 6 - Chapter III.1.(vi) Contingency trade measures:

Chart III.4 shows that in certain years, 2006, 2007 and 2010, the final Chinese antidumping measures introduced by far exceeds the number of investigations initiated.

Would China please explain the reasons for this development?

Answer: An anti-dumping investigation usually needs twelve or eighteen months. The reason why in some years the number of final antidumping measures exceed that of investigations initiated is that final rulings of some anti-dumping investigations initiated before have been made in that year.

Question 7 - Chapter III.1.(vi) Contingency trade measures:

Paragraph 72 states that Most of the RTAs that China has notified to the WTO contain provisions regarding the use of anti-dumping and countervailing measures between the parties. However, only two (with Hong Kong, China and Macao, China) preclude the use of such measures between the parties.

What made China agree to abstain from application of antidumping and countervailing measures only against two of its free trade partners?

Answer: The Closer Economic Partnership Arrangement between the Hong Kong/Macao Administrative Region (SAR) and the Mainland (CEPA) is a free trade agreement between China, as a sovereign country, and its separate customs territories the Hong Kong SAR and the Macao SAR, which aims at eliminating the tariff and non-tariff measures in their trade of goods so as to facilitate trade and investments and promote the growth of trade and investments between them. CEPA adopts the one country two systems principle and complies with relevant provisions of the GATT 1994. Considering the nature and characteristics of trade between the Hong Kong/Macao SAR and the

Mainland, the parties decided not to adopt any anti-dumping and countervailing measures between them. From 1 January 2006, the Mainland imposed zero tariff on all the goods originated from the Hong Kong and Macao SARs, liberalizing the trade in goods between the Hong Kong/Macao SAR and the Mainland.

Question 8 - Chapter III.1.vii SPS measures:

Issues related to wood packaging material. We understand despite China being a signatory to the FAO IPPC Convention - ISPM 15 (which expressly states that wood packaging material that and marked has been treated does not represent an environmental risk) there is still requirement for such wood packaging material to be accompanied by a phytosanitary certificate. This seems to be an unnecessary barrier to trade.

Could China please a) confirm that there is indeed such a requirement for wood packaging material, b) explain the reasoning behind it and c) inform us of any planned change in these requirements in order to fully implement the convention, apply the international standard and thereby facilitate trade?

Answer: Please refer to <http://dzwjyjs.aqsiq.gov.cn/>.

Question 9 - Chapter III.1.vii SPS measures:

In December 2010 China introduced new testing and quarantine measures directed specifically at fresh, chilled salmon from Norway. These measures were further strengthened in February 2011 by implementation of AQSIQ Order No 9. As a consequence, the export of fresh Norwegian salmon to China has dropped significantly.

Trade in seafood has developed in close cooperation between AQSIQ and the National Food Safety Authority (NFSA) to the satisfaction of both parties. Therefore, the introduction of new control measures for fresh salmon were unexpected and surprising.

Norway has questioned the justification of the new control measures on fresh salmon both bilaterally and in the Committee on Sanitary and Phytosanitary Measures. We observe discrepancies between the results from surveillance programs run by NFSA and notifications received from China. This issue should be addressed in cooperation between relevant technical experts. However, such a meeting has yet to be agreed upon. In view of the Parties obligations under the WTO agreement, we repeat our request to China to participate in such meetings to sort out the problems and to normalise trade in salmon.

What steps will China take to cooperate in order to find a solution under the SPS-agreement with regard to the current challenges to trade in fresh salmon, and to normalise this trade.

Specifically, Norway would like to request that the relevant authorities - the Norwegian Food Safety Authority (NFSA) and its Chinese Counterpart, the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) have a meeting to discuss the follow-up of quarantine and quality inspection of Norwegian salmon imported to China.

Answer: Since 2010, the entry and exit inspection and quarantine bureaus in China had detected fish lice, pathogenic micro-organisms and excess chemical residues, among other issues, in imported salmon. To protect consumers, public health and the safety of the Chinese fishing industry, China had strengthened the inspection and quarantine of imported salmon, based on the Administrative Measure for Inspection, Quarantine and Supervision on Import and Export of Feed and Feed additives, its revision and amendments relating to aquatic products. These had been notified to the WTO. The measures taken were covered by these regulations without any new elements and therefore China had

no obligation to further notify. These import inspection and quarantine procedures were not aimed at any particular Member, but quarantine issues were detected in numerous shipments of salmon from Norway.

Norway is one of China's major salmon importing countries, however, many Norway's salmon failed Chinese inspection. For example, in 2011, 24 shipments of fishing product from Norway have been detected micro-organisms and chemical residues, and 19 shipments out of which are salmon. Out of all imported salmon that failed Chinese inspection, the proportion of Norway's salmon was 63% in 2011. Therefore, the risk of Norway's salmon is higher so that China still needs to strengthen the inspection and quarantine measures.

Concerning Norway's salmon, China believes that our bilateral communication is effective. China is willing to communicate with Norway's relevant agencies and embassy under the SPS Memorandum of Understanding framework. Besides, China has numerous ports and a large number and variety of products. Incidents occurred on ports at any time, and Norway's salmon failed inspection several times. China is willing to adjust the relevant measures once Norway had addressed the quality issues.

Question 10 - SPS measures:

The regulatory framework for import of food to China is currently being expanded. According to the new Regulation on Registration and Management of Overseas Producers of Imported Food, applicable as of 1 May 2012, overseas producers of food may only export their products to China upon being registered. According to article eight of the above-mentioned regulation, the Certification and Accreditation Administration of the People's Republic of China organizes relevant experts or designated institution to conduct examination on the information submitted by the relevant authorities of the country (region) where the overseas food producing firm is located and dispatches an assessment group to conduct on-site assessment when necessary.

Could China expand on the criteria for when such on-site assessment is deemed necessary and on how it is implemented smoothly without the procedure itself becoming a hindrance to trade?

Answer: China will consider the volume of import, the increase of trade, the quality of import products and the inspection records when making and implementing on-site assessment plan. On-site assessment will be conducted according to CAC guidelines on foreign inspection activity. CNCA held consultations with Norway's Embassy in China concerning this issue on 4 June 2012.

Question 11 - Chapter III.3.vii IPR infringements and enforcement:

We note with interest the IPR enforcement campaign described in para 325 of the Secretariat's report. Although we appreciate the actions undertaken by the Chinese authorities, IPR infringements remain a concern. Particularly when copying relates to products that can be vital for the safety of a product. The copied product may have flaws and failures that may cause this product to fail. In a critical situation the outcome could be fatal to the user as the material quality will not hold the stress.

Do the Chinese authorities envisage another IPR enforcement campaign targeted specifically at other sectors? And if so, could you please provide us with the detail of such a campaign.

Answer: We are not sure what Norway indicate by IPR enforcement campaign targeted specifically at other sectors. The Chinese IPR enforcement campaign is a campaign cracking down on IPR infringements in an extensive sectors, including news and publication, entertainment, software, high-tech, agriculture and business information protection etc.

Question 12 - Chapter IV.5.ii Financial Services:

The laws and regulations in China's banking sector requires a multitude of licenses for the operation of different banking services as stated in paragraph 114 in the Report of the Secretariat. This difficult regulatory framework is particular challenging for smaller banks as they have less resources for administration. Many foreign-owned commercial banks operating in China are small, and the market share of foreign banks in China is limited. According to paragraph 90 in China's report Foreign Investments are encouraged to go to...modern services....

How does China plan to facilitate foreign investments in the banking sector?

Answer: In October 2011, the People's Bank of China issued the Measures on Administration of Settlement Services of Foreign Direct Investment in RMB. The rule, bridging the existing administrative regime on foreign direct investment, stated that overseas investors and related banks may handle settlement services for foreign direct investment in China in RMB. Formalities of financial services for overseas investors to make investment in China were further simplified and facilitated. China will make continuous efforts to facilitate foreign investments in the banking sector.

PAKISTAN

1. In para 127 of the Report by the Secretariat, it has been mentioned that Scheme of Indigenous Innovation was not implemented by China for Government Procurement at the national level. The measures introduced in some Regions were also discontinued. China is requested to inform whether this policy is continuing in areas other than Government Procurement?

Answer: The Chinese government has announced to discontinue the National Administrative Measures of Accreditation of Indigenously Innovated Products (for Trial Implementation), the Administrative Measures of the Budget for Government Procurement of Indigenously Innovated Products, the Appraisal Methods of Government Procurement of Indigenously Innovated Products and the Administrative Measures of the Contract for Government Procurement of Indigenously Innovated Products. Currently, the Chinese indigenously innovated products are no longer linked to the preferential policies of government procurement. The above decision will be complied with when the procurement issues in the public finance of Chinese government are handled while China will continue the policies in accordance with WTO rules and encouraging innovation.

2. After acceding to GPA, China is likely to get market access in this area in all the countries signatories to this plurilateral agreement. Is there any timeframe to conclude the accession process to this plurilateral agreement?

Answer: The Chinese government is creating conditions for acceding to GPA as soon as possible.

3. Has China eliminated export taxes in their bilateral/regional Free trade Agreements, if so, whether China would like to multilateralize such measures?

Answer: Export taxes have not been touched upon in the bilateral/regional Free trade Agreements signed by China.

4. The rise of multi-localization i.e. processing or assembly of imported input for export, provides statistics, which are misleading indicators of trade flows. What is the average value addition of imported inputs used by Chinese exporters on all products? China is requested to give some specific examples of such goods, especially high tech products. Besides, how can developing countries be part of this global change and learn lessons from China's experience?

Answer: Processing or assembly of imported input for export mainly takes the shape of processing trade in China. For many years, the processing trade has accounted for almost half of the total foreign trade volume in China and played a key role in absorbing more laborers, attracting foreign investment and developing domestic supporting industries. Due to the feature of processing trade of import and export on a big scale, the foreign trade statistics of China take into calculation quite a few of the raw materials and semi-finished products which are re-exported after being imported and processed, which would not be able to accurately reflect the actual volume of China's foreign trade. For the time being, in China's processing trade have there been such problems as being situated at the lower end of the international industrial chain, lack of independent brand and not being equipped with core technology. As a developing country, China will continue to vigorously develop its processing trade, and make an effort to promote a high-end extension along the industrial chain and an extension of the domestic value-added chain, meeting the requirements of upgrade and transformation. At the same time, the proportion of general trade in total foreign trade volume will be raised, the export of products with indigenous IPR, brand and technology will be increased, core competitiveness of China's foreign trade will be enhanced and a sustainable development will be achieved.

5. *Reference to paragraph 78 of the Secretariat's Report. China abolished local content requirement for automobile enterprises since August 2009. What has been the impact of this policy change on China's auto sector?*

Answer: Since September of 2009, China has discontinued the Administrative Measures of the Import of Auto Parts for Complete Vehicles. Firstly, a customs tariff of 25% is imposed on the import of complete vehicle in China and 10% on auto parts. The Measures had mainly been made up for the customs to accurately classify the imported auto parts and to levy customs duties according to the actual composition, which shall not be understood as a local content requirement for automobile enterprises. Secondly, after China has discontinued the Measures, cases have already appeared where a complete vehicle was deconstructed into parts that were then imported at different times in different batches and finally assembled back into a complete vehicle, in a way to evade the import tariff of complete vehicle. Therefore it is the next task to make up relevant provisions to regulate the classification of imported auto parts.

6. *Reference para 28 of China TPR Report. Since the last review, China has launched on pilot basis the tax reform aiming at boosting the services sector, would China like to share its experience?*

Answer: China implements a turnover tax system with value-added tax and business tax in parallel. Value-added tax is levied on cargo and dutiable service while business tax is levied in the service industries closely related to cargo such as transportation and communication, storage, delivery and technical service, which has resulted in a duplicate taxation and thus effected the development of service industry. Therefore, China launched on pilot basis the tax reform of business tax into value-added tax firstly in Shanghai with a focus on covering into the value-added tax range such industries as transportation and communication where the business tax was originally levied. To levy a value-added tax can solve the issue of duplicate taxation with the help of a re-design of taxation system.

7. *Consumer price index and (CPI) and Producer Price Index (PPI) experienced a steady increase in China in the last two years, also leading to higher minimum wages and labour cost. What will be the impact of these changes on China's international Trade?*

Answer: with the rapid growth of China economy, the rise of labor cost is an inevitable trend, it also reflects the improved living standard of Chinese people. Given the fact that China's foreign trade features an extensive mode, the rising labor cost will, in the short term, give rise to a higher cost for export-oriented companies, and reduce the price advantage of export goods. Some small and micro

foreign trade companies will be faced with difficulties. Some low VAT and uncompetitive orders will be gradually transferred to neighboring developing countries. However, in the long term, the rising labor cost also makes companies be aware of the fact that low-cost expansion won't be sustainable. They will be forced to enhance management, improve productivity, optimize structure, encourage R&D and design, accelerate transformation and upgrade to keep the momentum.

PERU

Peru would be grateful if China would provide answers to the following questions based on the information contained in document WT/TPR/S/264 of 8 May 2012.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Measures Directly Affecting Imports

(i) Customs procedures, valuation, and rules of origin

(a) Customs procedures

According to paragraph 3, "Customs collects the following administrative charges: handling charges for customs supervision [and] charges for ATA (Admission Temporaire/Temporary Admission) document adjustment". Peru would like further details as to whether the handling charges for customs supervision constitute payment for the Customs Administration's supervisory functions and what the levy concerning ATA document adjustment actually covers. Peru would also like to know how the temporary admission customs procedure under the Istanbul Convention (CARNET ATA) operates.

Answer: China is still in coordination with relevant agencies to provide response to this question.

According to paragraph 7, "China has adopted a 'single window' project, which is intended to realize data sharing for customs clearance, including data exchange concerning cross-border RMB settlement, and on-line audit". Peru would like to know how this on-line audit procedure is conducted.

Answer: At present, 12 authorities under the State Council, the Trade and Industry Department of the Hong Kong Special Administrative Region, the Economic Services of the Macao Special Administrative Region and also 14 commercial banks participate in exchange and sharing customs clearance data. Projects such as on-line examination of export rebates, RMB settlement data exchange in cross-border trade etc. have been put into operation. The model of "electronic account plus on-line examination" effectively improves the capabilities of joint enforcement and consolidated supervision of port authorities and strengthens the supervision and administration of import and export activities.

(b) MFN tariff rates

According to paragraph 23, "China's applied MFN tariff rates consist of 'standard' applied MFN rates as well as 'interim' MFN rates for certain products". Peru would like to know the difference between the "standard" applied MFN rates and the "interim" MFN rates, and to which products each type of rate applies.

Answer: In accordance with the Regulations of the People's Republic of China on Import and Export Duties, the temporary tariff rates apply to the import goods subject to most-favoured-nation rates, conventional rates and in-quota duty rates within a certain period; and the temporary tariff rates shall apply if both most-favored-nation rates and temporary tariff rates are available to the import goods. The list of the products subject to temporary tariff rates in 2012 is specified in the Notice of the

Customs Tariff Commission of the State Council on the Tariff Execution Plan 2012 (Shui Wei Hui [2011] No. 27) which is available on the official website of the Ministry of Finance (www.mof.gov.cn).

(2) Measures Directly Affecting Exports

(iv) Tax rebates on exports

According to paragraph 143, "VAT may be rebated on exports, although the rebate rates are, by and large, lower than the VAT rates actually paid. The difference between the two rates constitutes a levy on exports, which may in turn constitute assistance to downstream processing of the products affected, and could affect China's terms of trade". Peru would like to know how the VAT rebate on exports operates and whether there is any mechanism for the verification of rebate rates and VAT rates actually paid.

Answer: The export enterprises make clearance to customs. When they affirm departure of the goods, they can apply for VAT rebate to tax authorities with related materials.

(3) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Taxation and tax incentives

(b) Indirect taxes

Paragraph 173 refers to: "Indirect taxes, including (...) city maintenance tax". Peru would like to know who is subject to this tax as well as the tax base used, and whether it also applies to goods import and export transactions.

Answer: Urban maintenance and construction taxes are imposed on the units and individuals paying value added taxes, excise taxes and business taxes based on the amount of the value added taxes, the excise taxes and the business taxes paid by the taxpayers. No urban maintenance and construction taxes are imposed with respect to the value added taxes and the excise taxes charged by the Customs on the import products during the commodities import and export transactions; no urban maintenance and construction taxes are refunded in case of any refund of the value added taxes and the excise taxes for export commodities.

(d) Tax incentives

According to paragraph 185, "Preferential tax treatment, in terms of lower rate enterprise income tax, previously granted to firms located in special economic and high-tech development zones, is being grandfathered. After the transition period, there will no preferential tax treatment for enterprises in these zones". Peru would like to know more about tax treatment in these special economic zones, the high-tech development zones and the export processing zones.

Answer: The State Council issued the Circular of the State Council on the Implementation of the Transitional Preferential Policies on Enterprise Income Tax (Guo Fa [2007] No. 39) upon the implementation of the Enterprise Income Tax Law, according to which enterprises enjoying the preferential policies with regard to enterprise income tax under the former tax laws, administrative regulations and documents with the effects of administrative regulations shall be subject to a transition under the following measures:

Enterprises which enjoy the preferential policies of low tax rates in the past shall be gradually transited to be paying the tax at the statutory rate within 5 years from 1 January 2008.

Enterprises which enjoy such preferential policies of tax reduction and exemption with the fixed term as "2-year exemption and 3-year half deduction" and "5-year exemption and 5-year half deduction" in

the past are entitled to the original preferential policies based on the original rules and the original preferential years after the implementation of the new tax law on 1 January 2008 except that the preferential term shall begin from 2008 if the enterprises have not actually enjoyed the original preferential policies due to the failure to make profit.

In addition, Guo Fa [2007] No. 39 has also explicitly specified the enterprise income tax preferential policies subject to the transitional period.

PERU - SECOND SET

Normas y otras prescripciones técnicas

China es miembro activo del Comité de la OMC sobre Obstáculos Técnicos al Comercio y sobre Medidas sanitarias y Fitosanitarias. Respecto a las notificaciones realizadas por China durante el periodo 2009-2011 al Comité de OTC fue un total de 350 y 376 notificaciones al Comité de MSF, dichas notificaciones se debieron a determinados productos sensibles para ellos y los cuales demandaban preocupaciones, con especial énfasis en la salud humana, animal, vegetal y seguridad nacional.

1. Normas y Reglamentos Técnicos

China cuenta con cuatro tipos diferentes de normas: nacionales, locales, comercial y de empresa. Las normas de cumplimiento obligatorio para el sector agrícola no generalmente normas ligadas a higiene de los alimentos (inoxidabilidad), medicina veterinaria así como normas de seguridad e higiene de los productos y la producción, almacenamiento y transporte, y la utilización de los mismos. China es miembro de la ISO, IEC, UIT, OMS y del Codex Alimentarius, por lo que al establecer una norma obligatoria, estas deben basarse en normas internacionales.

Además, existen comités técnicos que se encargan de revisiones periódicas de las normas, estas revisiones se realizan cada 5 años después de la emisión de las normas, a fin de actualizarlas y en caso amerite una derogación de la norma.

China como parte de su política actual se ha comprometido a elaborar normas obligatorias basándose en normas internacionales cuando corresponda. Por tal motivo las normas obligatorias (reglamentos técnicos) están asumiendo un rol más importante como requisitos para el comercio con China y varios países del mundo, por lo tanto se están volviendo más exigentes.

2. China Compulsory Certification (CCC)

La Certificación Obligatoria China, es una medida para el control de calidad, ningún producto puede ser importado, ofertado o usado en China si no cuenta con el sello CCC. Existe un catalogo donde se encuentran publicados todos los productos que deben contar con el sello CCC, lo que no queda claro si en este catalogo se aplica a productos relacionados con la vida y la salud humana, animales plantas protección ambiental y seguridad nacional.

3. Etiquetado: todos los productos vendidos en China deben de cumplir con dos Leyes que regulan el etiquetado de los productos. Una de las exigencias, es que el etiquetado deba estar en el idioma chino. A la fecha, la Norma Nacional de Seguridad Alimentaria sobre las Normas Generales para el Etiquetado de los Alimentos, publicado por el Ministerio de Salud en 2011 se encuentra adoptándose en 2012.

4. Estándares de Inspección y Requerimientos Especiales: la normativa china indica que todos los productos que se encuentren dentro de la lista de inspección pública o que estén sujetos a

algún tipo de inspección en virtud de alguna, deberán ser inspeccionados antes de su importación, venta o uso en China. Para la importación de animales, plantas y sus productos, así como los envases y los materiales del empaque usados para su transporte, estos deberán pasar el examen de cuarentena a la llegada a China a fin de verificar la ausencia de enfermedades. AQSIQ y la Administración General de Aduanas mantener un Catálogo de Productos Básicos de entrada y salida a analizar y puesto en cuarentena por Inspección de Entrada y Salida y Cuarentena de los órganos. El catálogo incluye productos sujetos a inspección y cuarentena. Esto incluye alimentos procesados y bebidas, así como los productos semielaborados y materias primas y alimentos, como carne y verduras. Desde 2008, la AQSIQ ha hecho cinco ajustes en el catálogo de la base de consultas con las autoridades aduaneras y comerciales, de conformidad con los requisitos pertinentes y la calidad de los productos básicos de importación y exportación, y emitió los ajustes de la Administración General de Aduanas mediante un anuncio público.

5. Medidas Sanitarias y Fitosanitarias: China es un miembro de la Comisión del Codex Alimentarius y la Organización Mundial de Sanidad Animal y la parte contratante de la Convención Internacional de Protección Fitosanitaria. El punto de contacto es el Ministerio de Agricultura. Respecto a las medidas administrativas para la inspección, la cuarentena y el control de las importaciones de productos diferentes, un país o región que se desea exportar un producto alimenticio a China por primera vez, primero debe ser evaluado por la Autoridad Sanitaria.

Solicitudes:

China es uno de los socios más importantes de Perú, sus medidas generales, las regulaciones técnicas y estándares, las pruebas y certificados de arreglos, las medidas sanitarias y fitosanitarias, cuarentenarias y inspección, además de los requisitos de marcado, etiquetado y envasado, lo reflejan como un país con medidas restrictivas al comercio. A continuación se detallan la siguiente información:

- *Si bien China se ha comprometido en armonizar sus normas nacionales con las internacionales para adoptar sus medidas, es importante que brinde mayor información sobre su sistema jurídico en la elaboración y aplicación de normas, reglamentos técnicos y procedimientos de evaluación de la conformidad, así como de su mercado CCC y la vigilancia pre y post mercado para el cumplimiento de sus normativas y que deje claro que productos se encontrarán sujetos a inspección y que otros tienen que contar con el sello CCC.*

Answer: Under the market economy, relevant authorities of WTO Members all establish and implement conformity assessment procedures, such as the CE in EU for the protection of national security, of deceptive practices, of human, animal or plant life or health, of the environment. China's CCC system also establishes and implements for the same purposes, in conformity with relevant Chinese laws and regulations including Product quality law", "Import and Export Commodity Inspection Law", "Standardization law" and "Regulations on Certification and Accreditation, and follows relevant internationally accepted practice.

- *China mantiene un Catálogo de Productos Básicos de entrada y salida a sujetos a inspección y cuarentena. Esto incluye alimentos procesados y bebidas, as como los productos semielaborados y materias primas y alimentos, como carne y verduras. Este Catalogo se encuentra disponible en la web?.*

Answer: A product is corresponding to a single product code during inspection. If the product code is listed in The Catalogue of Entry-Exit Commodities Inspected and Quarantined by Entry-Exit Inspection and Quarantine Organs, the corresponding product needs to be inspected and quarantined. According to the product code listed in different categories of inspection and quarantine in the

Catalogue, a product can be subjected to different regulatory inspections, such as Commodity Inspection, Plant or Animal and Its Oriented Product Inspection, Food Hygiene Supervision and Inspection, Sanitary Inspection and Commodity Entry Validation Inspection. For the Catalogue please refer to <http://dzwjyjs.aqsiq.gov.cn/>

- *Sobre la falsificación y alteración de los Certificados sanitarios y fitosanitarios que mencionan, este registro online que la Autoridad Sanitaria (AQSIQ) introduce bajo la figura de Inspección y Cuarentena de China E-cert del sistema (China E-cert) en 2010, se aplica a todos los productos que se encuentran sujetos al cumplimiento de Protocolos Fitosanitarios?*

Answer: In order to facilitate the health growth of trade, especially the trade of agricultural and food product, as well as prevent fake inspection and quarantine certificate, China initiated the Inspection and Quarantine E-cert System.

Any country's government can access to China's Inspection and Quarantine E-cert System (<http://ecert.eciq.cn>) and apply for registration. After that, the country's embassy in China has to contact AQSIQ for approval. Any country's government can has the system to check and review the texts of certificates which are signed by China's inspection and quarantine organs within one year after AQSIQs approval.

The system is also a platform of certificate information exchange, automatic bilateral exchange and online checking connecting Chinese and foreign agencies. We have established official inspection and quarantine E-cert checking mechanism with the government of New Zealand, Australia, Netherlands and many other countries.

For further information, please refer to <http://tgyws.aqsiq.gov.cn/>

Medidas Arancelarias:

En el punto 23, sobre aplicación de medidas arancelarias se menciona que China a parte de los aranceles NMF aplicados también aplica aranceles provisionales para ciertos productos. El arancel provisional sustituye el arancel NMF aplicado, sin embargo las tasas provisionales no son superiores al tipo arancelario NMF aplicado.

As mismo en el Anexo I, punto III, párrafo 74, se menciona que En los últimos años, el Gobierno chino ha aplicado tasas anuales provisionales arancelarias para determinados productos importados que son inferiores a los tipos NMF aplicados. En 2010 y 2011, más de 600 productos a 8 dígitos del SA nivel similar al disfrutado las tasas más bajas arancelarias provisionales de cada año. En 2012, con el fin de aumentar las importaciones adicionales, promover la reestructuración económica y satisfacer las necesidades de consumo de las personas, la aplicación de las tasas arancelarias provisionales de importación se extiende a más de 730 partidas arancelarias, con la tasa arancelaria promedio de pie en el 4,4%, lo que es más de un 50% más bajo que el tipo NMF aplicado.

En ese sentido se solicita aclarar lo siguiente:

- *Bajo que criterios se establecen estos aranceles provisionales y que tipo de productos se encuentran contenidos sujetos a su aplicación. Existe un listado?*

Answer: Interim tariff rates are more favorable tariff rates than MFN treatment. For the detailed information please refer to the annual report of customs tariff.

- *Que tratamiento ofrece China respecto a los aranceles preferenciales suscritos en el marco de un acuerdo y los aranceles provisionales, cuando estos últimos se encuentran por debajo del primero?*

Answer: According to China Import and export regulations, Where there are interim tariff rates on imported goods subject to agreement tariff rates or special preferential tariff rates, the lower tariff rates apply.

- *En ese sentido, la consulta es Qu productos se encuentran dentro de las 730 partidas arancelarias?*

Answer: The list of the products subject to temporary tariff rates in 2012 is specified in the Notice of the Customs Tariff Commission of the State Council on the Tariff Execution Plan 2012 (Shui Wei Hui [2011] No. 27) which is available on the official website of the Ministry of Finance (www.mof.gov.cn).

Contingentes Arancelarios:

En el punto 31, se menciona que al 2011 los contingentes arancelarios se aplicaron a 8 categorías de productos importados, con 45 líneas arancelarias a 8 dígitos del SA nivel: trigo (6 líneas), el maíz (5), arroz (14), azúcar (6), lana (6), la lana peinada (3), algodón (2) y fertilizantes químicos (3) (igual que en 2009). Al respecto, se menciona que los aranceles aplicados sobre el contingente del algodón está sujeto a un gravamen diferenciado respecto al gravamen fuera de este, todo ello calculado sobre la base de un umbral que para el año 2011 fue de 11.397/kg. Asimismo se menciona que el promedio de la cuota dentro de la tasa fue del 4,8%, mientras que fuera de la cuota fue de alrededor de 50,4%. Al respecto se hace la siguiente consulta:

Sobre la determinación del umbral, se solicita saber si este cálculo forma parte de una norma o reglamento que permita brindar transparencia y predictibilidad para los usuarios del cupo de algodón.

Answer: Probably due to the translation factor we could not understand this question well.

Entorno Económico y Comercial y Dirección Política Macroeconómica

En el Anexo I, punto II, párrafo 38, se menciona que "El buen desarrollo de la agricultura y las zonas rurales es de gran importancia para el desarrollo a largo plazo, económico y social estable y sostenible en China. El Gobierno de China, de conformidad con los requisitos de reducción de la brecha entre las zonas urbanas y rurales y mejorar el equilibrio entre el desarrollo urbano y rural, continuará con la aplicación de la política "pay-back" y fortalecerá aún más el apoyo a la agricultura, las zonas rurales y los agricultores con el fin de promover constantemente la modernización agrícola en el curso de la industrialización y la urbanización, mejorar las condiciones de producción y de vida en las zonas rurales, aumentar los ingresos de los agricultores, consolidar y fortalecer las bases para el desarrollo de la agricultura y las zonas rurales y crear las condiciones para el desarrollo sostenible, desarrollo económico y social rápida y coordinada".

- *Al respecto, la consulta es ¿en qué consiste la política "pay-back"?, ¿Qué productos incluye?*

Answer: With the accelerated industrialization and urbanization in China, more support and protection has been delivered to the agriculture to achieve the coordinated development of industry and agriculture, for the shift of policies from agriculture feeding industry to industrial nursing the agriculture.

The central government started the experimental reform of rural taxes and administrative charges at of 2000 in Anhui province, eliminating the rural administrative charges, capital raising, readjusting the agricultural taxation policies, and reforming the regulations on the application of the charges withdrawn and retained at the village level. In 2003, the reform went underway nationwide. And 2004 witnessed more vigorous reforms, with tax on agricultural specialty products (excluding leaf tobacco) exempted. The agricultural tax had been gradually lowered and was finally exempted in 2006.

- *¿Cuál es el costo económico de esta política, y si se ha venido incrementando ya que se menciona que el apoyo a la agricultura se fortalecerá aun más?*

Answer: As mentioned above ,the purpose of this policy is to achieve the coordinated development of industry and agriculture, for the shift of policies from agriculture feeding industry to industrial nursing the agriculture.

To achieve the purpose, the central government has undertaken to reform the town and township mechanism, rural compulsory education, the county and township financial administration system, and collective forest ownership, so as to explore a long effect mechanism to prevent the rebounding of farmers burden. At the same time, leftover problems concerning the farmers burden should be duly resolved, by reforming national farms taxation and charges, relieving the burden of the rural residents around the Great Lake region. The government shall effectively reduce regional and administrative burden on farmers. The left over debts of the rural compulsory education should be resolved to unravel the village debt chains. Financial bonus and subsidies should go down to the village level for public welfare, to find out a new mechanism of rural public welfare. All these have contributed to relieving the farmers' burden.

PERU - THIRD SET

Questions relating to Customs Valuation

1. *It would be interesting to know if the Chinese customs administration has a database of import prices and, if so, how this database is used.*

Answer: The Chinese customs administration has a database of import prices which is mainly used for risk analysis on the declared prices of import and export commodities.

2. *It is important to know whether the Chinese customs administration has a simplified valuation procedure for postal items, accompanied baggage or household goods.*

Answer: Currently, the Chinese customs administration exercises the duty-paid value of accompanies baggage, postal items and other entry goods mainly based on the actual selling price of the items. In order to make it convenient for travellers to query and for the customs to conduct on-site duty collection operations and in accordance with selling prices in the overseas, Hong Kong and Macao markets, the Chinese customs administration formulated and implemented the Schedule of Duty-paid Value of Entry Goods and adjust the Schedule based on market price fluctuations. The duty-paid value of goods with a duty-paid value listed in the Schedule is subject to the Schedule, the duty-paid value of goods without a duty-paid value listed in the Schedule is determined in accordance with the latest major market retail prices of same goods in the place of origin, and the duty-paid value of goods whose actual purchase price is more than two times or 1/2 of the duty-paid value listed in the schedule is determined by the customs based on the authentic purchase invoice or receipt provided by the owner of the goods.

3. *It would be interesting to know what procedure the Chinese customs administration uses to determine the customs value of used goods.*

Answer: The Chinese customs administration doesn't use any special procedure to determine the customs value of used goods, but determines the customs value of used goods by using the same procedure with ordinary goods.

Questions relating to Customs Clearance Procedures

Questions relating to the information provided in Annex V: 6. "In 2010, the average time required for customs clearance was 1.7 hours for exports (2.4 hours in 2008) and 15.5 hours for imports (14.1 hours in 2008)":

1. *With regard to the average time required for import and export clearance, we would like to know how this information is obtained:*

- *From the arrival of the goods;*
- *the numbering of the customs declaration;*
- *the presentation of customs documents;*
- *in cases where declarations are subject to physical inspection (red channel)?*

Answer: When calculating the average time of import and export clearance, the time of customs clearance of normal and release customs declarations is the time difference from "handling time of declaration review by computer" to the "handling time of release of the declaration". The custom declarations with goods needing physical examination and verification are excluded from the calculation of the average time required for customs clearance.

2. *We would also like to know what checks are carried out to verify customs import and export declarations, and what percentage of declarations are subject to such checks.*

Answer: The China Customs verifies customs import and export declarations mainly by computer or by manual. The customs import and export declarations not needing manual verification are automatically verified by computer, and the customs import and export declarations needing manual verification receive specialized manual verification on their electronic data. At present, the ration of the declaration need to be manually audited is around 10% or so.

SINGAPORE

PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

QUESTIONS:

Summary

Page ix (Para 7)

1. *We note that China uses various non-tariff border measures, such as import and export licensing and state trading to "guide" the allocation of resources. Notice and-comment procedures are becoming more prevalent in the process of drafting trade laws, regulations, and departmental rules, but it seems that not all trade-related information is made available to the public.*

We would appreciate if China could share other examples of these non-tariff border measures and whether these measures have been effective in meeting their objectives.

Please identify the types of the non-tariff border measures.

Given that not all trade-related laws and regulations are made available to the public, we are also interested to know if there are plans to ensure greater predictability in trade procedures for the importers and exporters of China.

Answer: Article 52 and 62 of the regulation law stipulates that, all the laws and regulations should be published; and the rules of formulating procedure of administrative regulations also have the relevant provisions. All the Chinese trade-related laws and regulations should be published according to the above provisions.

Page xi (Para 19)

2. *We note that Seven industries have been identified as "strategic emerging industries" in China and receive tax preferences. Paragraph 90 of the Government Report also states that the Chinese Government encourages foreign investments in high-end manufacturing, high and new technology industries, and other green energy industries in the central and western regions of China.*

May we have a broad description of the tax preferences that foreign-invested enterprises can enjoy in the seven industries that are identified, and if there are specific sub-sector(s) in these areas which China is keen to encourage investments in.

Answer: The Ministry of Finance and the State Administration of taxation are researching the tax preferences policies for strategic industries. There are 24 sub-sectors defined as priorities within the seven industries.

Trade and Investment Policies

Pages 49 - 50 (Para 99)

3. *China has been recognized as an important source of Active Pharmaceutical Ingredients (APIs) that feed into the global pharmaceutical market. The sporadic incident reports of adulteration and drug counterfeits is of concern to most countries. We wish to seek greater clarity on China's current and future efforts to strengthen the pharmaceutical sector to ensure safety and quality of both APIs and pharmaceutical products exported from PRC.*

Answer: One, basics about China's pharmaceutical raw materials

Strict production license, product registration and GMP systems are implemented in producing pharmaceutical raw materials (PRMs) in China. China Drug Control Law stipulates that PRMs are supervised the same as drugs in registration and production. PRM producers have to apply to SFDA for registration and Drug Production License. They have to pass GMP inspection and fully fulfill relevant requirements. PRMs used by preparation producers must be registered and change of PRM suppliers has to be reported to SFDA. In 2011, SFDA published its newly revised GMP, including an appendix of PRMs. The newly revised GMP is equivalent to WHO/GMP and all PRM producers have to obtain this new GMP before 2015.

Imported PRMs have to go through the same registration procedure as preparations, with Imported Drug Registration as a must and every batch being inspected. Unregistered PRMs, both home and abroad, are forbidden and violators will be treated as falsified drug producers.

Two, basics about China's export and supervision

China implements Export License management system, and according to Article 45 of the Drug Control Law and relevant international conventions, all narcotics and psychotropic substances, protein anabolic preparations, peptide hormones regulated have to be exported only with Export License issued by SFDA. The Customs clears the exportation only with the Export License.

SFDA formulated Rules on Administration of Drug Sales Certificate, based on international practices and WHO advice. SFDA and FDAs at provincial level issue Drug Sales Certificate for those drugs (PRMs included) in line with WHO recommendations, to prove the legitimacy and GMP conformity.

Domestic drug producers that carry out consigned processing of drugs marketed abroad, following Rules of Supervision Management of Drug Production and Rules on Record Management of Consigned Drug Processing, shall be recorded by provincial FDAs, who will ensure requirements on processing sites, formula, workmanship, quality, labeling are strictly met and GMP standard is fulfilled.

In 2008, SFDA issued Notice on Catalogue Management of Certain Exported Drugs and Medical Devices, according to which, gentamicin sulfate, atorvastatin, sildenafil and its salts, oseltamivir and its salts, cefoperazone and its salts, ceftriaxone, glycerin, heparin and its salts, arteannuin and its salts (including dihydroartemisinin, artesunate, artemether, etc), 9 Chinese preparations with indication or functions of erectile dysfunction or sexual enhancement, glucose test strips, condoms, and 2 medical devices fall into export catalogue management. And all the above have to apply for Drug Production License, Drug Approval Number and GMP certificate before they can be exported. The issued Notice entered into force on 18 October 2010.

It is international practice for importers to check the legitimacy and quality of imported PRMs. For unregistered PRMs produced in China but exported, it is the importers responsibility to supervise and record the management control files, to check all the details in preparation registration, and to certify GMP and inspect on spot in China.

Three, supervision cooperation on exported PRMs

The Chinese government attaches great importance to drug quality and safety. SFDA is willing to exchange information and cooperation in supervision with relevant economies to address the problems of falsified and inferior drugs and illegal drug dealings. On management of exported PRMs, China has always been active to strengthen cooperation with relevant economies, and China has signed framework agreements with USA, EU and other economies.

SFDA suggest that importers should contact producers or dealers supervised by FDAs in China, procure those registered as drugs to safeguard drug safety and quality. The namelist of qualified producers and dealers and registered PRMs can be found at www.sfda.gov.cn

Page 51 (Para 104)

4. We note that AQSIQ and the General Administration of Customs maintain a Catalogue of Entry-Exit Commodities Inspected and Quarantined by Entry-Exit Inspection and Quarantine Organs. We would like to know if this catalogue would provide a full listing of SPS requirements for import and export of goods, and also how other WTO Members would be able to access it.

Answer: A product is corresponding to a single product code upon inspection. If the product code is listed in The Catalogue of Entry-Exit Commodities Inspected and Quarantined by Entry-Exit Inspection and Quarantine Organs, the corresponding product needs to be inspected and quarantined. According to the product code listed in different categories of inspection and quarantine in the Catalogue, a product can be subjected to different regulatory inspections, such as Commodity Inspection, Plant or Animal and Its Oriented Product Inspection, Food Hygiene Supervision and Inspection, Sanitary Inspection and Commodity Entry Validation Inspection.

For more information please refer to <http://tgyws.aqsiq.gov.cn/>

PART II: QUESTIONS REGARDING THE GOVERNMENT REPORT

Economic and Trade Environment and Macroeconomic Policy

Page 9 (Para 17)

5. *We understand that the prevailing enterprise income tax rate in China is 25%. Para 17 mentions that the small and low-profit enterprises will enjoy a reduced tax rate of 20% for 5 years from 2010 to 2015. We note that small and low-profit enterprises refer to enterprises with yearly payable tax amounting to 60,000 RMB or less. We are interested to know the experiences of China in implementing the 2-tier rate for businesses. What are the challenges encountered thus far?*

Answer: As for the tax structure for small low-profit enterprises: increase the VAT and business tax threshold; the policy that small low-profit enterprises pay the business income tax by half will be in effect until the end of 2015, together with wider coverage. The pilot projects to replace business tax with VAT will be accelerated in order to eliminate repeated taxation in service field. Taxation reforms will be deepened to improve the structural tax cuts policies, and taxation systems will be probed into to support the development of small and micro businesses.

Page 14 (Para 45)

6. *We note that China intends to introduce private equity investments and other financing vehicles. May we know what the general features of such private equity investments and other financing vehicles that China is considering are, and whether there are incentives to promote such investments/vehicles in China?*

Answer: Private equity investing fund is an important direct financing vehicle. It developed rapidly in China recent years. And this fund has the characteristics as follows, first, numerous types; second, various organizing forms; third, the areas for its registration and investment are almost well developed provinces or cities; forth, funding scale is growing, and bring more effect to substantial economy and investing market; fifth, the IPO of the investment enterprises is the main way for its quit, especially, the GEM facilitate the fund to quit.

Private equity investing fund starts late in China, and there is no law to regulate or adjust it currently. China's regulation body is promoting the amendment of Security investment fund law, and the main content of amendment is to bring the private fund (including private equity fund) into the adjustment scale, identify the supervision authority as well as supervision content, in order to promote the transparency and normalization of private fund. Now the drafting and consulting work of the amendment has been finished.

Page 14 (Para 46)

7. *We appreciate China's intention to standardise investment access thresholds and conditions for entry of private capital into certain sectors and fields to create a market environment in favour of fair competition and equal access of economic entities under diverse forms of ownership. We would like to seek clarification on whether the standardisation of investment access thresholds and conditions would cover all sectors which do not have explicit legal prohibitions against the entry of foreign private capital, and what the standardisations would entail. For instance, would this provide equal access thresholds and conditions for all foreign investors or both foreign and local investors?*

Answer: Please refer to the Guideline Catalogue of Foreign Investment Industries and <http://www.ndrc.gov.cn/> for further information.

SOUTH AFRICA

REPORT BY THE SECRETARIAT (WT/TPR/S/264)

Part III. Trade Policies and practices by measure: paragraph 99, page 50

IV. TRADE POLICIES AND PRACTICES BY MEASURE

- (i) Customs procedures, valuation, and rules of origin**
- (a) Customs Procedures**

The Secretariat states on page 25 that in 2010, the average time required for customs clearance was 1.7 hours for exports (2.4 hours in 2008) and 15.5 hours for imports (14.1 hours in 2008).

4. *What are the times required for customs clearance of the main entry ports into China?*

The Secretariat further notes that Import (and export) declarations may be made in paper or electronic form, and may be made either by consignors and consignees of import cargoes who are registered with Customs or by customs brokers. At the time of customs declaration, importers must meet the requirements of Customs and the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ).

Answer: There is no such term as customs liquidation in the China's Customs Law and some foreign governments and enterprises are used to naming the customs clearance by the term of customs liquidation. The customs clearance refers to the supervisory procedure to be completed on the spot of customs passage for cargo import and export. For the time being, the consignor and consignee of imported cargoes only need to make one report to the Customs in the form of a customs declaration and after being examined and verified by the Customs, the imported cargoes shall be allowed to pass the customs clearance.

5. *Are the customs documents for clearing goods required by registered customs brokers or AQSIQ in particular standardised or the same?*

Answer: The customs declaration of imported and exported cargoes in China is one written confirmation of the actual import and export of cargoes. Article 25 in the China's Customs Law stipulates that import and export declarations shall be made in paper or electronic form and for now, a uniformed filling requirement for the customs declaration has been defined by China Customs and specified for each item in the declaration form.

Tariffs

- Applied MFN tariff rates

The secretariat report in paragraph 23, page 27 states that China's applied MFN tariff rates consist of "standard" applied MFN rates as well as "interim" MFN rates for certain products. The interim tariff effectively replaces the applied MFN tariff; interim rates are not higher than the corresponding standard applied MFN tariff rates.

6. *Could China please explain the difference between standard and interim MFN tariffs and also list products affected?*

Answer: In accordance with the Regulations of the People's Republic of China on Import and Export Duties, the interim tariff rates apply to the import goods subject to most-favored-nation rates, agreement tariff and in-quota duty rates within a specific time limit; and the interim tariff rates shall apply if both most-favored-nation rates and interim tariff rates are available to the import goods. The list of the products subject to temporary tariff rates in 2012 is specified in the Notice of the Customs Tariff Commission of the State Council on the Tariff Execution Plan 2012 (Shui Wei Hui [2011] No. 27) which is available on the official website of the Ministry of Finance (www.mof.gov.cn).

(b) Licensing

On page 34, paragraph 41 the secretariat again reports that Based on these rules, MOFCOM together with the General Administration of Customs (GAC) and other relevant authorities issue the annual Catalogue of Goods Subject to Automatic Import Licensing Administration, and the Catalogue of Goods Subject to Import License Administration in the second half of every year in the form of a MOFCOM Announcement, which is to be implemented the following year.⁵ These two catalogues list all the products subject to import licensing procedures except for those under Tariff Rate Quota (TRQ) administration.

7. *Could China clarify whether the products that are not included in the list are exempt from licensing?*

Answer: The products that are not included in the list are exempt from licensing.

(v) State Trading

The secretariat report in paragraph 44 on page 35 indicates that Under the Foreign Trade Law, the State may subject certain goods to state trading, with a view, inter alia, to ensuring stable domestic supply, stabilizing prices, food safety, and protecting the environment and exhaustible resources.⁶ Products subject to state-trading (on imports) comprise: grain (including wheat, maize, and rice), sugar, cotton, chemical fertilizer, tobacco, crude oil, and processed oil (Table AIII.2).

8. *How do the STEs ensure that imports are sourced with no discrimination against any supplier? How can a new supplier enter the list of potential source of a commodity?*

⁵ The latest Catalogue of Goods Subject to Automatic Import Licensing Administration (for 2012) was issued on 10 December 2011. MOFCOM online information (in Chinese). Viewed at: <http://www.mofcom.gov.cn/aarticle/b/e/201112/20111207908966.html>. The latest Catalogue of Goods Subject to Import License Administration (for 2012) was issued on 5 January 2012. MOFCOM online information (in Chinese). Viewed at: <http://www.mofcom.gov.cn/aarticle/b/c/201201/20120107914675.html>. 201220111210<http://www.mofcom.gov.cn/aarticle/b/e/201112/20111207908966.html>2012201215<http://www.mofcom.gov.cn/aarticle/b/c/201201/20120107914675.html>.

⁶ China's latest notification to the WTO concerning the list of STEs was made in 2003 (WTO document G/STR/N/9/CHN/Add.1, 14 July 2003).

Answer: In accordance with the provisions of Article 52 under the Regulation of the People's Republic of China on the Administration of the Import and Export of Goods, the state-trading enterprises shall carry out their business activities under normal commercial conditions, and may not choose provider according to non-commercial considerations, nor may they reject the entrustment of other enterprises or organizations on the basis of non-commercial considerations. State-trading enterprises shall carry out commercial activities in accordance with relevant laws and regulations. When importing corresponding products, state trading enterprises shall follow the market rules, and decide their suppliers on their own without interference by the government.

(e) Sanitary and phytosanitary measures

The WTO report states on page 50 that ...the AQSIQ oversees food imports and exports, including legislation, and is responsible for quarantine and is the WTO Enquiry Point for SPS measures in China.

9. *Are SPS procedures streamlined and applied on a consistent manner in all entry ports into China?*

Answer: By law, yes. In practice, the competent authorities abide by the law and regulation concerned.

10. *The SPS measures applicable to oranges are they applied on an MFN basis?*

Answer: In the regard of the quarantine and market access of agricultural products, after the exporting country makes an application for export products and provides relevant technical documents, China will assess the risk involved in the breaking out and control of epidemic diseases in animals and plants and discuss with the official quarantine administration in the exporting country in the respect of quarantine measures. Upon the quarantine conditions being determined jointly by the two sides, a protocol can be signed and import realized

3) MEASURES AFFECTING PRODUCTION AND TRADE

(i) Taxation and tax incentives

The Secretariat report in paragraph 170 on page 65 states that since 2011, preferential taxes have been granted on energy-management contract projects for eligible energy services companies, in accordance with the Ministry of Finance and the State Administration of Taxation on Issues concerning the Value-added Tax, Business Tax and Enterprise Income Tax Policies for Promoting the Development of Energy Services Sector. Energy services companies that meet prescribed conditions on contract-based energy management projects are exempted from the business tax and the value-added tax.

11. *Please explain the criteria that must be met in order to be considered for this tax exemption?*

Answer: According to Notice on Policy Issues on VAT, Business Tax, and Corporate Income Tax to Promote the Development of the Energy Conservation Service Industry (Cai Shui No. 110 [2010]), for the products that enjoy the associated value-added tax and business tax policies, to be considered refers to the fact that the following conditions are complied with simultaneously: 1. The correlation techniques used by energy service companies in their implementation of contract energy management projects shall be consistent with the technical requirements specified in General Technical Rules for Energy Management Contract (GB/T24915-2010) released by the State Administration of Quality Supervision, Inspection and Quarantine and the National Standardization Management Committee; 2. Energy service companies shall sign Energy-Saving Benefit Sharing contracts with energy-consuming enterprises and the format and content of the contracts shall be in line with the provisions

of Contract Law and those of General Technical Rules for Energy Management Contract (GB/T24915-2010) released by the State Administration of Quality Supervision, Inspection and Quarantine and the National Standardization Management Committee and so forth.

IV. TRADE POLICIES BY SECTOR

(i) Financial services

Part IV. Trade Policies by Sector: (ii) Financial services (a) Banking: paragraph 104, page 123

The Secretariat Report notes that since 12 February 2010, foreign investors have been allowed to establish wholly owned personal consumption finance companies; previously foreign investment in personal finance was allowed only in the subsector of auto loans, through establishment of wholly owned or joint-venture auto-finance companies. Personal consumption finance companies are not allowed to engage in auto loan business.

12. Can China provide information on the number of wholly-foreign owned personal consumption finance companies established since 12 February 2010?

Answer: By the end of 2010, there were four consumer finance companies, including one fully foreign-owned company and two joint ventures. The four consumer finance companies are: Bank of Beijing Consumer Finance Co. Ltd (wholly owned by Bank of Beijing); Bank of China Consumer Finance Co. Ltd (jointly owned by Bank of China, Brilliance Group, and Shanghai Lujiazui Finance & Development Co. Ltd); Sichuan Jincheng Consumer Finance Co. Ltd (joint-owned by Bank of Chengdu and Hong Leong Bank, Malaysia); and PPF Consumer Finance Co Ltd (wholly owned by PPF Group, Cze).

Part IV. Trade Policies by Sector: (ii) Financial services (a) Banking: paragraph 122, page 128

The Secretariat Report notes that since 2004, lending and deposit taking by banks have been deregulated with a few constraints remaining.

13. Can China elaborate on these remaining constraints?

Answer: China has deregulated lending and deposit taking by banks since 2004, the commercial banks can make its own decisions based on the market situations. Nevertheless, the commercial banks shall abide by the relevant regulations when they carry out the lending and deposit taking activities. Pursuant to Commercial Bank Law of the People's Republic of China, a commercial bank shall abide by the principle of equality voluntariness fairness honesty and good faith in doing business with its clients. A commercial bank shall protect its depositors' legitimate rights and interests from encroachment by any organization or individual. In doing credit business a commercial bank shall strictly examine the credibility of a borrower and persist in extending loans against collateral in order to ensure recalling loans on time. A commercial bank is protected by law to retrieve the principal and interests of a loan from the borrower thereof in accordance with the law. A commercial bank shall abide by the relevant provisions of the law and administrative decrees and regulations in doing business and shall not impair the interests of the state or the public. A commercial bank shall abide by the principle of fair competition in doing its business and refrain from unfair competition.

China believes that the above-mentioned stipulations are common regulatory requirements rather than restrictions.

Part IV. Trade Policies by Sector: (ii) Financial services (a) Banking: paragraph 126, page 129-130

The Secretariat Report notes that with regard to non-interest income, certain services are subject to regulated prices.

14. *Could China elaborate what services are referred to by certain services?*

Answer: According to Regulatory Measures on Service Charge of Commercial Bank (which is still in the process of soliciting opinions and comments), the government-guided price, government-set price and market-adjusted price will be implemented respectively based on the property, characteristic and market competition of commercial bank. For the basic commercial bank services related closely to peoples lives, government-guided or government-set price will be carried out. These services include the bank draft, the promissory note, the cheque, the credit transfer, the entrusted collection of payment and other RMB basic settlement services. For transaction that do not fall into the categories the government guided or set price, the market-adjusted price is implemented.

Part IV. Trade Policies by Sector: (ii) Financial services (b) Securities: paragraph 134, page 131

The Secretariat Report notes that since 4 May 2011, qualified foreign institutional investors were allowed to engage in stock index futures trading.

15. *Can China provide details regarding the criteria to assess qualified foreign institutional investors?*

Answer: According to Measures on Administration of Domestic Securities Investments of Qualified Foreign Institutional Investors, Qualified Foreign Institutional Investors hereinafter referred to as QFII are defined as overseas fund management institutions insurance companies securities companies and other assets management institutions which have been approved by China Securities Regulatory Commission to invest in China's securities market and granted investment quota by State Administration of Foreign Exchange.

A QFII applicant should meet the following criteria (1) The applicant should be in sound financial and credit status should meet the requirements set by CSRC on assets size and other factors and its risk control indicators should meet the requirements set by laws and securities authorities under its home jurisdiction, (2) Employees of the applicant should meet the requirements on professional qualifications set by its home country/region, (3) The applicant should have sound management structure and internal control system should conduct business in accordance with the relevant regulations and should not have received any substantial penalties by regulators in its home country/region over the last three years prior to application, (4) The home country/region of the applicant should have sound legal and regulatory system and its securities regulator has signed Memorandum of Understanding with CSRC and has maintained an efficient regulatory and co-operative relationship, (5) Other criteria as stipulated by CSRC based on prudent regulatory principles.

Part IV. Trade Policies by Sector: (ii) Financial services (b) Securities: paragraph 141, page 133

The Secretariat Report notes that Securities companies may establish subsidiaries to specialize in financial products and other investments beyond the range of securities operation with their own capital as defined in the regulation, however, securities companies may not provide finance or guarantees to these subsidiaries.

16. *Can China explain whether this applies to both foreign and domestically owned securities companies?*

Answer: Regulations on the Investment Range and other Related Issues of Securities Companies' Operation on Their Capitals, which entered in force on 1 June 2011, is equally applied to domestic and foreign securities companies.

Part IV. Trade Policies by Sector: (ii) Financial services (b) Securities: paragraph 145, page 133

The Secretariat Report notes that Securities investment consultants must acquire the qualification of securities investment consultant, and be registered in the Securities Association of China.

17. *Can China elaborate whether foreign qualifications (securities investment) are recognised?*

Answer: It depends on the specific situations of mutual qualification recognition.

Part IV. Trade Policies by Sector: (ii) Financial services (b) Securities: paragraph 148, page 134

The Secretariat Report notes that since 2005, commercial banks have been allowed to establish fund management companies under a pilot programme. Currently, eight commercial banks have fund management companies as subsidiaries. The authorities state that the pilot programme is completed and under evaluation to determine whether its scope will be enlarged.

18. *Can China indicate how many of these eight commercial banks are foreign?*

Answer: According to our knowledge, the above-mentioned eight commercial banks do not include foreign banks.

19. *Can China provide further information about the progress to date of the evaluation process to determine whether the scope of the pilot programme will be enlarged?*

Answer: Currently, evaluation of the above-mentioned pilot programme is still ongoing, the relevant authorities will determine whether to enlarge the pilot programme or not on the base of evaluation.

Part IV. Trade Policies by Sector: (ii) Financial services (c) Insurance: paragraph 158, page 136

The Secretariat Report notes that insurance companies and their branches must operate business activities within the territorial boundary of the province/municipality/autonomous region in which they are registered. Insurance companies must establish at least one branch in the territory at the provincial level where they intend to operate business. However, re-insurance companies, including branches of foreign re-insurance companies, are allowed to operate nationwide.

20. *Can China explain whether all the regulations mentioned above, apply equally to local and foreign companies?*

Answer: Rules on Administration of Insurance Companies stipulates specific requirements for the application and establishment procedures of branches, which are equally applied to domestic and foreign insurance companies.

Part IV. Trade Policies by Sector: (ii) Financial services (d) Financial Information: footnote 149, page 137

Footnote 149 of the Secretariat Report notes that the decision whether to grant business approval is made within 20 working days upon receipt of application, and each approval is valid for two years.

21. *Can China elaborate whether reasons are provided for rejection of applications?*

Answer: According to Article 7 of Administrative Rules on Foreign Institutions Provide Financial Information within Chinese Territory, the State Council Information office of China (SCIO) shall make a decision within 20 working days from the date it accepts an application for administrative permission. Where the application of an applicant is in line with the statutory requirements and standards SCIO shall make a decision in writing on approving administrative permission, and issue the relevant certification. Where SCIO makes a decision on refusing to approve the application SCIO shall inform the applicant in writing and state its reasons.

Transport

Part IV. Trade Policies by Sector: (iv) Transport (a) Maritime transport services: paragraph 219, page 149

The Secretariat Report notes that a prohibition in principle exists in regards to foreign-funded companies and vessels engaging in pushing and towing services. Moreover, it acknowledges that since some foreign ports have foreign shareholders, the implication exists that there is some foreign investment in this area.

22. *Can China provide details as to the objectives of the prohibition?*

Answer: According to China's laws and regulations, foreign-funded shipping enterprises and foreign vessels are strictly forbidden to engage in pushing and towing service between Chinese domestic ports. It is also an international common practice for countries to reserve internal waterways transport to domestic enterprises and vessels. In addition, China has no relevant accession commitment in internal waterways transport. This prohibition is based on the position and principle that China always holds for reserving cabotage traffic rights.

At present, pushing and towing service giving assistance to vessels berthing and un-berthing within Chinese port zone belongs to the category of port operator services, which is outside the scope of cabotage transport services and has no contradiction with China's principle of reserving cabotage traffic rights.

Tourism

Part IV. Trade Policies by Sector: (v) Tourism (b) trade regime: paragraph 306-8, page 165

The Secretariat Report notes that that a pilot program has been implemented to determine whether to open the outbound tourist industry to foreign funded travel agencies. The Report states that if the results of the program are deemed successful it will be extended to other foreign travel agencies through a licensing mechanism. It goes on to state that 58 travel agencies have been licensed to operate.

23. *Can China explain whether the fact that 58 licenses have been issued means that the pilot program has in fact become the de jure state of affairs?*

Answer: By now, three foreign funded travel agencies have been licensed on a pilot basis to operate the outbound tourism business for residents of Mainland China. They are TUI China Travel Co. Ltd., CITS American Express Travel Services Ltd, and JTB New Century International Tours Co. Ltd.

24. *Can China elaborate on the criteria which determine the issue of a license?*

Answer: As to the license criteria of travel agency operating the outbound tourism business for residents of Mainland China on a pilot basis, please refer to the Tentative Measures for Supervising Pilot Operation of Outbound Tourism Businesses by Sino-foreign Joint Venture Travel Agencies jointly issued by the Ministry of Commerce and National Tourism Administration in 2010 (No. 33 of the Ministry of Commerce).

Environmental services

Part IV. Trade Policies by Sector: (vi) Environmental services: paragraph 314, page 166

The Secretariat Report notes that China is still designing a policy (for environmental services in general) as environmental facilities were originally regulated like public utilities, largely municipality owned.

25. *Can China provide details and/or timelines as to when this policy will be finalized and/or implemented?*

Answer: The 12th Five-Year Plan for the National Environmental Protection issued in December 2011, presented that China will strive to develop environmental protection industry, make industry statistical standards and formulate relevant policies and measures to improve the efficiency of project design and operation in environmental protection industry. Currently, some relevant laws and regulations have been promulgated with detailed incentives to some specific environmental service sub-sectors, and policies of utilizing foreign capital in China also encourage foreign investors participating in environmental services efficiently. During the Twelfth Five Plan Period, China will continue to actively promote the development of environmental service. Please log into the website of Ministry of Environmental Protection of China to get further information.

Part IV. Trade Policies by Sector: (vi) Environmental services: paragraph 314, page 166

The Secretariat Report notes that the Tianjin Municipal Government allows foreign capital participation in franchising activities of municipal utilities such as sewage treatment and waste disposal.

26. *What are the minimum capital requirements for foreign participation in these franchising activities?*

Answer: As regard to the issue of registered capital, provisions about foreign-invested enterprises registered capital and paid-up capital in Rules on the Registration of Companies Registered Capital paid-up capital states the minimum amounts for different types of enterprises: RMB 30,000 for limited liability companies, RMB 100,000 for one-person limited liability company, and RMB 5 million for incorporated corporation.

Tianjin City government encourages social capital and foreign capital participate in the construction of environmental protection industry in according to relevant regulations. However, for the distinctiveness and importance of sewage treatment and garbage disposal for municipal works, local governments in different provinces may have specific requirement on minimum amount of registered capital for companies participating in the project bidding.

Part IV. Trade Policies by Sector: (vi) Environmental services: paragraph 316, page 167

The Secretariat Report notes that China's environmental services commitments under the GATS excludes horizontally, environmental quality monitoring and pollution source inspection.

27. *Can China indicate whether these environmental standards are uniformly applied at a national level?*

Answer: According Environment Protection Law of the People's Republic of China, Ministry of Environment Protection should establish national standards for the discharge of pollutants under the guidance of the national standards for environment quality and the country's economic and technological conditions.

The people's governments of provinces, autonomous regions and municipalities may establish their local standards for the discharge of pollutants for items not specified in the national standards; with regard to items already specified in the national standards, they may set up local standards which are more stringent than the national standards and report the same to the competent department of environmental protection administration under the State Council for the record. Units that discharge pollutants in areas where the local standards for the discharge of pollutants have been established shall observe such local standards.

The Secretariat Report notes that logistics-related laws, regulations and rules are spread out across several Ministries and agencies.

Postal and courier services

Part IV. Trade Policies by Sector: (vii) Postal and courier services: paragraph 324, page 168

The Secretariat Report notes that the postal authority has also strengthened its administration on express delivery services as well as the licensing requirements for express delivery. The Secretariat Report also notes that the postal authority had issued 6,891 express delivery licenses and approved foreign-invested enterprises to engage in express delivery services.

28. *Can China indicate the number of approved foreign-invested enterprises in express delivery services?*

Answer: The Chinese postal authority has approved 60 foreign-invested enterprises to engage in express delivery services by July 2011.

29. *Can China provide more detail about the minimum capital requirements for a foreign-invested enterprise to engage in express delivery services?*

Answer: According to Article 52 of Postal Law, any enterprise that applies for a express delivery services license should meet the registered capital requirements as (follows): For operators within the province autonomous region or municipality directly under the Central Government, the registered capital shall not be less than RMB 500,000 yuan; For operators across the province autonomous region or municipality directly under the Central Government, the registered capital shall not be less than RMB 1,000,000 yuan; For operators providing international express delivery services, the registered capital shall not be less than RMB 2,000,000 yuan. These requirements apply to all the express delivery agencies established in China, including both foreign-invested and domestic ones.

Distribution services**Part IV. Trade Policies by Sector: (viii) Distribution services: (a) Overview paragraph 326-7, page 169**

The Secretariat Report notes that China has approved the establishment of 748 foreign-invested retail enterprises. The Report further notes that in January 2010, there were 604 foreign-invested comprehensive retail enterprises.

30. *Can China please explain the difference between a foreign-invested retail enterprise and a foreign-invested comprehensive retail enterprise?*

Answer: Comprehensive retail enterprise normally means department store, superstore, shopping mall etc., and retail enterprise may also include convenience store and specialty store.

Part IV. Trade Policies by Sector: (viii) Distribution services: (a) Overview paragraph 328, page 169

The Secretariat Report notes that the Ministry of Commerce has plans to improve relevant rules and regulations in order to prevent large retailers from abusing their advantageous position in the market.

31. *Can China elaborate on the procedural and substantive aspects of the proposed regulatory improvements?*

Answer: Domestic coordination is under way to assess to elaborate on such procedure and substance, but it will take more time to get such information.

Logistics services**Part IV. Trade Policies by Sector: (vi) Logistics services: paragraph 345, page 174**

The Secretariat Report notes that more than 700,000 logistics enterprises are registered in China, but less than 1% of them are truly integrated logistics enterprises.

32. *Can China elaborate as to whether there are regulatory barriers that prevent a higher incidence of truly integrated logistics enterprises?*

Answer: Chinese relevant administrations are in the process of understanding more specific condition on this issue, and then do further study work in this regard.

Part IV. Trade Policies by Sector: (vi) Logistics services: paragraph 358, page 176

The Secretariat Report notes that logistics-related laws, regulations and rules are spread out across several Ministries and agencies.

33. *Does China intend to rationalize this process and make it more user-friendly?*

Answer: China insists that rationalize the process of making logistics-related law and regulations is of great importance in improving the efficiency of logistics service and driving rapid development of national economy. Relevant administrations including National Development and Reform Commission, Ministry of Transport, Ministry of Railways, Ministry of Commerce, State Post Bureau and Civil Aviation Administration of China have all participated in the formulating of policies and

measures in promoting the development of logistics service industry. During the Twelfth Five Plan Period, China will continue to actively promote the development of this sector

SWITZERLAND

REPORT BY THE SECRETARIAT

II. Trade Policy Regime: Framework and Objectives

(1) Institutional and Legal Framework

(i) Transparency

In Paragraphs 11-14 the Secretariat's report notices that the (degree of) implication of foreign investors potentially affected by a new law, rule, or regulation in the solicitation of the public on said law, rule, or regulation appears to depend on the regulating authority. Could China elaborate under which conditions and to which degree potentially affected foreign investors or associations thereof may participate in these consultations? Furthermore, how are these consultations documented, and are these records available to the public?

Answer: China understands that its transparency commitment for WTO accession is to give a period after the promulgation of laws, regulations and rules related to or affecting trade in goods, trade in services and trade-related intellectual property right or foreign exchange control prior to their enforcement. It is not mentioned in China's commitment to solicit public opinions for the drafts of the laws, regulations or rules to be promulgated. Nevertheless, in order to advance scientific legislation and democratic legislation and improve the quality of legislation, the Chinese Government has always made unremitting efforts to improve the transparency of legislation, promote solicitation of public opinions on legislation drafts and expand public participation. Since 2008, public opinions have been solicited for draft administrative laws and regulations which are all published on the <http://www.chinalaw.gov.cn> except those to be kept secret in line with law. And public opinions have also solicited for draft regulations of various departments on their websites or <http://www.chinalaw.gov.cn>. All people including foreign investors can propose opinions and suggestions.

With regard to the transparency of foreign capital policies, foreign capital authorities have solicited public opinions in accordance with laws, regulations and rules. When amending the Catalogue for the Guidance of Foreign Investment Industries 2011 and promulgating the regulations on anti-monopoly review and national security review concerning foreign capital, foreign capital authorities solicited public opinions by publishing the drafts on the website and absorbed reasonable suggestions from all parties including foreign-funded enterprises and chambers of commerce. Up till now, China has not made provisions in relevant laws and regulations on the written documents and records of public opinion solicitations and consultations.

(3) Trade Agreements and Arrangements

(iii) Unilateral preferences

We commend China for having opened up to imports from LDCs in 2011, as mentioned in paragraph 37. Our questions are as follows:

1. What has been the proportion of imports subject to these preferences to overall imports in 2011?

Answer: We are in the process of identifying data that can help determine the exact problem if such imports.

2. *Does China grant unilateral tariff concessions to other (non LDC) developing countries?*

Answer: China has not grant unilateral tariff concessions to other (non LDC) developing countries till now.

(4) Foreign Investment Regime

(ii) Regulatory Framework

In Paragraph 44, the report states that authorities noted that foreign investors may be allowed to own some shares in state-controlled enterprises in certain sectors. In which sectors are foreign investors allowed to own shares in state-controlled enterprises? What are the foreign ownership caps?

Answer: As explicitly pointed out in the Several Opinions of the State Council on Better Utilizing Foreign Investment issued in 2010, foreign investors are encouraged to participate in the reconstructing, transformation, acquisition and reorganization of Chinese enterprises in the forms of equity participation and M&A among others. As a basic policy guiding foreign investors to invest specific industries, the Catalogue for the Guidance of Foreign Investment Industries divides encouraged, allowed, restricted and prohibited sectors for foreign investment and stipulates explicit requirements on the investment way and shareholding ratio in certain sectors. In sectors open to foreign investment, China doesn't impose restrictions on foreign investment based on company nature. The specific provisions of the Catalogue for the Guidance of Foreign Investment Industries are equally applicable to foreign investors participating in state-controlled and non-state-controlled enterprises, including requirements on share proportion.

(iv) Bilateral investment treaties

Paragraph 58 mentions that China has concluded four new bilateral investment agreements with Chad, Libya, Uzbekistan, and Congo (DRC) between 2010 and 2011. What is the coverage of the new bilateral investment agreements: Is it limited to the post-establishment phase (investment protection) or does it also include the establishment of investments (pre-establishment phase)?

Answer: In these new bilateral investment agreements, the contents concerning national treatment are only limited to the post-establishment phase, but the contents concerning most-favored-nation treatment includes the pre-establishment phase.

III. Trade Policies and Practices by Measure

(1) Measures Directly Affecting Imports

(i) Customs Procedures, valuation and rules of origin

Paragraph 1 states that under the Foreign Trade Law and the Rules for the Registration of Foreign Trade Operators, individuals as well as legal persons and other organizations need to be registered as foreign trade operators with the MOFCOM or its authorized bodies as well as with Customs before filing customs declarations. Which are the precise registrations or licensing requirements? Are these rules publicly available in English?

Answer: Rules for Registration of Foreign Trade Operators (MOFCOM Decree No. 14 of 2004) was enacted and came into force on 1 July 2004 as required by the revised Foreign Trade Law of the People's Republic of China of 2004 to implement the accession commitment to liberalize trading right within 3 years after WTO accession. The registration of foreign trade operators serves the purpose of statistics and information collection and facilitation of customs procedures, and there involves no approval procedures. For information required in the registration process, please refer to the Rules for Registration of Foreign Trade Operators, of which a full text English translation was provided to the

WTO Council for Trade in Goods when the Council had its annual China transitional review in November 2004.

*In the last sentence of **paragraph 10**, it is mentioned that PSI requirements have not been notified to the WTO. In 2008, China answered that China had notified the revised Implementing Rules for Import and Export Commodities Inspection to both TBT and SPS Committees (G/TBT/N/CHN/181 and G/SPS/N/CHN/96). However, TBT, SPS and PSI agreements are not the same and have each separate notifications requirements. Does China intend to comply with article 5 of the PSI agreement?*

Answer: China is studying and researching on the notification of PSI, and will notify to WTO when we finish this job.

According to **paragraph 11**, the current list of designated foreign institutions was not made available to the Secretariat by China. Could China provide the current list of designated foreign institutions to conduct PSI and to issue certificates?

Answer: Lists of the recognized institutions to conduct PSI of import of solid waste which could be used as raw materials include:

1. CHINA INSPECTION COMPANY LTD.
2. CCIC AUSTRALIA PTY. LTD.
3. CCIC CANADA INC.
4. CCIC MARRSEILLE SARL
5. CCIC BREMEN GMBH
6. JAPAN CHINA COMMODITIES INSPECTION LTD.
7. CHINA CERTIFICATION & INSPECTION GROUP JAPAN CO.LTD
8. CHINA CERTIFICATION & INSPECTION GROUP ALMATY CO.LTD.
9. CCIC MACAU COMPANY LTD.
10. CCIC MALAYSIA CO.LTD.
11. CCIC MN CO.,LTD.
12. CCIC EUROPE B.V.
13. CCIC NEW ZEALAND CO. LTD.
14. CCIC PHILIPINES INC.
15. CCIC OFFICE IN THE RUSSIAN FEDERATION
16. CCIC SINGAPORE PTE.LTD.
17. CCIC SUCURSAL EN ESPANA
18. CCIC THAILAND CO., LTD.
19. CCIC DUBAI CO., LTD.
20. CCIC LONDON LTD.
21. CCIC NORTH AMERICA INC.
22. CCIC SOUTH AMERICA S.R.L.
23. CCIC KOREA CO., LTD.
24. CCIC INDIA LTD.

(ii) Tariffs

*According to **paragraph 25**, The authorities maintain that applied non-ad valorem duty rates are adjusted annually so that their AVEs do not exceed their corresponding bound rates, which are all ad valorem rates in accordance with China's accession commitments. As bound rates are ad valorem and applied rates are non-ad valorem, there is a possibility that AVEs might exceed the bound rates, reflecting fluctuating import prices. Could China indicate how it controls and ensures that applied non-ad valorem rates are not above the bound ad valorem rates as fluctuations may occur due to the origin of the good, the price of the imported good, etc.?*

Answer: Since China's WTO accession, China has always been adopting the specific duty (equivalent to *ad valorem* rate) converted in strict accordance with the *ad valorem* rate committed by China for WTO accession and re-calculating the rate of specific duty each year so that the actual rate will not exceed the bound rate committed by China. The conversion is conducted mainly based on the average import price in recent years (the last four years) provided by the Customs, and, with respect to some categories, the influence of such factors is eliminated as no import records in a certain year or large fluctuation in the import price in a certain year.

(iv) Import prohibitions and licensing

Paragraph 38: *In 2011 China applied import prohibitions on inter alia second-hand/used items or scraps (e.g. clothes, precious metals, machinery and electronic equipment, aluminum containers for compound or liquefied gas, transport equipment). Which criteria does China use to define second-hand products and how does China distinguish them from remanufactured goods? Moreover, could China kindly provide us with a detailed explanation on the reasons for imposing import prohibitions on those products?*

Answer: Import prohibitions on certain second-hand/used items or scraps are implemented to protect human, animal or plant life or health, and environment. To define and distinguish second-hand/used items or scraps China has relevant rules in place, for example Rules on Administration of Inspection and Supervision of Import of Used Machinery and Electrical Products (AQSIQ Decree No. 37) and Rules on Inspection and Supervision Procedures for Import of Used Machinery and Electrical Products (AQSIQ Decree No. 53).

(v) State trading

Paragraph 44 (as well as IV. Trade Policies by Sector, (1) Agriculture, (ii) Agriculture policies, **Paragraph 33**): *The Secretariat's report states that for a number of agricultural products such as grains or sugar and natural resources such as oil or fertilizer, state trading enterprises intervene upon import. Could China explain what type of intervention for those products is foreseen? How does China assure that the intervention by state-trading enterprises is of a non-discriminatory nature? With regard to agricultural products, what is the relation between intervention upon import and the the Minimum Purchase Prices scheme as described in **Para 33 of Chapter IV (1)** of the Secretariat's report? How does China assure that speculation by the entitled companies, causing negative impact on net food importing countries, is excluded? Does China envisage removing those products from state trading requirements in the near future?*

Answer: State-trading enterprises refer to those enterprise that have acquired the qualification to engage in import and/or export trade of products listed in Annex 2A of China's WTO Accession Protocol. Operations of these state trading enterprises are not interventions upon the market because they essentially are all normal commercial operations free from government intervention. Decisions of these enterprises to import or export and on quantities and timing are independently made by themselves based on market conditions including prices in the international market. The concept of state trading stops at the qualification to engage in import and/or export trade of products listed in Annex 2A of China's Accession Protocol. It does not involve daily operation of the enterprises. In view of this China does not understand the meaning of the question saying how to assure that the speculation by the entitled companies (state-trading enterprises), causing negative impact on net food importing countries, is excluded.

As to the changes of the products listed in Annex 2A of China's WTO Accession Protocol, vegetable oils were no longer subject to state trading (import) since January 2006, tea was no longer subject to state trading (export) since May 2006, and silk was no longer subject to state trading (export) since

January 2005. For soy bean, unbleached silk, cotton yarn and woven fabrics of cotton in the Annex 2A, China has not applied state trading on them since its WTO accession. For rest of the products there have been no changes.

As to the Minimum Purchase Prices scheme, it is applied to only few key agricultural products of grains to safeguard food security and to increase the income of farmers. It has no relationship with import and export trade including state trading.

*Furthermore (in reference to **paragraph 44**, as well as (2) Measures Directly Affecting Exports, (vii) State trading on exports, **paragraph 152**), China's latest notification on state-trading enterprises was made in the year 2003 whereas the decision of the Council for Trade in Goods on 26 November 2003 demands notifications on a biannual basis. Could China indicate when it will update its notification on state trading enterprises? What are the developments concerning state-trading enterprises since China's last notification in 2003?*

Answer: The state trading regime of China, including the products covered and the STR enterprises, did not have significant changes except that a couple of products were no longer subject to state trading administration. Besides, for a few products subject to state trading, some statistics required in the notification are not produced officially in China. In view of these, China did not submit its state trading notification. That said, if members expect China to submit the notification despite of the few changes, China will try to submit the notification as soon as possible.

(vi) Contingency trade measures

*In **paragraph 51**, the Secretariat's report indicates that MOFCOM may self-initiate an anti-dumping investigation if it has sufficient evidence of the existence of dumping, injury and causal link. In the absence of an anti-dumping complaint by a domestic enterprise, person or organization on behalf of the domestic industry, could the Chinese authorities explain on the basis of what type of evidence MOFCOM would be able to self-initiate an anti-dumping investigation?*

Answer: Under such circumstances, MOFCOM would self-initiate an anti-dumping investigation in accordance with the WTO's provisions on implementing paragraph 5.6 and 5.2 agreed in Article 6 of GATT 1994.

*In **paragraph 60**, the Secretariat's report indicates that Article 37 of the AD Regulations provides that the imposition and collection of anti-dumping duties shall be in the public interest. In the same paragraph, the Secretariat also notes that in 2005 already China had informed the Committee on Anti-dumping Practices that it was still studying how to address public interest considerations in anti-dumping investigations. To this day, according to the Secretariat, there are still no published rules on how the consideration of public interest has to be taken into account in the context of an anti-dumping investigation in China. Given that the Chinese authorities are using the anti-dumping trade remedy quite intensively (117 AD measures taken by China were in effect as of December 2010), could the Chinese authorities explain how in practice they do take into account the interests of the public at large in the conduct of anti-dumping investigations and ensure that these issues are adequately and equitably taken into account across all anti-dumping investigations?*

Answer: In anti-dumping investigations, Chinese investigation authorities hold public hearings and opinion statement meetings among others to provide adequate opportunities for all parties, including involved producers and exporters, government of the involved country, upstream and downstream enterprises, relevant trade associations as well as importers, to listen to their opinions, and seriously take their relevant appeals into account so as to ensure objective, impartial and equitable investigations.

(vii) Standards and other technical requirements

According to paragraph 85 four levels of standards exist in China: national, trade, local and enterprise standards. When referring to Chinese standards in technical regulations, and assuming that no relevant international standard exists, would only provincial regulators refer to a local or trade standard? Which organizations elaborate local and trade standards and how are these organizations affiliated to the Standardization Administration of China (SAC)? How do those organizations take international standards into account? What are the requirements for companies to participate in the elaboration of local and trade standards? Does the Code of Good Practice for the Preparation, Adoption and Application of Standards as set out in Annex 3 of the WTO-TBT Agreement also apply for local and trade standards?

Answer: When referring to Chinese standards in technical regulations, and assuming that no relevant international standard exists, provincial regulators shall follow national standards, trade standards, and local standards.

The formulators shall be responsible to elaborate, and under this principle, trade standards shall be elaborated by executive bodies of the State Council that approved these trade standards, while local standards fall into the responsibility of standardization authorities of corresponding provinces, autonomous regions and municipalities.

SAC unifies the management of standardization across the country, but these authorities are not subordinate to SAC, SAC coordinate approval, review, numbering and publishing of all the national standards; relevant executive organs of the State Council formulate trade standards; and local standards fall into the responsibility of standardization authorities of corresponding provinces, autonomous regions and municipalities.

Adoptions of international standards are encouraged.

(viii) Government procurement

Paragraph 113: The report identifies a difference between the figure of 2 % of GDP provided by the authorities and the average for developing countries of 10-15 % of GDP estimated by other sources. Could the Authorities of China provide views on the origin of these differences in the appreciation to the volume of government procurement (GP) in China? Table III.6 indicates that the volume of GP at central level remained stable - or even decreased for constructions over the past years. What is the reason of that stabilization?

Answer: The China Government Procurement Law applies to a very limited scope only including the procurement projects conducted by the various governmental authorities, public institutions and organizations from fiscal funds. Therefore, the share of government procurement in GDP is smaller than the average level of the developing countries.

In recent years, the volume of government procurement at the central level remains stable and accounts for no more than 10% of the total volume of government procurement around the whole country. The volume of construction works procurement is small mainly because the government construction works procurement is carrying out through tendering and bidding and governed by the tendering and bidding law not completely taken into account in the statistics of government procurement.

Paragraph 116: SOEs might be considered as utilities in the sense of state monopolies - covered for GPA Members by annex 3 of the GPA. These utilities are operating with exclusive rights based on a specific law providing them with the status of a monopoly (water supply, energy, etc.). In return to

this competitive advantage, the procurement legislations are requesting these monopolies to create competition among suppliers when they have to purchase goods and services in order to run their activities. Could China explain why it does not consider procurements by SOEs as government procurement? What is the scope of the definition of government procurement used by the Authorities of China?

Answer: The Chinese state-owned enterprises are different from the utilities entities listed in annex 3 of the GPA. In accordance with the Law of the People's Republic of China on State-owned Assets of Enterprises, the Chinese state-owned enterprises are the independent market participants responsible for their own operations, profits and loss. Procurement by SOEs is an ordinary operation act of enterprises, which the government will not interfere.

Chinese government procurement means the procurement of the goods, the construction and the services within the statutory centralized procurement catalogue or over the statutory procurement thresholds by the various governmental authorities, public institutions and organizations from fiscal funds.

(2) Measures Directly Affecting Exports
(iv) Tax rebates on exports

In paragraph 143, the Secretariat's report indicates that VAT may be rebated on exports, although the rebate rates are, by and large, lower than the VAT rates actually paid. The Secretariat's report further notes that the difference between the two rates constitutes a levy on exports, which may in turn constitute assistance to downstream processing of the products affected and could affect China's terms of trade. Could the Chinese authorities provide an exhaustive list of the products affected by this levy on exports? Also, how do the Chinese authorities view these rebates favoring the downstream processing of the products affected in the context of China's obligations under Article 3.1(b) of the SCM Agreement?

Answer: Tax rebate is an international normal practice. China keeps the rebate rates generally lower than the rates actually paid mainly because of the insufficient fiscal capacity. We consider that the views on the difference between the rebate rates and the actually-paid rates constituting assistance to downstream processing of the products affected cannot be duly supported by either theory or practice. We would like to seek the clarifications from the relevant members. The products entitled to export rebate and the rebate rates can be obtained from the website of the State Administration of Taxation.

(v) Tax concessions under processing trade

In paragraph 145, the Secretariat's report notes that a large number of materials and parts listed in the Catalogue of Goods Subject to Import Prohibition Under Processing Trade are subject to import and/or export prohibitions but that the criteria for deciding which product are prohibited under processing trade were not made available to the Secretariat. Could the Chinese authorities indicate which criteria they use to establish these export and import prohibitions under processing trade?

Answer: Since 1999, China has begun to implement goods classification management for processing trade. Up till now, MOFCOM has worked with the General Administration of Customs to issue a total of 11 Catalogues of Goods Subject to Import Prohibition under Processing Trade. Currently, there are 1,803 commodities with a 10-digit customs code. Commodities listed in the Catalogue of Goods Subject to Import Prohibition under Processing Trade are mainly products characterized by high energy consumption, high pollution and high consumption of domestic resources during the production.

(vi) Export prohibitions, restrictions, and licensing

According to paragraph 147, Rare earth has been subject to export quota and licence since 1999. They are also subject to export taxes. In 2010 already the Secretariat and the Members questioned the economic effectiveness of these measures (see Box III.1 of WT/TPR/S/230/rev.1). In 2010 the Secretariat's report mentioned that China is starting to consider more suitable internal (rather than trade) measures to protect the environment and conserve natural resources. Could China indicate what kind of other measures (than export quotas) has China implemented since 2010? How do they apply? What has been their effect? Does China envisage moving export quotas since only a small proportion of its production is being exported?

Answer: China's export administration on rare earth is for the purpose of protecting environment and conserving exhaustible natural resources. Since the WTO dispute cases on this issue are now under way, it is appropriate for us to refrain from making comments until the final resolution.

(vii) State trading on exports

Paragraph 152 of the Secretariat's report states that China maintains state trading enterprises for, amongst others, some agricultural products and natural resources. Could China explain the driving forces for the STEs decision on carrying out export activities and how they are contributing to the objectives of ensuring stable domestic supply; avoiding drastic price fluctuations in international markets; safeguarding food safety; and protecting exhaustible and non-recyclable natural resources and the environment? How does China assure that the intervention by state-trading enterprises is of a non-discriminatory nature? How does China assure that net importing countries are not negatively affected by activities of those STEs? Does China envisage removing agricultural products from its STE obligations in the near future?

Answer: With regard to the basic trade information of Chinese state-owned enterprises, please refer to answers to the questions under III. Trade Policies and Practices by Measure (1) Measures Directly Affecting Imports (v) State trading.

(viii) Export finance, insurance, and guarantees

Paragraphs 161-165: The Chinese authorities have indicated that China in practice refers for key conditions to the Arrangement on Officially Supported Export Credits. The main purpose of the Arrangement is to provide a framework for the orderly use of officially supported export credits and to foster a level playing field for official support. The Arrangement receives administrative support of the OECD Secretariat but it is not an OECD Act. Where and why do the Chinese authorities see obstacles for fully applying the Arrangement and how could these obstacles be overcome from the point of view of the Chinese authorities? If the Chinese authorities see an alternative to the Arrangement, could they please explain what such an alternative could look like?

Answer: As a developing country, China's Arrangement on Export Credits has distinctive characteristics of developing countries and is different from OECD arrangement. The OECD Arrangement on Officially Supported Export Credits aims to regulate and address international competition issues among developed countries and doesn't fully embody the development perspective of developing countries. China now doesn't have conditions to join in the Arrangement. Due to these reasons, China neither considers it necessary to make export credit arrangements in full accordance with the Arrangement nor has conditions for referring to the Arrangement.

In the future, China will learn from the international favorable experience including the Arrangement in accordance with our own development level of national economy, economic structure and enterprise characteristics to constantly in practice improve domestic export credit arrangements.

(3) Measures Affecting Production and Trade
(i) Taxation and tax incentives

Paragraph 175: The excise (or consumption) tax of 20% on some luxury watches, with a unit price higher than 10,000 (Table AIII.5 to document WT/TPR/S/264) was introduced in 2006 and has not been reduced or abolished since. However, the Secretariat's report is making reference to several Chinese and overseas press comments over the last 12 months mentioning that the excise tax on some watches is being adjusted or abolished. Could China provide more detailed information on such adjustments?

Answer: Currently, the policy has not been adjusted.

(ii) Subsidies and other government assistance

In paragraph 189, the Secretariat's report indicates that the use of subsidies and other government assistance appear to be an important feature of China's trade policy making. In paragraph 192, the Secretariat's report also notes that China's latest full notification to the WTO on subsidies is the one covering the years 2007 and 2008 (i.e., the 2009 notification). The notification on subsidies for the years 2009 and 2010 which was due on 30 June 2011 has apparently yet to be submitted by China. Given the important role that subsidies seem to play in the Chinese economy, could the Chinese authorities indicate when the 2011 new and full notification of subsidies covering the years 2009 and 2010 will be submitted to the WTO?

Answer: Use of subsidies and other government assistance is an important feature in trade policies of many WTO Members. Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work towards incorporating local subsidies in its future notifications. As to the 2009-2011 notification, it will not be too difficult if covering only central programs. However if local programs are to be incorporated, it will be a different case. In any case, China will accelerate its efforts for a new notification.

IV. Trade Policies by Sector
(1) Agriculture
(ii) Agriculture policies

According to Paragraph 10 of the Secretariat's report, one of the measures of the 12th Five-Year Plan (2011-2015) is described as improving temporary purchase and storage of bulk agricultural commodities. Could China describe the aim of such measures? What could be the potential trade impact bearing in mind the potential dimension compared to the total world trade of such bulk products on net food importing countries? How does China assure that negative impacts regarding speculation are excluded?

Answer: There is no such a description as improving temporary purchase and storage of bulk agricultural commodities in the Outline of 12th Five-Year Plan for the National Economic & Social Development of People's Republic of China. For the purpose of increasing the ways available to farmers to increase the revenue and promoting the continuous rapid growth of farmers revenue, the Outline of Plan describes as follows: improving the agricultural products pricing protection system, stably raising the minimum purchase price of key grain products and perfecting the policy of

temporary purchase and storage of bulk agricultural commodities. The purpose of perfecting the policy of temporary purchase and storage of bulk agricultural commodities is to keep farmers active in farming and to ensure food security in China.

China has always been adhering to the principle of basically supporting ourselves, and has guaranteed the supply for 20% population in the world through the cultivated lands accounting for 9% of all the cultivated lands in the world, and has made great contributions to the international food security. The volume of Chinese grain export is very limited with little influence on the international market. Therefore, the above-mentioned measures will not affect the trade of net food importing countries.

*According to **Paragraph 22** China maintains export quotas on several grains, cotton and tobacco. Can China explain what the legal basis under GATT for those measures is? Does China intend to phase out its export quotas in the future? How does China ensure that these measures do not have a negative impact on net-food importing countries?*

Answer: We impose export quota on such grains as maize and rice and cotton on the following basis: (1) Article XI. 2(a) of GATT 1994: general elimination of quantitative restrictions shall not extend to export prohibitions or restrictions temporarily applied to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting contracting party; (2) Article 16 of Foreign Trade Law of the People's Republic of China: The State may impose restrictions on the import or export of goods and technologies where the import or export shall be restricted in order to safeguard the national security or public interest; where the export shall be restricted on account of domestic shortage in supply or effective protection of exhaustible domestic resources; or for other similar reasons. Currently, China does not plan to cancel export quota on such products as maize, rice and cotton. In addition, China has not adopted export quota on tobacco.

(2) Fisheries

(iii) Fisheries Policy

*In **paragraph 56**, the Secretariat's report indicates that under the 11th Five-year Plan, the State may support the development of ocean fishery industry by taking measures in finance, credit and taxation (Chapter III, Article 21). Furthermore, in 2006, the Ministry of Agriculture set out an Action Plan to encourage oceanic and transoceanic fishing and to speed-up the development of distant-water fishing during the Five-year Plan and beyond. Given that high seas fishing is likely to be mainly operated by industrial fishing fleets, how do the Chinese authorities reconcile this special policy support to industrial fisheries with the need for conservation of commercially usable fish stocks at a time when international organizations such as the FAO are warning that about 85% of these fish stocks are already exhausted or about to be exhausted?*

Answer: As a responsible large fisheries country, China has always been developing ocean fishery industry within the framework administered by international fisheries and following the principle of resources preservation and reasonable use. On one hand, China has joined all the regional fisheries organizations which are in the area of high seas and related to China and participates every year in the appraisal on reasonable use of fisheries resources in high seas and the stipulation of the of fisheries resources quota in high seas to ensure that the maximum reasonable fishing volume will not be exceeded; and on the other hand China has contributed more labor, materials and money and improved the monitoring measures and the supervision on Chinese fishing boats operating on high seas and their sales in order to attack the illegal fishing (IUU) acts to the largest extent and validly perform our obligations as a member state.

Therefore, irrespective the measures China adopts, China develops high seas fishing industry within the framework stipulated by the international regional fisheries organizations and will have no adverse impact on fisheries resources in high seas.

(3) Energy

(i) Policy objectives for the sector

Paragraph 62: Could China elaborate on the new Energy Law? What are the key points that are going to be treated in the Energy Law? As indicated, the Energy Law is intended to be comprehensive. Does that mean that all forms Energy (fossil, nuclear, as well as renewables) are going to be addressed? Are there plans to set national targets for the share of renewables in the energy mix or the increase in energy efficiency?

Answer: The draft of Energy Law is being amended by the Legal Affairs Office of the State Council, via further survey, argumentation and recommendation collection.

(iii) Oil and Gas

Paragraph 68: Could China already share information about the new pricing mechanism for refined oil? What will be the major changes compared to the current mechanism?

Answer: In May 2009, the Chinese Government published the pricing mechanism for refined oil on the website of the National Development and Reform Commission - the competent pricing authority. It is the current pricing mechanism for refined oil.

REPORT BY THE GOVERNMENT OF CHINA

Paragraph 106: With respect to the Doha negotiations China underlines the importance to address developing countries concerns on food security, livelihood of rural population and rural development. What is China's position with regard to more stringent disciplines on export restrictions in order to contribute to food security especially of net-food importing developing countries?

Answer: China's position on the issue is that careful studies be come out to ascertain what are the key elements that impact food security for whom and then map out a scientific approach to find the solution.

THAILAND

QUESTIONS REGARDING THE SECRETARIAT REPORT

III. TRADE POLICIES AND PRACTICES BY MEASURE

Page 24 (paragraph 5)

Importers may request advance written rulings from Customs; the rulings are binding. The legal basis of the advance written rulings from Customs is the Customs Law and the Interim Measures on the Administration of the Administrative Rulings of Customs.⁷

Question

1. *Paragraph 5 of the WTO Secretariat Report indicates the right of an importer to request for advance ruling. Thailand would appreciate if China could elaborate more on the scope of advance*

⁷ Order of the General Administration of Customs, No. 92.

ruling that importers could obtain, i.e. whether the scope covers all issues of valuation, rules of origin, and customs tariff.

Answer: In accordance with the Interim Measures on the Administration of the Administrative Rulings of Customs (No. 92 Order of General Administration of Customs), administrative rulings of customs apply to classification of import and export goods and determination of origin of import and export goods. A party applying for administrative ruling of customs shall be a unit registered in customs engaging in operation of import and export goods. Customs valuation does not fall within the scope of administrative rulings.

Page 58 (paragraph 138)

China's export taxes, in the form of statutory rates and interim rates (applied for a specific period), are levied on an MFN basis.⁸ The customs value of export goods is based on the transaction value of the goods, together with its transportation, insurance, and other relevant costs for the goods to arrive at the departing point but before loading. Interim export duty rates may be higher than statutory export tax rates; where there are interim export duties on export goods to which the statutory export taxes are applicable, the interim rates apply.

Question

2. *Paragraph 138 of the WTO Secretariat Report indicates that China's export taxes are levied on an MFN basis. Thailand would like to know whether China has any plan to abolish or exempt export taxes in FTAs which China is a party to or involves in negotiations.*

Answer: Export taxes are not involved in any bilateral (regional) FTAs which China is a party to or involves in negotiations.

Pages 65-66 (paragraph 174)

China's main indirect tax is its value-added tax (VAT) (which, excluding tax collected at the border, accounted for 29.5% of tax revenue in 2011, down from 31% in 2009); the revenue is shared 75:25 between the Central and local governments (except the revenue collected from imports, which is received by the Central government). VAT is levied at a standard rate of 17% and a lower rate of 13% on certain items. For small-scale tax payers⁹, VAT is charged on 3% of their gross sales. Farmers selling their produce directly are exempt from VAT provided their operations are small scale; the authorities state that the purpose of the exemption is to ease administration. Exporters are entitled to VAT rebates, but the VAT is often not fully rebated (section (2)(iv)). VAT paid on fixed assets (including machines, means of transport, tools and appliances related to production, and operation with a service life of more than 12 months) is credited against VAT on the final product.¹⁰

⁸ In Annex 6 of its Protocol of Accession, China listed 84 lines at the HS 8-digit level at statutory export tax rates, and confirmed these would be the maximum export tax levels (WTO document WT/ACC/CHN/49, 1 October 2001).

⁹ Taxpayers with total sales of less than 0.5 million engaged in the production of goods or taxable services, or those with total sales of less than 0.8 million in wholesaling or retailing.

¹⁰ Capital goods such as small passenger vehicles, motorcycles, and yachts are excluded, and are subject to consumption tax.

(ii) VAT

Question

3. *Thailand understands that China has established the system for levying value added tax (VAT) for certain agriculture products by using reference prices. Thailand would appreciate if China could provide us with a better understanding on how the reference prices are constructed. Is a source of import a factor used in determining the reference prices?*

Answer: According to the current VAT policies, the output VAT regarding to sales of goods shall be calculated by sales amount and applicable tax rate. Article 16 of the Detailed Rule for the Implementation of the Provisional Regulation on Value-added Tax stipulates that, for taxpayers whose prices are obviously low and without proper justification as mentioned in Article 7 of the Regulations, or have activities of selling goods as listed in Article 4 of these Detailed Rules but without invoiced sales amounts, the sales amount shall be determined according to the following sequence: (1) Determined according to the average selling price of the taxpayer on the same goods in the recent period; (2) Determined according to the average selling price of the other taxpayer on the same goods in the recent period; (3) Determined according to the composite assessable value. The formula of the composite assessable value shall be: Composite assessable Value = Cost X (1 + cost plus margin). For goods subject to Consumption Tax, the composite assessable value shall include Consumption Tax payable.

Page 69 (paragraph 192)

China's latest notification to the WTO on subsidies (2009 notification) contains information on assistance to businesses established in various sectors or regions (Table AIII.6).¹¹ It lists programmes providing government assistance at the central government level between 2005 and 2008; no information regarding subsidy programmes provided by local governments has been provided.¹² In many cases, there are no precise figures on the magnitude of subsidies provided by the government, many of which are in the form of tax benefits. China's 2009 notification has not yet been reviewed in the Committee on Subsidies and Countervailing Measures.

Question

4. *Paragraph 192 of the WTO Secretariat Report indicates that there is no information regarding subsidy programmes provided by local governments available. Thailand would like to seek a clarification whether the Chinese local governments/entities under the control of local governments have granted subsidies within the meaning of the WTO Subsidies and Countervailing Measures Agreement. If so, would China have any plan to notify such subsidy programmes to the WTO?*

Answer: Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work

¹¹ WTO document G/SCM/N/155/CHN and G/SCM/N/186/CHN, 20 October 2011. The document notes that the notification is transparency oriented; it does not prejudice the legal status of the notified programmes under GATT 1994 and the SCM Agreement, the effects under the SCM Agreement, or the nature of the programmes themselves.

¹² China's previous subsidy notification was submitted in April 2006, covering the period between 2001 and 2004.

towards incorporating local subsidies in its future notifications. As to the 2009-2011 notification, it will not be too difficult if covering only central programs. However if local programs are to be incorporated, it will be a different case. In any case, China will accelerate its efforts for a new notification.

IV. TRADE POLICIES BY SECTOR

Page 102 (paragraph 10)

Agriculture policies continue to evolve in the same direction as that seen in the last TPR of China. The 12th Five-Year Plan (2011-2015) reaffirms the commitments in earlier plans to build a Socialist New Countryside through strengthened support, more benefits to farmers, and the promotion of modernization in order to improve living standards for farmers. The main objective of domestic policy is to safeguard food security by increasing production capacity and improving competitiveness. More specific objectives are set out in the plan and include an increase in production capacity for grains (defined as rice, wheat, maize, and soybeans) by 50 million tonnes. This increase is to be achieved through higher investment in and payments to grain producing areas while improving agricultural production conditions.

The plan also emphasizes the need to increase farm mechanization as well as the development and adoption of biotechnology. Other measures set out in the plan include increased minimum purchase prices for key grains, and improving temporary purchase and storage of bulk agricultural commodities.

Question

5. *Since Thailand has a plan to enhance farmers well-being like China, we would appreciate China's further elaboration about the implementation and progress under Socialist New Countryside.*

Answer: China's Socialist New Countryside include five general criteria: furthered developed production, well-off life, civilized culture, beautiful rural scenery and democratic administration. It is a solid step-by-step process respecting the wishes of farmers and based on the actual conditions in different regions. Promoting the further development of production is the foundation for construction of the New Countryside. The key goal is to provide farmers with a better-off life. The substantial requirement is to establish a civilized culture for the rural areas. The primary task is to maintain the natural scenery. Democratic administration will provide the institutional assurance. The current work is proceeding smoothly and initial progress has been made.

Page 102 (paragraph 11)

Diversification of the rural economy is also stressed through the development of tourism, alternative-fuels, investment in infrastructure, improved town and village planning, and better public services (including education and training).

Question

6. *Could China provide further information about alternative-fuels? What's the plan for alternative-fuels?*

Answer: Over the years, the Ministry of Agriculture put emphasis on development of countryside energy such as biogas, biomass and solar energy, and has made great contribution to develop alternative fuels and relieve national energy pressure. Construction on countryside energy has achieved outstanding economic, environmental and social effects by improving life quality of farmers,

stimulating cycle development of agriculture, and promoting energy saving and emission reduction of countryside.

The next step is aimed to further improving life quality of farmers and reducing consumption of commercial energy. Countryside energy, a systematic project to develop modern agriculture, stimulate construction of new countryside, promote energy saving and emission reduction, improve countryside environment and farmers life quality, will be backed up by more financial and policy support, measured by suit of local conditions, empowered by advanced science and technology, and safeguarded by powerful supervision and management. Countryside energy industry will be developed better and rapidly by establishing sound follow-up services, optimizing development structure, realizing scaled effects and promoting comprehensive usage of countryside energy in all-round way.

Page 105 (paragraph 26)

The New Variety Extension Payment scheme, which was introduced in 2006 to improve the quality of seeds and livestock, has been extended from the original wheat, rice, maize, and soybeans, to include: rapeseed and cotton in 2007; potatoes in 2009; and barley in 2010 and, on a trial basis, peanuts. Livestock covered by the scheme include pigs, dairy cows, beef cattle, and sheep. In addition to increasing the product coverage, the scheme has been extended to cover greater areas, with all land sown with rice covered from 2008, and all land sown with wheat, maize, and cotton covered from 2009, and substantial expansion of the eligible area for soybeans in 2008 and 2009.¹³ The rate of subsidy varies depending on the crop, from 10 per mu for early rice, to 15 per mu for cotton, and middle and late rice.

Question

7. *Could China please provide more information on the guidelines of The New Variety Extension Payment Scheme? How does it differ from direct payments?*

Answer: Seed subsidies of rice, corn and other crops are issued in accordance with the acreage of the crops. Agricultural domestic support data informed to the WTO have notified crop seed subsidies as product-specific amber box support measures.

QUESTIONS REGARDING THE GOVERNMENT REPORT

Page 20 (paragraph 75)

Furthermore, in order to increase the import of key components and spare parts of major technical equipment and related raw materials, starting from 1 July 2009, the Chinese Government introduced tax incentives by exempting import tariffs and import VAT for such products. This helps to promote industrial restructuring, energy saving and emission reduction and to enhance the capabilities of domestic industries for sustainable development.

Question

8. *In order to increase the import as a key component of economy, the Chinese government has introduced tax incentives by exempting import tariffs and import VAT for such products. Is this measure equally apply to both Chinese and foreign industries?*

Answer: Yes. This measure applies equally to both Chinese and foreign industries.

¹³ USDA FAS (2011b).

Page 21 (paragraphs 84-88)Question

9. As the report has mentioned promoting the growth of outbound investment, Thailand would appreciate if China could further clarify on the following issues:

- *The outward investment promotion policy of the Government of China;*

Answer: In the regard of helping the enterprises to invest abroad, the major task of the government is to create conditions, provide services and build environments.

- *The types of support provided by Chinese Government to encourage the Chinese investors to invest abroad besides information services, such as tax incentives; and*

Answer: Whether to make a foreign investment is a self-decisive behaviour of an enterprise and depends on its developing strategy and competence while the main task of the government is to create conditions, provide services and build environments. Therefore, relevant departments of Chinese government have formulated relevant policies in investment promotion, guidance and service, coordination and assurance.

First is to strengthen the guidance. Since 2009 the Ministry of Commerce has issued for three consecutive years the Guidebook for Foreign Investment and Cooperation in Various Countries (Regions) and the Industrial Guideline for Foreign Investment in Various Countries.

Second is to promote investment. The Chinese government has provided platforms for enterprises to make foreign investment and cooperation via a variety of expositions and trade fairs, such as 8 September Xiamen Trade Fair, ASEAN Exposition, Harbin Trade Fair and Northeast Asia Expo.

Third is to provide assurance via bilateral mechanism. The Ministry of Commerce has taken advantage of multilateral and bilateral economic and trade mechanisms or investment promotion mechanism to enhance the communication with host governments and to coordinate the issues or solve the problems that Chinese enterprises meet with when making overseas investment. At the same time, the Chinese government has been making bilateral investment protection agreements and agreements on avoiding double taxation.

The relevant supportive measures don't involve specific taxation. (Department of Outward Investment and Economic Cooperation)

- *The targeted industries in promoting the outward investment.*

Answer: The industries where the Chinese enterprises will make a foreign investment are to be determined after taking into consideration both the developing need of the host country and its own international developing need while the Chinese government will not make stipulations regarding the specific industries for the enterprises.

TRINIDAD AND TOBAGO

PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT (WT/TPR/S/264)

I. ECONOMIC ENVIRONMENT

(1) MAIN ECONOMIC DEVELOPMENTS

Page 2, paragraph 3

The Secretariat's report stated that China resisted a trade-restrictive response overall to the effects of the global economic crisis. However, in a number of instances, China introduced measures that restrict or may restrict trade, notably exports.

1. *Could China please clarify the rationale for these restrictive measures and also give specific examples?*

Answer: Article XI of the GATT stipulates certain exceptions to general elimination of quantitative restrictions, Article 20 stipulates general exceptions and Article 21 stipulates security exceptions. On the condition of in compliance with foregoing exceptions, WTO Members may restrict or prohibit trading of goods or technologies. In addition, the Protocol on the Accession of the People's Republic of China to WTO also specifies that China would introduce measures that may restrict or prohibit the import or export of some goods or technologies.

Meanwhile, Articles 16 and 17 of the Foreign Trade Law of China stipulates the circumstances in which China may restrict or prohibit the import or export of goods or technologies, which are consistent with relevant provisions of the GATT.

Therefore, trade-restrictive measures introduced by China are based on WTO rules and its domestic laws.

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(3) TRADE AGREEMENTS AND ARRANGEMENTS

(ii) Regional arrangements

Page 17, paragraph 30

According to the Secretariat's report, While in general, the agreements notified by China to the WTO especially under Article XXIV of the GATT 1994 have relatively high tariff line and bilateral import coverage, this is not the case for all its agreements. In its agreements with Chile, Peru, and New Zealand, China commits to eliminate duties on 94.6% to 97.2% of its tariffs, corresponding to 88% to 99.1% of its bilateral imports from these trading partners; however, duties on only 35.4% of its tariffs will be eliminated in the agreement with Pakistan, corresponding to 44.4% of China's imports from Pakistan.

2. *Does China have any intention in the future to further eliminate or reduce duties contained in its agreements which have relatively high tariff lines?*

Answer: The final provision is included in all FTAs signed between China and its partners. According to the final provision, the Agreement could be modified or added under mutual agreement and such modifications or additions constitute an integral part of the FTA in accordance with the agreement.

(iii) Unilateral preferencesPage 18, paragraph 37

Answer: According to the Secretariat's report, During the Eighth WTO Ministerial Conference, China indicated that it would reduce tariffs to zero on 97% of imports (in terms of national tariff lines) from LDCs that have diplomatic ties with China.

3. *Can China state the chapters and sub-chapters in which the remaining 3% of tariffs would not be reduced?*

Answer: The Ministry of Finance is studying the list of remaining 3% of tariffs with other related departments.

(4) FOREIGN INVESTMENT REGIME**(i) Recent developments in FDI policy**Page 19, paragraph 40

4. *How does China determine which sub-sectors are added and removed from its Catalogue for the Guidance of Foreign Investment Industries?*

Answer: China is still in coordination with relevant agencies to provide response to this question.

Page 19, paragraph 41

5. *Can China provide more details on its innovation capacity building programme such as eligibility criteria for qualifying enterprises; quantum of subsidy per project; definition of innovation; and management structure of the programme?*

Answer: The "national technology development programme" and the "innovation capacity-building programme in China belong to general science and technology input, and would be available through media and websites including the official website of the Ministry of Science and Technology. FIEs and JVs interested may follow such channels for information relating to their respective sectors.

III. TRADE POLICIES AND PRACTICES BY MEASURE**(1) MEASURES DIRECTLY AFFECTING IMPORTS****(i) Customs procedures, valuation, and rules of origin****(a) Customs procedures**Page 24, paragraph 2

6. *What sort of technology architecture does China utilise to facilitate import and export electronic declarations? Is this system managed by the Customs? What is the time difference in the processing for paper versus electronic declarations? Is this system connected to the other government agencies involved in trade clearance?*

Answer: The Chinese Customs independently developed an H2000 customs clearance management system, which facilitates import and export electronic declarations through its collective networking application to realize cross-region and cross-department data sharing and work collaboration. The system is managed by the Customs. Except some particular circumstances, such as failure of the computer system, the consignors or consignees or agents of the import or export trade shall declare to the Customs through electronic declarations. Also the Customs will institute a non-paper customs

declaration reform this year. Therefore, there is no time difference in the processing for paper versus electronic declarations.

The customs clearance system of China is connected through the China E-port to such governmental departments as the commerce, railway, environmental protection, quality inspection, tax and foreign exchange that are involved in trade clearance.

Page 25, paragraph 7

According to the Secretariat's report, China has adopted a "single window" project, which is intended to realize data sharing for customs clearance, including data exchange concerning cross-border RMB settlement, and on-line audit. Currently, 13 departments under the State Council, the Trade and Industry Department of the Hong Kong SAR, the Economic Services of the Macao SAR, and 15 commercial banks are connected by an electronic platform. Customs has also promoted cooperation with the customs authorities in China's FTA partners, mainly in electronic networking with regard to preferential certificates of origin, and customs data exchange system, with the European and the Russian Customs, respectively.

7. Are these electronic certificates of origin required to carry the manual or electronic signatures of exporters? Can China also elaborate on this data exchange system?

Answer: Currently, Chinese Customs and relevant Hong Kong, Macao and Chinese Taipei authorities adopted electronic data online exchange of CEPA certificates of origin and ECFA certificates of origin, which requires no manual or electronic signature of exporters but only involves the electronization of relevant certificates of origin. There is no such requirement on the customs data exchange system with the European and the Russian Customs, either.

The customs data exchange system is a safe, reliable and effective data exchange platform established by the Customs of the parties by mutually determining the data to be exchanged based on version 2.0 of the WCO data model, which facilitates the customs clearance of law-abiding enterprises to the greatest extent by exchanging and sharing customs data in advance that realizes risk analysis of import or export of goods.

8. Kindly explain how the single window project will work in conjunction with those departments and FTA partners who may not have the required infrastructure to facilitate this electronic platform.

Answer: Overseas FTA partners may connect to the single window through exchange of paper certificates of origin if they have no required infrastructure; departments in China that have no required infrastructure may connect to the single window through the Internet- or client-based system developed and operated by the China E-port for those in need.

(d) Rules of origin

Page 26, paragraph 16

The Secretariat's report stated... In 2010, China conducted overseas checks on 1,229 certificates of origin under free-trade arrangements. Feedback so far showed that 8 of those certificates were false; they involved mainly fish products.

9. What steps has China taken to resolve the issues with falsified Certificates of Origin and how will this be prevented in the future?

Answer: Firstly, China will strengthen the publicity of policies and laws to import and export enterprises to enhance their law-abiding awareness so that they would make declaration in standardized and correct ways;

Secondly, China will enhance risk analysis and subsequent investigation of fraud of certificates of origin, establish relevant database, and strengthen contact and collaboration with the visa authority and the customs of the exporting party;

Thirdly, where there is provision in the agreement and the conditions permit, the customs of the parties or the Chinese Customs and the visa authority of the exporting party will establish an online system of certificates of origin or periodically exchange electronic data of certificates of origin. China will adopt various measures to effectively prevent and crack down on falsified certificates of origin.

(ii) Tariffs

(b) MFN tariff rates

Applied MFN tariff rates

Page 29, paragraph 25

The Secretariat's report stated As bound rates are ad valorem and applied rates are non-ad valorem, there is a possibility that AVEs might exceed the bound rates, reflecting fluctuating import prices.

10. *Can China please indicate if anything has been done to monitor cases where AVEs do exceed the bound rate? What corrective actions (planned or otherwise) will be taken if this situation arises?*

Answer: Since China's WTO accession, China has always been adopting the specific duty (equivalent to *ad valorem* rate) converted in strict accordance with the *ad valorem* rate committed by China for WTO accession and re-calculating the rate of specific duty each year so that the actual rate will not exceed the bound rate committed by China. The conversion is conducted mainly based on the average import price in recent years (the last four years) provided by the Customs, and, with respect to some categories, the influence of such factors is eliminated as no import records in a certain year or large fluctuation in the import price in a certain year.

(d) Tariff-rate quotas (TRQs)

Page 32, paragraph 30

The Secretariat's report stated China's rules regarding TRQ administration are the Interim Measures on the Administration of Tariff Rate Quota for Importation of Agricultural Products, and the Interim Measures on the Administration of Tariff Rate Quota for Importation of Fertilizers. Based on these rules, MOFCOM and National Development and Reform Commission (NDRC) issue product-specific implementing rules each year.

11. *Are any steps being taken to regularise the application of product-specific tariff rate quotas?*

Answer: In accordance with the commitments made by China upon its accession into the WTO and relevant WTO rules, pursuant to the Foreign Trade Law of the People's Republic of China and the Regulations of the People's Republic of China on the Administration of Import and Export of Goods, China formulated the Interim Measures on the Administration of Tariff Rate Quota for Importation of Agricultural Products (Order of the Ministry of Commerce and the National Development and Reform Commission [2003] No. 4). Since its entry into WTO, China has, in strict accordance with the Protocol on the Accession of the People's Republic of China into WTO and the Interim Measures on

the Administration of Tariff Rate Quota for Importation of Agricultural Products, periodically announced the annual import tariff quota, declaration time, application conditions, handling procedures of wheat, corn, paddy, rice, sugar, cotton, wool, top wool and other agricultural products that are subject to import tariff quota administration, and has earnestly performed its obligation of notification as required by the WTO.

Since 2002, China has implemented tariff rate quota administration on import of fertilizers under the tariff numbers of carbamide, diammonium phosphate and compound fertilizer. We now administer the tariff rate quota in accordance with the Interim Measures on the Administration of Tariff Rate Quota for Importation of Fertilizers, and will release announcements in the second half of each year, stipulating the time and method to apply for tariff rate quota for fertilizers in the next year. Our current practice complies with the requirements of the WTO for transparency, predictability, unity, fairness and non-discrimination.

(iv) Import prohibitions and licensing

(b) Licensing

Non-automatic import licences

Page 35, paragraph 42

The Secretariat's report stated Applicants must apply for an import permit prior to applying for an import licence. Import permits are issued by the Ministry of Environmental Protection or MOFCOM, depending on the product. Once the permit is obtained, a licence will be granted automatically by MOFCOM to the importer.

12. Please explain the rationale for the use of import permits in this regard. Can the same criteria for the permit be applied to access the import licence?

Answer: Pursuant to current provisions, the importer needs to apply relevant authority for import license products that are subject to import license management. Once an import license is obtained, no import permit is required.

(vi) Contingency trade measures

Page 39, paragraph 63

13. Are the duties imposed on a new shipper review terminated at the same time as the expiration of the duties on the original investigation?

Answer: The initiation of a new shipper review and the adoption of relevant measures are made due to the original investigation and relevant measures. Therefore, if original investigation measures expire, new shipper review measures will be terminated at the same time.

Page 40, paragraph 65

14. Are there provisions for the initiation of an investigation into the circumvention of duties? If so, does the Ministry of Commerce liaise with Customs? If not, which organization deals with issues relating to the circumvention of anti-dumping duties?

Answer: China has no regulations or practice of investigation regarding circumvention of anti-dumping duties at the current stage.

TRINIDAD AND TOBAGO - ADDITIONAL QUESTIONS

PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT (WT/TPR/S/264)

IV. TRADE POLICIES BY SECTOR

(5) SERVICES

(i) Overview

Page 121, paragraph 94

1. *Despite accounting for over 40% of GDP, the Chinese services sector remains relatively small with services trade accounting for 10.9% of the total value of exports and imports of goods and services, slightly less than in 2009.*

Can China expand on its plan for action regarding services liberalisation as an avenue for increasing services?

Answer: Currently, according to WTO classification, China has opened up more than 100 service sectors to foreign capital, which is on par with developed countries. Since China's accession to WTO, China has quickened the opening-up of service sector and embraced all-round opening-up. Commerce, communication, tourism and logistics have increased year by year in attracting foreign capital. Many well-known multinational enterprises in service sector have entered into Chinese market.

The new Catalogue on foreign investment that has been in force since 30 January 2012 further enlarges opening up and adds 9 items of encouragement in the service sector, including automobile charging station, start-up and investment company IPR service, offshore petroleum pollution cleaning service, occupational training etc. The proportion of service item in the encouraging items of the Catalogue are increasing; business like foreign-funded medical institution, financial leasing company, auto sale, and pharmaceutical retail have been shifted from restricted to permitted categories.

2. *Noting the importance of services to China's economy, could China please outline any further liberalisation it intends to undertake in its services economy? For example, what steps is China taking or considering in other services sector, such as education, energy, and professional services.*

Answer: China's service sector account for 43% of GDP. Service sector plays a key role in social and economic development. China based on its commitments upon WTO accession, will follow the Opinion of the State Council concerning Accelerating the development of Service Sector, Implementation Opinion of the General Office of the State Council on Policy Measures for Accelerating Service Sector, Opinion of the State Council on Further Utilizing Foreign Capital and the Catalogue for the Guidance of Foreign Investment Industries to utilize foreign capital and steadily enlarge the scope of opening-up in the service sector.

To be specific, China made commitment to open up the education service since China's accession to WTO. After the Accession, Chinese government is consistently opening up this sector. For example, "encouraging all schools to carry out international exchange and cooperation and setting up pilot school under international cooperation program" has been incorporated in the Outline for Mid and Long-term Education Reform and Development Plan (2010-2020). In terms of accounting services, up its accession to WTO, China has made commitment of high level of opening up and faithfully fulfilled its commitment. In terms of legal services, representative offices of foreign law firms can provide consultation service in local law, third-party country law and international law, or work with Chinese law firms on individual case or on entrusted basis through long-term contractual relation, so that foreign law firms can adapt to globalization trend and meet the demand for cross-scope legal

services. Meanwhile, China will continue its opening up policy of legal services based on its commitments upon WTO accession and enhance exchange and cooperation with foreign countries.

TURKEY

Report by the Secretariat

I. ECONOMIC ENVIRONMENT

(1) Main Economic Developments, para. 6, p. 3

The Secretariat's Report points out that the PBC raised its benchmark interest rates on both deposits and loans five times and raised the deposit reserve ratio 12 times. The rate of increase in money supply declined in 2011 and new bank lending also declined.

Could China explain whether it applies Tobin tax or a similar instrument for controlling banking transactions? If no, what kind of measures does China take in order to prevent carry trade?

Answer: China doesn't apply Tobin tax to control banking transactions. China is of the view that there are some natural arbitrage opportunities in economic activities, and the situation is similar in financial market. We think arbitrage is different from speculation, arbitrage is not only the opportunities for market entities, in some extent, it is also the motivations for market itself going rationalization, therefore we don't think it is necessary to treat arbitrage negatively. We don't block natural arbitrage behaviors existed in foreign exchange market.

(3) Developments in Trade and Foreign Direct Investment, para. 16, p. 6

The Secretariat's report points out that processing trade recovered in 2010 after a fall in 2009, reflecting the difficulties of foreign invested enterprises (FIEs) after the outbreak of the global crisis in 2008.

Could China state the share of FIEs in its total exports by the year of 2011? What measures did Chinese government take, both in central and local level, in order to overcome the difficulties of FIEs faced in the global financial crisis?

Answer: The share of FIEs in Chinese total exports by the year of 2011 was 52.4%.

In face of the international financial crisis, Chinese government has taken a series of measures in order to remain steady and sustainable economic growth, including implementing proactive fiscal policy and moderately easy monetary policy, accelerating the transformation of economic development mode and deepening its reform. Detailed information about the specific measures is available in our government report WT/TPR/G/264. As one of the important participants of Chinese economy, foreign invested enterprises benefited from the measures implemented by our government during the financial crisis just as other enterprises.

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) Institutional and Legal Framework, (i) Transparency, (c) Appeal Procedures, para. 1, p. 15

The Secretariat's Report mentions that in accordance with the Interim Measures Concerning Complaints from Foreign-invested Enterprises, the Complaint Coordination Office for Foreign-Invested Enterprises and the National Complaint Centre for Foreign-Invested Enterprises

under MOFCOM supervise and handle complaints from foreign invested enterprises that consider their rights have been impaired by the authorities.

Could China share whether it is obligatory for the Complaint Coordination Office for Foreign-Invested Enterprises and/or the National Complaint Centre for Foreign-Invested Enterprises under MOFCOM to respond to the complaint of the FIE or not? And if yes, what's the obligatory duration for conveying the final decision of the Center to that FIE?

Answer: In accordance with the Interim Measures Concerning Complaints from Foreign-invested Enterprises (hereinafter referred to as the Interim Measures), the Complaint agencies must respond to cases meeting the conditions of admissibility stipulated in the Interim Measures. The complaint acceptance agencies shall inform the complainant within 5 business days since receipt of the complaint whether the complaint is accepted, and make a final decision within 30 business days. Whereas the case cannot be closed within 30 business days for complexity, the complainant shall be timely noticed.

(4) Foreign Investment Regime, Footnote no. 38, p. 18

The Secretariat Report footnotes that healthcare institutions from the Hong Kong SAR and the Macao SAR are allowed to set up wholly foreign owned hospitals in designated provinces such as Shanghai, Chongqing, Guangdong, etc.

In that regard, could China explain whether other nationalities having branch companies in the Hong Kong SAR are also allowed to set up a wholly-owned hospital in such designated provinces or not? Are healthcare institutions from the Hong Kong and Macao SARs permitted to set up wholly foreign owned hospitals in the framework of CEPA between China and those SARs?

Answer: According to Supplemental Agreement 7 of CEPA signed in 2010, service providers from the Hong Kong and Macao Special Administrative Regions have been permitted to establish subsidiary hospitals in the provinces and municipalities of Shanghai, Chongqing, Guangdong, Fujian and Hainan in mainland China. According to Supplemental Agreement 8 of CEPA signed in 2011, service providers from the Hong Kong and Macao SARs have been permitted to establish subsidiary hospitals in all provincial capitals and municipalities in mainland China.

Other countries investors, who own medical institutions in the Hong Kong SAR, may not act as legal entity of other countries to establish wholly-foreign-owned hospitals in China. None but the established medical institution is eligible as a qualified Hong Kong service provider, and meanwhile, put the investment directly from the Hong Kong SAR to mainland China, could they establish subsidiary medical institutions in mainland China in line with Notification on Issuance of Provisional Administrative Measures about Hong Kong and Macao service provider establishing subsidiary hospitals in Mainland China.

The Hong Kong and Macao SAR's medical institutions must also be eligible as qualified service providers if they apply to establish subsidiary medical institutions in mainland China.

(4) Foreign Investment Regime, (i) Recent Developments in FDI policy, para. 42, p. 19

The Secretariat's Report points out those provincial authorities have been delegated to approve certain FDI projects below US\$300 million.

Could China explain that if a project is not approved by the provincial authorities for some reasons, can this company appeal the decision of the local authority to the NDRC?

Answer: In this case, the company may apply for administrative reconsideration in accordance with related laws and regulations of China.

(4) Foreign Investment Regime, (ii) Regulatory Framework, para. 46, p. 20

The Secretariat's Report mentions that the authorities intend to promote FDI in the central western region of China. Tax incentives are in place for FDIs investing in the central western region. Processing trade in central-western region is also encouraged by special customs supervision zones or bonded warehousing.

Since Turkey plans to establish a Turkish Industrial Zone in the Xinjiang Uighur Autonomous Region with the collaboration of both local and Central governments, could China specify what kind of tax incentives to be provided for the companies investing in the Region? Do tax incentives differ regarding the sector or production level? Could China give more information about special customs supervision zones and bonded warehousing?

Answer: Recent years, China customs actively support the central western region with mature conditions to set up special customs supervision zones, and actively promote processing trade to centralize towards special customs supervision zones. The general preferential policies for special customs supervision zones include bonded tariff for imported goods, free duty for imported equipment, rebating tax for domestic goods entering the zones, taxation for goods leaving the zones, and so on. The basic functions include bonded processing, bonded logistics and other functions relating to productive service industries.

The term bonded warehouses refers to the warehouses that are established upon approval of the customs for exclusive keeping of bonded goods and other goods that have not gone through customs clearance. The term bonded goods refers to goods entering China that have not gone through taxation procedures upon approval of the customs and leaving China after domestic storage, processing and assembly. Such goods can be written-off upon approval of the customs if leaving China within the prescribed time limit. If the goods will enter domestic market, they can leave the warehouses only if providing importation license and other documents in advance and going through importation procedures and paying customs duties. The goods stored in a bonded warehouse may go through simple processing such as packaging grading and classification adding shipping marks dismantling and assembling etc. but no substantial processing may go through. See the Provisions of the Customs of the People's Republic of China on the Administration of Bonded Warehouses and the Goods Stored Therein (No. 105 Order of General Administration of Customs) for more details.

(4) Foreign Investment Regime, (iii) Examination and Approval Procedure, para. 54, p. 22

The Secretariat Report states that there are no restrictions on lending by domestic banks to foreign invested enterprises.

Could China give more information regarding the lending process? Do these FIEs need to apply lending for their projects in China? What's the percentage of FIE lending in total lending of domestic banks?

Answer: In accordance with the Law of the People's Republic of China on Commercial Banks, in China, Commercial banks operate with full autonomy and are fully responsible for their own risks, profits and losses and self-restraint. Commercial banks do business in accordance with laws free from any interference by units and individuals. Currently, the Peoples Bank implements financial control by market-oriented measures rather than directly managing credit scale and structure of such financial institutions as commercial banks. Financial institutions, as the market-oriented entities with full autonomy, take the initiative in adjusting the overall volume and structure of credit lending and keep

stable operation taking into account the stable monetary policies and the macro prudential requirements and based on their own capital sufficiency level, risk management capability, development needs and strategic arrangement. With respect to the loans granted to foreign invested enterprises, financial institutions make their own decisions on whether to grant the loans to the qualified clients based on the various factors of the enterprises such as operation conditions, credit status, repayment capabilities as well as the principle of revenue covering costs and risks.

Currently, there are no statistics on the loans provided by financial institutions, which are classified by the registered types.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) Measures Directly Affecting Imports, (v) State Trading, para.44. p. 35

The Secretariat Report points out that only the China National Tobacco Import and Export Corporation, a state-trading corporation, is allowed to import tobacco.

Does China National Tobacco Import and Export Corporation have the authority to suspend tobacco importation unilaterally concerning phytosanitary measures or the AQSIQ have the full authorization regarding the commencement and suspension of tobacco imports from a country?

Answer: China National Tobacco Import and Export Corporation conduct importation and exportation business on a commercial basis. AQSIQ has the full authorization regarding the inspection and quarantine issues.

(1) Measures Directly Affecting Imports, (vii) Standards and other technical requirements, (c) Sanitary and phytosanitary measures, para.103, p. 51

The Secretariat Report points out that under the various administrative measures for inspection, quarantine and supervision of imports of different products, a country or region that wishes to export a food product to China for the first time must first be assessed by AQSIQ. After both parties have signed a protocol for inspection and quarantine, exports from the country or region by food producers that are registered with AQSIQ can start.

Turkey and China have signed the Agreement on Cooperation in Animal Health and Quarantine in 2008. Yet, despite the existence of this Agreement which is being indicated as a precondition, China still applies quarantine measures against the milk and milk related products and poultry products from Turkey despite OIEs (World Organization for Animal Health) decision that Turkey is an avian-flu free country regarding poultry products trade. In that regard, could China detail its quarantine measures and assessment procedure followed by AQSIQ?

Answer: China's inspection and quarantine access procedures of high-risk products before their first entry comply with international conventions. The inspection and quarantine access procedures of poultry are the following:

Exporting country should submit written application of meat product to AQSIQ. China decides whether to initiate access procedures depends on the exporting countries epidemic situation. If yes, AQSIQ will give the exporting country The Health Management System Evaluation Questionnaire for Countries Exporting Poultry, Pork, Bovine, Mutton, and Venison to China;

Exporting country should submit relevant technical information;

China will conduct risk analysis and assessment of technical information provided by exporting country. If the risk of the animal oriented product is acceptable, China will send experts to do on-site

inspection in the exporting country; The two sides consult the texts of bilateral inspection and quarantine protocol and sign upon consensus, as well as conform the texts and sample of sanitary certificate.

Foreign enterprises exporting animal oriented products should register according to the requirements of Administrative Measures for Registration of Overseas Manufacturers of Imported Food. Exporting country should provide information, such as the types of products and annual production capacity, of enterprises registered and located in China to AQSIQ. Enterprises registered and located in China are allowed to export to China after they are listed in The Catalogue of Countries or Regions Allowed to Export Meat Products and The Corresponding Types and Usages and published on the website of AQSIQ.

Importers in China should have qualification of importing meat products according to Administrative Measures for the Inspection, Quarantine and Supervision of Entry-Exit Meat Products. After exporting country completes the procedures above, Importers in China apply to import meat products from registered exporting country's enterprises, obtain License of Animal and Plant Quarantine Enter into China, and import product following quarantine requirements. When products arrive at China's port, inspection and quarantine organs at ports will conduct inspection and quarantine. Besides, meat products export to China must comply with international wild animal protection rules.

The inspection and quarantine access procedures of dairy products are the following:

- Exporting country should submit written application of dairy product to AQSIQ;
- AQSIQ will give the exporting country questionnaire;
- Exporting country should answer the questionnaire;
- Chinese experts will evaluate the questionnaire;
- If the risk is acceptable, the two sides consult the texts of sanitary certificate until consensus is reached;
- The exporting country's agency in charge should make the sample of sanitary certificate agreed bilaterally, and send it with the stamp of the agency to China;
- AQSIQ publishes the sample of sanitary certificate on its website and sends paper certificate to local inspection and quarantine organs. The exporting country can export dairy products.

(2) Measures Directly Affecting Exports, (viii) Export finance, insurance and guarantees, para. 161, p. 62

The Secretariat Report states that although China is not a participant in the OECD Arrangement on Officially Supported Export Credits, the EXIM Bank in practice refers to the Arrangement for key conditions of issuing export credit and it is generally consistent with the basic framework of the Arrangement, and that its lending interest rate is either a fixed one taking reference from OECD-released CIRs or a floating rate which is a reconciled London Interbank Offered Rate (LIBOR).

Turkish EXIM Bank and China EXIM Bank have an Agreement (dating back to 1998) for providing credit, guarantee and insurance for the joint projects to be undertaken by Turkish and Chinese companies in overseas. Yet, according to the data of Turkish EXIM Bank, no company has benefited from this scheme due to the different interest rates and lending periods provided by Turkish and Chinese EXIM Banks.

In that perspective, could China indicate its average lending costs of Chinese EXIM Bank and average interest rate provided by Chinese EXIM Bank especially for the projects in Africa and the Middle East?

Answer: By view of the cost of capital, the capital of Chinese EXIM Bank mainly comes from governmental investment, issuance of bonds on domestic and foreign capital markets, short-term loans from Peoples Bank of China as well as loans from domestic and foreign financial institutions. Based on the aforesaid sources, the credit capital cost of EXIM Bank is determined by some comprehensive elements such as the market, bilateral negotiation and bid. As stated in the Secretariat Report, the EXIM Bank in practice refers to relevant international agreements for key conditions of issuing export credit, and the lending interest rate is either a fixed one independently determined by itself by taking reference from OECD-released CIRs and its capital cost, or a floating rate determined based on London Interbank Offered Rate (LIBOR). The EXIM Bank has never made differentiated interest rate regarding to different states or regions. The specific interest rate standard is comprehensively determined by the capital cost of its foreign currency, the level of market quotations, customer credit rating, country risk and other elements. The credit interest rate may be different regarding to projects of the same kind in different countries, or different projects from a same country.

(3) Measures Affecting Production and Trade, (vii) Intellectual property rights, Trademarks, para. 297, p. 91 and para. 301, p. 92

The Secretariat Report states that the TMO examined about 1.4 million trademark applications in 2010 Well-known brands are recognized by the TMO or the Trademark Appeal Board.

Could China elaborate the evaluation of trademark application process of TMO? Besides well-known brands, does TMO search whether the applicant trademark has already been registered in another country or not?

Answer: According to the relevant provisions of China's Trademark Law and its enforcement regulations, if a trademark applicant needs to obtain exclusive trademark right, it should apply for trademark registration with the Trademark Office.

Trademark Office shall examine the applications for trademark registration accepted and handled in accordance with the relevant provisions of the Trademark Law and its implementing regulations, and shall give preliminary approval to those that accord with the regulations and make an announcement; those that do not accord with the regulations shall be rejected. Those who refuse the rejection can apply for a reexamination with the Trademark Review and Adjudication Board. For the preliminarily examined and approved trademarks, anyone can raise an objection within 3 months from the date of the announcement. Those without objection at the expiry of the announcement shall be approved for registration, be issued trademark registration certificate and be publicly announced.

After the applicant applies for registration with the Trademark Office, the Trademark Office does not take the initiative to examine whether the trademark has been approved for registration in a foreign country.

(3) Measures Affecting Production and Trade, (vii) Intellectual property rights, Border Enforcement, para. 324, p. 96

The Secretariat Report points out that right holders may apply to Customs for detention of suspected infringed goods, regardless of whether they have registered their rights in the record.

In this case, could China explain if a trademark has not been registered in China, but registered in another country, does a right holder, nevertheless, have the opportunity to apply to the Customs for registration of its rights and detention of infringed goods?

Answer: According to Article 2 of Regulations on Customs Protection of Intellectual Property Rights, Chinese customs protects trademark rights protected by Chinese laws and administrative regulations. Trademarks not registered in China are not protected by Chinese customs.

IV. TRADE POLICIES BY SECTOR

(5) Services, (iv) Transport, (c) Air transport, *Trade Regime*, para.261, p. 158

The Secretariat Report mentions that domestic and overseas airlines are required to apply for slots to the slot management departments of regional administration bureau under the CAAC. In accordance with relevant provisions of the Measures for the Administration of Civil Aviation Flight Schedule, the coordination and allocation of slots follows the principles of: openness, impartiality and fairness; historical slots priority, and priority of the continuation of previous seasons schedules, benefiting the promotion of large portal aviation pivot construction, the principle of benefiting the promotion of the coordinated development of trunk line and branch line aviation; benefiting the promotion of the normal order of flight; good faith first; and coordination of main and auxiliary airports.

Turkish Airlines faces some difficulties regarding slot allocation in Beijing, Shanghai and Guangzhou operations. In Beijing, CAAC has not allocated historical slot to the Turkish Airlines and thereby, Turkish Airlines had to negotiate with Air China for benefiting its slots. In this regard, could China explain slot allocation process, if possible, by referring to the Turkish Airlines problem?

Answer: We are still in coordination with competent authorities in order to answer the question.

TURKEY - ADDITIONAL QUESTIONS

Report by China

2. ECONOMIC AND TRADE ENVIRONMENT AND MACROECONOMIC POLICY DIRECTION, para. 21, pg. 10

It is pointed out some programs introduced in order to promote consumption with the general policy direction being green, low carbon, energy saving and environment protecting.

Could China explain that how does China strike balance between environmental protection and economic development?

Answer: First, we shall promote energy-saving and emission reduction while optimizing industrial structure. Second, we shall practice economy and pursue environmental protection while increasing the efficiency of the enterprises. Third, we shall develop environmental protection industry as a means of boosting domestic demand. Fourth, we shall arrange the spatial layout of productive forces in line with the requirements of ecological and environmental protection.

China actively protects its environment in optimizing its economic development, works hard to promote three shifts in the efforts of environmental protection (shift from emphasizing economic development more than environmental protection to attaching equal importance to both of them; shift from the situation where environmental protection lagged behind economic development to the situation where environmental protection keeps pace with economic development; shift from mainly adopting administrative means to adopting legal, economic, technical and necessary administrative means in addressing environmental problems), pays equal attention to environmental protection and economic development, keeps environmental protection in pace with economic development, so as to gradually strengthen the work of protecting environment to optimize economic development.

Report by the Secretariat**II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES****(2) Development and Administration of Trade Policies, (ii) Trade Policy Objectives, para. 22, pg. 15**

The Secretariat Report states that: the 12th Five-Year Plan (covering 2011-15) places emphasis on exports and inward foreign investment but also on imports and outward foreign investment. In this context, China aims to stabilize exports, expand imports, and thus reduce the trade surplus. The authorities intend to achieve this objective through import facilitation measures, as well as further preferential trading agreements.

Could China elaborate on measures under consideration for achieving the objective of stabilizing exports, expanding imports, and thus reducing the trade surplus? Which specific import facilitation measures has China put into force?

Answer: Since the beginning of 2012, we have adopted the following import facilitation measures: first, we have adjusted the import tariff of some commodities. Since 1 January 2012, China has imposed temporary low tariff rate on the products covering over 730 tariff lines, with an average tariff rate of 4.4%, which is over 50% lower than the tariff rate of most-favored nations. Second, we have further improved the measures of import administration. We have lifted unreasonable import restrictions so as to reduce the transaction cost of import trade. We actively promote the online application for automatic import license. We hold forum on import, exchange market information and strengthen the publicity on import policy. We establish the platform for promoting import, and support countries that have relatively large trade deficit with China to hold commodity exposition, trade talks and other promotion activities in China. We further improve the convenience for importing commodities. We improve the custom clearance efficiency by improving the custom clearance services, facilitate the enterprises having high credit rates in clearing the customs, and remove the unreasonable charges imposed on imports. Third, we have strengthened and improved import financial services. We encourage commercial banks to conduct import credit business, encourage policy banks to support the importing of hi-tech and resource commodities. We encourage commercial insurance companies to research in and conduct import credit and insurance business to lower the risks of enterprises when they import commodities.

(3) Trade Agreements and arrangements, Participation in the World Trade Organization, para.25, pg. 16

It is stated in the Secretariat Report that China is in the process of accession to WTO Government Procurement Agreement.

What is the stage related to China's accession to WTO Government Procurement Agreement?

Answer: The Chinese government will submit a newly revised comprehensive offer before the last meeting of the Committee on Government Procurement of WTO to convene in 2012. For the moment, the Chinese government is making an evaluation of the feasibility to improve the offer factors, making an effort to create conditions for extending the offer coverage.

III. TRADE POLICIES AND PRACTICES BY MEASURE**(1) Measures Directly Affecting Imports, (ii) Tariffs, (c) Non-MFN rates, para 28 pg. 30**

The Secretariat Report mentions that: China intends to eliminate tariffs on 97% of its tariff lines (at the HS 8-digit level) on imports from these LDCs; in 2011, tariffs were eliminated on 60.5% of tariff lines.

Could the Government of China explore their agenda for further elimination of tariffs on imports from LDCs?

Answer: China plans to offer zero tariff treatment on 97% tariff lines from least developed countries (LDC) that have diplomatic ties with China under the South-South Cooperation Framework. Since July 2010, China has offered zero tariff treatment to 60% tariff lines from LDCs and will gradually extend to 97%. Right now, Authorities in concern are studying the list of the 3% that are in exception.

(2) Measures Directly Affecting Exports, (vi) Export prohibitions, restrictions, and licensing, para. 146, p. 60

It is stated in the Secretariat Report that: China maintained general export prohibitions on a total of 45 items at the HS 8-digit level in 2011 (no change since 2009) and footnote 138 mentions that... A list of products subject to import and export prohibitions under processing trade is published online (in Chinese).

Could China provide a list of current export prohibitions with the explanation of their WTO compatibility in a WTO language?

Answer: Products subject to export prohibitions in China have been notified to the WTO as part of China's QR notification submitted to the market access committee.

(3) Measures Affecting Production and Trade, (i) Taxation and tax incentives, para 170, pg. 65

It is states by the Secretariat that... Since 2011, preferential taxes have been granted on energy-management contract projects for eligible energy services companies, in accordance with the Notice of the Ministry of Finance and the State Administration of Taxation on Issues Concerning the Value-added Tax, Business Tax and Enterprise Income Tax Policies for Promoting the Development of the Energy Services Sector (CaiShui 110/2010). Energy services companies that meet prescribed conditions on contract-based energy management projects are exempted from the business tax and the value-added tax.

Regarding aforementioned tax incentive program, Turkey would like to get clarification on the eligibility criteria for energy services companies under the program. Could China provide detailed information on company selection process for preferential tax implementation and the nature of prescribed conditions on contract-based energy management projects which should be fulfilled in order to qualify for business and value-added tax exemption?

Answer: According to the Notice of the Ministry of Finance and the State Administration of Taxation on Issues Concerning the Value-added Tax, Business Tax and Enterprise Income Tax Policies for Promoting the Development of the Energy Services Sector (Caishui [2010]No. 110), where the company enjoys the policies related to value-added tax and business tax, the expression meet the prescribed conditions refers to meeting the following conditions: 1. Technologies adopted by energy services companies in contract-based energy management projects shall conform to the technical requirements of the General Technical Rules for Contract-based Energy Management (GB/T24915-2010) as promulgated by the State Administration of Quality Supervision, Inspection and Quarantine and the Standardization Administration of China; and 2. The format and contents of the Contract on the Sharing of Savings from Energy Conservation as concluded by and between energy services companies and energy-consuming enterprises shall conform to the Contract Law, the General Technical Rules for Contract-based Energy Management (GB/T24915-2010) as promulgated by the

State Administration of Quality Supervision, Inspection and Quarantine and the Standardization Administration of China and other relevant provisions.

(3) Measures Affecting Production and Trade, (ii) Subsidies and other government assistance, para. 192, pg. 69

The Secretariat states that no information regarding subsidy programmes provided by local governments has been provided. In many cases, there are no precise figures on the magnitude of subsidies provided by the government, many of which are in the form of tax benefits.

Turkey takes note that China's last notification did not include sub-central government subsidy programs. The lack of sub-central government subsidy programs in China's notification particularly troubling as such programs are essential and complimentary for the central programs.

Within this framework, could China make the distinction between the central government programs and sub-central government subsidy programs and clarify the magnitude of each and every sub-central subsidy program? Could China also explain the forms of the sub-central subsidy programs which are other than tax benefits?

Answer: Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work towards incorporating local subsidies in its future notifications. Although at this stage it is still difficult to propose a timetable, China will accelerate its efforts in this regard.

(3) Measures Affecting Production and Trade, (ii) Subsidies and other government assistance, para. 200, pg. 71

The Secretariat states that... In 2009, the central government started to provide lump sum grants to consumers who bought new energy-saving or new-energy cars listed in a promotion catalogue.

The footnote regarding the program explains that the total amount of grant depends on the model of cars. Turkey would like to get detailed information on the scope of the program and the requirements to be met for provision of the grant. Could China please explain which qualifications are sought for the determination of the eligibility for the program and which conditions specify the exact amount of the grant?

Answer: For further details of the above documents and catalogues, please refer to the websites of the Ministry of Finance, National Development and Reform Commission (NDRC) and the Ministry of Industry and Information Technology.

In May 2010, the Ministry of Finance, National Development and Reform Commission (NDRC) and the Ministry of Industry and Information Technology promulgated Detailed Rules for Promoting Fuel-efficient Vehicles (Passenger Vehicles under 1.6 L) under the Project to Promote Energy-efficient Products for the Benefit of the People (Caijian [2010] No. 219). According to the rules, the Central Government allocated a subsidy of RMB 3,000 Yuan for each fuel-efficient vehicle that meets the prescribed conditions and is purchased by consumers, and the subsidy would be paid to customers by the manufacturing enterprise when it sells the vehicle. From June 2010 to May 2011, the Ministry of Finance, NDRC and the Ministry of Industry and Information Technology announced 6 catalogues of promoting fuel-efficient vehicles (passenger vehicles under 1.6 L) under the project to promote

energy-efficient products for the benefit of the people. In 2011, the Ministry of Finance, NDRC and the Ministry of Industry and Information Technology promulgated Notice on Adjusting the Policy of Subsidizing and Promoting Fuel-efficient Vehicles, adjusting the policies concerning fuel-efficient vehicles and announcing the 7th catalogue of fuel-efficient vehicles.

(3) Measures Affecting Production and Trade, (ii) Subsidies and other government assistance, para. 205, pg. 71

The Secretariat states that... The authorities issued a number of circulars related to China's export brands. It would appear that the measures described in those circulars have been abolished; some incentives appear to exist at the sub-central level, mainly cash awards, for locally registered enterprises to apply for famous brand recognition. It was not clear to the Secretariat whether all measures at the sub-central level have been abolished along with the abolition of measures at the central level.

Within this context, Turkey would like to receive clarification on the existence of the export brand programs such as China's World Top Brand Products and Chinese Export Famous Brands at the sub-central level. Could China please confirm whether following notices, opinions, directives, suggestions and circulars on sub-central support programs for export brands were abolished along with central-level circulars? If the components of the support programs for export brand is still in force, could China also explain the nature and eligibility criteria for these programs in detail?

- Notice Concerning the Issuing of Opinions on Promoting the Brand-driven Strategy & Its Incentive Measures (FFB [2007] No. 274, August 20, 2007; proposed by Guangdong Provincial Government and Guangdong Provincial Committee of CPC)

- Opinions of the Party Committee and Peoples Government of Jinhua City on Promoting the Building of Jinhua Brand8 (SW [2006] No. 21, November 22, 2006)

- Circular on Printing and Distributing the Method of Nanhai District, Foshan City for Supporting and Awarding Independent Innovation, Brand Drive and Enterprise IPO (NF [2007] No. 128, July 20, 2007; With the approval of Nanhai District Peoples Government)

- Circular on Forwarding the Policy Measures for Pushing on the Strategy of Drive with Top Brands (SFB [2006] No. 115, October 16, 2006; issued by Suzhou Municipal Government)

- Circular on Printing and Distributing the Policy Opinions for Accelerating Innovative Development of Industrial Economy (CZF [2007] No. 54, May 18, 2007; issued by Cixi Municipal Peoples Government)

- Directives of the Administrative Office of the Hangzhou Municipal Peoples Government on Promoting the Development of Independent Export Brands (Hang Zheng Ban (2007) No. 10, February 17, 2007; issued by Hangzhou Municipal Peoples Government)

- Notice of the Peoples Government of Quanzhou Fengze District on Issuing Regulations Concerning the Support to Key Enterprises (Quanfengzhengzong [2008] No. 22, March 9, 2008; issued by Peoples Government of Quanzhou Fengze District)

- Circular on Printing and Distributing the Interim Measures of Yangzhou City for Administration of the Incentive Fund for Famous-brand Export Products (YCQ [2007] No. 23, October 17, 2007; issued by Yangzhou Municipal Bureau of Foreign Trade and Economic Cooperation)

- Suggestions on Accelerating the Implementation of Brand Strategy (ZZF [2007] No. 81, August 21, 2007; issued by Zhenjiang Municipal Peoples Government)

Answer: Problems concerning policies related to export brand programs have already been resolved on the basis of consultation with some members. The above-mentioned policies were terminated if they are in relation with export brand programs.

(3) Measures Affecting Production and Trade, (iii) Industrial policies, para. 264, pg.72

The Secretariat states that... Financial supports provided under the industrial revitalization plans for ten sectors are mainly those to promote direct consumption, including subsidies for home appliances going to the countryside, automobiles and motorbikes to the countryside, and "old for new" household appliances.

Could China please provide information regarding the nature of the financial support granted under industrial revitalization plans? Could China also explain the scope of the program with its specific components detailing in which ways the program aims to promote consumption?

Answer: Please refer to our government report of last TPR for detailed information of industrial revitalization plan. Budget allocated to major specific programs under the plan, such as home appliances going to the countryside etc., were available in our replies to members, for example US, in the last TPR. You may also refer to report on the implementation of central and local budget submitted by Ministry of Finance to our national people's congress these years.

(3) Measures Affecting Production and Trade, (vi) Competition and consumer protection policy, (b) Monopoly agreements and dominant market positions para. 249, pg. 81

The Secretariat Report notes that: Article 2 of SAIC Provisions on Monopoly Agreements states that monopoly agreements are prohibited whether written or verbal, or by concerted practice whereby several companies essentially coordinate behaviours even without explicit written or verbal agreement.

Does the presumption of concerted practice ever exercised? Could the Government of China provide details on the implementation of presumption of concerted practice?

Answer: For the purposes of China's Anti-Monopoly Law, monopoly agreements include agreements, decisions and other concerted conducts designed to eliminate or restrict competition. The Provisions of Industry and Commerce Administrative Organizations on the Prohibition of Monopoly Agreement issued by SAIC of the People's Republic of China further clarify the definition of concerted conducts, namely, the operators have no explicit written or verbal agreements or decisions, but there essentially exist concerted conducts. At present, the monopoly agreement cases investigated and dealt with by the China's industry and commerce organizations have not involved the monopoly cases caused by concerted conducts.

(3) Measures Affecting Production and Trade, (vii) Intellectual property rights, para 325, pg. 96

It is stated in the Secretariat Report that: A national IPR enforcement campaign against infringement started in November 2010, and was completed in June 2011. The campaign's focus was on cracking down IPR violations in the industries of press and publication, entertainment, software, high-tech, and agriculture, with special emphasis on products such as audio-visual products, auto parts, handsets, pharmaceuticals, and plant seeds.

Despite these efforts, both some international institutions and enterprises report that IPR infringement in China including violations of copyrights, trademarks, patents, and trade secrets remains a central area of concern. How does China plan to bring off its IPR infringement problem and how shall it increase the effectiveness of its judicial and penalty system to tackle with IPR infringements. How does China plan to bring off its IPR infringement problem and how shall it increase the effectiveness of its judicial and penalty system to tackle with IPR infringements?

Answer: Strengthening of the protection of intellectual property rights is an important guarantee for China to build an innovative country. In order to effectively do the work of IPR protection, the Chinese government will take the following measures: First, effectively intensify law enforcement. Second, further strengthen criminal justice strike. Third, strengthen the effective connection between administrative law enforcement and criminal justice. Fourth, improve the relevant legal system. Fifth, establish a trans-regional and inter-departmental law enforcement coordination mechanism. Sixth, improve the supervision and evaluation system. Seventh, increase publicity and education efforts. Eighth, improve law enforcement capabilities. Ninth, strengthen international exchanges and cooperation.

In addition, all levels of China's judicial authorities will continue to make comprehensive use of various means of judicial remedies of intellectual property, and continually enhance the effectiveness of judicial protection of intellectual property rights. For example, through the judgment of making compensation for economic losses and the order of stopping the infringement, eliminating the effects and making an apology, providing the obligee with material and spiritual, money and non-monetary relief; through final judgment and adjudication of interim measures prior to or during the legal action, providing the obligee realistic and temporary judicial relief; through imposing of a fine, confiscation of property and civil sanction measures and others, and depriving the infringer his ability of infringing again and eliminating the danger of his repeat infringement.

IV. TRADE POLICIES BY SECTOR

(1) Agriculture, (ii) Agriculture Policies, para. 18, pg. 103

It is stated in the Secretariat Report that: Quotas were then allocated based on the volumes requested, previous imports, production capacity, or on a first-come, first-served basis. State-trading enterprises continue to dominate access to tariff quotas, being allocated 90% of the wheat quota, 60% of the maize quota, 50% of the rice quota, 70% of the sugar quota, and 33% of the cotton quota.

What is the legal and economic rationale behind keeping the state owned enterprises in the imports of certain agricultural products like maize, rice, tobacco, cotton and other grains? How does the dominant presence of the state trading enterprises ensure fair allocation of the tariff quotas? Are the locally established foreign companies able to import those products?

Answer: According to the Protocol on China's Accession to the WTO, China implements state-trading management on the import of wheat, corn, rice, cotton, sugar and other agricultural products. And the proportions of state-trading for those agricultural products are 90%, 60%, 50%, 33% and 70% respectively. The Protocol on China's Accession to the WTO also identifies the measures for the management of import tariff quotas and state trading, import tariff quota application and allocation procedures, etc.

In accordance with the Protocol on China's Accession to the WTO, the Foreign Trade Law of the People's Republic of China and the Regulations of the People's Republic of China on the Administration of the Import and Export of Goods, China formulated and promulgated the provisions of the Interim Measures on the Administration of Tariff Rate Quota for Importation of Agricultural Products. These policies are open and transparent.

Since China's accession to the WTO, the Chinese government has strictly followed its WTO accession commitments and relevant laws and regulations to manage the tariff quotas for agricultural products and state trading, announced as scheduled the application conditions and distribution procedures of import tariff quotas and so on, informed the WTO of the related situation concerning the state trading enterprises in a timely manner and required that the enterprises should conduct their commercial activities in compliance with related laws and regulations. State trading enterprises and non-state trading enterprises apply for the import tariff quota in accordance with the published conditions and

procedures and execute the unified tax rate. The enterprises that have obtained the import tariff quotas can choose import country and timing according to market conditions. The competent authorities of the Chinese government do not interfere with enterprise business.

Financial Services, para. 14

The authorities state that bankcard interbank clearing services fall in the category of financial settlement and clearing services for financial assets.

Could the Chinese delegation give some information about the nature of the bankcard interbank clearing services and whether it is related with the Panel on electronic payments system that China is the respondent?

Answer: Considering the electronic payment case is still ongoing, currently, we are not in the position to provide relevant information in this regard.

APPENDIX TABLES

According to Table AIII.6 of Appendix Tables at page 212 of the Secretariat Report and New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures of China, dated 21 October 2011 (G/SCM/N/155/CHN, G/SCM/N/186/CHN) at page 23, Preferential tax policies in the western regions program is in force. Under this program, the domestic and the foreign-invested enterprises established in the western regions are exempt from the tariff for the imported equipment for self uses within the total amount of the capital invested, except for those listed in Catalogue for the imported products not subject to tax exemption in foreign invested projects or in the Catalogue for the imported products not subject to tax exemption in domestic invested projects.

Question

In this perspective, could China please explain what criteria must be met in order not to be listed in the Catalogue for the imported products not subject to tax exemption in domestic invested projects and Catalogue for the imported products not subject to tax exemption in foreign invested projects?

Answer: The two catalogues are self-explanatory.

UKRAINE

Report by the Government (WT/TPR/G/264, 8 May, 2012)

5. CONTRIBUTION OF THE TRADE DEVELOPMENT OF CHINA TO THE WORLD ECONOMY

Para 123, page 28:

The development of China's foreign trade has accelerated the modernization of the national economy, and improved the standard of living of more than 1.3 billion Chinese people. It has also helped integrate the Chinese economy into the world economy, and promoted the common prosperity of all countries and regions in the world.

Question:

- As we know from the previous TPR that China was and perhaps is the most targeted country of various trade remedy measures. Would You be so kind to point out the main changes in tendencies mentioned in p. 61 of TPR 2010 in aspect of reducing or increase of the percentage of protectionism against China and how it affects on trade development of country and its contribution to the world economy?

Answer: According to the data at the WTO website, in 2011, WTO Members launched 155 anti-dumping and 8 countervailing duty investigations as well as 11 safeguard measure investigations, while China only launched 5 anti-dumping investigations with no countervailing duty and safeguard measure investigations.

Report by the Secretariat (WT/TPR/S/264, 8 May, 2012)

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES; (4) Foreign Investment Regime; (i) Recent developments in FDI policy

Para 40, page 19:

The Secretariat Report notes that a revised Catalogue for the Guidance of Foreign Investment Industries (2011 version), which entered into force on 30 January 2012, added 44 subsectors and projects to the "encouraged" category, whereas 41 subsectors and projects were removed from the "encouraged" category.

Para 41, page 19:

In the Secretariat Report it is stated that since 6 April 2010, the Government has encouraged foreign-invested enterprises in joint ventures with Chinese enterprises or research institutes to participate in government-funded projects under the "national technology development programme" and the "innovation capacity-building programme.

Question:

- What are the requirements to be met by FIEs and JVs in order to participate in these subsidy programmes?

Answer: The "national technology development programme" and the "innovation capacity-building programme in China belong to general science and technology input, and therefore are not likely to the subsidies defined in the WTO. As to the requirements to be met for the two programs, they may vary among different concrete projects under the programs, but would be available through media and websites including the official website of the Ministry of Science and Technology. FIEs and JVs interested may follow such channels for information relating to their respective sectors.

- Does China have any further plans to reduce the number of sectors/projects listed under the restricted and/or prohibited categories in the Catalogue?

Answer: The Catalogue formally implemented as of 30 January 2012 the total lists 473 clauses and sub-clauses, including 80 clauses and sub-clauses under restricted category and 39 ones under prohibited category, which are respectively 7 and 1 less than those in the former Catalogue. Meanwhile, the revised Catalogue removes restriction on equity ratio of foreign investment, and the number of clauses and sub-clauses listed under the restricted and prohibited categories, which put forward requirements for equity ratio, is 11 less than that of the former. In future, we will timely

adjust our policy to safely promote the opening-up of relevant industries according to China's economic development situation.

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES; (4) Foreign Investment Regime; (ii) Regulatory framework

Para 48, page 21:

The Secretariat Report mentions that foreign investment in the restricted category may be permitted, subject to approval, if export sales are over 70% of total sales of the product.

Question:

- Could China provide more detailed clarification on this export sales requirement?

Answer: This provision does not mean that export sales must be over 70% of total sales of the product for foreign-invested enterprises falling under the restricted category. Foreign-invested enterprises may decide, at its discretion, whether to sell products in Chinese market or to export.

III. TRADE POLICIES AND PRACTICES BY MEASURES

Para 70, page 42:

The Secretariat Report notes that there are some differences between AD and CV procedures in China. For example, the CV Regulation does not specifically provide for proceedings to refund final duties, and there are no implementing rules on these matters; there are no counterparts to AD implementing rules regarding, inter alia, interim reviews, price undertakings or judicial review.

Question:

- How does China plan to make appropriate amendments to domestic legislation (including CV Regulation) concerning these matters?

Answer: China will make appropriate amendments and improvements to relevant laws, regulations and department rules, and issue new countervailing investigation procedural regulations, according to the needs of situation development of countervailing investigation practices.

Para 79, page 44:

In the Secretariat Report it is stated that two of China's RTAs (New Zealand and Singapore) allow one party to "exclude" an originating good from another party from the safeguard action "if such imports are non-injurious. Four RTAs (ASEAN, Chile, Pakistan, and Peru) provide that the parties "maintain their rights" under Article XIX and the WTO Agreement on Safeguards, and two (Hong Kong, China and Macao, China) do not address the matter.

Question:

- Could China please clarify the meaning of the term: "non-injurious imports" and provide information on the application of the rules of "exclusion"?

Answer: As of now, China does not have the practice of the rules of exclusion.

Para 91, page 48:

The Secretariat Report notes that nearly 600 national standards were mandatory. The proportion of mandatory national standards increased from 10% in 2008 to 18% in 2010.

Question:

- Could China please explain the WTO basis for the introduction of mentioned mandatory standards? Does China have any further plans to reduce the number of national mandatory standards?

Answer: By the end of 2008, the total number of national standards has reached 22,931, among which, 3,111 are compulsory, taking 13.56% of the total. By the end of 2011, the total number has reached 28,422, among which, 3,647 are compulsory, taking 12.83% of the total.

Compulsory national standards are formulated by the Standardization Law of PRC, Regulations for the Implementation of the Standardization Law of PRC, and Administrative Measures on National Standards, based on the social and economic development.

Compulsory standards are the technical regulations under WTO/TBT Agreement.

Para 192, page 69:

China's latest notification to the WTO on subsidies (2009 notification) contains information on assistance to businesses established in various sectors or regions. It lists programmes providing government assistance at the central government level between 2005 and 2008; no information regarding subsidy programmes provided by local governments has been provided.

Question:

- Could China provide information regarding subsidy programmes at the local government level (including sectors, forms of assistance)?

Answer: Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work towards incorporating local subsidies in its future notifications. Although at this stage it is still difficult to propose a timetable, China will accelerate its efforts in this regard.

IV. TRADE POLICIES BY SECTOR; (1) Agriculture; (ii) Agriculture policies

Para 22, page 104:

In the Secretariat Report it is stated that exports of rice, maize, cotton, and tobacco are through state-trading enterprises and, along with other grains, are subject to export quotas.

Question:

- We would ask China more clarification how export quotas are through state-trading enterprises? And how this practice conforms to WTO domestic support obligation?

Answer: According to the Protocol on China's Accession to the World Trade Organization, China's exports of rice, maize, and cotton etc. are through state-trading enterprises. China's administration over state-trading enterprises will be subject to the provisions stipulated in Article 17 State-trading Enterprises under General Agreement on Tariffs and Trade 1947 (GATT 1947), and relevant contents regarding understanding on the interpretation of Article XVII of the General Agreement on Tariffs and Trade 1994 under General Agreement on Tariffs and Trade 1994 (GATT 1994).

In accordance with the provisions of Article 52 under the Regulation of the People's Republic of China on the Administration of the Import and Export of Goods, the state-trading enterprises shall carry out their business activities under normal commercial conditions, and may not choose provider according to non-commercial considerations, nor may they reject the entrustment of other enterprises or organizations on the basis of non-commercial considerations. The Chinese Government shall strictly follow its commitments for entry into WTO and relevant laws and regulations to implement administration over the export of agricultural products, require state-trading enterprises to abide by relevant laws and regulations to carry out business activities, and do not intervene in any enterprises detailed business behaviors.

The prevailing export administration and domestic supporting policies are consistent with the provisions of Article 6 Domestic Support Commitments and Article 7 General Disciplines on Domestic Support under the Agreement on Agriculture.

IV. TRADE POLICIES BY SECTOR; (2) Fisheries; (ii) Fisheries policy

Para 58, page 113:

The Secretariat Report notes that official data on the value of support to the fisheries sector were not available. Estimates of the value of these supports vary widely depending on the source and methodology used. One report stated that the total value of support by the State to fishing was estimated to be US\$4.1 billion in 2003, of which US\$2.2 was for vessel construction, fuel infrastructure, and other supports to fishing activities, with fuel accounting for US\$1.8 billion.¹⁴ It has also been reported that, under a programme introduced in 2006, a fuel subsidy is payable when the price of petrol exceeds 4,400 per tonne and that of diesel exceeds 3,870 per tonne. The subsidy covers 50% of the price over these thresholds and 100% for prices over 5,480 for petrol and 5,070 for diesel. It was reported that the fuel subsidy covers fishery enterprises and fishers that use motorized fishing vessels for near-shore and inland fishing and aquatic production, as well as state-owned forestry and urban public transportation companies. According to some media reports, in 2006, two batches of fuel subsidies at 3.18 billion were allocated, and the implementation of the policy is to be strengthened under the 12th Five-Year Plan (2011-2015).¹⁵

Question:

- Could China, please, provide more details of the support to the fisheries sector noted above? And could China, please, give more details on Estimates of the value of these supports?

Answer : China always attaches importance to the transparency and has made our best efforts in fulfilling transparency obligations with regard to the fishing subsidy, members are conducting negotiations to strengthen relevant discussion including notification requirements under the

¹⁴ Sumaila et al. (2009).

¹⁵ English.xinhuanet.com. Viewed at: http://news.xinhuanet.com/english2010/china/2011-03/07/c_13765575.htm; and *People's Daily* online, "20 mln fishermen benefit from China's subsidy mechanism: official", 7 March. Viewed at: <http://english.peopledaily.com.cn/90001/90778/90860/7311555.html> [November 2011]. http://news.xinhuanet.com/english2010/china/2011-03/07/c_13765575.htm.

framework of Doha Round. China is willing to provide relevant information once discussions agreed upon by members.

IV. TRADE POLICIES BY SECTOR; (3) Energy; (i) Policy objectives for the sector

Para 61, page 114:

According to the Report by the Secretariat, The NEA issued the National 12th Five-Year Plan for Energy Technology on 5 December 2011, with the aim of supporting the development of "strategic emerging industries" and of the energy sector. Implementation measures for the plan were not available to the Secretariat.

Question:

- Could China provide more information on the measures in support of the development of "strategic emerging industries" and of the energy sector?

Answer: Information on measures supporting the development of the "strategic emerging industries" are found in the Decision of the State Council on Accelerating the Cultivation and Development of Strategic Emerging Industries (State Council Circular No. 32 of 2010). The Circular is available at the official website of the Central Government of China. The fund for development of strategic emerging industries mentioned in the Circular was established in 2011 as a measure of the Central Government. China will consider to incorporate this fund into its future subsidy notification based on studies and analyses on the relationship between the fund and the subsidy as defined in the WTO SCM Agreement. Regarding the energy sector, before the policy on "strategic emerging industries" was initiated, China had in place the fund for development of renewable energy. However, because the fund contained sub-arrangements and the fund involved also transfer payment to provincial governments, it was too complicated to be incorporated in China's submitted subsidy notification. China will work on notification of this fund in the course of extending the notification to local subsidy programs.

Para 62, page 114:

The authorities indicate that the Energy Law, which is intended to be comprehensive for the energy sector, is in the final stages of drafting.

Question:

- When does China anticipate the draft publication and its final promulgation?

Answer: The draft of Energy Law is being amended by the Legislative Affair Office of the State Council, via further survey, argumentation and consultation. There is not a specific timetable for the promulgation of Energy Law.

IV. TRADE POLICIES BY SECTOR; (5) SERVICES

Para 94, page 121:

According to the Report by the Secretariat, the Chinese Government promoted further services liberalization in: tourism and travel related services, financial information services, financial services, medical services and publishing.

Question:

- *How does China see and plan further services sectors to be liberalised, for instance, construction and related engineering services and environmental services?*

Answer: On 24 December 2011, the Chinese Government released the Catalogue for the Guidance of Foreign Investment Industries. According to the Catalogue, China will open wider to the outside world, encourage foreign investment in modern service industry, support service industry targeting at people's livelihood to enhance the utilization of foreign investment, and promote the opening-up process. This revision added 9 clauses and sub-clauses of "encouraged" category to the service industry, including motor vehicle charging station, venture investment enterprises, intellectual property right services, offshore oil pollution cleaning technology service, and vocational skill training etc., and the proportion of service industry clauses and sub-clauses in "encouraged" category further increased. It also changed foreign investment medical establishments, financial lease companies, automobile marketing, and drug retail from restricted category to permitted category. In future, China will timely adjust policies to safely promote the opening-up of relevant industries according to its economic development situation.

Meanwhile, we believe that the opening-up of service industry among WTO Members is beneficial to the further development of service trade, and we are willing to join the world competition within a much broader scope; the further opening-up of service trade needs to be fully negotiated among WTO members during Doha round negotiations.

Para 110, page 125:

Paragraph 110 of the Report by the Secretariat says that China does not have a deposit insurance scheme; the authorities are currently drafting a scheme.

Question:

- *Could China please provide details on drafting deposit insurance scheme?*

Answer: The Chinese Government attaches great importance to the issues of protecting the interests of depositors and maintaining financial stability. The relevant authorities have been studying the system of deposit insurance since 1993. In 2007, the PBC together with other relevant authorities set up a special working group to design China deposit insurance scheme. At present, the PBC together with other authorities, are promoting the legislation on deposit insurance and studying the relevant implementing plans, to push forward the deposit insurance scheme to come into force as early as possible.

UNITED STATES**PART I: QUESTIONS REGARDING THE SECRETARIAT REPORT (WT/TPR/S/264)****SUMMARY**

1. **WT/TPR/S/264-01, page ix, paragraph 7:** *In paragraph 7 of the Summary, the Secretariat's report states that [n]otice-and-comment procedures are becoming more prevalent in the process of drafting trade laws, regulations and departmental rules. In addition, in paragraph 8 of Part II, the Secretariat's report states that, [a]ccording to the authorities, all draft administrative regulations have been published on the website for public comments since 2008.*

- a. *In its Protocol of Accession to the WTO, China committed to provide a reasonable period for comment to the appropriate authorities before laws, regulations and other measures are implemented, subject to limited exceptions. In a recent study, the U.S.-China Business Council (USCBC) reviewed China's regulatory transparency performance for the period from March 2011 to March 2012. The USCBC first reviewed trade-related laws passed by the National Peoples Congress (NPC). The USCBC found that, out of 9 laws passed by the NPC during the 12-month period covered by the study, drafts of only 3 of them were posted on the NPC website for public comment during the drafting or revision process. Can China explain why the 6 other draft laws were not posted on the NPC website for public comment? Going forward, what is China's plan for ensuring that all draft trade-related laws are posted on the NPC website for public comment, unless one of the limited exceptions applies?*

Answer: jointly addressed in the following answer.

The USCBC also studied trade-related regulations and departmental rules. It noted that, in addition to China's Protocol of Accession commitment, China committed bilaterally in connection with the June 2008 meeting of the U.S.-China Strategic Economic Dialogue and the May 2011 meeting of the U.S.-China Strategic & Economic Dialogue to publish draft trade-related regulations and departmental rules for public comment for at least 30 days on the website of the State Council Legislative Affairs Office (SCLAO). The USCBC found that only 49% of draft trade-related regulations and departmental rules were published on the SCLAO website for public comment during the 12-month period covered by the study. Looking at the 49% of draft measures that were published for public comment on the SCLAO website, the USCBC further found that only 56% of them were posted for a full 30-day comment period. Can China explain why 51% of draft trade-related regulations and departmental rules were not published on the SCLAO website for public comment during the 12-month period covered by the study? What is China's plan for ensuring that drafts of all trade-related regulations and departmental rules in the future are posted on the NPC website for public comment for a period of at least 30 days, unless one of the limited exceptions applies? Also, please explain how China envisions that SCLAOs 27 April 2012 publication of the Interim Measures on Solicitation of Public Comments on Draft Laws and Regulations and the Notice on Related Issues Regarding Solicitation of Public Comments on Draft Department Rules on SCLAO Website will assist in the implementation of China's commitments.

Answer: China did not make commitment to soliciting public opinions for publicizing draft laws, regulations and rules. However, in order to promote scientific and democratic legislation and improve the quality of legislation, Chinese government has been trying to increase the transparency of legislation and enlarge public participation. Since 2008, in addition to the confidentiality required by law, all the draft administrative regulations are publicized on the website of legal affairs information of the Chinese government to solicit public opinion. In July 2011, China's State Council revised the Provisional Method for Soliciting Public Opinions on the Draft of Laws and Regulations, and released the Notice on Soliciting Public Opinions on the Departmental Draft Rules at the Website of Legal Affairs Information of the Chinese Government. The notice required that, in addition to the exceptional conditions, administrative and departmental rules that are related to economy and trade shall open at least 30 days for soliciting public opinion. Since then, all administrative and departmental rules that are related to economy and trade are publicized on the website of legal affairs information of China for public opinions with duration of 30 days, except some urgent and extraordinary conditions. The transparency outcome reached between China and US under the framework of S&ED is beyond the jurisdiction of WTO review of China trade policy. The US never fulfills any of the transparency commitments made to China.

2. **WT/TPR/S/264-01, page ix, paragraph 7:** *In paragraph 7 of the Summary, the Secretariat's report states that it seems that not all trade-related information is made available to the public. The United States notes that, in past disputes before the WTO, such as China Measures Affecting Trading*

Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products (DS363), China has used the term internal guidance to describe a category of government documents that it considered to be different from regulations and departmental rules. Specifically, China argued that certain measures challenged by the United States were only internal guidance and therefore did not constitute measures that could be challenged in a WTO dispute. The panel and the Appellate Body disagreed with China, finding that they were challengeable measures.

- a. *Could China explain whether it publishes all internal guidance documents? If it does not publish all internal guidance documents, could China explain how it decides when to and when not to publish internal guidance documents?*
- b. *The Provisions on Disclosure of Government Information, which entered into force on 1 May 2008, require, among other things, that government ministries disclose information. Does this measure require the disclosure of so-called internal guidance? Please explain why this is or is not the case.*

a-b **Answer:** article 2 of the Regulation on Information Disclosure stipulates that government information refers to those made or obtained by administrative agencies in the course of exercising their responsibilities and recorded and stored in a given form. Article 9 stipulates the scope that administrative agencies should disclose on their own initiative government information. Article 8 stipulates that the information disclosed by administrative agencies may not endanger state security, public security, economic security and social stability. The disclosure of internal guidance paper depends on whether the paper complies with the articles in the Regulation.

3. **WT/TPR/S/264-01, page x, paragraph 8:** *In paragraph 8 of the Summary, the Secretariat's report notes that in October 2011 China submitted a subsidies notification under Article 25.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), representing only the second subsidies notification submitted by China in its 10 years of WTO membership. The Secretariat's report further notes that in many cases there are no figures on the magnitude of support provided, and no information is available on subsidies and other government assistance provided at the provincial level, which are believed to be considerable.*

- a. *Although the Secretariat's report does not mention it, the United States filed a counter notification under Article 25.10 of the SCM Agreement in September 2011, and the United States counter notification listed more than 200 central and sub-central government subsidies that had not been notified by China. In these circumstances, Article 25.10 calls on China to notify those subsidies promptly. However, to date, China has not done so. In China's October 2011 notification, China included only 10 of the 200 subsidies identified in the U.S. counter notification. Could China explain when it will notify the remaining 190 subsidies identified in the U.S. counter notification?*

Answer: Subsidy is a complex issue in the WTO and Members often have different views as to whether certain policies and measures should be deemed subsidies defined in the SCM Agreement and subject to its notification obligation. In China's view, this is the case with quite some items in the US Article 25.10 submission.

Also, US has not been able to figure out the relationship between our notified programs and the information it gathered as contained in its Article 25.10 submission. On a lot of items in the US submission, China actually has already notified in its submitted notifications, but it seems to China that US has not been able to recognize those notified ones, in particular when they are implemented at the sub-central government level. Rather, US has mistaken such implementations by our sub-central governments of the notified central programs as locally-initiated subsidies.

For the remaining ones which are limited, China will take time to verify in the course of its efforts to incorporate local subsidies in its future subsidy notifications.

- b. *China has now been a WTO Member for more than 10 years, and it is one of the largest traders among WTO Members. When will China notify its sub-central government subsidies?*

Answer: Subsidy notification entails huge amount of work on information gathering and analysis and this is particularly a challenge for China as a large developing country. To fulfill its notification obligation under the SCM Agreement systematically, China since its WTO accession has concentrated its efforts on notifying comprehensively central programs as a first step, and would then extend its efforts and experiences to cover those at the sub-central level. Now that substantial progress has been made in fulfilling the transparency obligation of the subsidies at the central level, China will work towards incorporating local subsidies in its future notifications. Although at this stage it is still difficult to propose a timetable, China will accelerate its efforts in this regard.

4. *WT/TPR/S/264-01, page xi, paragraph 19: In paragraph 19 of the Summary, the Secretariat's report passes on that, [a]ccording to the authorities, no technology transfer requirements are imposed on foreign investment projects. Similar statements appear in paragraph 56 of Part II of the Secretariat's report. Nevertheless, concerns have arisen in connection with certain provisions of China's Regulations on the Administration of Import and Export of Technologies (Technology Import-Export Regulations) and Regulations for the Implementation of the Law on Joint Ventures Using Chinese and Foreign Investment (Sino-Foreign JV Regulations). First, the Technology Import-Export Regulations require suppliers of imported technology to indemnify licensees or assignees for third-party infringement claims, while the Unified Contract Law permits contracting parties to avoid this legal requirement in connection with domestic technology transfer contracts. Second, the Technology Import-Export Regulations prescribe that the right over any improvement to imported technology shall be vested with the improving party, while the Unified Contract Law permits the contracting parties to decide upon a method of sharing improvements. Third, the Sino-Foreign JV Regulations generally limit the term of a technology transfer agreement to no more than ten years, and permit the technology importing party to continue to use the technology after expiration of such agreement. In contrast, under the Unified Contract Law, contracts extinguish upon the conclusion of the term prescribed by the parties. Please explain how China justifies the differential treatment described above in light of its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).*

Answer: Pursuant to Article 355 of the Contract Law, where the laws and administrative regulations provide otherwise in respect of technology import and export contracts, patent contracts or contracts on application for patents, such provisions shall prevail. Therefore, the relevant provisions on technology import and export contracts in Regulations for the Administration of Import and Export of Technologies and Regulations for the Implementation of the Law on Joint Ventures Using Chinese and Foreign Investment are consistent with the Contract Law

I. ECONOMIC ENVIRONMENT

(2) STRUCTURAL POLICIES

5. *WT/TPR/S/264-01, page 4, paragraph 14: In paragraph 14 of Part I, the Secretariat's report notes that China's manufacturing, including steel, aluminium, and cement, has continued to tend towards over investment and overcapacity. The privileged position of SOEs (e.g. in their access to bank lending) has also contributed to over investment and overcapacity in the economy. Please comment on this assessment and explain how China intends to deal with over-investment and over-capacity in the sectors referenced above.*

Answer: China's steel, aluminum and cement belong to industries of perfect competition, and central enterprises in the three industries get dominant position through market competition. Credit is the self-decisive behaviour of market entities and the Chinese government does not interfere.

Affected by the demand changes of such downstream industries as construction industry, machinery and equipment manufacturing industry and consumer goods industry, the excess production capacity of steel, aluminum and cement is a surplus at certain phases due to the economic cycles. On the premise of assuring the full competition in the market, the surplus should be solved through both necessary macroeconomic control and market guidance. Specific measures: first, intensify industrial administration and guidance for industries; second, enhance elimination of backward production; third, give into full play the synergistic effect of acquisition and reorganization; fourth, strengthen cooperation between upstream and downstream industries and guide the consumption of downstream industries.

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

(1) INSTITUTIONAL AND LEGAL FRAMEWORK

(i) Transparency

6. *WT/TPR/S/264-03, page 12, paragraph 11: Paragraph 11 of Part II of the Secretariat's report states that draft trade-related regulations and departmental rules must be published for public comment and paragraph 13 of Part II of the Secretariat's report states that the public comment period must be not less than 30 days. Please clarify whether the Interim Measures on Solicitation of Public Comments on Draft Laws and Regulations and/or the Notice on Related Issues Regarding Solicitation of Public Comments on Draft Department Rules on SCLAO Website, or these measures combined with other existing measures, require Chinese ministries to publish draft trade-related regulations and departmental rules or to provide for a public comment period of not less than 30 days. If other existing measures contribute to the establishment of these requirements, please identify those measures. If existing measures do not contain these requirements, does the NPC or China's State Council have plans to issue a measure that does contain these requirements?*

Answer: In July 2011, China's State Council revised the Provisional Method for Soliciting Public Opinions on the Draft of Laws and Regulations, and released the Notice on Soliciting Public Opinions on the Departmental Draft Rules at the Website of Legal Affairs Information of the Chinese Government. The notice required that, in addition to the extraordinary conditions, administrative and departmental rules that are related to economy and trade shall open at least 30 days for soliciting public opinion.

7. *WT/TPR/S/264-03, page 14, paragraph 15: Paragraph 15 of Part II of the Secretariat's report discusses the role of the Ministry of Commerce (MOFCOM) under the Interim Measures Concerning Complaints from Foreign-invested Enterprises in handling complaints from foreign-invested enterprises that consider that their rights have been impaired by Chinese Government authorities. How many complaints did MOFCOM receive from foreign-invested enterprises in 2011? What did each of the complaints address? How were each of the complaints resolved?*

Answer: In accordance with the Interim Measures Concerning Complaints from Foreign-invested Enterprises, the Complaint agencies must respond to cases meeting the conditions of admissibility stipulated in the Interim Measures. The complaint acceptance agencies shall inform the complainant within 5 business days since receipt of the complaint whether the complaint is accepted, and make a final decision within 30 business days. Whereas the case cannot be closed within 30 business days for complexity, the complainant shall be timely noticed. National Complaint Centre for Foreign-invested Enterprises under MOFCOM has, for the past two years, received in total 11 complaints, in a written form or via telephone, from foreign-invested enterprises or individuals, all of which have been

appropriately dealt with according to the relevant provisions in the Interim Measures for Handling Complaints from Foreign-invested Enterprises.

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES
(2) DEVELOPMENT AND ADMINISTRATION OF TRADE POLICIES
(i) Agencies involved in trade policy formulation and implementation

8. *WT/TPR/S/264-03, page 16, paragraph 24: Paragraph 24 of Part II of the Secretariat's report explains that industry associations collect and share information, identify and deal with problems related to industries, discuss trade policy issues that affect their industries, and represent the interest of their sectors in relation to the Government. It is the United States understanding that industry associations in China are not independent of the government. Please describe fully the relationship between industry associations and the government in China. Are any industry association officials appointed or otherwise selected by the government? In what ways are the activities of industry associations regulated by the government? Are industry associations required by law to report to the government? Please explain.*

Answer: Industrial association is a social organization that has been registered at the Ministry of Civil Affairs (MCA). Such association responds to the demands of industry and members, serving as bridge and link to the communication between government and industry. Industrial association is a social organization independent of government, formulating industrial regulations to standardize practice and setting up self-disciplinary mechanism to provide consultation service; its leadership is elected at the membership conference instead of being appointed by the government. The leadership report to membership conference and fulfill its role according to the charter; the Administration of Civil Organization Management of the MCA regulate industrial associations according to the Regulations on Social Organization Registration and Management. China has no legal document requiring industrial association to report to the government.

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES
(4) FOREIGN INVESTMENT REGIME
(i) Recent developments in FDI policy

9. *WT/TPR/S/264-03, page 19, paragraph 40: Paragraph 40 of Part II of the Secretariat's report details revisions to China's Catalogue for the Guidance of Foreign Investment Industries (2011 version). Despite the revisions made to the catalogue in 2011, many sectors remain closed to foreign investment. What plans does China have to further revise the catalogue to open more sectors to foreign investment, particularly in services sectors, consistent with the Twelfth Five-Year Plan? Please explain.*

Answer: The Catalogue revisions in 2011 closely centered on overall requirements specified in the 12th Five-year Plan and fully embodied active and positive opening policy to be implemented. We will timely revise the Catalogue according to China's economic development situation and WTO accession commitments to safely promote the opening-up of relevant industries.

III. TRADE POLICIES AND PRACTICES BY MEASURE
(1) MEASURES DIRECTLY AFFECTING IMPORTS
(i) Customs procedures, valuation, and rules of origin

10. *WT/TPR/S/264-04, page 24, paragraph 3: In paragraph 3 of Part III, the Secretariat's report states that customs duties must be paid at a designated bank within 15 days of the memorandum of duty payment being issued by the General Administration of Customs (Customs). Are companies able to appeal the memorandum of duty payment, if there is a disagreement about the amount of duty owed? If so, is the duty payment delayed until the appeal process is completed, or*

must the amount be paid under protest, leaving the company to seek a refund if the amount paid is greater than the amount owed after the appeal decision is made?

Answer: where there is a disagreement about the amount of duty payable, the parties concerned may apply for administrative reconsideration to the Customs. If the parties are unconvinced by the reconsideration decisions, they can bring an administrative lawsuit to the court. The payment of disputed customs duty is not suspended during the course of administrative reconsideration or proceedings, however, the duty payment can be delayed until the reconsideration or appeal process is completed when the Customs deemed necessary to suspend the payment, the parties apply for suspension and approved by the customs, or the law requires the suspension of payment. If the amount paid is greater than the amount owed after the appeal decision is made, the customs will refund the excess amount of duty to the company.

11. WT/TPR/S/264-04, page 24, paragraph 5: *In paragraph 5 of Part III, the Secretariat's report states that Customs provides advance binding written rulings upon request. On what specific topics does Customs provide these rulings?*

Answer: Article III of "the Interim Measures of the People's Republic of China for the Administration of the Administrative Rulings of Customs states that the administrative rulings of customs cover the following areas: classification of the import and export commodities, determination of the origins of import and export goods, application of the measures for prohibiting imports and exports and of the licenses, as well as other customs affairs that the GAC decides these measures shall apply to.

12. WT/TPR/S/264-04, page 25, paragraph 9: *In paragraph 9 of Part III, the Secretariat's report states that the General Administration of Customs (Customs) accepted 289 appeals for administrative review of Customs decisions in 2010. In how many of these appeals was the original Customs decision upheld? In how many of these appeals was the original Customs decision overturned or modified?*

Answer: In 2010, Customs at all levels received a total of 289 applications for administrative review, of which 270 were accepted and 19 denied. In accepted cases, 207 were settled the same year, of which 135 cases were affirmed the original judgment after the administrative review by the Customs, 70 cases were withdrawn or modified, and 2 were denied the application for review.

13. WT/TPR/S/264-04, page 25, paragraph 9: *In paragraph 9 of Part III, the Secretariat's report states that the courts accepted 27 administrative lawsuits disagreeing with Customs decisions in 2010. In how many of these administrative lawsuits was the original Customs decision upheld? In how many of these administrative lawsuits was the original Customs decision overturned or modified?*

Answer: in 2010, there were 30 administrative lawsuits against Customs, with 25 cases being concluded, of which 14 cases were concluded in favor of Customs (maintained the decision of the Customs) and 11 cases were withdrawn by the plaintiffs. There were no Customs failed cases .

14. WT/TPR/S/264-04, page 25, paragraph 10: *In paragraph 10 of Part III, the Secretariat's report states that China's preshipment inspection requirements have not been notified to the Customs Valuation Committee. When does China plan to notify these requirements in accordance with Article 5 of the Agreement on Preshipment Inspection?*

Answer: China plans to go through the process of verifying whether it is indeed a valid notification requested and then handle it accordingly.

15. WT/TPR/S/264-04, page 26, paragraph 12: *Paragraph 12 of Part III of the Secretariat's report discusses China's customs valuation regime. Can China confirm that it applies paragraph 2 of*

the Decision on Carrier Media Bearing Software and therefore values carrier media bearing software based on the value of the carrier media as opposed to the value of the software?

Answer: Article 37 of the Measures of the Customs of the People's Republic of China for the Assessment of Dutiable Value of Import and Export Goods (the General Administration of Customs Decree No. 148) put into effect in 2006 has reflected the legislative intent of paragraph 2 of the Decision on Carrier Media Bearing Software, the Chinese customs enforces the law in strict accordance with the provision of this article.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) MEASURES DIRECTLY AFFECTING IMPORTS

(iii) Indirect taxes affecting imports

16. *WT/TPR/S/264-04, page 33, paragraph 34: Note 27 to paragraph 34 of Part III of the Secretariat's report explains that [p]rimary agricultural products sold by farmers directly to consumers are exempt from VAT. According to the authorities, this exemption is implemented on grounds of, inter alia, administrative simplicity. However, imports of these same products are subject to the VAT. Even if it is accepted that the Chinese authorities established this exemption for domestic farmers in part because of administrative simplicity, please explain on what basis China considers its tax treatment to be non-discriminatory within the meaning of Article III of the General Agreement on Tariffs and Trade 1994 (GATT 1994).*

Answer : Regarding this policy, China has made explanation and clarifications for several times. In summary, we have the following points to make. First of all, China has a huge number of small farmers across the country, which makes it impossible to conduct accounting and tax filing. In other words, to levy value-added tax upon them is infeasible and uneconomical because of the huge administrative cost. This is the fundamental reason behind the policy. Second, in China the agricultural production is mainly based on household operation. The sales scale is very small. The VAT exemption is applied only to farmers who sell their own products like a kilogram of potatoes in an open air market. This is completely different from the import of products in bulk. Their VAT policies are not comparable. Third, as far as we understand, other members with a VAT system also seem to exempt VAT from farmers who sell their own products, while levying tax over imported agricultural products.

Fourth, even if we apply VAT over these farmers, we would adopt a policy that would establish a commercially-meaningful threshold like in other countries. Most farmers would fall below the threshold. The real effect would be the same as the current policy. Therefore, China does not believe the current policy is not in compliance with its WTO obligations

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) MEASURES DIRECTLY AFFECTING IMPORTS

(iv) Import prohibitions and licensing

17. *WT/TPR/S/264-04, page 34, paragraph 42: Paragraph 42 of Part III of the Secretariat's report states that, for certain products, applicants must apply for an import permit prior to applying for an import license. Could China explain the difference between an import permit and an import license and why there is a need for both an import permit and an import license?*

Answer: Under the existing provisions, for mechanical and electrical products administered by import licenses, the importers need to make an application to the authorities in advance. For those who have obtained the import licenses after examination and approval, there is no need for them to apply for an import permit.

18. **WT/TPR/S/264-04, page 35, paragraph 43:** *Paragraph 43 of Part III of the Secretariat's report discusses automatic import licenses, which are applied to monitor certain imports for statistical purposes, and states that 32 tariff lines were added to the list on 1 January 2010 and 21 tariff lines were added to the list on 1 January 2011. Could China explain the statistical purposes for which it uses automatic import licenses on poultry, vegetable oil, chemical fertilizers, iron ore, steel and coal? Does China use the automatic import licenses for any other purposes? What criteria does China use to add products to or remove products from the list?*

Answer: the purpose for China to implement the automatic import license administration is to strengthen the real-time monitoring of imports, to grasp the overall situation of imports and provide public information services for industries, which is in line with relevant WTO provisions. By counting the automatic import licenses applied for by companies, we can understand the overall situation of relevant imported goods earlier than customs statistics so that companies can make reasonable arrangements for imports and the imported goods can be delivered in a balanced and orderly manner and therefore avoid over-concentrated arrival of goods resulted from haphazard imports, as well as other unfavorable situation. When there is abnormal situation in importing of certain commodities, or when companies or government departments need to understand the import situation of certain goods earlier than customs statistics, we will consider the implementation of the automatic import license administration for the goods in question, or we will consider abolishment of the automatic import license administration.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) MEASURES DIRECTLY AFFECTING IMPORTS

(vi) Contingency trade measures

19. **WT/TPR/S/264-04, page 39, paragraph 61:** *Paragraph 61 of Part III of the Secretariat's report states that the first judicial review of an anti-dumping measure in China began in October 2010. What claims have been made by the complaining party in that litigation? Have any rulings been made by the court? What is the current status of the litigation? Please explain.*

Answer: On 10 April 2010, the Ministry of Commerce made a final arbitration after its anti-dumping investigation of the import-oriented electrical steel produced in Russia and other countries, that the dumping margin of Russian NLMK was 6.3%.

On 7 June 2010, NLMK did not agree with the arbitration result and applied for an administrative review to the Ministry of Commerce. After the applicant added supplementary materials, the Ministry of Commerce accepted the application. On 8 October, an administrative review was made to affirm the original arbitration.

NLMK had objections against the result of administrative review and initiated an administrative lawsuit to Beijing Second Intermediate Peoples Court. NLMK believed that information disclosure was not adequate during the case and the dumping margin was not calculated accurately, so it requested that the final anti-dumping arbitration be cancelled. Now the case is under trial.

20. **WT/TPR/S/264-04, page 39, paragraph 62:** *In paragraph 62 of Part III, the Secretariat's report notes that, before the Committee on Anti-Dumping Practices in October 2002, China received questions from several WTO Members regarding Article 56 of China's anti-dumping regulations, which provides that China may take corresponding measures when a trading partner discriminatorily imposes anti-dumping measures on exports from China. (Similar provisions appear in Article 7 of China's Foreign Trade Law and Article 55 of China's countervailing duty regulations.) At the time, China responded before the Committee on Anti-Dumping Practices that it had not applied Article 56 and that it would resort to the WTO dispute settlement mechanism before taking corresponding measures in respect of a WTO Member.*

- a. *Has China applied Article 7 of the Foreign Trade Law, Article 56 of the anti-dumping regulations or Article 55 of the countervailing duty regulations against a WTO Member since October 2002? If so, please explain.*

Answer: Up to now, China has not applied Article 7 of the Foreign Trade Law, Article 56 of the Anti-dumping Regulations or Article 55 of the Countervailing Duty Regulations.

- b. *Shortly after President Obama issued his decision on 11 September 2009, to impose a safeguard measure against Chinese tire imports pursuant to Section 421 of the Tariff Act of 1974, as amended, MOFCOM responded to the U.S. safeguard measure on Chinese tire imports. MOFCOM announced that it would initiate anti-dumping and countervailing duty investigations of imports of automobiles from the United States as well as anti-dumping and countervailing duty investigations of imports of chicken from the United States. About 20 days later, on 27 September 2009, MOFCOM initiated anti-dumping and countervailing duty investigations of imports of chicken broiler products from the United States; following the conclusion of those investigations, China imposed anti-dumping and countervailing duties. On 6 November 2009, MOFCOM initiated anti-dumping and countervailing duty investigations of imports of saloon cars and cross-country cars from the United States; following the conclusion of those investigations, China imposed anti-dumping and countervailing duties. Meanwhile, on 14 September 2009, at about the time that MOFCOM began launching the anti-dumping and countervailing duty investigations described above, China also launched a WTO dispute, United States Measures Affecting Imports of Certain Passenger Vehicle and Light Truck Tyres From China (DS399), in which it directly challenged the safeguard measure imposed by the United States on Chinese tire imports; a WTO panel and the Appellate Body subsequently upheld the safeguard measure and rejected all of China's claims. Did MOFCOM rely in whole or in part on Article 7 of the Foreign Trade Law, Article 56 of the anti-dumping regulations or Article 55 of the countervailing duty regulations in launching its anti-dumping and countervailing duty investigations of imports of chicken broiler products from the United States or its anti-dumping and countervailing duty investigations of imports of saloon cars and cross-country cars from the United States? If so, please explain how China justifies its reliance on those provisions in light of its obligations under the GATT 1994, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement) and the SCM Agreement.*

Answer: According to the Chinese law, the Chinese industries can apply to the Ministry of Commerce for trade remedy investigations in accordance with relevant laws and regulations. Such cases require companies to apply for anti-dumping investigations and countervailing duty investigations according to law, and the Ministry of Commerce places the cases on file for investigation after examining the qualifications of applicants, the contents and evidences of applications to make sure they are in line with the law, and it has nothing to do with Article 7 of the Foreign Trade Law, Article 56 of the anti-dumping regulations or Article 55 of the countervailing duty regulations.

21. **WT/TPR/S/264 -04, page 40, paragraph 63:** *Paragraph 63 of Part III of the Secretariat's report notes that [i]n 2009, China made draft rules on new shipper reviews available for public comment. However, it appears that China has not yet notified these rules to the Committee on Anti-Dumping Practices. In addition, it appears that regulations addressing anti-dumping tax rebate and price commitments were also made available for public comment in 2009, but have not yet been notified to the Committee on Anti-Dumping Practices. When will China finalize and notify these measures?*

Answer: China once solicited public comment on the Provisional Rules on New Shipper Review and the Interim Rules on Price Commitments in Antidumping Investigations but has made no modifications so far on the above-mentioned Rules, so we did not notify the WTO.

22. **WT/TPR/S/264 -04, page 40, paragraph 65:** *Paragraph 65 of Part III of the Secretariat's report notes that China's anti-dumping regulations allow for the conduct of expiry reviews. To date, China has not issued any regulations that govern the conduct of expiry reviews, even though MOFCOM has conducted numerous expiry reviews, and virtually all of these expiry reviews have resulted in the anti-dumping measures under review being extended. In these circumstances, parties having had to undergo expiry reviews proceedings without adequate understanding of the procedures and expectations of MOFCOM face a significant lack of due process, which appears to be contrary to the procedural safeguards built into Articles 6 and 11.4 of the Anti-Dumping Agreement. Could China clarify when regulations governing the conduct of expiry reviews will be issued?*

Answer: China conducts fair and reasonable sunset review investigations with due process in accordance with the relevant provisions of the Regulations of the People's Republic of China on Anti-dumping and the common practice of WTO Members, and in practice, we strictly follow the principle of appropriate procedures and transparency to ensure the interests and rights of stakeholders. China also noticed that the vast majority of the members of the WTO who carry out sunset review investigations did not issue their laws and regulations on sunset review investigations, and specific procedures exist only in their practice.

23. **WT/TPR/S/264 -04, page 43, paragraph 70:** *Paragraph 70 of Part III of the Secretariat's report notes that there are some differences between China's anti-dumping procedures and China's countervailing duty procedures and that certain procedures addressed by China's anti-dumping regulations are not addressed by China's countervailing duty regulations. Does China have plans to issue additional procedural rules for its countervailing duty proceedings? Please explain.*

Answer: China's laws and regulations on the countervailing duty procedures include: the Foreign Trade Law of the People's Republic of China, the Countervailing Regulation of the People's Republic of China and the Provisional Regulation on Investigation and Registration of Anti-subsidy Cases, the Provisional Rules on Questionnaire Investigation of Countervailing Cases, the Interim Rules on the Hearing of Countervailing Investigations, the Provisional Rules on the Spot Inspection for Countervailing Investigations and other departmental rules. China will, according to the needs of the development of the situation and requirements of countervailing duty investigation practice, revise and improve the relevant laws and regulations and departmental rules, and will introduce new procedural rules for its countervailing duty proceedings in good time.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) MEASURES DIRECTLY AFFECTING IMPORTS

(vii) Standards and other technical requirements

24. **WT/TPR/S/264-04, page 47, paragraph 88:** *Paragraph 88 of Part III of the Secretariat's report describes the process for developing standards and technical regulations in China. The United States believes that foreign enterprises should be permitted and even encouraged to participate in Chinese standards-development efforts on an equal and non-discriminatory basis with Chinese enterprises. In North America, the development of standards has been an open, interactive process, in which enterprises from around the world have participated. The openness of these processes helps account for their undeniable commercial effectiveness and helps ensure that any national standard is not more trade restrictive than necessary. Does China agree that fair, open and equal access to participation, including the right to vote, in standards development efforts by Chinese and non-Chinese enterprises alike would result in superior Chinese standards and superior Chinese proposals for consideration by international standards bodies? If not, why not?*

Answer: SAC has been attaching great importance on Foreign Investment Enterprises (FIEs) participation in national standardization and has repeatedly welcomed FIEs involvement on various occasions. Legally registered FIEs could participate in standardization seminars, forums, press conferences, and activities in formulating and revising voluntary national standards. In principle, FIEs are allowed to become full members of various standardization committees, except those related to national security and information security, etc. In fact, American companies like GM, INTEL, SHELL, MOTOROLA are already members of many standardization committees. Besides, the whole formulation process is transparent, and all enterprises, including FIEs, could submit their opinions at different stages.

25. **WT/TPR/S/264-04, pages 47-48, paragraphs 88 and 91:** *Paragraphs 86 and 91 of Part III of the Secretariat's report reference voluntary standards (also identified as recommendatory standards). When a voluntary standard is made a requirement of one of China's various mandatory certification regimes (e.g. CCC mark registration and telecommunications type approval), does China notify it to the Committee on Technical Barriers to Trade (TBT Committee)? Please provide information on what voluntary standards are required as a condition of compliance with China's mandatory certification regimes (e.g., CCC mark registration and telecommunications type approval).*

Answer: competent authorities in China are in the process of coordinating domestic responses among the relevant agencies.

26. **WT/TPR/S/264-04, page 48, paragraphs 91-92:** *Paragraphs 91 and 92 of Part III of the Secretariat's report distinguish between voluntary and mandatory standards. The United States notes that China rarely notifies its mandatory standards to the Committee on Sanitary and Phytosanitary Measures (SPS Committee) or the Committee on Technical Barriers to Trade (TBT Committee) for comment and that many of China's so-called voluntary standards are enforced against imported products, even though they are voluntary for the products of Chinese producers. Please explain what steps China will take to provide its WTO trading partners with the opportunity to review and comment on mandatory standards and to ensure that any concerns raised by WTO Members will be considered prior to enforcement. Please also explain the legal basis on which China enforces voluntary standards against imported products.*

Answer: After accession to the WTO, China has been fulfilling its obligation in notifying compulsory national standards and answering comments and inquiries. Since 2002, all compulsory national standards have to go through the procedure of reviews by the standing committee of committee of SAC to decide whether they should be notified. For those without international standards, not in accordance with international standards, not based on international standards, or initially based on international standards but revised, and affecting trade of other members, those on food, consumer goods, energy, environmental protection, mechanical and electrical products in particular, they are notified to the WTO in a timely manner. By the end of May 2012, China has notified 879 compulsory national standards, with 808 TBT notifications and 71 SPS notifications. In answering comments and inquiries, China attaches importance to every comment from any WTO Member, and has seriously replied to all the comments, including those falling out of the comment period. For compulsory national standards that are so much concerned by some WTO Members, China has organized experts to analyze and adopt the comments involving technical index changes of the standards.

27. **WT/TPR/S/264-04, page 48, paragraph 94:** *Paragraph 94 of Part III of the Secretariat's report discusses the compulsory certification requirement for 22 groups and 163 categories of products, including medical devices and various mechanical apparatuses. This certification process seems overly complex and time consuming. What is the average length of time from application to the manufacturers receipt of the CCC mark label? Please provide information on how many CCC*

certificates are issued on an annual basis, and what percentage of CCC certificates is issued to non-Chinese entities.

Answer: Article 16 of the Rules on Management of Compulsory Certification (AQSIQ No. 117) stipulates that for those qualified, 90 days is the normal period from acceptance to issuance. 3C certification is carried out strictly by law and, upon request, the average period is less than 90 days.

The total annual number of certificates depends as applications differ. In the past 10 years of 3C certification, a total number of 634,000 certificates are issued for 98,000 enterprises. Currently, more than 288,000 are still effective for 46,000 enterprises, among which, over 4,000 enterprises with 25,000 certificates are from abroad .

28. WT/TPR/S/264-04, page 49, paragraph 98: *Paragraph 98 of Part III of the Secretariat's report explains that the China National Accreditation Service for Conformity Assessment (CNAS) is responsible for issuing accreditations to certifying bodies, laboratories, and inspection centers. The paragraph provides statistics on the number of accreditations issued. Please provide information on how many non-Chinese entities have been accredited by CNAS as approved certifiers, laboratories and inspection bodies.*

Answer: China has signed entrustment agreements with 19 overseas certifying bodies (located in Europe, America, Japan and other economies) for follow-up inspections of 3C certification over factories abroad. CNCA accept the inspection reports and results of these bodies.

29. WT/TPR/S/264-04, pages 49-52, paragraphs 99-108: *In paragraphs 99 through 108 of Part III, the Secretariat's report discusses China's regime for sanitary and phytosanitary (SPS) measures, but it does not mention China's Food Safety Commission, which was created under China's 2009 Food Safety Law. Could China explain this commissions roles in food policy and trade policy and how those roles relate to the roles of the Ministry of Health, the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), the Ministry of Agriculture (MOA), MOFCOM, the National Development and Reform Commission (NDRC), the Ministry of Environmental Protection and the State Food and Drug Administration (SFDA)?*

Answer: In order to implement The Food Safety Law and enhance the lead of food safety work, in February 2010, The State Council set up the National Food Safety Commission as the top-level authority to deliberate and coordinate affairs concerning food safety. It is responsible for analyzing food safety situation, studying, planning and guiding the overall food safety work, putting forth major policies on food safety regulation, and supervising the implementation of food safety regulation responsibilities. However, it is not responsible for making food trade policies. The chair of the Commission is vice premier Li Keqiang, with vice premier Hui Liangyu and vice premier Wang Qishan as the Commissions deputy chairs. NDRC, Ministry of Environment protection, Ministry of Agriculture, Ministry of Commerce, Ministry of Health, AQSIQ, State Administration for Industry and Commerce and State Food and Drug Administration and other agencies are members of the Commission. The Commission has set up an office to undertake its daily work. State Food and Drug Administration is responsible for policy making, implementing and supervising of catering service industry and health food industry.

30. WT/TPR/S/264-04, page 51, paragraph 102: *In paragraph 102 of Part III, the Secretariat's report discusses China's SPS notification practices. The United States notes that, in 2010, 2011 and 2012, China's ministries introduced a plethora of measures regarding feed, feed additives, aquatic products and food additives that China did not notify to the SPS Committee. These measures include: the Regulation on the Administration of Feed and Feed Additives, MOA Decree 609; the Measures for Administration of New Food Additives, MOH Order No. 73; MOHs Administrative Measures on*

New Food Additive Varieties; MOHs General Standard for Blended Food Additives; AQSIQ's Hygiene and Quarantine Requirements for Imports of Fish Oil, Fish Meal, and Other Aquatic Animal Proteins; MOHs Nutrition Labeling for Prepackaged Foods; Banned Substances in Animal Feed and Drinking Water, MOA Announcement No. 1519 (2011); the Notice on Strengthening Inspection and Quarantine on Imported Salmon, AQSIQ No. 9 of 2011; the National Standard for Labeling, SAC 2011 revision; the Specification for Import and Export Food Additives, AQSIQ No. 52 of 2011; MOAs Administrative Measures of Production License for Animal Feed and Feed Additives; MOAs Administrative Measures of New Feed and New Feed Additives; MOAs Regulation on Product Approval Numbers for Feed Additive and Premix Feed; and the Regulation on Feed and Feed Additive Import Registration, MOA 2012 amendment. What steps will China take to ensure that these measures and similar measures in the future will be notified to the SPS Committee for review and comment and that any concerns raised by WTO Members will be considered prior to enforcement?

Answer: China's SPS notification involves many departments, and a lot of information collection, analysis and collation. After the accession to the WTO, China established an inter-departmental working mechanism of SPS notification, and began a more effective operation. China, as a developing member, overcomes the constraints of capacity and resources to conscientiously fulfill the obligation of transparency. For these measures mentioned above we believes that: there are indeed some omissions of notification; for some regulations and measures that do not have significant impact on trade, so there is no necessarily need of notification; for some regulations and measures that involve recommended standards or adopted international standards, therefore no notification is required. Regarding different understanding of "significant impact on trade, we are willing to frankly exchange views with other members. We will also continue our efforts to constantly improve our SPS notification, to fulfill our commitments in the WTO.

31. WT/TPR/S/264-04, page 51, paragraph 102: In paragraph 102 of Part III, the Secretariat's report states that China notified numerous measures to the SPS Committee after the adoption of the 2009 Food Safety Law, but only provided a 15-day comment period. What steps will China take to ensure that it provides a 60-day comment period for future SPS measures as required by the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement)?

Answer: From the time the 2009 Food Safety Law was adopted to 30 May 2012, China had notified 219 revised or new SPS measures to other members through the WTO secretariat, ranking the third in 2010 and the second in 2011. 5 out of these 219 notifications are emergent ones. Among the rest 214 conventional notifications, 211 had provided 60-day comment period after distribution by the Secretariat, taking up over 98%, far above the WTO average level.

Since the promulgation of the Food Safety Law, the draft regulations reviewed by the Laws and Regulations Department of AQSIQ and notified to the WTO accordingly include the following: Measures on the Administration of Imported and Exported Food Safety, Measures on the Administration of Imported and Exported Dairy Products Supervision, Inspection and Quarantine, Measures on the Administration of Imported and Exported Meat Products Supervision, Inspection and Quarantine, Measures on the Administration of Imported and Exported Aquatic Products Supervision, Inspection and Quarantine, and Measures on the Administration of Registration of Overseas Producers of Imported Food. All these drafts have provided 60-day comment period. The problems raised in the questionnaire do not exist.

In addition, China has noticed that the U.S. has failed to provide ample time for comment in numerous SPS notifications. Take the recent two years for example, in 2010, only 11 SPS notifications by the U.S. offered 60 day comment period, accounting for only 7% of the conventional notifications of the whole year. In 2011, the number of notifications with 60-day comment period was 16 and the proportion only 9%, far below the average level. We hope that the U.S. could give

more attention to honoring its own transparency obligations, so as to give other members real opportunities to engage in the formulation and revision of its SPS measures.

32. **WT/TPR/S/264-04, pages 51-52, paragraph 104:** *In paragraph 104 of Part III, the Secretariat's report notes that AQSIQ has made five adjustments to the Catalogue of Entry-Exit Commodities Inspected and Quarantined by Entry-Exit Inspection and Quarantine Organs in accordance with the relevant requirements and the quality of import and export commodities. Could China explain the criteria that it uses to make adjustments to this catalogue?*

Answer: According to Article 3 of the Implementation regulation of Commodity Inspection Law, AQSIQ should formulate, adjust and publish the Catalogue of Entry-Exit Commodities Inspected and Quarantined by Entry-Exit Inspection and Quarantine Organs. The adjustments are made for several reasons, including the newly published laws or regulations, which authorizes duties to the Entry-Exit Inspection and Quarantine Organs, for example certain commodities including dangerous chemicals are added to the Catalogue according to the Regulations on the Control over Safety of Dangerous Chemicals; certain commodities containing food additives are added to the Catalogue according to the Notification of strengthening the administration of food additives by General office of the State Council; the adjustments are made based on some risk assessment results or inspection results by Entry-Exit Inspection and Quarantine Organs.

33. **WT/TPR/S/264-04, page 52, paragraph 106:** *Paragraph 106 of Part III of the Secretariat's report refers to the China Inspection and Quarantine E-cert System, or China E-cert. Please provide additional details on the operation of China E-cert and indicate which commodities are covered by this system.*

Answer: In order to facilitate the health growth of trade, especially the trade of agricultural and food product, as well as prevent fake inspection and quarantine certificate, China initiated the Inspection and Quarantine E-cert System.

Any country's government can access to China's Inspection and Quarantine E-cert System (<http://ecert.eciq.cn>) and apply for registration. After that, the country's embassy in China has to contact AQSIQ for approval. Any countries government can has the system to check and review the texts of certificates which are signed by China's inspection and quarantine organs within one year after AQSIQs approval.

The system is also a platform of certificate information exchange, automatic bilateral exchange and online checking connecting Chinese and foreign agencies. We have established official inspection and quarantine E-cert checking mechanism with the government of New Zealand, Australia, Netherlands and many other countries.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) MEASURES DIRECTLY AFFECTING IMPORTS

(viii) Government procurement

34. **WT/TPR/S/264-04, page 53, paragraph 114:** *In paragraph 114 of Part III, the Secretariat's report states that [l]ocal governments account for a major part of government procurement in China; they accounted for about 93% of the total value of government procurement in 2010. Given the enormous amount of government procurement conducted at the local government level in China, why has China so far included only a small number of sub-central governments in its offers of coverage in its GPA accession negotiations?*

Answer: The local-level government procurements fall within the administration of sub-central governments in China. Whether sub-central governments will be included in the offer of coverage will be decided by themselves.

35. **WT/TPR/S/264-04, page 54, paragraph 116:** *In paragraph 116 of Part III, the Secretariat's report states that China does not consider procurement by SOEs as government procurement. The revised Agreement on Government Procurement (GPA), which was adopted by the Committee on Government Procurement in March 2012, provides in Article II:2 that covered procurement means procurement for government purposes [that is] not procured with a view to commercial sale or resale. Does China have any state-owned enterprises to which that description would apply? If so, please identify them.*

Answer: No

36. **WT/TPR/S/264-04, pages 53-54, paragraphs 111 and 117:** *In paragraph 117 of Part III, the Secretariat's report notes that the main laws governing China's government procurement are the 2002 Government Procurement Law (GPL) and the 1999 Law on Bid Invitation and Bidding or Tendering (TBL). Paragraph 111 of Part III further notes that preparatory work is under way on eventual changes to [China's] legislative framework to bring it in conformity with the GPA. Based on Article 4 of the GPL, most construction projects are subject to the TBL, not the GPL. What steps is China taking to provide for compliance of construction projects with the GPA?*

Answer: Basically, the principles in the Tendering and Bidding Law are in line with those of GPA. The Tendering and Bidding Implementation Rules, which came into effect on 1 February 2012, gives more clear and detailed provisions on project bidding.

37. **WT/TPR/S/264-04, page 56, paragraph 130:** *In paragraph 130 of Part III, the Secretariat's report states that China's accession to the GPA, when it is completed, is likely to be a win-win outcome for all concerned. The United States notes, however, that it has been more than 10 years since China acceded to the WTO and that China committed in its Protocol of Accession to begin its GPA accession negotiations as soon as possible. At this point, while China has begun its GPA accession negotiations, it appears that those negotiations may take longer than the vastly more complex and comprehensive negotiations between China and members of the Working Party on China that enabled China to accede to the WTO in 2001. Please explain why China's GPA accession has been so delayed.*

Answer: China is the largest developing country in the world. The governments procurement reform is still at the initial stage. However, China's standpoint to accede to GPA is never changed. So far China is trying to create conditions to expanding its offer list. To a great extent, Chinese accession process is decided by whether GPA participants would adopt a reasonable attitude and request the offer suitable to Chinese current development.

III. TRADE POLICIES AND PRACTICES BY MEASURES

(2) MEASURES DIRECTLY AFFECTING EXPORTS

(ii) Export subsidies

38. **WT/TPR/S/264-04, page 58, paragraph 136:** *In paragraph 136 of Part III, the Secretariat's report makes the following statement: The authorities state that China does not provide any export subsidies. However, numerous WTO Members, including the United States, both in the counter notification that it filed in 2011 under Article 25.10 of the SCM Agreement and in other WTO submissions, have previously identified and raised questions about a wide range of unreported subsidy programs, and many of these subsidy programs have appeared to be contingent upon export performance. Indeed, to date, the United States has brought three WTO cases (DS358, DS387 and*

DS419) in which it has challenged numerous Chinese subsidies as prohibited export subsidies or prohibited import substitution subsidies. In each case, China subsequently repealed the challenged subsidies or modified them to remove either an export contingency or a local content requirement.

- a. *The United States understands that China maintains national export bases and provincial export bases for products in numerous industrial sectors. For each sector, please identify the measures providing for the export bases, describe the support provided to manufacturers of products in the sector in connection with the export bases over the past 3 years, and explain this support in light of China's obligations under Article 3 of the SCM Agreement.*

Answer: The policies regarding export base construction is in full compliance with WTO rules, with focus on creating equal and standardized competition environment and changing the mode of export growth. There is a shift from simply seeking quantity expansion to emphasizing quality and efficiency improvement. Specific policies covers developing public service platform, standardizing export order, enhancing IPR protection, promoting trade and improving public service, etc.

- b. *In a notice issued on 28 April 2011 and available on the Ministry of Finance (MOF) website, the MOF provides that the government will provide interest rate subsidies to technology exports in 2011 for the purposes of maintaining foreign trade growth, optimizing export structure, spurring fast technology export growth and promoting shifts in the pattern of trade growth. Such exports include patent right and patent application right transfers, patent licensing, proprietary technology transfer or licensing, technical services, software technology and related information service exports. To qualify, a company must have registered with MOFCOM and in 2010 recorded at least \$100,000 in technology export foreign exchange earnings. Could China confirm the details of this program? Do any of the subsidy recipients manufacture, produce or sell goods in addition to supplying services? Could China explain this program in light of China's obligations under Article 3 of the SCM Agreement?*

Answer: According to the Notice of the Ministry of Finance and the Ministry of Commerce on Discount Funds for Technology Export in 2011 (Caiqi [2011] No.55), we support to patent right and patent transfer, application right transfer, patent implementing license, proprietary technology transfer or licensing, technical services, software technology and related information service export. For technology exportation, the income amount in USD is taken as the principal when discount is calculated. For discount clearing, discount rate should be no higher than the latest RMB one-year lending rate released by People's Bank of China.

III. TRADE POLICIES AND PRACTICES BY MEASURES

(2) MEASURES DIRECTLY AFFECTING EXPORTS

(iv) Tax rebates on exports

39. **WT/TPR/S/264-04, page 59, paragraph 143:** *Paragraph 143 of Part III of the Secretariat's report explains that in China the value-added tax (VAT) may be rebated on exports, but exporters are generally entitled to VAT rebates lower than the VAT actually paid. The Secretariat's report notes that [t]he difference between the two rates constitutes a levy on exports, which may in turn constitute assistance to downstream processing of the products affected, and could affect China's terms of trade. It adds that China adjusts VAT rebate rates as part of its industrial policies, to control, restrict, or otherwise manage the export of certain products. The United States is also concerned that China's use of VAT rebate rates that vary between and among exported products severely distorts trade.*

- a. *Does China consider its VAT rebate policies necessary in part because it has not yet developed a fully functioning market economy? Please explain.*

Answer: Export rebate policy is a general system arrangement of countries that carries out VAT system in international trade. It is an international practice, and cannot be linked with whether the market economy is sound or not.

- b. *While China has reduced or eliminated the VAT rebate on many products, it has continued high VAT rebates on other, closely-related downstream products. As the Secretariat's report indicates, the amount of VAT rebated on total exports has continued to increase over the past two years. Does China view its VAT rebate policies as contributing to China's goal of rebalancing its growth by promoting domestic led growth over export led growth? If so, please explain.*

Answer: Export is one of the important measures to drive economic growth, while export rebate policy is only a practice generally adopted by countries that carries out VAT system in international trade. This is no direct correlation between export rebate policy and applying which mode to rebalance economic growth.

- c. *Does China agree with the assessment that its VAT rebate policies act as assistance to downstream processors that could affect China's terms of trade? Does China also agree that its VAT rebate policies have the affect of decreasing costs for downstream processing industries? Please explain.*

Answer: The adoption of rebate rate generally lower than levy rate is mainly because of scarce capacity of China's fiscal burden. The viewpoint that the difference between levy rate and rebate rate constitutes an encouragement for downstream processing of relevant products is unilateral, and lack of sound theoretical and empirical support.

- d. *The Secretariat's report notes that China changes the varying rates of VAT rebates from time to time. The United States is concerned that China's changes to the VAT rebates have often been arbitrary and disruptive to market players, with little or no opportunity for public comment. Does China plan to fully vet any future changes to its VAT rebate policies by allowing public comment on proposed changes? Please explain.*

Answer: Our adjustments for export rebate rate are all made according to legal proceedings, and opinions will be solicited from relevant industries (market players) before adjusting export rebate rate, and such situation of arbitrarily changing VAT rebates or little or no opportunity for public comment does not exist.

- e. *China has indicated that it is studying the possibility of adopting a uniform VAT rebate policy consistent with the policies prevailing in other WTO Members with a VAT system. When does China anticipate that it will be able to adopt a uniform VAT rebate policy? Please explain.*

Answer: Please explain the accurate meaning of a uniform VAT rebate policy consistent with the policies prevailing in other WTO Members with a VAT system. If it refers to that the VAT rebates of all export goods shall follow statutory levy rate, we explain as follows: China is a developing country, and the percentage of turnover tax is much higher than those of developed countries, so the impact of export rebate on China's finance is much higher than those of developed countries. Therefore, in a period of time, China is unable to follow statutory levy rate for all goods like Western developed countries.

40. **WT/TPR/S/264-04, page 59, paragraph 143:** *China actively uses variable VAT rebate rates on numerous steelmaking raw materials and primary, semi-finished and finished products in the steel sector. What objectives is China seeking to achieve through these practices? Has China considered other less trade-distorting means for achieving its objectives? In the period since China began using*

these variable VAT rebate rates in the steel sector, China's steelmaking capacity has grown from 424 million metric tons (MT) in 2005 to 815 million MT in 2011, and China has become a large net exporter. Please explain how China's VAT rebate policies contribute to rationalization and market-orientation of the steel industry in China.

Answer: The adjustment of export rebate rate is not beyond the levy rate, and does not constitute subsidies for export goods. The rebate rate for primary products in the steel sector is much lower than the levy rate, and such products join in international market competition under a climate of cost increase. Under such a situation, China becomes a large net exporter of steel, and this shows the impact of supply demand relations on product export is much larger than the change of export rebate policy.

41. WT/TPR/S/264-04, page 59, paragraph 143: *Aluminum foil and other finished aluminum products are other energy-intensive products whose exports are impacted by China's system of variable VAT rebate rates. What objectives is China seeking to achieve through these practices? Has China considered other means for achieving its objectives? Please explain.*

Answer: The adjustment of aluminum export rebate rate is not beyond the levy rate, and does not constitute subsidies for export goods. The rebates of aluminum products and other energy-intensive products do not follow the levy rates, and that is mainly because of our scarce fiscal support capacity a.

42. WT/TPR/S/264-04, page 59, paragraph 143: *Soda ash is one of the products whose export has been managed by China through the changes to VAT rebate rates discussed in paragraph 143 of Part III of the Secretariat's report. Soda ash is an inorganic chemical that is used in the production of glass and detergents. China's soda ash production capacity has grown dramatically in recent years, even though 95% of China's soda ash is produced through synthetic processes, rather than the less energy-intensive natural process using mined trona ore (as in the United States, for example). Synthetic production of soda ash is about one-half as energy efficient as soda ash produced from trona and results in much higher emission of pollutants. In 2007, China eliminated the VAT rebate on soda ash in a stated attempt to address over-capacity problems in the soda ash sector. In July 2009, China changed the VAT rebate rate from zero to 9%, apparently to make Chinese soda ash more competitive in export markets. What objectives is China seeking to achieve through these practices? Has China considered other less trade-distortive means for achieving its objectives? Please explain.*

Answer: The adjustment of soda ash export rebate rate is not beyond the levy rate, and does not constitute subsidies for export goods. Due to non-full-amount rebate, the cost for exporting soda ash is increasing. Under such a situation, if superior global competitiveness can be achieved, we can say that the impact of export rebate on trade is much smaller than that of other factors.

III. TRADE POLICIES AND PRACTICES BY MEASURES

(2) MEASURES DIRECTLY AFFECTING EXPORTS

(iv) Export prohibitions, restrictions, and licensing

43. WT/TPR/S/264-04, pages 59-60, paragraphs 146-150: *In paragraph 7 of the Summary, the Secretariat's report states that China uses various non-tariff border measures, such as import and export licensing and state trading to guide the allocation of resources. Subsequently, in paragraphs 146-150 of Part III, the Secretariat's report discusses in more detail various export prohibitions, export quotas and export licensing employed by China, particularly with regard to natural resources. It also references the report prepared by the Secretariat in connection with China's Trade Policy Review in 2010, where it stated: [W]hether intended or not, export restraints for whatever reason tend to reduce export volumes of the targeted products and divert supplies to the domestic market, leading to a downward pressure on the domestic prices of these products. The resulting gap between*

domestic prices and world prices constitutes implicit assistance to domestic downstream processors of the targeted products and thus provides them a competitive advantage. Insofar as China is a major supplier of such a product, export restraints may also shift the terms of trade in China's favour. Although the Secretariat's report does not mention it, the Appellate Body and a WTO panel recently found in China Measures Related to the Exportation of Various Raw Materials (DS394, DS395 and DS398) (China Raw Materials), that China's use of various export quotas and export duties on several industrial raw materials violated WTO rules, and China has committed to come into compliance with those findings. At the same time, China continues to maintain export restrictions on numerous other raw materials.

- a. *Please explain China's plans for the export quotas that it maintains on raw materials that were not among those challenged in China Raw Materials.*

Answer: In recent years, faced with increasingly severe resource and environmental pressures, the Chinese government continues to strengthen and improve the integrated management of some resource products, especially those high-pollution, high energy consumption products, this not only meets the needs of China's own scientific development but also is an important effort for promoting the global sustainable development. China pursues a synchronized management of the export of raw material products and their exploration and production at home, and reasonably determines the annual volume of exports to meet the basic needs of the international markets based on an overall consideration of the domestic and foreign markets, resources and environment carrying capacity. This also shows China is a responsible member of the WTO. China has no intention to limit the free trade, nor does it intend to protect the domestic industries by distorting trade, and our policy goals are in line with WTO rules.

In the future, China will, based on careful assessment of the WTO rulings on the cases of raw materials, continue to implement scientific management for resource products in accordance with WTO rules to achieve sustainable development. At the same time, we urge the relevant countries to abide by the WTO rules in export restrictions.

- b. *Given the sweeping nature of the panel and Appellate Body findings on export duties in China Raw Materials, please explain China's plans regarding elimination of all of the export duties that it maintains on products that are not listed in Annex 6 to China's Protocol of Accession.*

Answer: According to the practices WTO has in dispute settlement, the rulings made by the Panel and Appealing Body only applies to 9 products including coke. China will take measures conforms to WTOs discipline in regard of export administration on products beyond the 9 products.

III. TRADE POLICIES AND PRACTICES BY MEASURES

(2) MEASURES DIRECTLY AFFECTING EXPORTS

(viii) Export finance, insurance, and guarantees

44. *WT/TPR/S/264-04, page 61, paragraph 154: Paragraph 154 of Part III of the Secretariat's report notes that there is no local content requirement to obtain export finance. Is this statement intended to suggest that China's export credit financing is tied to local content requirements in China, or is the statement referring to local content requirements in the buyer country?*

Answer: China's export credit financing has nothing to do with the buyer country's local content requirement and China's local content requirement.

III. TRADE POLICIES AND PRACTICES BY MEASURE
(3) MEASURES AFFECTING PRODUCTION AND TRADE
(i) Taxation and tax incentives

45. **WT/TPR/S/264-04, page 66, paragraph 175:** *Paragraph 175 of Part III of the Secretariat's report states that [c]onsumption tax is rebated fully on exports, except where the product is not eligible for rebate. Please identify the products for which the consumption tax is rebated fully upon export. Please also identify the products for which the consumption tax is rebated partially or not at all, along with the applicable rebate rate.*

Answer: The products eliminated from export rebates include both those eliminated from VAT rebates and those eliminated from consumption tax (if the products fall under the taxable scope). The consumption tax of products eliminated from export rebates will not be rebated.

III. TRADE POLICIES AND PRACTICES BY MEASURE
(3) MEASURES AFFECTING PRODUCTION AND TRADE
(ii) Subsidies and other government assistance

46. **WT/TPR/S/264 -04, page 69, paragraph 190:** *The Secretariat's report states that the main instruments of government assistance to business provided at the central and sub-central government levels are direct grants, subsidized loans and tax benefits. The 2011 IMF Article IV Report for China also explains that the selective use of low-cost factor prices, such as low prices for land, offers Chinese firms a competitive edge and creates incentives for capital intensive means of production. (See 2011 IMF Article IV Report for China, page 20.) Please explain what steps China is taking to correct the price distortions created by its selective use of low prices for land.*

Answer: The Property Law publicized in 2007 stipulates in a legal way that... The commercial land for industry, commerce, tourism and commercial residential buildings shall be sold via public bidding invitation and auction. Therefore, except the special land for military use and indemnificatory housing, any organization or individual who would like to obtain the land-use right from governments at all levels has to compete in the domestic open market. What was mentioned in the IMF report is a misconception that doesn't fit reality.

47. **WT/TPR/S/264-04, page 69, paragraph 193:** *Paragraph 193 of Part III of the Secretariat's report states that a large part of China's November 2008 fiscal stimulus package was to be implemented through increased bank lending. Please identify the banks that were involved in this stimulus package. How much of the aggregate loan volume was attributable to state-owned commercial banks (SOCBs) versus China's policy banks?*

Answer: Fiscal stimulus plan is not designated to any specific financial institution for implementation. On the basis of national policies and under the market-oriented principle, banking financial institutions can decide by themselves whether to provide related financial services. There is no proportion requirement for total loan amount. At the end of 2011, the loan balances of state-owned commercial banks and China's policy banks are respectively RMB 23.05 trillion and RMB 6.63 trillion.

48. **WT/TPR/S/264-04, page 69, paragraph 194:** *Paragraph 194 of Part III of the Secretariat's report explains that programmes described in the industrial revitalization plans adopted in 2009 for ten sectors were implemented over the past three years. The ten sectors include the automotive, steel, ship building, petrochemical, textile, light manufacturing, non-ferrous metal, equipment manufacturing, electronics and IT, and logistics sectors. Please provide detailed information regarding the budget allocated to the programs described in the industrial revitalization plan for each*

sector. Please also provide detailed information on the monies actually disbursed and loans provided pursuant to these programs.

Answer: As of the end of 2011, the RMB and foreign currency medium and long-term loan balances put to the ten sectors with industrial revitalization plans are respectively: RMB 72.8 billion for automobile, RMB 266.5 billion for steel, RMB 693.6 billion for petrochemical, RMB 65.1 billion for textile, RMB 887.4 billion for light manufacturing, RMB 167.4 billion for non-ferrous metal, RMB 398.5 billion for equipment manufacturing, and RMB 144.7 billion for electronics and IT, and for ship building and logistics sectors, no statistics are available yet.

49. **WT/TPR/S/264-04, page 69, paragraph 195:** *Paragraph 195 of Part III of the Secretariat's report refers to a Special Fund for Development of Renewable Energy, which was established in 2007 to provide grants to energy conservation projects. How much money is contained in this fund? How many grants have been disbursed out of this fund? What are the criteria that an enterprise must satisfy to receive a grant from this fund?*

Answer: Special Fund for Development of Renewable Energies refer to all funds offered by relevant departments for different renewable energies. These departments formulate correspondent supportive policies to different renewable energies on the basis of their development stage and characteristics, and there is no uniform fund application guidance or annual report. To get special fund, enterprises should meet the requirements of the policies and regulations on renewable energies formulated by relevant departments.

50. **WT/TPR/S/264-04, page 71, paragraph 204:** *Paragraph 204 of Part III of the Secretariat's report states that, in China, enterprises making low profits receive preferential tax treatment. Please explain why the Chinese Government does not allow the market to dictate outcomes.*

Answer: Small low-profits enterprises play an irreplaceable role in promoting economic growth, boosting employment, and improving scientific and technological innovation ability. Providing support for small and weak economic entities is generally adopted by countries across the world.

III. TRADE POLICIES AND PRACTICES BY MEASURE
(3) MEASURES AFFECTING PRODUCTION AND TRADE
(iii) Industrial policies

51. **WT/TPR/S/264-04, page 72, paragraph 210:** *One of the ten sectors identified in note 184 to paragraph 210 of Part III of the Secretariat's report for boosted development beginning in 2009 is the automotive sector. The United States understands that the sector-specific plan for the automotive sector issued in 2009 discusses support for export bases for autos and auto parts, as do a number of other measures, such as the Policies for Automobile Trade, issued by MOFCOM on 10 August 2005 [Order No. 26]. Please identify any other measures providing for these export bases. Please also describe the support provided to manufacturers of autos and auto parts in connection with these export bases over the past 3 years, and explain this support in light of China's obligations under Article 3 of the SCM Agreement.*

Answer: In 2006 and 2007, the Ministry of Commerce and the National Development and Reform Commission have identified 12 areas such as Changchun as the national automobile and auto parts export bases. The identification of such bases aims to improve the degree of concentration of auto sector, promote international cooperation and exchanges, strengthen the protection of intellectual property, accelerate the transformation of the development pattern of foreign trade, develop demonstration bases for orderly export and protection of intellectual property, as well as an important carrier for transfer of the world auto industry and international exchanges and cooperation. For

specific policy measures over the past three years please refer to the Plan on Adjusting and Revitalizing the Auto Industry (GuoFa [2009] No. 5).

III. TRADE POLICIES AND PRACTICES BY MEASURE

(3) MEASURES AFFECTING PRODUCTION AND TRADE

(v) State-owned enterprises, private enterprises, and corporate governance

52. **WT/TPR/S/264 -04, page 73, paragraph 219:** *Paragraph 219 of Part III of the Secretariat's report states that SOEs have traditionally benefited from better access to capital than domestic private enterprises, although the authorities emphasize that this is due, inter alia, to historical reasons and the size of enterprises, and that the Government has always supported the development of enterprises of all ownership structures equally. The United States notes that, in 2004, the China Banking Regulatory Commission (CBRC) issued the Regulation Governing Capital Adequacy of Commercial Banks, which assigned central SOEs a lower risk rating than private enterprises (i.e. 50% as opposed to 100%). According to the OECDs 2010 Economic Survey, this action reinforces Chinese banks traditional propensity for banks to lend to large SOEs. Is the 2004 regulation still in effect? If not, please explain the weightings that the CBRC currently assigns to various types of enterprises.*

Answer: According to Commercial Bank Law of People's Republic of China, a commercial bank operates independently takes up responsibility for all risks it may encounter and for its own profits and losses it may bear and exercises self-regulating mechanism on the management principle of economic efficiency safety and liquidity. A commercial bank shall conduct its business in accordance with the law free from interference by any department or individual. No organization or individual may force a commercial bank to extend a loan or provide guarantee for a loan. A commercial bank shall have the right to refuse any organization's or individual's demand for a loan or guarantee. To sum up, lending decisions by State owned Commercial Banks are based entirely on commercial consideration.

53. **WT/TPR/S/264 -04, page 75, paragraph 225:** *Paragraph 225 of Part III of the Secretariat's report states that [t]he NDRC, in line with [the State-Owned Assets Supervision and Administration Commission (SASAC)], supports national champions and promotes the reform of key industries, such as automobiles and steel, via industrial policies to improve the competitiveness of the dominant SOEs. Please explain why China promotes national champions in sectors already dominated by SOEs. How is this policy goal regarding SOEs consistent with the statement in paragraph 219 of Part III of the Secretariat's report, which explains that the Government has always supported the development of enterprises of all ownership structures equally?*

Answer: The State-Owned Assets Supervision and Administration Commission is a special organization directly under the State Council, and it performs the contributors duties pursuant to law. The so-called the National Development and Reform Commission in line with the State-Owned Assets Supervision and Administration Commission provides economic support does not exist. The automobile and steel enterprises among national enterprises mainly depend on independent operation behaviors such as market competition and scientific & technological progress to achieve development.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(3) MEASURES AFFECTING PRODUCTION AND TRADE

(vi) Competition and consumer protection policy

54. **WT/TPR/S/264 -04, page 78, paragraphs 239-245:** *Paragraphs 239-245 of Part III of the Secretariat's report discuss the Anti-Monopoly Law. Please explain the relationship between provisions of the Anti-Monopoly Law such as Article 55 on Abuse of Intellectual Property and the 2004 Judicial Interpretation Concerning Some Issues on Application of Law for the Trial of Cases on*

Disputes over Technology Contracts, especially Article 10 thereof, which deals with monopolization of technology.

Answer: Article 55 of Anti-trust Law of China states that, this law is not applicable to undertakings who exercise their intellectual property rights in accordance with the laws and administrative regulations on intellectual property rights; however this law shall be applicable to the undertakings who eliminate or restrict market competition by abusing their intellectual property rights. This shows that China's anti-trust law clearly make legitimate IPR practice an exception but strongly opposes abusing IPR to eliminate and restrict market competition. With respect to the nature of the Anti-trust Law in penalizing IPR abuse in eliminating and restricting market competition, the State Administration for Industry and Commerce (SAIC) is leading an effort to draft the Guideline on the Anti-trust Enforcement in IPR. Article 329 of the Contract Law states that illegally monopolies technologies and impedes technological progress; in article 10 of judicial interpretation of technology contract states that it only adjust the practice that abuse IPR license, including certain monopoly cases. Therefore, specific IPR abuse doesn't constitute monopoly, they are subject to article 329 of contract law and article 10 of judicial interpretation of technology contract

55. **WT/TPR/S/264 -04, page 78, paragraph 243:** *Paragraph 243 of Part III of the Secretariat's report discusses the enforcement of competition law in China, which is shared by three agencies, coordinated and guided by the Anti-Monopoly Commission under the State Council. Given that the Anti-Monopoly Commission includes SASAC, which owns China's largest SOEs, how does China deal with conflicts of interest that arise between SASAC's role as SOE owner and SASAC's role as regulator, in that it is a member of the Anti-Monopoly Commission, which oversees Anti-Monopoly Law enforcement?*

Answer: The Anti-Monopoly Commission under the State Council is a coordinator instead of an entity. It doesn't directly engage in enforcement. As a member of the Anti-Monopoly Commission, the State Assets Supervision and Administration Commission (SASAC) is able to supervise the competition of State-owned Enterprises, and promote implementation of legislation among central SOEs. The MOC, NDRC and SAIC are responsible for anti-trust enforcement. SASAC is not an enforcement body, thus there is no conflict of interest.

Meanwhile, Anti-Monopoly Law is equally applicable to foreign and domestic enterprises of various ownerships. First, SOE shall declare when operation concentration reaches the standard of declaration; second, the MOC will review the SOE with operator concentration according to law, without any differentiated preference; finally, any enterprises whatever their ownership, the operators will bear corresponding legal responsibility if they fail to declare according to law. The Anti-Monopoly Law has clear statement on this. In December 2011, the MOC issued the Provisional Measures on the Investigation and Handling of Concentrations between Business Operators not Notified in Compliance with the Law, which is effective as of 1 February 2012. The Measures give requirement for the procedure, investigation measure and penalization for failing to report operator concentration according to law.

56. **WT/TPR/S/264 -04, page 81, paragraph 250:** *Paragraph 250 of Part III of the Secretariat's report explains that [i]ndustrial associations are prohibited from organizing or facilitating monopoly agreements among their members. Have the Anti-Monopoly Law enforcement agencies enforced the Anti-Monopoly Law against any industrial associations for organizing or facilitating monopoly agreements by their members? If so, please provide a short summary of each instance of enforcement and any penalty imposed.*

Answer: the Anti-trust Law of China clearly states that industrial association shall not organize the operator in eliminating and restricting market competition. The SAIC conducts anti-trust enforcement by law in an active and sound way. In 2010, the SAIC entrusted the Administration for Industry and

Commerce of Jiangsu Province to investigate the case of the Concrete Committee of the Concrete Material and Mechanical Society of Lianyungang organizing monopoly activity. According to the provisions of Anti-trust Law, the party concerned was ordered to stop illegal practice and the society was penalized RMB 200,000.00, and the core member companies were confiscated with all illegal earning and penalized RMB 900,000.00.

57. **WT/TPR/S/264 -04, page 82, paragraph 256:** *Paragraph 256 of Part III of the Secretariat's report states that [b]etween 2008 and 2011, MOFCOM received 382 cases for review, of which 371 were unconditionally cleared, 10 were cleared subject to conditions, and 1 case was rejected. How many of the 382 reviewed cases involved (1) SOEs merging with other SOEs, (2) mergers between SOEs and private enterprises and (3) private enterprises merging with other private enterprises?*

Answer: The MOFCOM treat companies with equality when reviewing cases of high-concentrating operators, regardless of different ownership. Given the fact that many companies have complicated shareholding structure, the MOC has no statistics in this field.

III. TRADE POLICIES AND PRACTICES BY MEASURE

(3) MEASURES AFFECTING PRODUCTION AND TRADE

(vii) Intellectual property rights

58. **WT/TPR/S/264 -04, page 86, paragraph 277:** *In paragraph 277 of Part III, the Secretariat's report discusses the Inter-Ministerial Joint Conference for the Implementation of National Intellectual Property Strategys drafting of Anti-Monopoly Guidelines for Abusive Use of Intellectual Property Rights. Can China confirm that the Joint Conference will circulate draft guidelines for public comment? What is the Joint Conferences timeline for issuing draft and final guidelines?*

Answer: Article 55 of the Anti-Monopoly Law reads... This Law is not applicable to the undertakings which exercise their intellectual property rights in accordance with relevant laws and regulations on intellectual property rights. However, this Law shall be applicable to the undertakings which eliminate or restrict market competition by abusing their intellectual property rights. This indicates that Chinese Anti-Monopoly Law is against the abusive use of intellectual property rights which eliminates or restricts market competition. To enforce the relevant provisions of the Law, SAIC is leading the drafting of Anti-Monopoly Guidelines for the Use of Intellectual Property Rights. During the drafting process, besides referring to relevant guidelines and rules and enforcement practices of other countries, we made extensive domestic investigations and researches and invites opinions from enterprises, courts and government agencies for several times in China. In moving forward the drafting work, we will continue to invite opinions from relevant parties and welcome comments or suggestions from the US or other countries.

59. **WT/TPR/S/264 -04, page 86, paragraph 277:** *In paragraph 277 of Part III, the Secretariat's report refers to revisions of various IPR-related laws. The United States understands that the Trademark Law revision is with the State Council Legislative Affairs Office (SCLAO), an Anti-Unfair Competition Law draft may also be with the SCLAO, and a Copyright Law revision is with the National Copyright Administration. What is the timeline for issuing draft revisions to these laws and seeking public comment? What is the timeline for final revisions? Are any related regulations being drafted? Will they be available in draft form for at least 30 days public comment? Please explain.*

Answer: For the amendment of Trademark Law, SCLAO is reviewing the draft amendment for review prepared by SAIC. In January 2010, SCLAO invited opinions for this draft from various organizations including WIPO and trademark agencies of US, EU and Japan. In September 2011, the Trademark Law (Draft Amendment) (Draft for Solicitation of Opinions) was published on www.chinalaw.gov.cn and provided a 30-day period for public comments.

For the amendment of Anti-Unfair Competition Law, the draft amendment for review has been prepared by SAIC and submitted to SCLAO for review.

For the amendment of Copyright Law, the National Copyright Administration published the draft amendment on its official website on 31 March 2012 to solicit public opinions till 30 April 2012. During the period, the National Copyright Administration received comments and suggestions from US State Patent and Trademark Office, US Copyright Office and relevant US associations and enterprises. Currently, there is no specific timeline for the final revision and promulgation of the amendment.

The National Copyright Administration and SAIC is now drafting the Copyright Law (draft amendment for review) and relevant implementation regulations.

60. WT/TPR/S/264 -04, page 87, paragraph 278: *In paragraph 278 of Part III, in noting a number of new IPR-related rules and regulations since China's last Trade Policy Review, the Secretariat's report states: China also promulgated the Interim Measures on Payment by Radio and TV Stations for Broadcasting Audio Products. The United States notes that the implementation of this compulsory license for the public performance of musical works affects China's obligations under the Berne Convention, which is incorporated into the TRIPS Agreement by Article 9.1 of the TRIPS Agreement. Please provide information regarding the implementation of this measure, including details on the collection and distribution of monies (i.e., tariffs) received under this measure.*

Answer: According to Interim Measures on Payment by Radio and TV Stations for Broadcasting Audio Products promulgated in November 2009, Chinese radio and TV stations negotiated the fee for broadcasting audio products with Music Copyright Society of China (MCSC), the only certified collective music copyright management organization in China. In 2010 and 2011, CCTV and China National Radio signed agreement with MCSC respectively on the package license of all musical works managed by MCSC. By far, 12 radio stations and 33 TV stations in China have signed agreement with MCSC for the use of musical works. The license fee for 2010 between MCSC and CCTV is RMB 19 million. The total license fee for 2011 between MCSC and CCTV, China National Radio and 10 local TV stations is RMB 20.25 million.

61. WT/TPR/S/264 -04, page 89, paragraph 286: *In paragraph 278 of Part III, the Secretariat's report discusses the activities of the Patent Re-examination Board (PRB). Please describe the types of patents reviewed by the PRB (e.g. invention, utility and design), the extent to which these patents are service or non-service patents, and the numbers of cases where a foreigner is a party (as petitioner or respondent). Please also identify the number of appeals of grant/validity decisions heard by the Beijing Number 1 Intermediate Court and provide data on the types of patents involved, the rates of reversal or change on appeal, and the number of cases involving a foreign party (as appellant or appellee).*

Answer: (1) Cases concerning patent review requests. In 2011, the PRB accepted 12,946 review requests, including 12,850 requests involving invention patent right, 66 requests involving utility patent right and 30 requests involving design patent right. In 2011, the PRB concluded 10,116 review request cases, including 10,056 cases involving invention patent application, 20 cases involving utility patent application and 40 cases involving design patent application. The PRB has accepted 56,903 review request cases and concluded 44,230 cases from the implementation of Chinese Patent Law in 1985 to the end of 2011.

(2) Cases concerning requests for invalidation. In 2011, the PRB accepted 2,749 requests for invalidation, including 566 cases involving invention patent right, 1,323 requests involving utility patent right and 860 requests involving design patent right. In 2011, the PRB concluded

2,567 requests for invalidation, including 555 requests involving invention patent right, 1,245 requests involving utility patent right and 767 requests involving design patent right. The PRB has accepted 28,494 requests for invalidation and concluded 26,231 requests from the implementation of Chinese Patent Law in 1985 to the end of 2011.

(3) Administrative patent lawsuits. In 2011, Beijing Number 1 Intermediate Court accepted 128 administrative cases against the review decisions of the PRB and 487 cases against the invalidation decisions of the PRB. Up till now, China has not collected statistics of review and invalidation cases where the invention involved is a service or non-service invention, or where a party is a foreigner or Chinese.

62. **WT/TPR/S/264-04, page 92, paragraph 304:** *Paragraph 304 of Part III of the Secretariat's report states that the State Administration for Industry and Commerce (SAIC) announced in July 2011 that trademarks that have not been used for three consecutive years will be revoked. Will the SAIC cancel the trademark registration if evidence of use is not submitted, or must a third party bring an action before the SAIC?*

Answer: According to the Trademark Law and its implementation regulations, where a registered trademark is not in use for three consecutive years, any person may apply to the Trademark Office for cancelling the said registered trademark and explain circumstances. The Trademark Office shall notify the trademark registrant and require him to furnish, within two months from the date of receipt of the notification, proof of use of the trademark before the date on which the cancellation application is filed, or a justifiable reason for its non-use. If no proof of use is furnished at the expiration of the period or the proof provided is invalid without a justifiable reason, the Trademark Office shall cancel the registered trademark.

63. **WT/TPR/S/264-04, page 93, paragraph 306:** *Paragraph 306 of Part III of the Secretariat's report indicates that the operator of an internet trading platform must take necessary actions against trademark infringement, and is liable for any damage caused by misuse of the platform. Please clarify what actions are required to be taken by online service providers (OSPs), and whether OSPs are subject to a constructive knowledge standard.*

Answer: According to Article 23 of the Interim Measures for the Trading of Commodities and Services through the Internet, the operators of Internet trading platform services should establish an inspection and supervision system for providers of goods or services through online trading platforms as well as goods and service information published by such providers, and should report any goods or service provider violating laws, regulations and rules on industrial and commercial administration to local industrial and commercial authorities, timely adopt measures to stop the violation, and suspend providing online trading platform services to such goods or service provider. According to Article 24 of the abovementioned Interim Measures, the operators of Internet trading platform services should adopt necessary measures to protect the right of exclusive use of registered trademarks and take necessary measures in accordance with the Tort Liability Law where the right owner has evidences to prove that his right of exclusive use of a registered trademark is infringed upon by an operator in the Internet trading platform.

64. **WT/TPR/S/264-04, page 93, paragraph 310:** *Paragraph 310 of Part III of the Secretariat's report states that geographical indicators (GIs) registered with AQSIQ and the Ministry of Agriculture are protected permanently. Is it possible for a third party to file a cancellation claim against these GIs, and if so, on what grounds?*

Answer: According to Article 21 of the Measures for the Administration of Geographical Indications of Agricultural Products, China encourages organizations and individuals to make social supervision on GIs of agricultural products, a third party may proceed against a registered GI of agricultural

products and cancel the GI in accordance with Article 18 of the Measures, which provides Where a registered GI of agricultural products or a holder of certificate of registration doesn't meet provisions specified in the Articles 7 and 8 of the Measures, the Ministry of Agriculture shall cancel the certificate of the GI registration and make a public announcement of such a cancellation.

65. *WT/TPR/S/264-04, page 93, paragraphs 308-311: Paragraphs 308-311 of Part III of the Secretariat's report describe the three different systems used to protect GIs in China, and paragraph 311 states that it is unclear whether there is any coordination mechanism when it comes to enforcement. The United States understands that China is contemplating revising these three systems in order to achieve better coordination among them. Please identify China's timeline for these revisions, and explain whether China will seek public comment on its proposed revisions.*

Answer: Currently, agricultural authorities, industrial and commercial authorities and quality supervision authorities jointly protect GIs in China in accordance with relevant laws and regulations as well as functional division. In order to further improve the GI protection and administration mechanism and system, China will formulate special laws and regulations on GI protection. The Ministry of Agriculture, MOFCOM, SAIC and AQSIQ will, based on existing functional divisions, collaborate to integrate business procedures and unify relevant policy standards for GI protection in China. To advance this work, SAIC will work with relevant authorities to establish an inter-ministerial joint coordination mechanism for GI protection.

66. *WT/TPR/S/264-04, page 93, paragraph 313: Paragraph 313 of Part III of the Secretariat's report addresses in general terms the protection granted by China's Copyright Law. Please provide information on the scope of protection for applied art in China under the Copyright Law and its implementing regulations, and describe any differences in protection afforded to Chinese entities versus foreign entities. Please also identify any civil, administrative or criminal cases involving the protection of applied art in 2010 and 2011.*

Answer: The applied arts of foreign entities are protected in China according to the Regulations for the Implementation of International Copyright Treaties. The current Copyright Law does not specify the protection of applied arts.

67. *WT/TPR/S/264-04, page 93, paragraph 313: Paragraph 313 of Part III of the Secretariat's report addresses in general terms the protection granted by China's Copyright Law. Please explain the scope of protection for sports broadcasting under the Copyright Law as well as under related laws, such as the Anti-Unfair Competition Law.*

Answer: Sports event is not an object of copyright in the current international copyright treaties. The Chinese Copyright Law and Anti-Unfair Competition Law do not have specific provisions on sports broadcasting. However, a sports broadcasting program may be protected by Copyright Law if it constitutes a work under the Copyright Law.

68. *WT/TPR/S/264-04, page 93, paragraph 313: Paragraph 313 of Part III of the Secretariat's report addresses in general terms the protection granted by China's Copyright Law. Please explain the scope of protection afforded to graphical user interfaces (or GUIs) under China's Copyright Law, Anti-Unfair Competition Law, Patent Law (to the extent that its provisions afford protection for designs) or any other Chinese laws. Have any cases been brought under any of these laws? If so, please provide information regarding the number and type of cases, the parties involved and the disposition of the cases.*

Answer: At present, China's Copyright Law, Regulations on the Protection of Computer Software and Anti-Unfair Competition Law have not stipulated specific provisions on GUIs. Paragraph 3 under the Article 2 of the Patent Law provides protection of appearance designs. However, according to

Section 7.4, Chapter 3, Part 1 of the Patent Review Guidance, design patent will not be granted to graphic patterns shown after a product is powered on, including patterns shown on the dial of an electronic watch, patterns shown on the mobile phone screen and software interfaces. Therefore, the mentioned graphic designs are not an object of appearance design protection under the Patent Law. A GUI may enjoy copyright protection if it constitutes a work under the Copyright Law.

69. **WT/TPR/S/264-04, page 95, paragraph 322:** *In paragraph 322 and Table III.12 of Part III, the Secretariat's report addresses administrative and judicial IPR enforcement. For 2010 and 2011, please provide the following data:*

- a. *The numbers of civil trade secret cases under Article 10 of the Anti-Unfair Competition Law, the percentage of these cases in which a foreigner was a plaintiff or defendant, the location of the courts that heard the most trade secret cases, and the numbers of appeals;*

Answer: In 2011, Chinese courts accepted 247 trade secret cases and concluded 223 cases in which 4 cases involved foreign elements. Courts in Guangdong Province and Jiangsu Province accepted the most trade secret cases in 2011, i.e. 36 trade secret cases each. No appeal statistic is available at present.

- b. *The number of administrative trade secret cases under Article 10 of the Anti-Unfair Competition Law, the percentage of these cases in which a foreigner was a plaintiff or defendant, the location of the agencies that heard the most trade secret cases; and*

Answer: In 2011, Chinese administrations for industry and commerce investigated and concluded 109 trade secret cases, in which one case involved a foreign-funded enterprise as infringer. No statistic of trade secret cases by location is available at present.

- c. *The number of criminal trade secret cases under Article 219 of the Criminal Law investigated by the Ministry of Public Security, the number of prosecutions brought by the Procuratorate, the numbers of cases decided by the courts, and the number of convictions; and*

Answer: In 2011, Chinese courts accepted 50 new criminal cases involving trade secret, concluded 49 cases and convicted 63 criminals.

- d. *The amounts of administrative fines and criminal penalties imposed for cases involving unauthorized disclosures of undisclosed information and trade secrets of foreign parties by province for enforcements undertaken under the Anti-Unfair Competition Law, the Criminal Law or their implementing regulations.*

Answer: With regard to administrative fines, in 2011, industry and commerce authorities at all levels imposed fines of RMB 2.03 million for cases of infringements upon trade secrets. Up till now, China has not collected relevant statistics for cases where a right owner is a foreigner party.

With regard to criminal fines, China has not collected specific statistics on the amounts of fines. According Article 4 of the Interpretations of the Supreme Peoples Court and the Supreme People's Procuratorate for Several Issues Concerning the Specific Applicable Laws on Handling Criminal Cases of Infringement upon Intellectual Property Rights (Fa Shi [2007] No. 6), the amounts of criminal fines are generally decided based on 1-5 times of the illegal incomes or 50%-100% of the amounts involved in illegal operations.

70. **WT/TPR/S/264-04, page 95, paragraph 322:** *Paragraph 322 of Part III of the Secretariat's report addresses judicial IPR enforcement. The United States understands that China has been considering various reforms in the pre-trial exchange of information and punitive damages in civil*

IPR infringement cases. Please provide an update on these and other developments that could affect the conduct of IPR-related trials.

Answer: Several Provisions on the Evidence for Civil Actions promulgated by Supreme People's Court in 2001 made specific provisions on pre-trial exchange of evidence, which are applied well in the trial of IPR cases, especially the first instance cases. Punitive damage, pre-trial evidence preservation and pre-trial injunction have been discussed during the amendment process of Civil Procedural Law and Trademark Law. The result of relevant reforms depends on the promulgation of future amendments.

71. **WT/TPR/S/264-04, page 95, paragraph 322:** *With regard to judicial IPR enforcement, which the Secretariat's report addresses in paragraph 322 of Part III, the United States notes that Article 42 of the TRIPS Agreement permits parties to be represented by independent legal counsel in civil and administrative proceedings. Please explain what provisions of Chinese law establish what constitutes an independent legal counsel, as that term is used in the TRIPS Agreement and in China's WTO accession protocol commitments. Similarly, what are the professional obligations of lawyers appearing before courts and administrative agencies that require them to preserve confidences as required by the TRIPS Agreement?*

Answer: Independent legal counsel is not a term in China's relevant laws and regulations as well as its Protocol on WTO Accession. According to Article 38 of the Law of the People's Republic of China on Lawyers, lawyers shall keep national secrets and business secrets they learn during their practice activities and shall not disclose the privacy of the parties. Lawyers shall keep secret the situations and information that they learn during their practice activities and that the client and others do not want to disclose, except for the facts and information concerning the client or others who are preparing to commit or are committing crimes that endanger national security and public security or seriously damage the personal or property safety of others.

72. **WT/TPR/S/264-04, page 95, paragraph 322:** *In 2010 and 2011, were there any civil or administrative cases brought in China involving obligations arising under Article 39.3 of the TRIPS Agreement relating to data exclusivity, including cases that may have been brought against SFDA, MOA, the State Forestry Administration or other agencies or against an enterprise that allegedly misappropriated clinical data? If so, please provide information regarding the number and type of cases, the parties involved and the disposition of the cases.*

Answer: No such case has been filed yet.

IV. TRADE POLICIES BY SECTOR

(1) AGRICULTURE

(ii) Agriculture policies

73. **WT/TPR/S/264-05, page 102, paragraph 10:** *Paragraph 10 of Part IV of the Secretariat's report states that China aims to increase grain production by, among other things, increasing payments to grain producing areas. It also states that other measures set out in the plan include increased minimum purchase prices for key grains, and improving temporary purchase and storage of bulk agricultural commodities. These types of measures generally appear to be amber box programs. How does China plan on ensuring that payments made pursuant to these measures are consistent with its domestic support obligations under the Agreement on Agriculture?*

Answer: Since its accession to the WTO, China has been earnestly fulfilling its commitments. China's agricultural domestic support measures are taken in line with WTO commitments.

74. **WT/TPR/S/264-05, page 103, paragraph 19:** *Paragraph 19 of Part IV of the Secretariat's report discusses tariff-rate quotas and explains that in-quota imports for rice, wheat, and maize have been low compared to the quota quantity. It adds that, according to the Chinese Government, the low level of imports relative to the size of the tariff quota was due to high levels of domestic production coupled with high international prices.*

- a. *With rising domestic maize prices, and more competitive international corn prices, will China re-evaluate its tariff-rate quota for maize?*

Answer: Since the accession of WTO, China has been working in accordance with the commitment to develop and improve the Foreign Trade Law of Peoples Republic of China, People's Republic of China Import and Export Goods Regulations and Interim Measures on the Import Tariff Quotas of Agricultural Products. Such policies are open and transparent. Working strictly in accordance with its WTO commitments and the relevant laws and regulations, the Chinese government implemented import and export management, notifying the WTO of state trading enterprises in time, while at the same time requiring enterprises compliance with relevant laws and regulations to carry out commercial activities. In reality, the implementation of relevant laws and regulations has brought about good effect. China has yet to consider adjusting the corn import management policies.

- b. *It is the United States understanding that the grains quotas designated for private entities have been filling, while those designated for State Trading Enterprises (STEs) have not. Please explain how high levels of domestic production coupled with high international prices have impacted the fill levels of quotas designated for STEs but did not similarly affect those designated for private entities.*

Answer: Since the accession of WTO, China has been working in accordance with the commitment to develop and improve the Foreign Trade Law of People's Republic of China, People's Republic of China Import and Export Goods Regulations and Interim Measures on the Import Tariff Quotas of Agricultural Products. Such policies are open and transparent. Working strictly in accordance with its WTO commitments and the relevant laws and regulations, the Chinese government implemented import and export management, notifying the WTO of state trading enterprises in time, while at the same time requiring enterprises compliance with relevant laws and regulations to carry out commercial activities. In reality, the implementation of relevant laws and regulations has brought about good effect. According to Article 52 of the Peoples Republic of China Goods Import and Export Ordinance, state trading enterprises and trading enterprises engaged in business activities should act on normal commercial terms, may not be the choice of suppliers of non-commercial factors, and may not refuse commissions from other enterprises or organizations for non-commercial reasons.

- c. *How is China ensuring transparency in the allocation and utilization of quotas reserved for STEs?*

Answer: According to the accession commitments, the Chinese government issued the Measures for the Administration of Import Tariff Rate Quotas of Agriculture Products in 2003, which embodied the unified, fair, impartial, transparent, predictable and non-discriminatory principles for quota administration. TRQs are allocated in strict accordance with the above mentioned rule, and there are no differences on TRQ eligibility criteria, allocation and adjustment administration between state trading enterprises and non-state trading enterprises.

75. **WT/TPR/S/264-05, page 104, paragraph 20:** *Paragraph 20 of Part IV of the Secretariat's report states that, based on China's notifications to the Committee on Agriculture, China does not provide export subsidies for agricultural products. The United States understands that China maintains export bases for agricultural products. Please identify the measures providing for these*

export bases, describe the support provided to producers of agricultural products in connection with these export bases over the past 3 years, and explain this support in light of China's obligations under Article 3 of the SCM Agreement.

Answer: According to verified information, we didn't provide fix-assets support to development of argo-production export bases in past 3 years.

76. **WT/TPR/S/264-05, page 104, paragraph 23:** *Paragraph 23 of Part IV of the Secretariat's report states that China provides direct payments to agricultural producers and, according to a notification that China made to the Committee on Agriculture, payments are based on area and are decoupled from production and prices. However, the areas that receive these payments and the level of subsidy are decided by local government authorities. In addition, recent Organization for Economic Cooperation and Development reports referenced in paragraphs 41-46 of Part IV of the Secretariat's report and other sources indicate that some provinces make direct payments according to current production or current area planted.*

a. *Please explain how direct payments are administered in the various eligible provinces to ensure that the payments are truly decoupled. Could China also provide data on total direct payments on a province-by-province basis?*

Answer: we are in the process of verifying the nature and accuracy of OECD statistics abbreviation facilitation from WTO and OECD members are welcome.

b. *Please explain how subsidy levels are determined, given that the Secretariat Report states that the levels differ by province.*

Answer: Approved by the state council, China's direct subsidies to grain farmers and comprehensive agricultural subsidies payment methods are determined by provincial authorities. Currently the payments are decided according to areas. Specifically there are measures in accordance with tax area, the actual area that grows grain, the second contracted area and so on. When it comes to the differences on the level of subsidy standards, the central government will grant certain advantages to main areas of food production when determining the scale of grain subsidies.

77. **WT/TPR/S/264-05, page 105, paragraph 25:** *Paragraph 25 of Part IV of the Secretariat's report states that the Comprehensive Subsidy on Agricultural Inputs is not contingent upon consumption of inputs and is made on the basis of taxable arable area. Please explain further how this subsidy is disbursed, including how taxable arable area is determined. Please also provide data on taxable arable area on a province-by-province basis.*

Answer: Approved by the state council, China's direct subsidies to grain farmers and comprehensive agricultural subsidies payment methods are determined by provincial authorities. Currently the payments are decided according to areas. Specifically there are measures in accordance with tax area, the actual area that grows grain, the second contracted area and so on.

78. **WT/TPR/S/264-05, page 105, paragraph 26:** *Paragraph 26 of Part IV of the Secretariat's report states that the New Variety Extension Payment Scheme uses subsidy rates that vary depending on the crop and that various livestock are covered by this program. Under this program, how is the subsidy level determined? Is there a limit on the number of acres planted or the number of animals that can receive the subsidies? Is the subsidy for livestock paid on a per head basis?*

Answer: In the domestic support notification submitted by China, subsidies for using superior seed varieties including rice, corn, etc., are notified as amber box support under product-specific. The amount of subsidy per mu is 10-15 RMB.

Subsidies for using superior livestock varieties is the money set up to promote superior livestock varieties, to encourage farmers to use frozen semen of superior livestock varieties in order to improve varieties. It belongs to the payment for promotion of agricultural technology of the green box, not the amber box support, according to which payment is in accordance with animal numbers.

79. **WT/TPR/S/264-05, page 105, paragraph 29:** *Paragraph 29 of Part IV of the Secretariat's report states that fertilizer exports are subject to export taxes, which stood at 75% in October 2011. Given the sweeping nature of the panel and Appellate Body findings on export duties in China Raw Materials, please explain China's plans regarding elimination of the export taxes on fertilizer exports.*

Answer: According to the practices WTO has in dispute settlement, the rulings made by the Panel and Appealing Body only applies to 9 products including coke. China will take measures conforms to WTOs discipline in regard of export administration on products beyond the 9 products.

80. **WT/TPR/S/264-05, page 106, paragraph 31:** *Paragraph 31 of Part IV of the Secretariat's report states that China has a number of programs that support domestic prices and specifically mentions minimum purchase prices for rice and wheat. Please identify all of the programs that support domestic prices. Can China confirm that all commodities under these programs, with the exception of rice and wheat, are bought and sold only at market prices?*

Answer: China's prices of agricultural products have been fully liberalized by the market. In order to prevent excessive price decrease and to protect the interests of farmers, China implements the policy of the minimum grain purchase to two major varieties, namely rice and wheat, in the main producing areas. In addition, the purchase price for sugar cane in main producing areas is determined by provincial governments based on the actual situation.

Under normal circumstances, farmers independently sell their food, following the market, whether it is rice, wheat, sugar cane or other agricultural products. When actual selling prices for rice, wheat and sugar cane in main producing areas fell considerably and even lower than the minimum purchase price, farmers could sell food, at the minimum purchase price, to the government-designated companies, avoiding reducing losses brought about by food prices fell.

81. **WT/TPR/S/264-05, page 106, paragraph 31-34:** *According to paragraphs 31-34 of the Secretariat's report, China uses various instruments, including minimum purchase prices, government stock purchases, stock releases and restrictive auctions, to control domestic prices for grains, sugar, cotton and oilseeds. All of these instruments appear to constitute market price support within the meaning of the Agreement on Agriculture. Please explain the impact of these instruments on domestic commodity prices. Please also explain why China has not notified to the Committee on Agriculture the instruments controlling domestic prices for cotton, oilseeds, sugar and other grains as market price support when they appear to operate in a manner similar to and have objectives that are similar to the instruments controlling domestic prices for rice and wheat, which have been notified.*

Answer: We have notified those above mentioned measures in our 2005-2008 notification last October 2011.

82. **WT/TPR/S/264-05, page 107, paragraph 38:** *The United States notes that China only recently and belatedly provided required notifications of agriculture support through 2008. When does China expect to provide notifications for more recent years?*

Answer: We have notified to WTO agricultural domestic support data up to 2008. We are making careful preparations on agricultural domestic support data after 2008, which will be actively informed after the relevant data summary is completed.

83. **WT/TPR/S/264-05, page 109, paragraph 44:** *There were recent press reports indicating that China has increased its supports considerably for the cotton sector subsequent to 2008, and it appears that some of this information is captured in Table IV.7. on page 110 of the Secretariat's report. Could China identify what programs are involved and the level of support granted under each of the programs?*

Answer: To protect cotton supply and reduce market volatility, China has set up a national reserve system of cotton which organizes purchasing and storage in order to achieve the goal of market regulation. The specific amount of the temporary cotton purchasing and storage policies will be decided according to the storage amount and price of that year. Relevant cotton reserve costs subsidies have been informed in the cotton product-specific amber box support.

IV. TRADE POLICIES BY SECTOR

(1) FISHERIES

(ii) Fisheries policy

84. **WT/TPR/S/264-05, page 113, paragraph 58:** *Paragraph 58 of Part IV of the Secretariat's report states that, according to one report on Chinese Government financial support to the fisheries sector, the total value of support by the State to fishing was estimated to be US\$4.1 billion in 2003, of which US\$2.2 billion was for vessel construction, fuel infrastructure, and other supports to fishing activities, with fuel accounting for US\$1.8 billion. Please provide information about each subsidy program benefiting the fisheries sector, including a detailed description of the program, the policy objectives of the program, the amount budgeted for the program, the form of the subsidies provided pursuant to the program, the criteria for eligibility for the subsidies and the amounts disbursed to subsidy recipients pursuant to the program.*

Answer: China attaches great importance to the principle of transparency and has made our best efforts in fulfilling transparency obligation. Nowadays, members are conducting negotiations to strength the fisheries subsidies disciplines, including the notification regulation. China is willing to provide relevant information once such disciplines agreed upon by members.

IV. TRADE POLICIES BY SECTOR

(3) ENERGY

(ii) Electric utilities

85. **WT/TPR/S/264-05, page 114, paragraph 65:** *Paragraph 65 of Part IV of the Secretariat's report explains that China is encouraging investment in the renewable energy sector. It cites the Catalogue for the Guidance of Foreign Investment Industries, but does not seem to address many of the other industrial policy measures put in place to encourage the development of the renewable energy sector. For example, China's Twelfth Five-Year Plan for the Solar Photovoltaic Industry explains as follows: China has successively introduced policies such as the Interim Measures for the Administration of Financial Subsidies for Application of Solar Building-Integrated Photovoltaics and the Notice on Implementing the Golden Sun Demonstration Project, both of which appear to provide subsidies to the solar industry; support will be provided to major enterprises in the solar sector to grow stronger; policies in the areas of industry, taxation, and finance will be developed to promote the development of China's photovoltaic industry; the expansion of the photovoltaic market will be achieved through reasonable tariffs, moderate financial subsidies, and active financial support. Please provide detailed information on how China has implemented the above-cited and above-described support measures. Please also provide detailed information on the support measures that China has implemented pursuant to the Special Twelfth Five-Year Plan for the Science and Technology Development of Solar Power Generation.*

Answer: The Chinese Government attaches great importance to addressing climate change, and is committed to taking feasible measures to reduce greenhouse gas emissions. The application of solar energy photovoltaic power generation in buildings is an important path to reduce the application of fossil energy to buildings. In accordance with the Twelfth Five-Year Plan for the Science and Technology Development of Solar Power Generation, China will offer certain funds for the research and development of fundamental science, advanced technologies and generic technologies in solar energy generation domain. The contents supported are precompetitive technologies, and such support is a measure generally adopted by countries across the world and is consistent with international practice. Our policies and measures to encourage solar power generation are aimed at application market rather than photovoltaic cell manufacturing enterprises. This is a prevailing international practice.

IV. TRADE POLICIES BY SECTOR

(4) MANUFACTURING

(ii) Selected subsectors

86. *WT/TPR/S/264-05, page 116, paragraph 73: Paragraph 73 of Part IV of the Secretariat's report notes that a number of funding programmes and funds have been established since 2011 for seven strategic emerging industries in China. The United States understands that aerospace and the development of commercial civil aircraft are included in the high-end equipment manufacturing industry, which is one of the seven emerging industries. Please describe the funding programmes and funds that have been established since 2011 for the development of commercial civil aircraft. Please also describe any other funding programmes and funds that have been established since 2011 for the high-end equipment manufacturing industry as well as the funding programmes and funds that have been established since 2011 for the six other emerging industries.*

Answer: No funding projects and funds has been specially set up for commercial civil aircrafts. In recent years, to promote energy saving and environmental protection, such seven emerging industries as new generation information technology, biotechnology, new energy and new materials have become a commonly accepted strategy, and countries successively take measures to accelerate the development of emerging industries. By reference to these countries experience and practices, the Chinese Government issued the Decision on Speeding up the Cultivation and Development of Strategic Emerging Industries in 2010, and set up special-purpose funds for the development of strategic emerging industries in 2011, and has adopted such means as equity participation and venture fund, high-end equipment research and development subsidiaries, implementing key application demonstration projects and key innovative development projects to break key core technology in the initial period of industrial development, cultivate new business type market, and put focus on supporting the research and development of technologies and products as well as achievement transformation in new generation information technology, biology and new materials domains. Such support is universal, and targets at various types of enterprises.

87. *WT/TPR/S/264-05, page 119, paragraph 84: While paragraph 84 of Part IV of the Secretariat's report notes the incentives provided under the Circular on Certain Policies for Further Encouragement to Development of Software Industry and Integrated Circuit Industry, issued by the State Council on 28 January 2011, it does not address any incentives provided by sub-central government authorities, which appear to have played an active role in the development of the integrated circuit industry in China. For example, the 2011 Annual Report for Semiconductor Manufacturing International Corporation (at page 107) states that [c]ertain local governments provided subsidies to encourage the Company to participate and manage new plants related to the integrated circuit industry. In 2011, 2010 and 2009 the Company received local government subsidies of \$2.0 million, \$26.9 million and \$54.1 million, respectively. Given that China has never notified any subsidies provided by sub-central government authorities in its 10 years of WTO*

membership, please describe in detail the various subsidies provided by sub-central governments to the integrated circuit industry.

Answer: To propel the development of integrated circuit industry, China issued the Circular on Certain Policies for Further Encouragement to Development of Software Industry and Integrated Circuit Industry, and the clauses of such policy do not conflict with WTO rules. Besides from tax preferences pursuant to relevant legal provisions, currently, China does not have special subsidiary for integrated circuit industry. It is known that, the subsidies provided by local governments mentioned in the annual report for Semiconductor Manufacturing International Corporation are actually factory building project funds, and the property rights of assets formed are owned by local governments.

88. **WT/TPR/S/264-05, page 120, paragraphs 90-91:** *The Secretariat's report states that China set certain steel capacity elimination goals in 2009 and met them in 2010. Meanwhile, according to OECD data, China's total steelmaking capacity increased from 665 million metric tons in 2008 to 815 million metric tons in 2011, a net increase of over 20%. The increase in Chinese steelmaking capacity from 2009 to 2011 was roughly equivalent to the total steelmaking capacity in North America during the same period. Moreover, China's steelmaking capacity has continued to grow, and steel production in China has hit record levels in the first quarter of 2012, despite clear indications that demand for steel in China has stagnated. Please explain the goals of China's efforts to eliminate certain steel capacity and whether these efforts have succeeded in increasing the market orientation of Chinese steel mills, controlling capacity, reducing total emissions from the steel sector and reducing energy consumption by the steel sector? Please also explain how China will respond to declining demand for steel in the construction, manufacturing and other sectors.*

Answer: The implementation of outdated capacity elimination is for the purpose of propelling energy saving and emission reduction, accelerating steel industry restructuring, promoting industry upgrade and moderating the contradiction of excess steel capacity. Since the launching of the 11th five-year plan, China has totally eliminated 123 million tons of outdated iron capacity and 72.24 million tons of outdated steel capacity, which greatly drives energy saving and emission reduction. In 2010, various energy saving and emission reduction indicators of key steel enterprises in China were fully improved, and the overall energy consumption, fresh water consumption and sulfur dioxide discharge per ton of steel respectively dropped 12.8%, 52.3% and 42.4%.

During the period from January to April of this year, the market demand for steel in the construction, manufacturing and other downstream sectors declines, impacted by the slowing down economic growth in China and the world. To guide the healthy development of the sectors, we will enhance upstream & downstream cooperation to guide downstream industry consumption, vigorously advance reduced steel rolling, meet the development requirements of downstream industries for high strengthening and light weight steels, and expand the application of steel market.

IV. TRADE POLICIES BY SECTOR

(5) SERVICES

(i) Overview

89. **WT/TPR/S/264-05, page 121, paragraph 95:** *Paragraph 95 of Part IV of the Secretariat's report explains that, [a]ccording to the authorities, China's general policy is of gradual, progressive, and managed opening, with a view to promoting development through a win-win strategy for both domestic and foreign services suppliers. Could China explain its plans for opening particular services sectors pursuant to this policy over the next two years?*

Answer: China always attaches great importance to the development of services industry and takes a positive position on the liberalization of trade in services. On 24 December 2011, the Chinese government issued the revised Catalogue for Guidance of Foreign Investment, which has been

implemented since 30 January 2012. This revised Catalogue for Guidance of Foreign Investment aims to enlarge the opening-up in services sectors, and encourages foreign enterprises to invest in the modern services industry. For example, it has moved the foreign-invested medical institutions and financial leasing companies into the permitted category from the restricted category. China recognizes that the progressive liberalization of trade in services among WTO Members would promote the development of international trade in services. We hope that the DDA negotiations will reach a successful conclusion soon.

IV. TRADE POLICIES BY SECTOR

(5) SERVICES

(i) Financial services

90. *WT/TPR/S/264-05, page 122, paragraph 99: Paragraph 99 of Part IV of the Secretariat's report explains that, [a]ccording to the authorities, lending decisions by SOCBs are based entirely on commercial consideration. However, the United States notes that, in paragraph 101 of Part IV, the Secretariat's report further explains: The authorities maintain that the five largest SOCBs did not transfer any [non-performing loans (NPLs)] to asset management companies in 2009 and/or 2010. At end 2010, the five largest SOCBs had total NPLs of 312.52 billion, and their NPL ratio was 1.3. The rapid accumulation of debts of local governments in recent years, together with loose credits to infrastructure through the 2009 stimulate package, raised concerns of another surge of NPLs. Please explain why there are concerns about China's SOCBs accumulating large amounts of NPLs if they are basing their lending decisions entirely on commercial considerations.*

Answer: According to Commercial Bank Law of Peoples Republic of China, a commercial bank operates independently takes up responsibility for all risks it may encounter and responsible for its own profits and losses it may bear and exercises self-regulation on the principle of economic efficiency safety and liquidity. A commercial bank shall conduct its business in accordance with the law free from interference by any department or individual. No organization or individual may force a commercial bank to extend a loan or provide guarantee for a loan. A commercial bank shall have the right to refuse any organization's or individual's demand for a loan or guarantee. To sum up, lending decisions by State owned Commercial Banks are based entirely on commercial consideration.

As for the closely attention paid by the regulatory authorities to potential non-performing loans (NPLs) is concerned, its merely for the need of prudential regulation, which is essential to assure the stable and sustainable development of financial system.

91. *WT/TPR/S/264-05, page 122, paragraph 98: Please provide more detail regarding recent policies that encourage more private investment in city commercial banks and rural commercial banks. Do those policies also encourage foreign investment as part of such private investment?*

Answer: To encourage and guide the private capital to enter into the banking sector, the CBRC recently promulgated the Implementation Opinions on Encouraging and Guiding the Private Capital to Enter into the Banking Sector (hereinafter referred to as the Opinions).

The Opinions stipulate that the private capital should abide by the same access requirements as other categories of capital when entering into the banking sector. For those private enterprises that are conforming to the banking administrative licensing rules, with complete corporate governance structure, fine social reputation, creditworthiness and tax paying record, strong operation and management ability and financial status, true and legitimate stake capital resources, their investment in banking sector are welcome.

The Opinions underline that favorable environment should be created for private capital entering into the banking sector. Banking regulatory authorities at all levels should encourage investors to invest in

banking sector; no restrictive or auxiliary requirements should be imposed specially on private capital in its entrance.

Regarding the relevant policies on the opening up of banking sector to foreign capital, please refer to Regulations of the People's Republic of China on Administration of Foreign-funded Banks and its implementing rule, Administration of Equity Investment of Overseas Financial Institutions in Chinese-funded Financial Institutions Procedures.

92. **WT/TPR/S/264-05, page 128, paragraph 121:** *What in practice does it mean to regulate as foreign-funded institutions, and how does it differ from being regulated as a Chinese financial institution? In how many instances have the levels of foreign investment in a non-listed Chinese bank exceeded the 20% or 25% thresholds so that a Chinese bank is regulated as a foreign-funded bank? In how many circumstances have the levels of foreign investment in a listed Chinese bank exceeded the 20% or 25% thresholds? If there are no instances of such investment, do the 20% and 25% thresholds serve as de facto limits on foreign investment in Chinese banks? Do Chinese authorities permit foreign banks to surpass the 20% or 25% thresholds so that a Chinese bank becomes regulated as a foreign-funded bank? Please explain.*

Answer: Regulate as foreign-funded institutions, means the institutions in question shall be regulated as foreign banks, and its registrations and regulations thereafter will be subject to foreign banks related regulations, such as Regulations of the People's Republic of China on Administration of Foreign-funded Banks and its implementing rules. Pursuant to the provisions of Measures on Administration of Equity Investment of Overseas Financial Institutions in Chinese-funded Financial Institutions, the percentage of equity investment of a single overseas financial institution in a Chinese-funded financial institution may not exceed 20%, for this reason, the foreign investment in a listed Chinese bank cant exceeded the 20% or 25% thresholds.

According to China's Services Schedule, qualified foreign financial institutions are allowed to establish wholly foreign-owned banks, including subsidiaries with legal person status and branches. However, China did not make commitments on the acquisition of domestic banks by foreign financial institutions. Nevertheless, China has decided to allow foreign investors to acquire equities of domestic banks up to a certain level. According to the Measures on Administration of Equity Investment of Overseas Financial Institutions in Chinese-funded Financial Institutions, the percentage of equity investment of a single overseas financial institution in a Chinese-funded financial institution may not exceed 20%. As for the requirement that if the aggregate percentage of equity investment of multiple overseas financial institutions in a non-listed Chinese-funded financial institutions reaches or exceeds 25%, such non-listed Chinese-funded financial institutions shall be regulated as a foreign-funded financial institution, it is in accordance with Article 4 of the Law on Chinese-Foreign Equity Joint Ventures.

93. **WT/TPR/S/264-05, page 128, paragraph 122:** *Note 104 to paragraph 122 of Part IV of the Secretariat's report states: The Law on Commercial Banks requires commercial banks to take into consideration the needs of national economic and social development, and follow the guidance of the industrial policies of the State. Please explain how China's SOCBs can base their lending decisions entirely on commercial considerations when they must take into consideration the needs of national economic and social development and the guidance provided by the Chinese Governments industrial policies.*

Answer: Pursuant to Article 4 of Commercial Bank Law of People's Republic of China, a commercial bank operates independently takes up responsibility for all risks it may encounter and responsible for its own profits and losses it may bear and exercises self-regulating mechanism on the management principle of economic efficiency safety and liquidity. A commercial bank shall conduct its business in accordance with the law free from interference by any department or individual. Meanwhile,

Article 34 of the aforesaid law also stipulates that a commercial bank should conduct its loan business in accordance with the need for the development of the national economy and social progress and under the guidance of the state industrial policy. We believe these two articles are not contradictory with each other, for the reason that the state industrial policy mentioned in Article 34 is a general guideline in nature, and there is no statutory bindly obligation for the commercial banks. The commercial banks can make their own decisions on lending and deposit taking based on the market situation.

94. **WT/TPR/S/264-05, page 134, paragraph 150:** *Paragraph 150 of Part IV of the Secretariat's report notes that state-owned insurers dominate China's insurance market. The United States also understands that the foreign insurers share of China's insurance market is very small, with foreign life insurers at 5% and foreign non-life insurers at only 1%. What policies does China plan to redress this suboptimal concentration in its insurance market and ensure greater solvency and opportunities for consumer choice?*

Answer: The time of foreign insurance companies participation in Chinese market is short, for the foreign companies, we believe that the process of local market adaption and development is gradual process. China has liberalized its insurance market in accordance with its WTO accession commitments, all insurance services suppliers including foreign insurance companies are allowed to provide insurance services to the Chinese consumers, the CIRC will continue its efforts to ensure the level playing field in the manner of fairness, impartiality and transparency.

95. **WT/TPR/S/264-05, page 136, paragraph 161:** *Does China have any plans to review its current policy of limiting foreign equity share of a life insurance company to 50%?*

Answer: China will progressively take active and steady steps to further liberalize its insurance market. Since the equity cap of Sino-foreign joint venture life insurance companies is very sensitive issue, we have no plan to review our current policy at this stage.

IV. TRADE POLICIES BY SECTOR

(5) SERVICES

(iii) Telecommunications

96. **WT/TPR/S/264-05, page 138, paragraph 168:** *Several press organizations reported in 2011 that the NDRC began an antitrust investigation of China Telecom and China Netcom. Please provide an update on the status of this investigation.*

Answer It is a fact that the NDRC undertook an antitrust investigation of China Telecom and China Netcom in 2011. Now this investigation is still underway. The NDRC will make final decision according to the Antitrust Law.

97. **WT/TPR/S/264-05, page 139, paragraph 171:** *What structural mechanisms within the Ministry of Industry and Information Technology (MIIT) ensure that MIITs role in industrial promotion (e.g., for TD-SCDMA) does not conflict with its obligation to be impartial? How does China reconcile an obligation of its regulator to be impartial with a measure providing advantages for deploying TD-SCDMA, such as loans, more rapid approval of a standard, preferential test licenses, policy support, etc.?*

Answer: The Chinese government strictly complies with the WTO principle of technical neutrality in the process of developing 3G market, and has not provided preferential treatment based on the standards or technology applied by operators. The regulatory authority has not adopted any preferential measures for the deploying of TD-SCDMA. In terms of approving industry standards,

test licenses and other regulatory aspects, the regulatory authority strictly complies with the principle of technical neutrality.

98. **WT/TPR/S/264-05, page 140, paragraph 178:** *Paragraph 178 of Part IV of the Secretariat's report indicates that a draft Telecommunications Law, whose first draft dates back to July 2004, is still being drafted and reviewed.*

a. *When will a draft of the Telecommunications Law be circulated for public comment?*

Answer: At present, the Legislative Affairs Office of the State Council of China is reviewing and researching the relevant issues on Telecommunication Law. There is no timeline for public comment solicitation on the draft.

b. *Does the current draft of the Telecommunications Law either make MIIT structurally and financially separate from all the telecommunications operators and providers or move the regulation of this sector outside of MIIT?*

Answer: Yes, the current draft of the Telecommunication Law makes MIIT, which regulate this sector, structurally and financially independent from all the telecommunications operators and providers.

c. *Does the current draft of the Telecommunications Law provide that foreign service suppliers required to form joint ventures with Chinese entities to operate in China are free to choose their joint venture partner, and that they may choose a partner from a sector outside the sector of operation of the joint venture, consistent with the commitment that China made in paragraph 314 of the Working Party Report accompanying its Protocol of Accession?*

Answer: The Telecommunications Law is still in the process of formulation. Like other laws and regulations, it will be consistent with China's WTO commitments and obligations under the GATS.

99. **WT/TPR/S/264-05, page 140, paragraph 178:** *Paragraph 178 of Part IV of the Secretariat's report notes that China has no plans to lift or ease the provisions on minimum registered capital, which China previously reduced in September 2008 from RMB 2 billion to RMB 1 billion for foreign-invested telecommunications enterprises engaging in basic telecommunications services. Previously, the United States has suggested a capitalization requirement of no more than \$5 million (RMB 31.6 million), in line with global norms. Because it appears that few if any additional basic telecommunications operators entered the market subsequent to the September 2008 reduction, why has China not considered further reduction to the registered capital requirement, more in line with global norms?*

Answer: We note that some WTO Members require China to reduce the registered capital requirement, and have examined this issue carefully. In September 2008, the State Council promulgated the Decision on Amending Regulation on the Administration of Foreign-Invested Telecommunications Enterprises (State Council Decree No. 534), which halves the minimum capital requirement on the basic telecom operation of the foreign-invested telecommunication enterprises. Currently, China has no further plan to revise the relevant requirements.

China is of the view that the registered capital requirement should be determined based on each Members national conditions and there is no so called international standard in this regard. China needs more capitals than many other countries to build national telecommunication networks due to the vast territory and the enormous population of the country.

The minimum registered capital requirement for the foreign-invested telecom enterprises stipulated by the Regulation on the Administration of Foreign-Invested Telecommunications Enterprises is at the same level for domestic services suppliers in China, which complies with the WTO national treatment principle. The telecom sector is a capital-intensive industry featuring economy of scale. An inadequately low level of registered capital would not be able to effectively safeguard the interests of investors and consumers. As a matter of fact, the WTO Members all have their own minimum registered capital requirements based on their own national conditions.

100. WT/TPR/S/264-05, page 141, paragraph 184: Decree 291 from 2000 appears to prohibit majority private-sector entry, whether foreign or domestic, into the basic telecommunications sector. Is this still true with regard to private Chinese capital? Is it still true that there are no majority-private basic telecommunications services providers in China and that applications by such suppliers would be denied under Decree 291? In light of the State Council decision to expand the role of private capital, what are China's plans to address this restriction?

Answer: Currently, the Chinese government regulates some basic telecommunications services business with the same approach as regulating value-added telecommunications services business. It is reported that around 400 enterprises obtained licenses to provide such basic telecommunications service, and 90% of them are Chinese private enterprises.

In order to implement the Several Opinions of the State Council on Encouraging and Directing Healthy Development of Private Investment, MIIT is positively reviewing and researching the relevant issues.

101. WT/TPR/S/264-05, page 144, paragraph 196: Please provide information on the specific reasons used by the Chinese Government to filter services and content provided via the Internet. How does China provide notice to these providers that their ability to provide service into China has been blocked by the Chinese Government?

Answer: The Chinese government regulates the Internet in accordance with relevant laws and regulations. The Decision of the National People's Congress Standing Committee on Guarding Internet Security, Regulations on Telecommunications of the People's Republic of China, Measures on the Administration of Internet Information Services, Measures on the Administration of Security Protection of the International Networking of Computer Information Networks, and other laws and regulations clearly prohibit the spread of information that contains contents subverting state power, undermining national unity, infringing upon national honor and interests, inciting ethnic hatred and secession, advocating heresy, pornography, violence, terror and other information that infringes upon the legitimate rights and interests of others. According to the above-mentioned decision and regulations, Chinese basic telecom operators and Internet information service providers are responsible for preventing the dissemination of all types of illegal information within the territory of China in accordance with the law.

China proposes the application of technical means, in line with relevant laws and regulations and with reference to common international practices, to prevent and curb the harmful effects of illegal information on state security, public interests and minors.

China honors its commitments in the WTO, and encourages foreign companies to legally provide services in China, and protect their legitimate interest. When providing products and services to Chinese customers through the Internet, foreign companies shall respect China's specific conditions and Chinese traditional morals. They are prohibited from producing, duplicating, publishing or disseminating the information of endangering national security, instigating ethnic hatred, obscenity, pornography, gambling, violence, and etc. which are not favored by the Chinese people. Foreign companies may consult the Chinese telecom operators if their websites are inaccessible in China.

102. WT/TPR/S/264-05, page 144, paragraph 196: Paragraph 196 of Part IV of the Secretariat's report states that [t]he activities of internet content providers are regulated by different regulations issued by specialized authorities depending on the nature of the services provided. Please provide information on how a provider of services via the Internet can determine which regulations and which specialized authorities are applicable to its service. In the situation where the regulations of different specialized authorities are in conflict, which agency of the Chinese Government will resolve the conflict?

Answer: The main responsibilities of the State Internet Information Office include: 1) to guide, coordinate and supervise the relevant government agencies to strengthen the regulation of the content of online information; 2) to approve and supervise online news services and other related services; 3) to investigate and discipline websites that violate laws and regulations; 4) to guide the work of Internet information offices at local levels.

Ministry of Industry and Information Industry of China is responsible to regulate the Internet industry, for example to regulate the basic resources such as the Internet domain names and IP address in the territory of China.

The authorities in charge of press, publication, education, public health, supervision and administration of pharmaceuticals, administration of industry and commerce, public security and national security are entitled to adopt license requirements on Internet information services regarding press, publication, education, medical and health work, medicine and medical equipments according to Measures on the Administration of Internet Information Services.

The authorities in charge of public security are responsible to supervise the security of Internet information, and investigate and prosecute the various Internet illegal and criminal activities according to the laws.

103. WT/TPR/S/264-05, page 145, paragraphs 202-203: Foreign participation in the Chinese telecommunications services sector remains very limited. What is the basis for the very low level of foreign participation in China's telecommunications value-added sector, where only 25 licenses have been issued? What is China doing to remove the plethora of informal and formal restrictions that it maintains in the basic telecommunications sector, including requirements to partner with state-owned enterprises, informal bans on approval, and high minimum capital requirements, which have blocked foreign enterprises from submitting applications to set up new joint ventures in this sector?

Answer: According to China's accession commitments, foreign investment in value-added telecommunication services shall be no more than 50%. China progressively liberalizes the telecommunication services market in line with its WTO commitments. So far 26 foreign enterprises have applied for licenses of providing value-added telecommunication services and then submitted qualified documents. All of them have all obtained the business licenses without being denied.

China processes application for establishing foreign-invested telecom enterprises according to its WTO commitments and relevant regulations such as Regulations on Telecommunications, Regulations on the Administration of Foreign Invested Telecommunication Enterprises, and Measures on the Administration of Telecommunication Business Operation License. The licensing procedures are open and transparent. The application will be approved as soon as it is consistent with the prescribed requirements. So we do not think there are informal and formal restrictions as this question mentions.

IV. TRADE POLICIES BY SECTOR
(5) SERVICES
(iv) Transport

104. WT/TPR/S/264-05, page 154, paragraph 246: Paragraph 246 of Part IV of the Secretariat's report states that [a] new draft regulation is being prepared with the aim of clarifying the conditions of authorization by the [Civil Aviation Administration of China (CAAC)] for direct access to and use of foreign [computer reservation systems (CRSs)] by Chinese aviation enterprises and agents of foreign aviation enterprises. When will a draft of the CRS regulation be circulated for public comment? When does China plan to issue the CRS regulation in final form?

Answer: Civil Aviation Administration of China(CAAC) has begun drafting and reviewing the Provisional Approval and Administrative Measures on the Direct Access and Usage of Foreign Computer Reservation System by Foreign Aviation Enterprises Sale Agents within China, and this Measure has stepped into the phase of legislative review since August 2011.

During the process of reviewing, CAAC solicited written and oral opinions from related parties several times. In August 2011, November 2011 and February 2012, CAAC absorbed some opinions from International Aviation Association, EU Chamber of Commerce, international airlines councils in China, international airlines, foreign computer reservation system service providers and other relevant domestic organizations.

At present, the draft of this Measure has been submitted to the CAAC for final approval, and the Measure will be finally promulgated after the approval.

105. WT/TPR/S/264-05, pages 159-160, paragraphs 274-275: Paragraph 274 of Part IV of the Secretariat's report states that, [f]or freight transportation, China's [General Agreement on Trade in Services (GATS)] commitments consist of a none for modes 1 and 2, and allow commercial presence in the form of wholly foreign-owned subsidiaries. Paragraph 275 notes, however, that [r]ailway freight transport companies are still classified in the [foreign investment] catalogue as restricted. What types of restrictions does China apply to the rail freight transport sector? How does these restrictions relate to China's GATS obligation to allow commercial presence in the form of wholly foreign-owned subsidiaries for freight transportation?

Answer: Foreign Service providers are welcome to invest in railway freight transport service in China. According to the rules provided in the Catalogue for the Guidance of Foreign-Invested Industries (2011 revised edition), railway freight service is classified under the restrained category. Therefore, investment of more than 50 million dollars should be approved by National Development and Reform Commission, and investment of less than 50 million dollars should be approved by provincial development and reform commissions. This rule has no limitation on foreign equity participation in both joint venture and wholly-foreign-owned, therefore it doesn't conflict with China's accession commitment.

IV. TRADE POLICIES BY SECTOR
(5) SERVICES
(vii) Postal and courier services

106. WT/TPR/S/264-05, page 168, paragraph 322: Paragraph 322 of Part IV of the Secretariat's report discusses China's Postal Law. It notes that the Postal Law provides scope for compulsory payments to subsidize universal postal services and that a universal postal service fund will be set up to support the provision of universal postal services. Concerns have been expressed by both Chinese and foreign express companies that the express sector should not be subject to any such levies relating to the delivery of regular, first class mail. What are China's plans in this regard?

Answer: The universal postal service fund is an important system set up by the amended Postal Law. As prescribed in the Article 17 of the Postal Law, the State establishes universal postal service fund. The specific measures of the levy, usage, supervision and management of the universal postal service fund are formulated by the Department of Finance and other related departments of the State Council, which will be submitted to and come into force after the approval. Such specific measures are still under study.

107. WT/TPR/S/264-05, page 168, paragraph 323: Paragraph 323 of Part IV of the Secretariat's report also discusses China's Postal Law. It notes that the Postal Law does not allow foreign express delivery enterprises to engage in domestic express delivery service for correspondence. Although the Postal Law does allow foreign express delivery enterprises to engage in domestic express delivery service for parcels, the United States understands that the postal authority in China has suggested placing geographic limitations on foreign express delivery enterprises supply of domestic express delivery service for packages. Is the United States understanding correct? If so, how would China justify these limitations in light of China's GATS commitments?

Answer: The understanding is not correct. According to our WTO commitments, we don't place any geographic limitations on foreign express delivery enterprises supply of domestic express delivery for packages. China's Postal Law established the license system for express delivery business, thereby the postal authorities in China examine and approve the applications for license of express delivery business according to the law, which is consistent with China's WTO commitments.

108. WT/TPR/S/264-05, page 168, paragraph 324: Has China issued permits or licenses to any foreign companies to provide domestic express delivery service for packages throughout China? Please explain.

Answer: China's Postal Law and the Administrative Measures of Licensing Express Delivery Business clearly define the conditions and procedures of applying for license of express delivery business, and provide that the enterprises applying for express delivery business shall have appropriate expertise and capacity within the relevant geographic area. The License of Express Delivery Business issued by the postal authority clearly defines the geographic area and so on, which applies to both foreign-invested and domestic enterprises. Enterprises shall provide express delivery services within the licensed geographic area. As to the specific licenses issued by Chinese government to enterprises to provide express delivery services, please refer to the websites of the State Post Bureau (<http://www.spb.gov.cn>).

IV. TRADE POLICIES BY SECTOR

(5) SERVICES

(viii) Distribution services

109. WT/TPR/S/264-05, page 169, paragraph 331: Why does China believe that it is necessary to require an internet content provider license for an internet company engaging in retail sales? How do retail sales qualify as the provision of internet content?

Answer: Under Chinese law, this is necessary and justifiable. for more information please refer to www.miit.gov.cn.

Part II: QUESTIONS REGARDING THE GOVERNMENT REPORT

I. ECONOMIC AND TRADE ENVIRONMENT AND POLICY DIRECTION

(1) ECONOMIC AND TRADE ENVIRONMENT

(ii) Domestic situation

1. *WT/TPR/G/264, page 6, paragraph 11: In paragraph 11 of Part I, the Chinese Government's report states that numerous provinces and municipalities have adjusted their minimum wages upward in 2010 and 2011, an important mechanism for boosting domestic demand. What measures is China taking to improve enforcement of the minimum wage system to ensure that these adjustments are broadly implemented?*

Answer: According to the Regulations on Minimum Wage issued in 2004, all regions shall adjust their minimum wage standard according to real conditions. The minimum wage standard shall be adjusted at least every two years.

In recent years, local governments timely adjust minimum wage standard according to local economic development, average wage and consumer price index (CPI). In 2010, 30 regions adjusted the minimum wage standard, with average increase by 22.8%; in 2011, 25 regions adjusted minimum wage standard, with average increase by 22%. The increase range of minimum wage is higher than that of price increase, which ensures the basic living standard for the laborer and their family members.

In order to ensure gradual increase on low-income employees wages, China will guide all regions to timely and reasonably adjust minimum wage standard according to local economic development, productivity, CPI, and average wage increase. China will try to raise the average wage by 13% each year during the 12th five-year plan period. Most regions will have a minimum wage standard that is more than 40% of the average wage of local urban employees. Meanwhile, China will strengthen enforcement of the minimum wage standard and penalize malpractice that is against the regulation, so as to ensure full implementation of the minimum wage system and safeguard the legitimate right and interest of low-income laborers.

2. *WT/TPR/G/264, page 6, paragraph 11: In paragraph 11 of Part I, the Chinese Government's report discusses labor as a cost. The United States notes that enforcement of labor laws generally, including laws governing internationally recognized core labor standards, such as child labor and forced labor, as well as laws governing acceptable conditions of work, creates the institutional environment for sustaining domestic demand and growth. What role have workers and workers organizations been asked to play, or will they be asked to play, in developing strategies to improve enforcement of labor laws in each of those areas?*

Answer: As the representative of Chinese workers, Chinese trade unions take the protection of workers rights as its sacred responsibility, have been always active in the labour legislation and inspection of labour laws so as to translate the legitimate demands of workers for decent work into effective social policies.

At national and local levels, through tripartite committee, joint meeting between unions and government as well as other social dialogue forms, Chinese trade unions have been actively participated in the formulation and revision of laws, regulations and policies affecting workers immediate interest in terms of employment, remuneration, holidays and rest, OSH, education, training and social security. Unions take this role as the protection of workers rights at source from macro-perspective. In the past 5 years, Chinese trade unions have been involved in over 100 pieces of national legislation, including the drafting and amendment of dozens of administrative regulations and rules supplementing Labour Law of People's Republic of China, such as labour contract law,

employment promotion law, labour disputes mediation and arbitration law. In addition, over 1,200 local regulations and policies concerning workers immediate interests have been promulgated with the participation of trade unions at various levels.

Meanwhile, Chinese trade unions place great emphasis on inspection of labour law enforcement, aiming to better safeguard workers legitimate rights and interests, thus ensuring harmonious labour relations. At present, Chinese trade unions, in close collaboration with labour inspection authorities, have already put in place a labour law inspection network, comprising up to 500,000 labour law inspection organizations nationwide run by unions, with more than 1 million union inspectors on duty daily. Over the past 5 years, over 400,000 complaints have been dealt with by trade unions labour law inspection organizations. Unions inspection organization have right to rectify the unlawful practices at workplace, and request the labour authority for penalty on enterprises which violate the relevant laws.

Chinese trade unions welcome the National Five Year Development Plan from 2011-2015, which has committed to promote collective bargaining and increase the minimum wage, as well as put into place mechanism to reduce the income gap, and achieve social justice. Therefore, Chinese trade unions have been fully engaged in the income policy making and minimum wage setting at all levels. At national level, All-China Federation of Trade Unions (ACFTU) has launched a 2 paramount priorities campaign, their slogan is to get all enterprises unionized, and to get all enterprises engaged in the collective bargaining. This campaign has been incorporated in the daily work of the unions at local levels now. With the high importance on wage negotiation for fair share objective, Chinese trade unions call for cherishing the value of labour, as labour shapes the world, builds the society. All workers should work in dignity and fairness, and deserve decent work.

II. ECONOMIC AND TRADE ENVIRONMENT AND MACROECONOMIC POLICY DIRECTION

(3) ACCELERATING THE TRANSFORMATION OF ECONOMIC DEVELOPMENT PATTERN

(iv) Advancing energy conservation and pollution reduction and industrial restructuring

3. *WT/TPR/G/264, page 12, paragraph 35: Paragraph 35 of the Chinese Governments report explains that the Chinese Government has always considered pushing forward energy conservation and pollution reduction and accelerating industrial restructuring as important tasks in promoting the transformation of the pattern of economic development. However, the United States notes that China limits the production of remanufactured goods to a small number of products in the heavy equipment and motor vehicle sectors and only allows the remanufacturing to be undertaken by certain enterprises, designated by the Chinese Government. China also restricts the importation of cores (i.e., vital non-new inputs for remanufacturing) and remanufactured products. In light of the goals described in paragraph 35 of the Chinese Governments report, please explain whether China has any plans to allow remanufacturing to take place for more products or in sectors that are currently restricted, such as the medical, office and information and communications technology equipment sectors. Does China have any plans to allow the importation of cores and remanufactured products?*

Answer: (1) Scope of remanufactured goods. China is not limiting remanufactured goods to products in the heavy equipment and motor vehicle sectors. So far the development of remanufacturing is at its pilot stage. Some pilot fields have been built, with products covering auto parts, engineering machinery, agricultural machinery, machine tools, mining equipment, office supplies, etc.

(2) Remanufacturing designation. China does not designate specific enterprises to remanufacture. Therefore, remanufacturing pilot fields are open to both domestic and foreign companies without discrimination, and many foreign companies are participating in these fields. For instant, Cummins and Caterpillar are remanufacturing pilot companies in China. Other large companies like IBM are

paying attention to China's remanufacturing industries and have set up their computer server remanufacturing plants in China.

(3) Importation of old products for remanufacturing. To allow legal and free trade of remanufactured products is conducive to the growth of this industry and is also a tendency of international trade. However, before relevant technologies get mature, free importation of remanufactured products should not be allowed hurriedly, because on one hand necessary measures for this industry are not complete, technical standards and policies have not been formulated and supervision system not established, immediate opening to importation may impact remanufacturing market and consumption safety, and on the other there exist legal barriers to import and export products for remanufacturing.

II. ECONOMIC AND TRADE ENVIRONMENT AND MACROECONOMIC POLICY DIRECTION

(3) ACCELERATING THE TRANSFORMATION OF ECONOMIC DEVELOPMENT PATTERN

(v) Strengthening further the foundation for the development of agriculture and rural areas

4. *WT/TPR/G/264, page 13, paragraph 38: Paragraph 38 of the Chinese Governments report notes that China will continue the implementation of the pay-back policies and further strengthen the support for agriculture. Has China notified any of these policies to the Committee on Agriculture?*

Answer: The pay-back policy has been a working approach for the Chinese government in recent years. Its goal is to develop the rural economy, increase farmers income, and improve production and living conditions in rural areas. The main content includes adjusting the distribution of national income, increasing inputs to agriculture and rural areas, strengthening the agricultural infrastructure, introducing measures strengthening and benefiting farmers like improved varieties subsidies, strengthening the regulation of markets for agricultural products, and mobilizing the enthusiasm of farmers to develop production; giving emphasis to rural areas for the development of infrastructure and social undertakings, improving rural water and gas room, and conditions for education, health care and cultural facilities; improving the rural social security system, and vigorously promoting to establish three security systems: the system of new rural cooperative medical care, the system of rural minimum living allowance and the system of new rural social pension insurance. We have notified to the WTO regarding measures related to the WTO Agreement on Agriculture.

II. ECONOMIC AND TRADE ENVIRONMENT AND MACROECONOMIC POLICY DIRECTION

(4) CONTINUING TO DEEPEN THE REFORM STEADFASTLY

(iii) Reform of state-owned enterprises and development of the non-public sector

5. *WT/TPR/G/264, page 15, paragraph 48: Paragraph 48 of the Chinese Governments report states that the number of central SOEs decreased from 128 at the time of China's 2010 Trade Policy Review to 117 by the end of 2011. However, according to paragraph 122 of Part III of the Secretariat's report for China's 2010 Trade Policy Review, SASAC had planned to reduce the number of central SOEs subject to its management to 80-100 by the end of 2010. What factors led China to fail to meet SASACs SOE reduction goal? Does China intend to continue the process of further reducing the number of central SOEs? Please explain.*

Answer: The Guiding Opinions on Promoting the Adjustment of State-owned Assets and SOE Restructuring issued in 2006, requires that, by 2010, 80 to 100 enterprises promoted by the SASAC will be adjusted and restructured. However, this is only an expected objective. Enterprises are the main body of adjustment and restructuring. The government shall respect companies willingness to encourage and guide them based on market-oriented resource distribution. From now on, China will

continue to stick to the principle of market-oriented resource distribution, enhance government guidance and promote optimization of company structure.

**REPLIES TO FOLLOW-UP QUESTIONS AND
ADDITIONAL REPLIES PROVIDED BY CHINA**

CANADA

FOLLOW-UP QUESTIONS FROM THE GOVERNMENT OF CANADA

Part II. Trade Policy Regime; Framework and Objectives; (1) Institutional and Legal Framework; (ii) Central-provincial relationships: paragraph 19, page 14:

The Secretariat's report notes that the implementation and enforcement of national policies and measures is carried out mostly by counterpart agencies of local governments. It notes further that coordination between the national and local level remains weak. On the resolution of conflicts, the Report says that according to authorities, higher level agencies tend to use the argument "local yields to central" to solve conflicts.

4. *In cases of conflict, could China explain what enforcement mechanisms it uses to ensure that sub-national level governments comply with national policies?*

5. *In cases where the local level is not implementing or enforcing national policies and measures, what means of enforcement are available to FIEs?*

4-5 Answer: The Legislation Law of the PRC states that the Standing Committee of the NPC has the right to repeal local regulations in contradiction with the Constitution, laws and administrative regulations. The State Council has the right to change or rescind inappropriate local rules. China has set up record review system of regulations and rules, according to the Ordinance on the Archivist Filing of Regulations and Government Rules, the legal office of the State Council will review the regulations and rules submitted to the State Council for filing. Those local regulations that are in contradiction with administrative rules will be further submitted to the standing committee of the NPC for review; the legal office of the State Council will also coordinate differentiated regulations between local and department rules on a single item. The legal office will offer recommendation and submit it to the State Council for deliberation if consensus can't be achieved through coordination.

Follow-up question:

China has responded that it has set up record review system of laws and regulations, according to the Ordinance on the Archivist Filing of Regulations and Government Rules, the legal office of the State Council will review the regulations and rules submitted to the State Council for filing. Can China please confirm whether there is a legal requirement for sub-national levels of government to notify their regulations and rules to the State Council for filing? Further, is there a record of these filings available for public review via the internet or another tool?

Finally, China's response outlines a mechanism to address non-compliance at the sub-national level where rules and regulations do not comply with national-level policies and laws. Canada wishes to know what enforcement mechanisms China uses when sub-national level non-compliance relates to shortcomings in implementation or enforcement of national policies rather than the enactment conflicting rules and regulations? Canada also wishes to know what recourse mechanisms are available to FIEs when sub-national level non-compliance relates to shortcomings in implementation or enforcement of national policies rather than conflicting rules and regulations?

Answer: In accordance with the Ordinance on the Archivist Filing of Regulations and Government Rules, the regulations and rules that should be submitted to the State Council for filing are:

sub-national regulations formulated by the people's congresses or the standing committees thereof of the provinces, autonomous regions, municipalities directly under the Central Government and the comparatively large cities according to their statutory functions and duties as well as legal procedures and the regulations of the special economic zones formulated by the people's congresses or the standing committees thereof of the provinces or municipalities where the special economic zones are situated according to their respective functions and legal procedures, as well as the regulations for autonomy and specific regulations formulated by the people's congresses of the autonomous prefectures and counties according to their respective functions and legal procedures; rules and regulations formulated by the ministries, commissions under the State Council, the People's Bank of China, the National Audit Office and the organs directly under the State Council that have certain administrative powers within their respective functions and duties on the basis of the provisions of laws, administrative rules, decisions or orders of the State Council and according to the Ordinance on the Procedures for the Enactment of Government Rules; rules and regulations enacted by the people's governments of the provinces, autonomous regions, municipalities directly under the Central Government and the comparatively large cities on the basis of the provisions of laws, administrative regulations and sub-national regulations of their respective provinces, autonomous regions or municipalities directly under the Central Government and according to the provisions of the Ordinance on the Procedures for the Enactment of Government Rules. The Ordinance on the Archivist Filing of Regulations and Government Rules also states that, the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government should enhance the supervision over the rules and regulations and normative documents issued by lower-level administrative bodies pursuant to law, and set up relevant record review system. According to this stipulation, 31 Chinese provinces, cities and regions have established record review system for rules and regulations and normative documents issued by high administrative bodies to lower-level administrative bodies. In addition, according to the provisions of Law of the People's Republic of China on the Supervision of Standing Committees of People's Congresses at Various Levels, the standing committees of people's congresses at or above the county level also set up record review system over the decisions and orders issued by government at the same level. The public may inquire sub-national regulations and rules submitted to the State Council for filing via <http://www.chinalaw.gov.cn/>. The Legislative Affairs Office of the State Council compiles and publishes a volume of New Compilations of Laws in the People's Republic of China, which publishes full texts of departmental rules and regulations submitted to the State Council for filing and catalogues of sub-national regulations and rules of current month. In accordance with the provisions of Administrative Reconsideration Law of the People's Republic of China and Administrative Procedure Law of the People's Republic of China, any citizen, juridical person and other organization including foreign direct invested company, which considers that any specific administrative behaviour of an administrative body in the implementation or enforcement of national policies infringes upon its lawful rights and interests, may apply for administrative reconsideration or lodge an administrative procedure pursuant to law.

Part II. Trade Policy Regime; Framework and Objectives; (4) Foreign Investment Regime; (i) Recent Developments in FDI Policy: paragraph 40, page 19:

8. *Could China please explain what criteria it uses when it removes a sector from the encouraged category? Can China confirm that all investments made in the Encouraged Category of the 2007 Catalogue will continue to receive preferential treatment even if these sectors were removed from the Encouraged Category in the 2011 Catalogue? The predictability in China's investment environment is beneficial both to investing parties and recipient parties. Once an investment is made under the encouraged category, a category change for that sector should not lead to changes in the previously established preferential policies for a guaranteed, predictable period of time.*

Answer: An array of macro-and micro economic indication and criteria are used to come up with Scientific decisions on which sector should be removed from a particular category by taking into account the overall strategy and needs of own national economic development.

Follow-up Question:

Could China please explain the criteria it uses to remove a sector from the encouraged category? Can China confirm that all investments made in the Encouraged Category of the 2007 Catalogue will continue to receive preferential treatment even if these sectors were removed from the Encouraged Category in the 2011 Catalogue?

Answer: The Provisions on Guiding the Orientation of Foreign Investment (State Council Order No. 346) has made definitive provisions about project classification and criteria in the Catalogue of Industries for Guiding Foreign Investment (hereinafter referred to as the "Catalogue"). The Catalogue (2011 Revision) was executed on 30 January 2012, and foreign invested projects approved after 30 January 2012 shall be enforced pursuant to the new Catalogue, and foreign invested projects approved before 30 January 2012 shall be enforced pursuant to the former Catalogue. For projects that add restrictive conditions (including prohibition) in the new Catalogue, such as foreign invested enterprises that has already existed and been operating prior to 30 January 2012, the policies at the time of project approval shall apply, however, the capital increase, equity transfer or overseas listing of domestic companies of former old enterprises must apply the provisions of the new Catalogue.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (vii) Standards and other Technical Requirements; (a) Standards and Technical Regulations: paragraph 84, page 46:

Canada notes that there are many standards in China at numerous levels (i.e. central government, sub-central, industry etc.) yet there does not seem to be one central portal to which industries can consult which contains all levels of standards. Canada has concerns that this practice makes it difficult for enterprises to know which standards must be followed. Further, many standards can only be obtained by hard copy while some cannot be obtained at all (particularly those related to security).

21. *Does China have plans to create one electronic portal that lists all standards that industries and companies must adhere to and that makes electronic copies of those standards available?*

Answer: The whole texts of all the safety-related compulsory national standards can be found at the official website of SAC.

Follow-up Question:

Canada thanks China for its answers on standards and certification issues and recognizes that national standards can be found on central government websites. However, standards formed at the sub-national or enterprise level are much more difficult to find, as there do not seem to be a central portal or website tailored for standards notification at these levels. As a result, the process to which foreign companies must adhere if they wish to do business in China is often very time-consuming and confusing. Taking into account China's continued efforts to ensure transparency, does China have any plans to create a centralized electronic portal that includes or provides links to sub-national and industry standards?

Answer: The website of the Standardization Administration of the People's Republic of China (www.sac.gov.cn) provides not only information regarding the formulation and revision of Chinese national standards, announcements on the issue of national standards, inquiries about full texts of compulsory national standards, but also industry standard archivist filing announcements,

sub-national standard archivist filing announcements, including standard numbers, names of the standards, substitution standards, date of approval, date of implementation, and competent authorities of standards etc. For standards of such fields as electronics, agriculture, public health and environmental protection, this website also offers linkage to standard columns of relevant ministries and commissions. For sub-national standards, websites of all local standardization institutes provides inquiries and full text reading services of sub-national standards.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (viii) Government Procurement: paragraph 111, page 53:

Paragraph 111 notes that China objectives in procurement include the promotion of better governance.

34. Has China considered, or does China invoke any procurement measures to support sustainable procurement, particularly environmental sustainable procurement?

Answer: According to the Government Procurement Law of PRC, government procurement should be conducive to the accomplishment of environmental protection and other policy objectives of national economic and social development. Chinese government has come up with a series of policies which stipulate preferential or mandatory procurement of energy-saving and environment-friendly products.

Follow-up question:

Canada would appreciate further information on the "series of policies which stipulates preferential or mandatory procurement of energy saving and environment-friendly products". Would China be able to provide copies of these policies or point to websites where these are available? Has China conducted assessment of the results, the benefits or the success of these policies?

Answer: In order to fulfill policy targets regarding government procurement of energy saving and environmental-friendly products stipulated in the Government Procurement Law of The People's Republic of China, the Ministry of Finance has respectively established government procurement system of energy saving and environmental-friendly products in 2004 and 2006, listed energy saving and environmental-friendly products that passed state certification into government procurement list to carry out preferential or mandatory procurement. In 2011, the scales of mandatory and preferential procurement of energy saving and environmental-friendly products respectively reached RMB 91.06 billion and RMB 73.98 billion, accounting for 82.21% and 59.59% of products of the same kind respectively, which plays a significant role in driving, demonstrating and guiding energy saving and environmental protection. Please log on www.ccgp.gov.cn for more details.

Part III. Trade Policies and Practices by Measure; (1) Measures Directly Affecting Imports; (viii) Government Procurement: paragraph 116, page 54:

Paragraph 116 notes that China does not consider procurement by SOEs as government procurement. However, footnote 191 on page 73, indicates that SOEs include wholly state-owned enterprises or state-controlled enterprises. Canada understands that if an SOE procures a good or service with a view to commercial resale or with a view for the use in the production of goods for commercial resale that such procurement would not be considered government procurement.

39. Do Chinese SOEs engage in procurement for purposes other than commercial use or use in the production of goods for commercial resale? Are there any circumstances in which an SOE would be engaged in procurement for a government purpose?

Answer: Chinese SOEs are independently operated market entities, and their procurements are of commercial purpose.

Follow-up question:

Although China's response indicates that "SOEs are independently operated market entities, and their procurements are of commercial purpose", in China's response to question #62 it notes that SOEs are involved in national security, key infrastructures and supply of important public products and services. Based on questions asked by other members, it would appear that SOEs are involved in public utilities and government construction works and procurement. In that respect:

a. Can China clarify the relationship between SOEs performing these functions and the Chinese government?

Answer: The large infrastructure and public utilities projects engaged by SOEs are of commercial operation, and shall be governed by the provisions of the Tendering and Bidding Law of the PRC, and the government does not intervene in such bidding activities.

b. To what extent do government departments or institutions exercise authority or responsibility over these types of projects?

Answer: Chinese SOEs are independently operated market entities with corporate capacity, and the Chinese Government exercises shareholder's (investor's) rights over SOEs pursuant to law, and does not intervene in their independent business operations. The relevant administrative supervision authorities conduct supervision over bidding activities and investigate and prosecute relevant illegal acts pursuant to law.

c. As SOEs are independently operated market entities, how are they assigned the responsibility for these important public functions? (iv) Do government departments, institutions or organizations delegate their authority or provides funds to an SOE for these projects?

Answer: Chinese SOEs undertake relevant building projects as suppliers, and do not perform government functions. The Chinese Government does not provide SOEs with more preferential policies in finance, taxation, credit, exclusive right and others than any other enterprises.

d. Can China clarify why it views "national security" as not a governmental function?

Answer: China's former response is "public security", which is the responsibility of all enterprises and citizens, not only the government.

PART III. Trade Policies and Practices by Measure; (3) Measures Affecting Production and Trade; (vii) Intellectual Property Rights: paragraph 281, page 87:

The Secretariat report indicates that "local IPR administrative offices are responsible for patent disputes".

69. Can China indicate whether all local IPR offices have adopted a standardized set of rules, regulations and procedures for handling patent disputes?

Answer: To regulate patent enforcement work and protect the legitimate rights and interests of patent right holders and the public, SIPO promulgated the Measures for Administrative Enforcement of Patents in December 2010.

Follow up question:

Could China please confirm its response to Question 69 to the effect that the local IPR offices are not in a hierarchical relationship with SIPO, but are rather subordinate to the local people's governments that establish them? If this is the case, could China please clarify what mechanisms SIPO uses to ensure these local IPRs and their supervising local governments consistently follow SIPO's business guidance on how to handle patent infringement disputes, investigating patent counterfeits and mediating patent disputes since these are areas that fall under SIPO's jurisdiction? Lastly, could China please confirm whether there is a hierarchical relationship between SIPO and the provincial IPR offices?

Answer: Local IPR offices are the institutions established by local people's governments to be responsible for patent administration within their regions of administration, and are not in a hierarchical relationship with SIPO. According to Article 80 of Rules for the Implementation of the Patent law of PRC, the patent administration department under the State Council shall provide professional guidance to the administrative authorities for patent affairs in handling patent infringement disputes, investigating and punishing acts of passing off a patent and mediating patent disputes. According to the provisions, SIPO provide professional guidance to local IPRs on the above patent affairs. Handling patent infringement disputes, investigating and punishing acts of passing off a patent and mediating patent disputes are duties granted by law to local IPRs.

Part III. Trade Policies and Practices by Measure; (2) Measures Directly Affecting Exports; (vii) Intellectual property rights: paragraph 292, page 90:

The Secretariat report states that "Guidelines for Competition against Abusing Intellectual Property Rights are being drafted".

73. *Can China confirm whether the draft Guidelines will be provided for public consultations?*

Answer: In the course of studying and drafting the Guidelines, the State Administration for Industry and Commerce studied and drew lessons from law enforcement practices and related guidelines and regulations published by foreign competition agencies, carried out research activities at home, and solicited opinions and suggestions from companies, law courts and government departments related to intellectual property for several times. In the course of further improvement, we will continue to solicit opinions from the relevant parties and we welcome your comments and suggestions in this regard.

Follow-up question:

Canada appreciates China's openness in welcoming foreign parties' comments and suggestions on the draft "Guidelines on the Enforcement of Anti-Monopoly Law in the Field of Intellectual Property Rights". Can China therefore confirm that it will make the draft available for such a purpose in advance of their implementation?

Answer: When the Guide (draft) attains to maturity, it will be published to take advice from various circles of society with foreign competitive law enforcement agencies included.

Part IV. Trade Policies by Sector; (5) Services; (ii) Financial services:

143. *Why does China maintain separate approval processes for foreign and domestic insurers?*

Answer: In accordance with China's WTO accession commitments, China accords national treatment to foreign insurance companies for the branch establishment. China Insurance Regulatory

Commission (CIRC) applies the same law, regulations and procedures to the establishment of new branches of domestic and foreign-invested insurance companies. Rules on Administration of Insurance Companies stipulates specific requirements for the application and establishment procedures of branches, which are transparent, non-discriminatory and consistent with China's commitments.

Follow-up question:

It is reported that approval of new provincial branches is restricted to one new branch approval per single application for foreign joint venture (JV) insurance companies, while for domestic insurers, there is no such requirement and China Insurance Regulatory Commission (CIRC) may approve multiple new provincial branches for domestic insurers in a single application. The foreign JV insurer can only apply for a second branch upon CIRC approval of commencement of business for the first branch, thus limiting the number of new branches per year for foreign JVs. Could China confirm whether this is still the case and if yes, whether there are plans to accord identical treatment to foreign JVs and domestic insurers in the future? Canada would appreciate it if China could provide references to any specific supporting documents (laws, regulations, guidelines or information guide) on the approval of domestic and foreign insurance branches.

Answer: The establishment of branches by Chinese and foreign insurance companies apply to the same examination and approval procedure, without discrimination. National treatment is not simply equal to same quantity. China does not have any insurance law or regulation that prohibits insurance companies from applying for establishment of branches according to their own development strategies and business operations. For documents on the approval of branches, please log on the website of China Insurance Regulatory Commission www.circ.gov.cn for inquiries.

EUROPEAN UNION

I. Follow-up questions

Questions 21, 34, 41, 44, 45, 46, 139, 144.c, 144.d: China has indicated that replies to these questions will be submitted after coordination with competent authorities. The EU looks forward to study such replies latest one month after the TPR meeting.

21. *What steps is China taking in order to expand the systematic use of Regulatory Impact Assessments (RIAs) by all its regulatory authorities? Is there an obligation to carry out RIAs for measures that may have a significant impact on trade?*

Answer: Administrative system reform is one of the important elements for China to continue to deepen its reform. China will consider the question raised by EU in the course of its administrative system reform.

34. *Can China explain how its policy of systematically developing Chinese-specific standards in the fields of ICT and information security, even where international standards exist, comply with its obligations under the TBT Agreement? If it is China's assertion that the international standards in questions are inappropriate or ineffective for the objectives pursued, can China clarify what these objectives are, and can it provide scientific and technical evidence to support this assertion?*

Answer: China has consistent and clear policies for international standards and actively adopts the standards formulated by acknowledged international organizations for standardization such as ITU, ISO, IEC and so on. However, currently quite a few regional standardization organizations or even certain countries are promoting their own standards in the name of "international standards". We

don't think this kind of standards belongs to international ones and would just take them for reference. What we do conforms to international rules. So, there is no so called "systematically developing Chinese-specific standards in the fields of ICT and information security".

41. *Could China explain why it considers necessary to regulate CABs that perform conformity assessment activities required by another country, and which are already approved by the authorities of that country?*

Answer: The purpose of China's supervision and regulation of certification bodies operating in the Chinese territory is to regulate certification activities and enhance effectiveness of certification. China's Measures for the Administration of Certification Bodies is developed on the basis of the relevant international standards and applies equally to domestic and foreign certification bodies. Therefore, it is fully WTO/TBT-compliant.

44. *Could China provide an update on MLPS implementation? In particular, how many information systems have so far been assessed according to MLPS criteria, how many of those have been classified as 'critical infrastructure' (level 3 and above), and which sectors they belong to?*

Answer: After research and practices for several years, China has gradually improved its policies on graded protection of information security. In 2007, the Ministry of Public Security, the State Secrecy Bureau, the State Cipher Code Administration and the Information Office of the State Council jointly issued the Administrative Measures for the Graded Protection of Information Security (Gong Tong Zi [2007] No. 43, hereinafter referred to as the "Administrative Measures"). The Administrative Measures serve as a standard document for China to implement the graded protection system of information security. The key of the graded protection system of information security is to implement graded protection and graded supervision and to highlight the key points in relation to information system. The aim for China to implement the graded protection system of information security is to keep China's fundamental information network and important information system safe and secure and to maintain national security and public interests.

45. *Could China explain further what is meant with the "importance" of the information system?*

Answer: The aim for China to implement the graded protection system of information security is to keep China's fundamental information network and important information system safe and secure and to maintain national security and public interests.

46. *If the answer to the above implies that the classification of the information system depends on its importance to national security, can China provide a detailed outline of the reasons for which information systems in sectors such as banking (e.g. retail banking payment systems, debit cards, etc.), public utilities (e.g. energy or public transport companies, including applications such as subscribers' electronic cards), education (e.g. universities) or health (e.g. hospitals) would be considered as national-security sensitive?*

Answer: The key for China to implement the graded protection system of information security is to adopt graded protection for information system. In China, the security of banking, education, medical, transportation and other public industry is directly related to the citizens' interests such as economic income, right to education, living and health, and transportation security. The security issue in such information systems, if any, will directly affect public rights and interests and social stability. Therefore, China determines the "importance" of information system based on the extent of impairment such information systems may bring to national security, social order, economic construction and public interests if such information systems are interrupted rather than the sensitivity of the industry.

139. *How is the purchasing and stocking of sugar as described in paragraph 34 accounted for in China's domestic support notifications?*

Answer: We have placed this issue under green box notification.

144. *c. Has China considered reviewing the Prudential Ratios (CBRC) so assets and liabilities can be compared with the same tenor?*

Answer: Could EU please further clarify this question, for the relevant authorities in China could not understand it clearly.

d. Does the Chinese government plan to implement any advance in the area of increasing foreign debt quota?

Answer: The Measures for the Administration on Foreign Debts of Foreign-funded Banks in China stipulate that, according to the need of national economy and social development, the status of international balance of payments and the capability for bearing the foreign debts, as well as the status of assets and liabilities of foreign-funded banks in China and the demand for working capital, etc., properly determine the total amount of foreign debts of foreign-funded banks in China and the target for the structural adjustment and control of medium-term and long-term and short-term foreign debts.

Follow-up to question 4 (report by the Government, page 24, para. 98): *the EU is pleased with China's clarification given in reply to question 4 that "technology cooperation and transfer are voluntary behaviours of enterprises and that it will not take technology transfer as a precondition for market access". However, the EU often hears complaints from its industry about being obliged to accept conditions imposed upon them that require a degree of forced technology transfer to the local joint venture partner for instance. Does there exist an entity or complaints office at central level where companies can speak up if instances occur where technology transfer conditions would be imposed upon them at local level?*

Answer: The Chinese government has made it clear in the answer that technology cooperation and transfer are voluntary behaviours of enterprises and that it will not take technology transfer as a precondition for market access. Foreign enterprises and Chinese partners may reach agreements at their own discretion based on their negotiations and their respective comparative advantages. Generally speaking, the reason why foreign enterprises introduce technologies into China is that they believe in the potential of the Chinese market and hope they may occupy an advantageous position in the market rather than government's compulsory requirements.

The Chinese government has not set up any complaint office or entity where companies may speak up if instances occur where technology transfer conditions would be imposed upon them. In accordance with the Administrative Reconsideration Law of the People's Republic of China and the Administrative Procedure Law of the People's Republic of China, where citizens, legal persons and other organizations including enterprises directly invested by foreigners consider that their legitimate rights and interests have been impaired by administrative acts taken by administrative organs during the implementation or enforcement of state policies, they may legally apply for administrative reconsideration or institute administrative procedures.

EU's initial question 4: *Can China confirm that no government authority, whether central, provincial or local, shall take technology transfer as a pre-condition for market access – including in the context of examining and approving planned investments of foreign operators?*

Reply by China: With regard to the issue of mandatory technology transfer, actually, China amended policies that are inconsistent with its WTO accession commitments and cancelled provisions on

mandatory technology transfer when sorting out laws and regulations shortly after its WTO accession. The Chinese Government has always clarified that technology cooperation and transfer are voluntary behaviors of enterprises and that it will not take them as preconditions for market access.

Follow-up to question 37 (WTO Secretariat's report, pages 48-49): *Could China please provide the names and the country of the 19 overseas certifying bodies with which China has signed consignment agreements?*

Answer: So far, China has signed consignment agreements in relation to certification and attestation with 19 institutions from 13 countries and regions, namely, UK's ASTA-BEAB, Norway's NEMKO, Holland's KEMA, Sweden's INTERTEK SEMKO AB, Germany's TUV Rhine, TUV Southern Germany and VDE, Italy's IMQ SpA, France's UTAC, Japan's JET and JQA, Chinese Taipei's ETC, Singapore's PSB Group, Malaysia's SIRIM-QAS, Hong Kong, China's CIC, STC, US's UL, Canada's CSA and Belgium's CEBEC.

EU's initial question 37: Obtaining CCC certification is a lengthy and costly process. Factory inspections in particular are the major cost item for foreign manufacturers located outside China. In the absence of sufficient trade volumes, the costs of CCC certification cannot simply be absorbed by manufacturers and de facto prevent many companies, especially SMEs, from doing business in China. What steps has China taken and / or is considering to reduce the costs associated with CCC certification?

Reply by China: 3C system is a market access system supervised by government agencies and operated by 3rd party technical organizations that review and certify products. The main technical procedure includes type test, initial factory inspection and after-certification supervision. Type test refers to the test to prove that standards and technical requirements are met, after which a test report will be issued. Initial factory inspection refers to site inspections of how to ensure quality and product conformity conducted by certifying bodies. After-certification supervision is the annual supervision over enterprises and products by certifying bodies, including sample tests and follow-up inspections.

CNCA will consider appropriate adjustment for certain products, and for low-risk products and credible enterprises, initial factory inspections may involve fewer procedures to reduce costs and improve efficiency.

Rules on Management of Compulsory Certification stipulate that, generally speaking, CCC Certification is issued within 90 days since acceptance. In addition, 3C-related fees are much less than other similar international certifications.

China abide by WTO/TBT Agreement and Regulations on Certification and Accreditation of PRC, and China is actively promoting and allowing mutual recognition in international product testing and factory inspection within the framework of multilateral or bilateral MRAs. China has signed consignment agreements with 19 overseas certifying bodies (located in Europe, America, Japan and other economies) for follow-up inspections over factories abroad. CNCA accepts the inspection reports and results of these bodies, which further saves time and costs.

Follow-up to question 48 (WTO Secretariat's report, pages 48-49): *China in its reply states that "systems of level III and above cover a very limited portion; foreign products will be hardly affected". Could China please provide a clear explanation of what systems are covered by level III, and provide an assessment of the market share of the systems covered by level III – as compared to the share of services covered by levels I and II?*

Answer: In accordance with the Administrative Measures for the Graded Protection of Information Security, there are five levels of protection of information security. Systems of level 3 and above

related to such State key infrastructures and important assets as may be related to China's national security, public interests and social order, which account for a very small proportion in China's national information systems and have a very limited scope.

EU's initial question 48: Could China explain how the exclusion of foreign technology and foreign manufacturers from information systems classified as levels 3 and above benefits the objectives of the MLPS?

Reply by China: Article 21 (1) and (2) stipulate requirements for information security products to be used in information systems of Level III and above, with the aim of protecting national security and safeguarding security of important information systems, which, like relevant measures adopted by other members in protecting critical information infrastructure, conforms with international practice. Information systems of Level III and above are critical infrastructure and important assets that concern national security, public interests and social order, and these systems cover a very limited portion of all the information systems. As RCPIS has been implemented for a short time, information about the information systems of Level III and above is limited.

Besides, Article 21 of RCPIS does not forbid foreign information security products from being applied in any of the Chinese industries, and as these systems of level III and above cover a very limited portion; foreign products will be hardly affected. China has reiterated for many times that in indigenous innovation, intellectual property and government procurement, all enterprises will receive equal treatment.

Follow-up to question 68 (WTO Secretariat's report, page 52, para. 109): *Can China complete the answer to question 68 with a full text in English, as the webpages to which reference is made are in Chinese?*

Answer: According to Article 4.1.6.3 of the General Standards for the Labelling of Pre-packed Food (GB7718-2011): in case of imported pre-packed food, the name of the country of origin or the region of origin (e.g. Hong Kong, China, Macao, China and Chinese Taipei) shall be specified. In case of pre-packed food imported from EU countries, the label must identify the name of the exact country rather than only "EU". China has notified WTO of the General Standards for the Labelling of Pre-packed Food (GB7718-2011) during the formulation of these standards (with the notification number of G/SPS/N/CHN/206).

EU's initial question 68: Can China confirm that the indication of a completed Customs Union, such as "European Union"/ "EU" is accepted for the purposes of origin labelling on imported products? If not, why not?

Reply by China: Please refer to the official website of the Ministry of Health <http://www.moh.gov.cn/publicfiles//business/htmlfiles/wsb/index.htm> and the TBT/SPS Enquiry Point http://www.tbt-sps.gov.cn/service/Pages/TBT_enquirepoint.aspx.

Follow-up to question 78 (WTO Secretariat's report, pages 61-63): *China Development Bank (CDB) is one of the China's policy banks which offers export credits to the Chinese suppliers and to the buyer's of Chinese products and services. What is the legal basis for overseas operations of CDB? Does China consider CDB an export credit agency given that the bank can issue bonds with sovereign guarantees to finance its overseas operations? Does CDB follow OECD Arrangement's "key conditions" in its export credit transactions?*

Answer: China Development Bank is a commercial bank rather than a policy bank. China Development Bank Corporation was officially listed in December 2008 and has explicitly stipulated in its articles of association that China Development Bank is a commercial bank and will operate

independently and solely undertake its own profits and losses. As a commercial Bank, China Development Bank shall carry out its business in accordance with the Company Law of the People's Republic of China, the Law of the People's Republic of China on Commercial Banks and other applicable laws and regulations as well as its articles of association. The Chinese government did not provide sovereign guarantee to China Development Bank on its issue of bonds. China Development Bank is a commercial bank rather than an official export credit institution. China Development Bank carries out its business as per the principles of commercialization and stipulates at its own discretion the applicable loan conditions as per the market-oriented principles.

EU's initial question 78: Apart from the EXIM Bank and SINOSURE, does China have any other agencies or instruments providing financing linked to exports or similar external economic activities? In the affirmative case, how do they operate?

Reply by China: In addition to the Export-Import Bank, other commercial banks can also carry out export credit business. Commercial banks follow the principle of market-oriented operation.

Follow-up to questions 80-81 (WTO Secretariat's report, pages 61-63): *Does China Exim Bank apply the OECD Arrangement's CIRR rate also to the preferential buyer's export credits? If not, how is the interest rate established for this particular instrument?*

Answer: The conditions of preferential buyer's export credits adopted by China Exim Bank are jointly determined by the Chinese government and the government of the borrowing country through negotiations and the grant components comply with the international requirements on official development assistance.

EU's initial questions 80-81: The Secretariat's report states "The authorities have indicated that, although China is not a participant in the OECD Arrangement on Officially Supported Export Credits, the EXIM Bank in practice "refers to the Arrangement for key conditions of issuing export credit and is generally consistent with the basic framework of the Arrangement", and that "its lending interest rate is either a fixed one taking reference from OECD-released CIRRs or a floating rate which is a reconciled London Inter Bank Offered Rate (LIBOR)". As of the end of 2010, 55.35% of EXIM Bank on-balance lending was in renminbi, and the remaining 44.65% in foreign currencies. The authorities indicate that financial institutions set their own renminbi lending rates subject to a lower limit, which is 0.9 times the PBC benchmark rate." Which are the OECD Arrangement's "key conditions" of issuing export credits to which EXIM Bank refers in practice?

As regards lending at floating interest rates, how does EXIM Bank benchmark the rate it applies against the market? Of which elements is the "reconciled LIBOR" composed?

Replies by China: Although China is not a participant in the OECD Arrangement on Officially Supported Export Credits, the key conditions of issuing export credit of the EXIM Bank in practice are similar to the key conditions set forth in the Arrangement. The key conditions on advances, financing ratio, repayment period, principal and interest payment of the EXIM Bank refers to the key conditions set forth in the Arrangement, and the fixed interest rate of foreign currency loans of the EXIM Bank also refers to the OCED commercial reference rate.

China Export-Import Bank mainly raises credit funds by issue bonds in the market, so the rate is determined on the basis of debt issuance costs as regards lending at floating interest rates. The reconciled LIBOR is mainly composed of the cost of capital, loan costs, tax costs, and risk compensation.

Follow-up to question 115 (WTO Secretariat's report, page 95, para. 321): *China has asked for clarification of the following wording "lack of effective judicial verdict" in question 115. The EU*

would hereby like to clarify that we were referring to the lack of consistency and recognition between judicial decisions taken by different courts. Could China clarify the policy it intends to implement to give consistent effect between Court decisions?

Answer: China is a country with a uniform law system and adopts the following measures to ensure the consistency in law application: 1) to stipulate several judicial interpretations and to summarize judgement experience in order to regulate law application; 2) to promulgate typical cases and annual reports on cases heard by the Supreme People's Court and to guide the law application in lower courts; 3) to examine and hear judgment and supervise the cases and to ensure that retrial of cases related to disputes on intellectual property rights is carried out at least by the Higher People's courts as per applicable rules and regulations of the current Chinese law on civil procedures in order to keep consistency in judgement; and 4) To hold such activities of different types as trainings and seminars in order to promote the consistency in the understanding of laws.

EU's initial question 115: Can Chinese Government ensure consistency between local trade fair regulations with state trade regulations in order to guarantee that the lack of effective judicial verdict against an exhibitor in a former fair will not prevail the legitimate IPR holder to go against the same exhibitor in a new fair, especially if both fairs are only few months apart?

Reply by China: Please clarify what "lack of effective judicial verdict" means in the question. If it refers to the situation that a case is in court proceeding and has not been concluded with an effective judicial verdict, according to Article 17 and 20 of Measures for the Protection of Intellectual Property Rights in Exhibitions, in the event that a dispute between a right holder and an exhibitor is under judicial proceeding, if the right holder complains and requests for administrative remedy against the same exhibitor in a new exhibition, local IPR office and administration for industry and commerce would not accept the complaint and take actions.

Follow-up to question 120 (WTO Secretariat's report, page 103, para. 14): *The EU would appreciate additional explanations from China regarding the interim purchasing price: would the interim purchasing price equal the market price or does it take into account production costs?*

Answer: The interim purchasing price is set according to the costs to farmers of growing grain with reference to market price.

EU's initial question 120: The Secretariat's report states that apart from minimum purchase prices for rice and wheat, China also uses government temporary purchasing and stockpiling for some other commodities. How are the prices at which products are bought into temporary stockpiling determined?

Reply by China: Interim purchasing price is set according to the costs to farmers of growing grain with reference to market price.

Follow-up to question 144. a (WTO Secretariat's report, pages 126-127, para-s 111-116): *China has provided a reply on the approval process for processing the applications for establishing securities companies and fund management companies. Is there a similar process established for other banking operations? Could China please clarify?*

Answer: Because of the exogenous risk borne by financial institutions, their business failure will produce great impact on the public. Therefore, a professional regulation shall be implemented on these institutions and different restrictions from those on industrial and commercial enterprises shall be given when the financial license is issued. Access conditions shall be reasonably set for investors of financial institutions in order to have powerful and experienced investors take part in the establishment of financial institutions, which is a prerequisite for maintaining financial order and

safeguarding public interests, helps to establish a sound internal control and risk management system right after a new institution is founded. This is of great benefit to institution's customer cultivation, business development and risk control as well as market stabilization.

Administrative License Law which came into force on 1 July 2004 stipulates that administrative organs shall implement administrative permission in accordance with the principles of openness, fairness and impartiality. Administrative organs shall enact and implement administrative permission on the basis of statutory limits of authority, scope, conditions and procedures. China Banking Regulatory Commission will, in a fair and transparent way, examine and approve the application for license submitted by the regulated institution in accordance with the Management Measures for Administrative Licensing and will reply the applying institution within the time stipulated in the Measures.

Continue to optimize the mechanism and method for administrative examination and approval, adhere to a combination of prudence and efficiency and provide service while implementing regulation. To solve various problems in the existing mechanism, key issues to be checked on and responsibilities to be assumed shall be clearly defined in different procedures of market access, and the requirements for procedure and time limit shall be strictly abided by in order to ensure a clear division of responsibilities, a smooth procedure implementation, a timely manner and high efficiency.

EU's initial question 144. a: As the Secretariat's report points out, the licensing requirements and procedures are very divergent and there is no umbrella license or single point of contact in China for financial institutions. In this regard, could China provide information: a) Are there any advances in speeding up and making more transparent the approval process (CBRC, PBOC, SAFE, CSRC)?

Reply by China: Pursuant to Administrative License Law, Securities Law, Securities Investment Fund Law, the approval process and time limit for processing the applications for establishing the securities company and fund management company are specifically stipulated. From March 2010, the CSRC disclosed the status of application acceptance and verification on its official website, and the specific verification process for establishing fund management companies are also publicized by the CSRC in this April. In sum, the approval process is already transparent.

Follow-up to question 144. b (WTO Secretariat's report, pages 126-127, para-s 111-116): *As regards possibilities of increasing cooperation among the different regulatory authorities, could China clarify whether it intends establishing a single point of contact?*

Answer: In recent years, China has conducted active explorations in establishing and improving the financial and regulatory coordination system. Since 2008, the State Council has established the system of financial periodic meetings which is presided over by the Vice President of the State Council in charge of financial business, attended by the persons in charge of such authorities as the People's Bank, CBRC, CSRC, CIRC and SAFE. The meetings deal with such matters related to the significant issues in the financial sector as information communication, situation analysis, countermeasure study and coordination among different departments. Under the uniform arrangement by the State Council, such macro-control authorities as the People's Bank, SDRC and MOF and the financial regulatory agencies strengthen their coordination in relation to such aspects as formulating and implementing currency policies and credit policies, promoting financial reforms, maintaining financial stability and sorting out and sharing financial information. The People's Bank has, as a leader, established the information sharing system among PBC, CBRC, CSRC and CIRS. According to the "12th Five-Year Plan", the People's Bank, the financial regulatory agencies and other competent departments will further improve the system of financial regulatory coordination and information sharing and constantly increase the efficiency of regulation.

EU's initial question 144. b: What are the possibilities of increasing cooperation among the different regulatory bodies and creating a government authority to coordinate the different offices, and in particular has China considered establishing a single point of contact?

Reply by China: China attaches great importance to the regulatory cooperation among the different regulatory bodies. After several years' efforts, the relevant authorities have already set up a coordination system based on the principle of division with individual responsibility and mutual coordination, to facilitate the regulatory cooperation in the financial industry, which can be summed up as follows:

First, we have established a regulation and coordination system at the level of the State Council and senior financial supervisors have researched, discussed, analysed and demonstrated major urgent, important and strategic events and issues in the macro-economy and finance sectors, effectively facilitating the information communication, coordination and cooperation among various financial regulators.

Second, the financial regulators at various levels have signed memorandum of understanding on regulation cooperation. In June 2003, the Memorandum of Understanding on the Regulatory and Supervisory Responsibilities was signed by the CBRC, the CSRC and the China Insurance Regulatory Commission (CIRC), and the Memorandum of Understanding on Strengthening In-depth Cooperation and Inter-industry Regulation Cooperation in Banking and Securities Industries was signed by the CBRC and the CIRC in 2008.

Third, we promote information sharing. In 2005, the CBRC, the CSRC, the CIRC and the People's Bank of China jointly set up a system of financial statistical information and sharing, and formulated the Interim Measures of the CBRC, the CSRC, the CIRC and the People's Bank of China for Information Sharing which stipulates the contents, ways, working mechanism and the responsibilities of all departments concerned of information sharing. The dispatched organs in various regions under the CBRC and the People's Bank of China established an information sharing mechanism in 2009.

Nevertheless, we are fully aware that the issue of regulation coordination and cooperation remains a worldwide regulatory difficulty. The Chinese financial regulators will, based on existing achievements, further strengthen the building of various coordination mechanisms, boost the cooperation among all parties concerned and facilitate the steady development of financial industries.

Follow-up to question 145 (WTO Secretariat's report, page 127, para. 115): *China informs that its financial regulatory authorities still need time to evaluate the result of the experiment allowing commercial banks to establish fund management companies before deciding on what is the next step for the further liberalization of this business. Is there a time framework envisaged for this evaluation?*

Answer: Currently, some commercial banks are permitted to establish fund management companies on a trial basis. The People's Bank and the financial regulatory authorities still need time to evaluate the result of the pilot projects allowing commercial banks to establish fund management companies before they can decide on what next step to be taken for the further liberalization of this business.

EU's initial question 145: During the last TPR in 2010, China announced that the financial regulatory authorities still needed time to evaluate the result of the pilot of allowing commercial banks to establish fund management companies before deciding on what is the next step for the further liberalization of this business. Have the Chinese Authorities assessed the situation and when is China going to allow foreign banks to establish fund management companies?

Reply by China: Currently, some commercial banks are allowed to establish fund management companies on a pilot basis. The financial regulatory authorities still need time to evaluate the result of the experiment and the current market situation before deciding on what is the next step for the further liberalization of this business.

Follow-up to question 146 (WTO Secretariat's report, page 128, para. 121): *China noted that its banking sector is still under-developed. The EU does not understand how market access limitations like equity caps in the banking sector will help this sector to develop. Could China elaborate on this point? Please explain how China sees the role of equity caps as a prudential measure to protect investors, depositors and the integrity and stability of the financial system.*

Answer: GATS annex on the financial services clearly state that members shall have the right to adopt measures in order to protect investors and depositors or to ensure a complete and stable financial system due to prudential reasons. China made a special explanation on this issue during the previous reviews and we are willing to explain again the issue of stockholding limit in the banking industry. China has adopted this measure mainly due to the following two reasons: one is that the Chinese-funded banks are still in their initial stage of introducing foreign investors and it will take time for both Chinese and foreign parties to achieve sound cooperation. The other reason is that the international financial situation remains in unrest, and that the financial crisis reveals the drawbacks in global financial system in terms of risk management and operation mode. The necessary supervision is implemented with the aim of protecting the interests of depositors and guaranteeing the stability of financial order. Of course, the supervision department of the banking industry in China will continue to guide banks both foreign- and Chinese- funded to extend the breadth and depth of their cooperation so as to promote mutual development.

EU's initial question 146: *According to Art XVI.2 (f) of GATS, quantitative limitations on foreign ownership need to be listed. China has not listed foreign equity caps for financial institutions; however, as confirmed during last TPR by China, no single foreign financial institution may own more than 20% of the equity of a Chinese financial institution. When is China planning to eliminate the violation of its WTO commitments and permit full foreign ownership of Chinese banks?*

Reply by China: According to China's Services Schedule, qualified foreign financial institutions are allowed to establish wholly foreign-owned banks, including subsidiaries and branches. However, China did not make commitments on the acquisition of existing domestic banks by foreign financial institutions. Nevertheless, China has decided to allow foreign investors to acquire equities of Chinese-funded banks up to a certain level on the voluntary basis. According to the Measures on Administration of Equity Investment of Overseas Financial Institutions in Chinese-funded Financial Institutions, the percentage of equity investment of a single overseas financial institution in a Chinese-funded financial institution may not exceed 20%. This practice is not in violation of China's WTO commitment.

Furthermore, China's banking market is still under-developed. With the international financial crisis not being out of the scene, we have to be cautious in further liberalizing China's banking market. On the other hand, such measure is within the meaning of the "prudential measures" provided for in the Annex on Financial Services under the GATS, the implementation of which is for the purpose of the protection of investors, depositors and ensuring the integrity and stability of the financial system.

Follow-up to question 147: *The current policy with respect to data processing in China implies that only IT-onshoring of data ensures individual privacy, data protection and financial information security without taking into account on whether conditions in other countries ensure similar objectives. Could China provide a rationale for this policy?*

Answer: China has given explicit answer on Question 147. The issue mentioned in Question 14 that "without taking into account on whether conditions in other countries ensure similar objectives" may be considered and settled through negotiations by the regulatory institutions of the countries under the coordination mechanism among countries.

In addition, according to the provision of "General Exceptions" in Article XIV of GATS, member states may implement the laws and regulations not in conflict with GATS, including the laws and regulations on anti-fraud and counterfeiting acts or disposal of breaching service contracts, protection of personal privacy and disposal and expansion of personal materials and security questions related to the protection of personal records and accounts. Currently, China has not signed any memorandum with foreign countries and regions in relation to data protection and cross-border data transfer and has no legal basis for the requirements on ensuring information security and privacy security. Apart from these, China has no regulatory requirements on such aspects as information security, protection of personal data and materials and data outsourcing. Where the RMB bank card system of any foreign-invested banks is established outside China, there are legal risks involved in the supervision and inspection conducted by Chinese regulatory authority on such bank card system and the cross-border access of trading data, which is not good for the effective supervision on such system.

EU's initial question 147: Another important issue not directly mentioned in the report, but raised during the previous TPR is the fact that China has introduced a requirement for IT-onshoring (all data handled by the bank needs to be physically kept and processed in China) for commercial banks. This requirement goes considerably beyond the category of "settlement and clearing services for financial assets", which China's had not committed and is covered by China's GATS commitments on data transfer and processing. When is China planning to eliminate the violation of its WTO commitments and allow data transfer and processing other than settlement and clearing services for financial assets?

Reply by China: Pursuant to the Article XIV of GATS, WTO members shall be entitled to adopt and enforce related laws and regulations for the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts, subject to the consistency with the provisions of GATS and the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services. This practice is not in relation of China's WTO commitment.

In consideration of individual privacy, data protection and financial information security as well as the prudential requirements on regulators, China has formulated related policies to attach great importance to and stipulate specific requirements on information security, data confidentiality and other issues. For instance, the Electronic Payment Guidelines (No. 1) (Announcement of the People's Bank of China, [2005] No.23), the Guiding Opinions of the People's Bank of China on Further Strengthening Insurance of Information Security of Banking Financial Institutions (Yin Fa [2006] No. 123), the Notice of China Banking Regulatory Commission on Solely Foreign-funded Banks and Sino-foreign Equity Joint Banks to Engage in the Bank Card Business (Yin Jian Fa [2007] No. 49) and other rules and regulations explicitly stipulate requirements on establishing data systems within China by the institutions engaged in domestic bank card business. Therefore, the policies on establishing important financial data processing systems within China have been explicit and consistent, without any change. At the same time, the requirements on establishing data systems within China have equally applied to Sino-funded and foreign-funded institutions, and there have been no discriminatory treatment to foreign-funded banks.

Follow-up to question 156.a (WTO Secretariat's report, page 154, para. 246): *The EU understands that under the new "Administrative Measures on the Direct Access and usage of Foreign Computer Reservation System by Foreign Aviation Enterprises' Sale Agents within China" foreign*

CRS do not need an (operating) licence to offer their cross-border services to foreign airlines and their sales agents (mode 1). Is this correct?

Answer: As per China's accession commitments, foreign aviation enterprises' sale agents shall not directly get access to and use foreign computer reservation system without prior approval of CAAC. In accordance with the Interim Administrative Measures on the Direct Access and Usage of Foreign Computer Reservation System by Foreign Aviation Enterprises' Sale Agents within China (the "Interim Measures"), foreign aviation enterprises shall, as the applicant, submit to CAAC the application regarding the direct access and usage of foreign computer reservation system by their sale agents within China, and providers of foreign computer reservation system shall meet the requirements set forth in the Interim Measures on their qualifications and comply with the Interim Measures.

EU's initial question 156. a: Could China clarify the following questions on the provision of computer reservation system services: Under the current legal regime do foreign CRS require an approval to provide their cross-border services (mode 1) to Chinese and foreign airlines and their sales agents?

Reply by China: According to China's accession commitment, Foreign CRS could provide cross-boarder service in three ways listed below:

- a. foreign CRS, when having agreements with Chinese aviation enterprises and Chinese CRS, may provide services to Chinese aviation enterprises and Chinese aviation agents by connecting with Chinese CRS,
- b. Foreign CRS may provide services to representative offices and sales offices established in the destination cities in China by foreign aviation enterprises which have the right to engage in business according to the bilateral aviation agreements.
- c. Direct access to and use of foreign CRS by Chinese aviation enterprises and agents of foreign aviation enterprises are subject to approval of the General Administration of Civil Aviation of China (CAAC).

As regard to the issue of direct access to and use of foreign CRS by agents of foreign aviation enterprises referred in China's commitment, CAAC is in the process of drafting and reviewing the Provisional Approval and Administrative Measures on the Direct Access and Usage of Foreign Computer Reservation System by Foreign Aviation Enterprises' Sale Agents within China, and the draft of this Measure has been submitted to the CAAC for final approval.

Follow-up to question 156.b (WTO Secretariat's report, page 154, para. 246): *IATA China has so far refused foreign CRS to participate in the China BSP on the basis that Chinese law would require foreign CRS to obtain an (operating) licence when offering cross boarder services (mode 1). Can China confirm that under current Chinese law and under the future legislation (see above a)) foreign CRS do not and will not need an (operating) licence when offering cross-border services (mode 1)?*

- a. *What does China mean by "relevant rules" in order to process the application of a foreign CRS to provide their services?*

Answer: According to the Interim Measures, the designated sale agents of foreign aviation enterprises within China may directly get access to and use foreign CRS and make reservation or issue tickets through the foreign CRS after obtaining license. Where providers of foreign CRS intend to participate in Chinese BSP, the Chinese BSP committee shall pass the resolution and the resolution shall be followed.

EU's initial question 156.b: Do foreign CRS need a licence to participate in IATA's Billing and Settlement Plan (BSP)?

Reply by China: Billing and Settlement Plan (BSP) is the system set up by IATA for aviation enterprises and sales agents using neutral ticket to realize sales and settlement. The application of CRS service providers to participate China BSP system shall be processed by Chinese BSP Council according to the relevant rules.

Follow-up to question 156.c (WTO Secretariat's report, page 154, para. 246): China's answer refers to the "establishment of a commercial presence in China" (mode 3). Could China please respond to the question in relation to the provision of "cross-border services" (mode 1) as specified under item C) of China's specific accession commitments ("direct access to and use of foreign CRS")?

Answer: According to Item C of Mode 1, Chinese aviation enterprises' and foreign aviation enterprises' agents shall not directly get access to and use foreign CRS without prior approval of CAAC. In 2002, CAAC cancelled the administrative license related to the direct access to and usage of foreign CRS by Chinese aviation enterprises. The direct access to and usage of foreign CRS by foreign aviation enterprises' agents shall be governed with reference to the Interim Administrative Measures on the Usage of Computer Passengers Reservation System by Foreign Aviation Enterprises and Their Sale Agents within China (Min Hang Yun Fa [1995] No. 51). The Interim Measures which will be promulgated soon will supersede the administrative measures and the normative document will be upgraded to be a departmental rule.

EU's initial question 156c: If a licensing requirement for foreign CRS exists, what are the conditions to be fulfilled?

Reply by China: Please refer to the answer for question (a). China didn't make any commitment for foreign enterprises to establish commercial presence in China when acceding WTO, and CAAC hasn't received any establishment application from foreign CRS.

Follow-up to question 156.e (WTO Secretariat's report, page 154, para. 246):

- a. *Could China please specify the date when the new Measure will be promulgated? From which date on will the new Measure apply?*
- b. *Could China provide a draft on the additional technical standards and operational requirements which are to be accomplished in the second half of this year?*

Answer: The meeting of CAAC has examined and passed the Interim Measures. The effective date of a rule will be stipulated in its supplementary provisions, which is normally a date after 30 days from the promulgation date of the rule. China is also drafting the technical standards and operation requirements on CRS.

EU's initial question 156.e: When will the new regulations be enacted? Will the new regulations be accompanied by implementing rules and, if yes, when would these enter into force?

Reply by China: CAAC has begun drafting and reviewing the Provisional Approval and Administrative Measures on the Direct Access and Usage of Foreign Computer Reservation System by Foreign Aviation Enterprises' Sale Agents in China, and this Measure has stepped into the phase of legislative review since August 2011. Currently, the draft of this Measure has been submitted to the CAAC's board of administration affairs for further review, and after the approval, the Measure will be finally promulgated.

In order to facilitate the issue of this Measure and increase its operability, CAAC is working hard on drafting relevant technical standards and operational requirements, so as to facilitate foreign CRS to build systems containing sales agency information related to booking and billing, flight information and passenger information. All the above mentioned standards are expected to be accomplished in the second half of this year.

Follow-up to question 156.f (WTO Secretariat's report, page 154, para. 246): China states that "the providing of CRS service is under the authority of several administrations." Does the EU understand correctly that under neither of these several administrations foreign CRS are required to obtain a licence in order to provide their cross-border services to foreign and Chinese airlines and their sales agents?

Answer: Foreign aviation enterprises shall, as the applicant, submit to CAAC the application regarding the direct access and usage of foreign computer reservation system by their sale agents within China, and providers of foreign computer reservation system shall meet the requirements set forth in the Interim Measures on their qualifications and comply with the Interim Measures. In addition, providers of online cross-border services shall consult with competent authorities as to whether the approvals of other authorities are required for foreign CRS to provide cross-border services through network.

EU's initial question 156.f: Since Chinese airlines can directly access and use foreign CRS, does this mean that foreign CRS do not need any further operating license?

Reply by China: The providing of CRS service is under the authority of several relevant administrations. CAAC is the competent authority on CRS service market, besides, the relevant electronic information affairs are regulated by information department, the relevant information security affairs are regulated by public security department, and the relevant registration, supervision and tax collection affairs for CRS enterprises are respectively regulated by the SAIC, tax administration and etc.

II. Additional question

III. TRADE POLICIES AND PRACTICES BY MEASURE

(1) MEASURES DIRECTLY AFFECTING IMPORTS

(iii) Indirect taxes affecting imports

WTO Secretariat's report, page 33, para. 13

The Secretariat's report states that the rates for VAT and excise taxes are generally the same for imports and domestically produced goods. However Circular of the Ministry of Finance and the State Administration of Taxation on the value-added tax exemption for home-made regional aircraft [Caishui 2000 n°51] provides for a preferential value added tax regime on domestically produced regional aircraft. The Circular explicitly refers to "the purpose of promoting the production and operation of China made regional aircraft" and states that "a preferential value added tax shall be exempted on regional aircraft for sale". This seems to be a straightforward case of discrimination against foreign-produced regional aircraft which are subject to 17% VAT.

1. Could China please explain? The EU would also be pleased to learn when China intends to repeal this discriminatory treatment.

Answer: We took note of EU's concern on this policy. We will contact competent authorities to verify the allegation made by EU in connection with relevant WTO rules.

JAPAN

WRITTEN FOLLOW-UP QUESTIONS BY JAPAN

Question 6 (Paragraph 80, page 45)

Japan appreciates China's answer about the "Notice on Strengthening Network Access Management of Mobile Smart Terminals" ("Notice"). Japan would like to confirm that as the answer which mentions the Notice doesn't add any new certification or administrative approval, this means the Notice doesn't require any disclosure of technological information of manufacturers.

Answer: The Notice was proposed in accordance with the Regulations on Telecommunications of the People's Republic of China and the Measures for the Administration of Telecommunication Equipments Entering into the Public Telecommunication Networks to supplement and improve the existing administration of mobile smart terminals entering into the public telecommunication networks instead of establishing a new supervision and regulation framework and an administration system and adding new certification or administrative approval. Where a manufacturer applies for the network access license of smart terminal, it shall give explanations on the operating system, preset application software and provider as well as other information in the product introduction materials. Such information doesn't involve the intellectual property rights and business secrets of the manufacturer.

Also, Japan understands Article 3 of the "Notice" prescribes that manufacturers of mobile smart terminals shall not offer software under the subparagraphs of the same Article in a manner of preset or other ways. Japan would like China to explain the meaning of "preset or other ways" in this context.

Answer: "Preset or other ways" mean that manufacturers shall not pre-install the application software in nature provided in the Article hereof in the mobile smart terminals and shall not install the application software in nature provided in the Article hereof by containing CD and other storage media in the packaging box, providing download link on the website or in other ways.

Question 7 (Paragraph 80, page 45)

The SFDA showed its preference for bilateral technical exchanges. The Government of Japan understands that the SFDA prefers a dialogue between competent authorities who are responsible for safety examination. We share the importance of such a dialogue. However, this policy is considered to be trade-restrictive rather than having the intended effect: to improve public hygiene by ensuring the safety of new ingredients.

Japan considers the best way to evaluate the safety of cosmetic ingredients is, based on international safety management practices in many economies such as Japan, the European Union and the US, to carry out testing with the same substance as that used in the finished products. We would like to invite China to thoroughly provide scientific grounds why exclusion of solvents, etc., is indispensable for safety evaluations and the risk that will occur without the exclusion of solvents, etc., and provide us with some specific examples that support the grounds for risk.

Answer: Regarding issues of plant extract ingredients and compound ingredients, the Guide to Registration and Evaluation of New Ingredients for Cosmetics stipulates that "ingredients shall not be compounded except indispensable solvents, stabilizers and carriers due to technical reasons". Japan misunderstands this provision. China advises Japan to have further communications with technical experts to get correct understanding and interpretation instead of discussing professional technical issues through trade policy review mechanism or regular WTO/TBT meeting by non-professionals.

Question 16 (Paragraph 121, page 55)

What are the qualifications of approval for foreign professionals to participate in the constructor exam?

Answer: Pursuant to the provision that "the administrative construction authorities under the State Council exercise unified supervision and administration on construction activities in China" specified in the Construction Law of the People's Republic of China, the Interim Provisions on Professional Qualifications of Constructors explicitly provides that qualified foreigners approved to be engaged in the construction and management of construction projects within the territory of China may participate in the constructor exam and apply for registration and that the departments of housing and urban-rural development are responsible for the administration of professional registration.

Question 16 (Paragraph 121, page 55)

Does the fact that there have been no foreign professionals who participated in the exam imply that there have been no cases in which they obtained approval from the relevant authority?

Answer: Confirmed by relevant competent authorities and according to latest statistics, two foreign professionals participated in the constructor exam and one foreign professional obtained the approval from the relevant authority.

Question 26 (Paragraph 278, page 87, AII.1 China's major trade-related laws and regulations, September 2011, page 190)

Could China clarify that Article 355 of the Contract Law is not applied to know-how contracts between Chinese entities with regard to Chinese indigenous technologies which are not related to technology import/export nor related to patent/patent application contracts?

Answer: As stipulated in Article 355 of the Contract Law, where the relevant laws or administrative regulations provide otherwise in respect of technology import/export contracts or in respect of patent contracts or contracts for patent application, such provisions shall prevail. This is a bridging provision on the applicability of laws on technology import/export contracts, patent contracts or contracts for patent application. Pursuant to the provision, relevant provisions of the Contract Law are applied to technical transfer contracts not belong to technology import/export contracts, patent contracts or contracts for patent application, or technical transfer contracts belonging to technology import/export contracts, patent contracts or contracts without relevant provisions in relevant laws and regulations.

Question 35 (Paragraph 313, page 93)

Article 46 of the draft amendment of Copyright Law stipulates that, after the expiration of a period of three months from the date of such first sale, a person can make a sound recording of a musical work that has been already recorded on phonograms without the authorization of the copyright owner. In this regard, Japan requests China to clarify whether such phonograms are limited to those made and sold in China, or such phonograms also include ones made and sold in countries other than China after an expiration of a period of three months?

Japan also requests China to clarify that the following understanding is correct: Where a person makes such phonograms using an imported master record which was first sold in a country other than China, Article 46 does not apply to such phonograms.

Answer: With respect to the issues of relevant provisions in the draft of the new Copyright Law, considering the draft amendment of Copyright Law is subject to further discussion and opinion solicitation, the abolishment of Article 46 is not determined, and the specific applicable rules are also yet to be determined, China believes it is not proper to further discuss relevant details under the framework of WTO trade policy review and advises Japan to have communications on this issue through other channels.

Question 42 (Paragraph 39, page 107)

Japan thanks China for its answer to Q42, but the last DS notification by China (G/AG/N/CHI/21) does not show the breakdown figures by item on b) Public stockholding for food security purposes (ST-DS:1). Could China provide (a) the target stock amounts, (b) the actual stockpile amounts, (c) purchase prices and (d) purchase amounts by item (wheat, rice, corn, vegetables, oils, sugar)? Also, the ST-DS:5 in the same notification shows the administered price and purchase amounts of wheat and rice under the Minimum Procurement Price Scheme. Are they part of the "Public Stockholding for food security purposes" or different programs?

Answer: Relevant figures in the last DS notification by China (G/AG/N/CHI/21) are consistent with relevant WTO rules and requirements. Meanwhile, the latest DS notification is being prepared.

Question remained to be replied (original question 13) (Paragraph 116, page 54)

Japan would like China to explain Chinese SOEs' status of 'not being controlled by the Government' in terms of government involvement in appointment of the SOE directors and managers.

Answer: According to the Law of the People's Republic of China on the State-Owned Assets of Enterprises, the Interim Regulations on Supervision and Management of State-owned Assets of Enterprises and other laws and regulations, the SASAC performs its duties as a contributor in accordance with law and doesn't intervene into the independent legal operation by enterprises in accordance with the principles of separation of enterprise from administration, separation of administration from assets and separation of ownership from operational right. The SASAC dispatches directors to enterprises under its supervision and assess the performances of the directors in terms of professional ethics, duty performance capability, diligence, work results and clean-fingered work. Directors and managers perform duties in accordance with the Company Law and independently make commercial judgments by virtue of their professional competences and in accordance with actual conditions of the enterprises.

IV. TRADE POLICIES BY SECTOR

(5) SERVICES

(ix) Logistics services

(g) Regulatory framework

Additional question 1 (Paragraph 358, page 176)

Even as logistics service suppliers try to do freight transportation business directly through the Ministry of Railways, on a practical level, it is necessary that they contact designated agents. Is there any example of foreign logistics service suppliers being designated as agents? Moreover, what are the criteria for designated agents?

Answer: The Ministry of Railways has not designate agents of freight transportation.

MEXICO

1. *Could China give an update of the current state of implementation of its Authorized Economic Operator Program (the name of the AEO in China is "AA Class Enterprises"), as well as the relevant publications/websites indicating the applicable requirements for applicants?*

Answer: The Measures of the Customs of the People's Republic of China for the Classified Management of Enterprises coming into force on 1 April 2008 (hereinafter referred as "Classification Measures") and supporting regulatory documents include the entity requirements, certification procedures and trade facilitation measures of AEO system concerning law compliance, trade security and partnership between customs and enterprises and specifically translate AEO system into a domestic system. According to enterprises' observance of laws, administrative regulations, customs regulations and relevant regulations on clean governance and their management and operation conditions as well as the records of customs supervision and statistics, AA, A, B, C and D five management classes are set in the Classification Measures based on the degree of law compliance and credit standing from high to low, and corresponding differentiated management measures are formulated in the Classification Measures for enterprises with different management classes in accordance with the principles of law observance and convenience. The applicable standards and conditions for AA Class Enterprises are consistent with relevant AEO requirements of the World Customs Organization. AA Class Enterprises are AEO enterprises of the Chinese customs with corresponding applicable customs clearance facilitation measures. The implementation of the *Classification Measures* and supporting measures marks the beginning of the execution phase of the Chinese customs' AEO system.

The newly-amended Classification Measures (Shu Ling No. 197) were promulgated on 15 November 2010 and came into force on 1 January 2011. The amended Classification Measures lower the access scale threshold of AA Class Enterprises and offer customs clearance facilitation to more enterprises with high credit standing. Meanwhile, the Assessment Report on Enterprises' Operation and Management Conditions attached to the Classification Measures was also amended to supplement and improve contents concerning internal control management and trade security.

Please visit www.customs.gov.cn (portal website of the China Customs) for details of the amended Measures of the Customs of the People's Republic of China for the Classified Management of Enterprises (Shu Ling No. 197).

En el párrafo 102 menciona China que en el Comité de Medidas Sanitarias y Fitosanitarias de la OMC, otros Miembros han manifestado preocupaciones comerciales respecto de medidas adoptadas por China. En relación con la preocupación específica manifestada por México sobre la regulación sanitaria GB 2757 – XXXX que regula los niveles de Metanol de diversas bebidas alcohólicas entre ellas del Tequila mexicano indicar:

21. *¿Cuándo se adoptó y a través de qué instrumento la legislación sanitaria de referencia?*
22. *¿Cuál es el nivel de Metanol aplicable al Tequila que impone dicha regulación?*
23. *¿Cuáles son los argumentos científicos que se tomaron como base para limitar el nivel de Metanol en las bebidas alcohólicas, específicamente del Tequila?*
24. *¿Se ha realizado un análisis de riesgo que apoye la imposición del límite de niveles de Metanol del Tequila en dicha regulación sanitaria?*
25. *¿Prevé dicha regulación otorgar un periodo de transición para aplicar a los Miembros su regulación sanitaria, y en su caso cuál es el periodo?*

Answer: We have provided detailed information about the above questions in the advance replies. It is suggested that Mexico could have negotiations with China in other occasions if they still have any doubt in technical respect.

UNITED STATES**SECRETARIAT'S REPORT****SUMMARY**

In U.S. question 1, we had noted that, in its Protocol of Accession, China committed to provide a reasonable period of comment to the appropriate authorities before laws, regulations and other measures are implemented, subject to limited exceptions. We then asked China to comment on a study conducted by the U.S.-China Business Council that found that only 3 out of 9 trade-related laws and only 49% of trade-related regulations and departmental rules had been circulated for public comment during the period from March 2011 to March 2012. China's response was two-fold. First, China asserted that it had made no commitment to solicit public comment on trade-related laws, regulations and other measures.

Second, it maintained that since July 2011 it had published all trade-related regulations and departmental rules for public comment. We find it puzzling that China would claim that it made no commitment to solicit public comment, and we would refer China to paragraph 2(C)2 of Part I of its Protocol of Accession. We would also ask China to clarify its statement that it has solicited public comment on all trade-related regulations and departmental rules since July 2011, given that this statement is contradicted by the results of the U.S.-China Business Council study as well as an independent review conducted by the United States. In addition, we note that China did not respond to the part of our question addressing trade-related laws, and we would therefore ask that China provide a response on that front as well.

Answer: China made no commitment to promulgate drafts of laws, regulations and departmental rules for public comment at the time of access to WTO. According to paragraph 2(C)2 of Part I of its Protocol of Accession, China will provide a reasonable period between the time of promulgation and the time of implementation of all of such laws, regulations and other measures as may be related to or affect goods trade, service trade, TRIPS or foreign exchange control so that any individual, enterprise and other WTO member may comment. Under this provision, there must be a reasonable period between the time of promulgation and the time of implementation of the final versions (other than drafts) of relevant laws, regulations and other measures so that no laws, regulations and other measures may be implemented immediately after promulgated. After China's access to WTO, China has always been strictly complying with the commitment. In addition to this commitment, China also adheres to the principle of scientific and democratic legislation, constantly enhances transparency of legislation and expands the extent of public participation to further improve the quality of legislation. Since 2008, except those legally required to be kept confidential, all drafts of administrative regulations have been published on www.chinalaw.gov.cn for public comments and the drafts of ministerial rules are also published on the websites of various ministries or www.chinalaw.gov.cn for public comments. The results reached between China and US in relation to transparency under the framework of Sino-US strategic economic dialogue do not fall in the scope of WTO trade policy review of China and US has never diligently performed any commitment made by it to China in relation to transparency. Such issues should be settled through the bilateral mechanism of Sino-US strategic economic dialogue.

In U.S. question 3, we had addressed China's October 2011 subsidies notification pursuant to Article 25.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Among other things, we noted that shortly before that notification we had submitted a counter notification pursuant to Article 25.10 of the SCM Agreement, and that China's subsequent subsidies notification had only addressed 10 of the 200 subsidies identified in the U.S. counter notification. In its response to U.S.

question 3, China asserted that it had included many of the 200 subsidies in its subsequent subsidies notification, and China indicated that it had no plans to notify the remaining subsidies promptly, as called for by Article 25.10. Instead, China stated that it would include them when it notified its sub-central government subsidies. This response is very disappointing.

First, at the last meeting of the Committee on Subsidies and Countervailing Measures, China only identified 4 subsidies that overlapped between the U.S. counter notification and China's subsequent subsidies notification. Second, China has never notified any of its considerable sub-central government subsidies, and in response to another U.S. question China could provide no timetable for when it would make its first notification of sub-central government subsidies. The United States therefore urges China to notify all of the outstanding subsidies identified in the U.S. counter notification promptly, and the United States further asks that China identify a timetable for its notification of its sub-central government subsidies. In addition, we ask that, with regard to each measure identified in the U.S. counter notification that China claims it has already included in its subsidies notification, China provide the name of the subsidy program that has been notified, identify the corresponding measure in the U.S. counter notification, and provide an explanation of how the relevant measures from the two notifications function together.

Answer: China has to restate that US has a lot of misunderstandings on China's subsidy programs and failed to understand the interrelationship between our notified programs and the U.S. counter notification. In fact, substantial parts of the U.S. counter notification have already been covered by the notifications submitted by China to this Committee, including the 4 items that we took as examples at the last meeting of the Committee on Subsidies and Countervailing Measures.

China hopes that US could do further study on our subsidy notifications and welcomes opportunities to discuss with US on specific programs in a more constructive and effective manner.

As for the notification of local subsidies, it is still difficult to propose a timetable at this stage. However, China will accelerate its efforts to work towards incorporating local subsidies in its future notifications. In this regard, technical capacity building from US would be most welcome.

In U.S. question 4, we had asked about a different subject – technology transfer. We explained in our question that Chinese law treated foreign companies and imported technology different from domestic companies and domestic technology. We then asked China to explain how it justifies this differential treatment in light of its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). However, China did not answer this question. Instead, China responded that this differential treatment is authorized by Chinese law. We would therefore ask again that China explain how it justifies this differential treatment in light of its obligations under the TRIPS Agreement.

Answer: The Agreement on Trade-Related Aspects of Intellectual Property Rights is mainly about the protection of intellectual property rights while the Contract Law of the People's Republic of China and the Regulations of the People's Republic of China on Administration of Import and Export of Technologies are mainly about the liabilities of guarantee on the defects in technology transfer rather than the protection of intellectual property rights.

I. ECONOMIC ENVIRONMENT

We also seek clarification regarding China's response to U.S. question 5, in which we had asked China to comment on a statement in the Secretariat's Report asserting that the privileged position of state-owned enterprises (SOEs), such as in their access to bank lending, had contributed to over investment and overcapacity. In its response, China stated that "[c]redit is the self-decisive behaviour of market entities and the Chinese government does not interfere." The United States is

confused by this response. According to the China 2030 report, jointly authored by the World Bank and the State Council's Development Research Center, SOEs pay much lower average interest rates for their debt than other borrowers such as private firms and cooperatives, and SOEs as a class have enjoyed access to cheaper capital, land and natural resources. At the same time, the China 2030 report also states that SOEs are consistently less profitable and less innovative than non-state-owned firms. We would ask that China explain how "the self-decisive behaviour of market entities" results in much cheaper access to credit for chronically weaker SOEs.

Answer: Currently, China's banking industry treats foreign-invested enterprises, state-owned enterprises, private enterprises and enterprises of other types equally and the regulatory authority imposes no additional restrictions. In terms of interest rate of loans, the regulatory authority has only stipulated the threshold of the interest rate of RMB loans of financial institutions. Financial institutions may determine at their own discretion the level of the interest rate of loans granted to customers based on various factors including cost and risks and commercial principles, so long as the rate is above the threshold. Profitability is a key guarantee for enterprises to repay loans. Generally speaking, the stronger profitability the enterprise has, the lower risks the loan of the bank is subject to and the lower the interest rate of the loan should be. Stability in operation and credit status of the enterprise and other similar elements are also the important factors affecting the risk of loans. Good credit records will procure banks to lower the interest rate of their loans and the creativity capability of enterprises is also considered in case of overall judgment on the financial status of the enterprises. Generally speaking, enterprises which have good credit status, stable operation and reasonable and proper usage of funds will get better financial support regardless of foreign-invested enterprises, state-owned enterprises or private enterprises.

II. TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES

In U.S. questions 12 and 13, we had asked about appeals for administrative review of decision by the General Administration of Customs (Customs) and administrative lawsuits disagreeing with Customs decisions. In its responses, China described the resolution of a significant number of these appeals and lawsuits as "withdrawn". Can China explain what it means by a case being "withdrawn"? Also, as the United States reads China's responses, it appears that none of the 289 applications for administrative review filed in 2010 resulted in the original Customs decision being overturned and similarly that none of the 30 administrative lawsuits filed in 2010 resulted in the original Customs decision being overturned. Is that correct?

Answer: With respect to administrative reconsideration, there is difference between the withdrawal by the applicant of the reconsideration application and the cancellation or change by the superior customs of the original administrative act upon reconsideration. The applicant has the right to change the mind, accept the original administrative decision made by the customs and cancel the reconsideration application during the period from the time when the applicant applies for administrative reconsideration to the time when the reconsideration authority makes the decision of reconsideration. In this case, the hearing of the reconsideration case will be terminated if the reconsideration authority approves the same. Where the superior customs cancels or changes the original administrative act upon reconsideration, the result of reconsideration overrules the original administrative decision. Among 289 reconsideration cases in 2010, 27 are the cases that applicants withdraw reconsideration applications and 70 are the cases that the superior customs cancels or changes the original administrative act upon reconsideration.

In case of administrative litigations, "withdrawal of an action" means that the plaintiff takes the initiative to withdraw the litigation. In 2010, the customs has not failed any cases, that is, there are no such cases that results of litigations overruled the original decisions made by the customs.

In U.S. question 14, we had asked about China's pre-shipment inspection requirements. Could China explain how long it will take for it to review these requirements and determined whether they need to be notified in accordance with Article 5 of the Agreement on Pre-Shipment Inspection? Also, could China identify the specific products that are subject to these requirements?

Answer: The pre-shipment inspection in China is now implemented only upon imported solid wastes that could be used as raw materials and imported second-hand electromechanical products. The inspecting procedure of imported solid wastes that could be used as raw materials is implemented before shipping in accordance with the Administrative Measures for the Inspection, Quarantine and Supervision of Imported Solid Wastes as Raw Materials (General Administration of Quality Supervision, Inspection and Quarantine Decree No. 119 in 2009). The inspecting procedure of imported second-hand electromechanical products is implemented before shipping in accordance with the Administrative Measures for the Inspection and Supervision of Imported second-hand Electromechanical Products (General Administration of Quality Supervision, Inspection and Quarantine Decree No. 37 in 2002) and the Procedure Stipulation for the Inspection and Supervision of Imported second-hand Electromechanical Products (General Administration of Quality Supervision, Inspection and Quarantine Decree No. 53 in 2003). The above mentioned provisions have so far not been revised yet and the specific date for revision is to be decided on the basis of the actual situation of the General Administration, it will be reported to WTO in case of any revision.

III. TRADE POLICIES AND PRACTICES BY MEASURE

In U.S. question 17, we had asked about products that required both an import permit and an import license. In response, China explained that mechanical and electrical products only need an import license. Could China identify the products that need both an import permit and an import license? Also, could China explain why these products need both an import permit and an import license?

Answer: The products requiring both an import permit and an import license mainly refer to ozone depleting substances. According to the relevant amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer and for the purpose of better performing the Agreement, China established the license system on the administration of importing and exporting ozone depleting substances which is administered by the "National Office of Import and Export Administration of Ozone-Depleting Substances" jointly set up by MOE, MOFCOM and the General Administration of Customs. The Administrative Measures on Import and Export of Ozone-Depleting Substances issued by Chinese government stipulates the application procedures and requirements for importing ozone depleting substances. The National Office of Import and Export Administration of Ozone-Depleting Substances will examine the written application submitted by the applicant and will issue the import permit document in case of compliance with applicable rules. Importers may apply for import license with MOFCOM after obtaining the permit document.

In U.S. question 22, we had asked China to explain when it would issue regulations governing anti-dumping expiry reviews. China responded that it "strictly follow[s] the principle of appropriate procedures and transparency to ensure the interests and rights of stakeholders" and "specific procedures exist" in its practice. Can China explain whether these procedures are set forth in a written document? If so, can China publish that document so that interested parties are aware of the applicable procedures?

Answer: China conducts sunset review that goes through complete procedures and is fair and reasonable in accordance with the Regulations of the People's Republic of China on Anti-dumping and with reference to the practice of the Members of WTO. Currently, China has not determined the exact time to promulgate the rules on sunset review.

In U.S. question 26, we had asked a question with two parts, and China responded to the first part of the question but not the second part, which dealt with China's enforcement of voluntary standards. Can China explain the legal basis on which it enforces voluntary standards against imported products?

Answer: According to the Interpretation of the Provisions of the Standardization Law of the People's Republic of China (State Administration of Technology Supervision Decree No. 12), once referenced to in a directive document, the recommended standard shall have relevant administrative binding effect. According to this Interpretation, implementation of the recommended standard on the relevant goods is based on the laws, regulations, rules and directive documents concerning their administration.

In U.S. question 39, the United States asked several questions about China's VAT rebate policies, which the Secretariat's Report equated with a "levy on exports". In its response, China seemed to suggest that countries other than China used similar VAT rebate policies, where VAT rebate rates for exports vary between and among exported products. The United States is not aware of any other country that uses these policies. Can China tell us who they are referring to? Also, in its response, China explained that it used variable VAT rebate rates not as a means to encourage certain exports and discourage certain other exports, but rather as a fiscal tool to raise additional revenue for the government. China added that it needs this additional revenue because it is a developing country. If that is correct, can China explain why its VAT rebate rates vary from product to product and are not uniform across all products?

Answer: Export tax rebate is a common practice in the world. New Zealand, Korea, France, Germany and other relevant countries adopt rebate policies for exported products. China adopts the measure that the rebate rate is well lower than the levying rate mainly because that China has no adequate financial capability; and the rebate rate is determined as per the legal procedures and does not constitute the "additional revenue for the government". China adopts lower rebate rate for products consuming much energy, generating much pollution or attributable to resources for the purpose of controlling energy consumption and protecting environment.

In U.S. question 43, we had referenced the panel and Appellate body decisions in the China – Raw Materials dispute, which addressed export restrictions on nine industrial raw materials. Among other things, we had asked whether China planned to eliminate all of its export duties that are not listed in Annex 6 to its Protocol of Accession, not just the export duties on the nine industrial raw materials involved in this dispute, given the sweeping nature of the findings on export duties. In response, China stated: "China will take measures conforms [sic] to WTO's discipline in regard of export administration on products beyond the 9 products." Can China clarify what it means by this statement? Is China stating that it will eliminate all of its export duties that are not listed in Annex 6 to its Protocol of Accession, not just the export duties on the nine industrial raw materials involved in the China – Raw Materials dispute?

Answer: According to the practices WTO has in dispute settlement, the rulings made by the Panel and Appellate Body only applies to 9 products including coke. China will take measures conforms to WTO's discipline in regard of export administration on products beyond the 9 products.

In U.S. question 45, we had asked about the rebate of consumption taxes upon export. Specifically, we had asked China to identify the products for which the consumption tax is rebated fully upon export. We had also asked China to identify the products for which the consumption tax is rebated partially or not at all, along with the applicable rebate rate. We have reviewed China's response, but do not understand it. We would appreciate it if China could clarify its response.

Answer: For the exported products subject to the rebates of consumption tax, the consumption tax is rebated at the rate of the consumption tax collected in China in accordance with the consumption tax schedule of tax item and tax rate.

In U.S. question 51, we had asked China to identify all measures relating to China's "export bases" for autos and auto parts. We also had asked China to describe the support provided to manufacturers of autos and auto parts in connection with these export bases over the past 3 years, and to explain this support in light of China's obligations under Article 3 of the SCM Agreement. In response, China only cited to its 2009 auto plan. Can China identify all measures relating to these export bases, including all measures providing support to manufacturers of autos and auto parts in connection with these export bases? Can China also describe the support provided to these manufacturers and explain this support in light of China's obligations under Article 3 of the SCM Agreement?

Answer: The "Plan on Adjusting and Revitalizing the Auto Industry" (GuoFa [2009] No. 5) is for the period from 2009-2011, which has expired now. The policy for national automobile and auto parts export bases is of public policy rather than specifically for certain manufactures. The identification of such bases aims to facilitate concentration of auto sector, promote international cooperation and exchanges, strengthen the protection of intellectual property, accelerate the transformation of the development pattern of foreign trade, develop demonstration bases for orderly export and protection of intellectual property, as well as an important carrier for transfer of the world auto industry and international exchanges and cooperation.

IV. TRADE POLICIES BY SECTOR

In U.S. question 73, we had asked China to explain how it ensures that certain agricultural support measures referenced in the Secretariat's Report are consistent with its domestic support obligations under the Agreement on Agriculture. In response, China only stated that it has fulfilled its WTO commitments. The United States remains concerned by the objective that China has articulated for these measures, namely, to "increase grain production", when that objective is viewed in relation to the fundamental requirement that support exempted from the "amber box" shall "have no, or minimal, effects on production" as set forth in paragraph 1 of Annex 2 of the Agreement on Agriculture. Can China explain how it ensures that it is fulfilling its WTO commitments in this area?

Answer: China clearly knows our obligations in WTO and currently our relevant support measures are consistent with WTO rules and China's accession commitments.

In U.S. question 76, we had asked about direct payments to China's agricultural producers. In response, China stated that "the payments are decided according to areas. Specifically there are measures in accordance with tax area, the actual area that grows grain, the second contracted area and so on." Can China how each type of area described above is determined? Can China also explain how using "the actual area that grows grains" is consistent with paragraphs 5 and 6 of Annex 2 of the Agreement on Agriculture? In addition, we would ask that China provide data for the past 3 years showing payments for each type of area described above and also showing total payments on a province-by-province basis.

Answer: After approved by the State Council, the payment method of farmer's direct subsidies and comprehensive agricultural subsidies are to be determined by the provinces at their own discretion. Currently, the providers pay such subsidies mainly based on the contracted areas of second round.

In U.S. question 80, we had asked China to identify any commodities other than rice and wheat for which China maintained programs supporting domestic prices. In response, China identified sugar cane. Can China explain why it has only included rice and wheat but not sugar cane in its notification of domestic price supports?

Answer: China's grain market and price have been opened up completely. For the purpose of preventing price from extremely falling down and protecting farmers' interests, the central government only adopts the minimum purchase price policy for rice and wheat in the main production areas and adopts no similar policy for sugar cane. Currently, for the purpose of promoting the continuous and healthy development of the sugar industry and protecting sugar cane farmers' interests, policies of connecting the sugar cane purchase price and the sugar market price have been stipulated with reference to the actual local situations in China's main sugar cane production areas. We have not included sugar cane in our notification of domestic price supports mainly because the above-mentioned sugar price policies are stipulated by some local governments rather than the central government and the sugar cane price has been connected with the sugar price which has been completely opened up. The connection between sugar cane price and sugar price means that sugar cane price has actually already realized the goals of market orientation.

In U.S. question 84, we had asked China to provide information about subsidy programs benefiting the fisheries sector, which exceeded more than US\$4 billion in 2003 according to one report. In its response, China stated that it would only provide information about these subsidies after WTO Members agreed to disciplines on fisheries subsidies. The United States notes that existing SCM Agreement rules already obligate Members to notify all subsidies, including fisheries subsidies, and that this obligation is not in any way contingent on Members first agreeing to fisheries disciplines. The United States would therefore ask again that China provide the information on its fisheries subsidies requested by U.S. question 84.

Answer: Although subsidy notification is stipulated in the Agreement on Subsidies and Countervailing Measures, the provisions are related to the principles and as such China begins the negotiations related to the disciplines of fisheries subsidies as per the special nature of the marine fishing industry to detail the standards and strengthen the enforceability. However, no agreement has been reached. Therefore, it is difficult from the technical aspects for the members to provide the detailed data without the uniform standards on fisheries subsidies and the data provided by the members are not comparable and may raise confusion and impose adverse impact on future negotiations. China is willing to discuss with the US and other members in order to jointly promote the works related to this aspect.

In U.S. question 86, we had asked about the funding programmes and funds established since 2011 for China's civil aircraft industry. China responded that no funding programmes or funds "had been specially set up for commercial civil aircrafts." Although China did not limit its response to the period since 2011, the United States assumes that China is referring to the period since 2011, given that the United States, in submissions before the Subsidies Committee, has identified the following financial support for China's civil aircraft industry: "In 2008, the State approved the creation of Commercial Aircraft Corporation of China Ltd. (COMAC), a state-owned enterprise responsible for developing China's first large commercial aircraft. In 2009, COMCAC received US\$2 billion in government funding for the development of the ARJ21-700 regional jet. Further, the Industrial and Commercial Bank of China (ICBC) has stated that part of its mandate is to help indigenous passenger aircraft programs like the ARJ21, in particular by providing helping airlines in other countries to lease the aircraft. Moreover, also in 2009, the state-owned China Aviation Industry Corporation (AVIC) secured a pledge of up to RMB 176 billion (US\$25.7 billion) in domestic bank loans, including loans from state-owned commercial banks, which will be used to finance the development of helicopters, engines, cargo planes and the building of passenger aircraft." Is the United States' understanding correct? Also, can China explain whether funding programmes or funds have been established since 2011 that benefit China's civil aircraft industry, even if those funding programmes or funds do not specially or solely benefit China's civil aircraft industry?

Answer: China has no funding programme for China's civil aircraft industry. Commercial Aircraft Corporation of China Ltd. ("COMAC") solely undertakes its own profits and loss completely as per the market mechanism in the course of researching, producing and selling. As mentioned by the US, the Industrial and Commercial Bank of China (ICBC) has stated that part of its mandate is to help domestic passenger aircraft programs like the ARJ21 and the state-owned China Aviation Industry Corporation secured a pledge of up to RMB 176 billion (US\$25.7 billion) in domestic bank loans in 2009. Such issues are mainly the market-oriented actions taken by commercial banks during their self-administered operation. According to the Law of the People's Republic of China on Commercial Banks, commercial banks shall make their own decisions regarding their business operations, take responsibility for their own risks, assume sole responsibility for their profits and losses and exercise self-restriction. Commercial banks are permitted to provide funding supports to enterprises based on the principles of market orientation, making their own decisions on credits and taking responsibility for their own risks in case that they meet the conditions stipulated in applicable rules and regulations on financial administration.

In U.S. question 93, we had asked China to explain how China's state-owned commercial banks (SOCBs) can base their lending decisions entirely on commercial considerations when they must take into consideration the needs of national economic and social development and the guidance provided by the Chinese Government's industrial policies. In its response, China nevertheless insisted that SOCBs make their lending decisions entirely on commercial considerations. China noted that Article 34 of the Commercial Bank Law of the People's Republic of China provides that SOCBs should take into consideration the needs of national economic and social development and the guidance provided by the Chinese Government's industrial policies, but it is only a general guideline and not a statutorily binding obligation. Can China explain why Article 34 uses the mandatory term "shall" instead of permissive terms like "may" or "should"?

Answer: China is prepared to discuss with US experts on the linguistic implications of "shall", "may" and "should" in the process of translation.

In U.S. question 100, we had asked about investment by private enterprises in China's basic telecommunications sector. In its response, China stated that 90 per cent or 360 of the 400 licensed enterprises in China's basic telecommunications sector were private Chinese enterprises. It appears that China divides basic telecommunications services into various license categories. Can China identify each of these license categories? Can China also identify the license categories in which private Chinese enterprises have been licensed and the number of licensed private Chinese enterprises in each license category? Also, please explain whether private enterprises are prohibited from obtaining licenses in particular license categories.

Answer: According to the current telecommunication business classification catalogue, analog trunking communication, wireless paging, very small aperture terminal (VSAT) telecommunication, Class II data telecommunication (including fixed domestic data transmission and wireless data transmission), user premises network and network hosting belong to the basic telecommunication business that is managed with reference to the rules on value-added telecommunication business. No restrictions exist on private enterprises to apply for the above-mentioned business.

By the end of this May, 10 enterprises hold the licenses for analog trunking communication business, 35 enterprises hold the licenses for analog trunking communication business, 39 enterprises hold the licenses for very small aperture terminal (VSAT) telecommunication business, 5 enterprises hold the licenses for fixed domestic data transmission business, 3 enterprises hold the licenses for wireless data transmission business, 39 enterprises hold the licenses for user premises network business and 277 enterprises hold the licenses for network hosting business. Currently, private capital has entered the above-mentioned telecommunication business.

In U.S. question 104, we had asked when China will circulate draft computer reservation systems regulations for public comment. In its response, China explained that the Civil Aviation Administration of China (CAAC) had solicited the opinions of select parties on a draft measure and that the CAAC would next be promulgating the final measure. Based on this response, it appears that CAAC does not intend to publish the draft measure for public comment, despite China's response to U.S. question 2, in which China asserted that it published all draft trade-related regulations and departmental rules for public comment, except in "some urgent and extraordinary conditions." Is the United States' understanding correct?

Answer: According to the Provisions on the Procedures for Making the Administrative Rules of the General Administration of Civil Aviation of China, CAAC has solicited comments from various sectors for several times in the course of examining rules. In addition to soliciting comments in writing and holding rule examination meetings, CAAC published the Interim Regulation on Approval and Management of Designated Agencies in China by Foreign Aircraft Transport Enterprises Entering and Using Foreign Computer Reserve System (the "Interim Regulation") on its website in January 2011 and July 2011 for public comments. CAAC has amended the Interim Regulation after considering the comments from various sectors and passed this regulation.

In U.S. question 107, we had asked China to clarify whether it places any geographic limitations on foreign suppliers engaging in domestic express delivery services for packages. The United States welcomes China's clear statement that it does not impose geographic limitations.

Answer: According to China's accession commitment, China sets up no geographic limitations on the foreign service providers who provide express delivery services in China. According to China's Post Law and the Measures for the Administration of Express Delivery Business Permits, an enterprise applying for the approval on operating express delivery services must have the service capability corresponding to the geographic scope of operation under the application. The Operation License for Express Delivery Business issued by the post administration department explicitly stipulates such matters as "Operation Regions", which is applicable to both Chinese and foreign invested enterprises. Enterprises must carry out express delivery operation activities within the scope permitted under the Operation License for Express Delivery Business.

In U.S. question 109, we had asked why China requires an internet content provider license for an internet company engaging in retail sales. In its response, China referred us to the home page of the Ministry of Industry and Information Technology's website. We cannot discern from that website why China requires an internet content provider license for an internet company engaging in retail sales. Can China explain how retail sales qualify as the provision of internet content?

Answer: According to Article 4 of the Measures on the Administration of Internet Information Services (State Council Decree No. 292), China adopts the licensing system on commercial Internet information services and adopts the filing system on non-commercial Internet information services.

Where an enterprise establishes its own online trading platform and provides information free of charge and sells its own products to clients directly on Internet through this platform, the enterprise is not required to apply for the license of value-added telecommunication service but to file this business as per applicable laws and regulations. Where an enterprise establishes an online trading platform and provides such commercial services as information exchange and information disposal for the parties to the transaction through this platform and charges corresponding service fees for the same, the enterprise must apply for the license of online data processing and transaction processing.

FOLLOW-UP QUESTIONS TO QUESTIONS POSED BY OTHER MEMBERS

Based on China's responses to the European Union's questions about export credit financing (EU questions 78-80), it appears that China EXIM Bank and SINOSURE are not the only Chinese entities that provide export credit financing. Can China confirm whether the China Development Bank also provides export credit financing? Also, does China Development Bank follow the OECD Arrangement on Officially Supported Export Credits in the same way as China EXIM Bank and SINOSURE?

Answer: China Development Bank is a commercial bank which operates based on the principles of commercialization and market orientation and may participate in export credit financing activities. China is not a member state of OECD and as such the participation by China Development Bank in export credit financing activities does not involve the issue as to whether China has complied with the OECD Arrangement on Officially Supported Export Credits.

EU questions 78-80 also addressed the fees charged by China's export credit financing entities. Can China explain whether China EXIM Bank, SINOSURE and China Development Bank charge an exposure fee/risk premia and, if so, how the exposure fee/risk premia are charged (e.g., separate fee, part of interest spread, etc.)? Can China also explain what costs are targeted by the exposure fee/risk premia in order to arrive at an appropriate fee to compensate for the risks involved?

Answer: With respect to the export credit business covered by export credit insurance, SINOSURE charges insurance premium separately from the applicant, the insured or the third party designated by them. SINOSURE sets up the price of the premium to be charged by it mainly based on the risk exposure the business may face and the amounts charged by it are to be used to cover risk cost, operation cost and other similar costs of the company.

China Development Bank charges risk premium and includes risk premium into the calculated price of the loan in the course of export credit business. Risk premium is to be used to cover probability of default by borrowers, specific debt- default loss, debt default exposure, time limit of debts and other risk factors.
