WORLD TRADE ORGANIZATION

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Council for Trade in Goods

REPORT OF THE COUNCIL FOR TRADE IN GOODS ON CHINA'S TRANSITIONAL REVIEW

1. The Council for Trade in Goods (CTG), at its meeting on 25 November 2004, carried out the Transitional Review of China pursuant to paragraph 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432).

2. Japan, the United States and the European Communities submitted questions and comments in writing to China on the CTG-specific information requirements contained in Annex 1A of the Protocol and on matters raised before subsidiary bodies. These questions and comments were circulated in documents G/C/W/498, G/C/W/499 and G/C/W/502 respectively. The Annex 1A information provided by China to the Council for the review was circulated in document G/C/W/505.

3. The review proceeded in two stages. First, the CTG took note of the reviews that had been carried out in the CTG subsidiary bodies. Second, the Council reviewed the information provided by China concerning specific parts of Annex 1A of the Protocol and the questions raised by certain Members. The statements made at the meeting of 25 November 2004 are reflected in the minutes of the meeting in document G/C/M/78. The relevant paragraphs which reflect the discussion under agenda item III are annexed.

ANNEX

III. TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

3.1 In accordance with paragraph 18 of the Protocol of the Accession of the People's Republic of China ("the Protocol") in document WT/L/432, the Chairman said that the CTG would report to the General Council on the Transitional Review Mechanism (TRM). As last year, he suggested that the Council proceed in two stages. First, the CTG subsidiary bodies were required to transmit their reports to the Council for Trade in Goods. This they had done and, as a first step in today's review process, he wanted to give Members an opportunity to make general comments on those reports, and would then propose that the Council take note of the Reviews that had been carried out in the CTG subsidiary bodies. Then the Council would move on to its own report. Turning to the reports of the subsidiary bodies, the Chairman reminded Members that the following CTG subsidiary bodies had carried out the Review: Committee on Market Access (document G/MA/155); Committee on Agriculture (G/AG/19); Committee on Customs Valuation (G/VAL/57 and Corr.1); Committee on Sanitary and Phytosanitary Measures (G/SPS/34); Committee on Technical Barriers to Trade (G/TBT/W/249); Committee on Import Licensing (G/LIC/13); Committee on Rules of Origin (G/RO/58); Committee on Anti-Dumping (G/ADP/13); Committee on Subsidies and Countervailing Measures (G/SCM/115); Committee on Safeguards (G/SG/73); and Committee on Trade-Related Investment Measures (G/L/708 and Corr.1).

3.2 The representatives of the United States and the European Communities noted that many of the questions that they had submitted for the transitional review sought clarifications about matters that had not been fully answered in some of the CTG subsidiary bodies.

3.3 The representative of China raised a question concerning the process and procedure of the transitional review since some Members had stated that they had already raised the same questions in subsidiary bodies; his question was whether the CTG had the mandate to review those issues which should be covered by its subsidiary bodies.

3.4 He also questioned, with regard to document G/C/W/499, submitted by the US, which said "many of these questions relate to matters that were not fully addressed by China during the transitional reviews held before the Committees that report to the CTG", whether it was possible for the US delegation to provide the delegation of China with a definition of "fully addressing matters", so as to enable his delegation to make appropriate preparations in an attempt to fully address these matters.

3.5 Referring to document G/C/W/498, submitted by Japan, he stated that from the title of this document it was not clear that this was a question submitted to China or that Japan expected some response from China. The title was "Communication from Japan" and "Japan's Comments to the CTG". Only after reading the content was he able to see that the document contained a lot of requests, demands and expectations. In light of these observations China urged Japan to do as follows: (i) to make the title of the document more appropriate; (ii) to study carefully paragraph 18 of China's Protocol of Accession, which governed the current exercise; and (iii) to try to figure out what was the exact assignment, from wherever it came, in order to fully understand the rules and procedures governing this exercise.

3.6 He then referred to document G/C/W/502, submitted by the European Communities. He pointed out that the quality of the EC paper was pretty low. For example, the paper stated in paragraph 2, "It is of utmost importance to ensure a proper and meaningful functioning of this mechanism. The objective of the EC was to have, in each subsidiary body of the CTG, a meaningful

discussion and detailed replies from the Chinese side to this limited number of questions." He questioned what the definition of "a meaningful discussion" was, in light of paragraph 18 of the Protocol; whether China had obligations to reply in detail to questions from the EC under paragraph 18. Referring to paragraph 3 of G/C/W/502, which said that, "To ensure an efficient functioning of the mechanism, the EC has transmitted the questions well in advance of each meeting (typically six weeks)", his delegation drew attention to the fact that the EC's questions in the Committees on Market Access, Import Licensing and SPS had been submitted less than six weeks prior to the meetings, and that his delegation had received these questions for the meeting of the CTG only one day prior to the meeting; thus the document was incorrect.

3.7 Referring to paragraph 4 of document G/C/W/502, which stated, "The EC regrets to note that the assessment of this year's TRM exercise in the subsidiary bodies under the CTG is rather disappointing. The EC impression is that China provided replies of a very general nature that lacked specificity ...", he also questioned what the legal basis was for them to make this kind of remark; paragraph 18 of the Protocol stated how specific China's replies should be. Referring to paragraph 4 again, which said, "The EC regrets that China provided written replies only in very few instances", he stated that in accordance with paragraph 18 of the Protocol, China had no obligation to provide any written replies at all.

3.8 Referring to paragraph 5 of G/C/W/502, which said that "The issues ... for which the answers provided by the Chinese side were not sufficient can be listed as follows:", he requested the EC to provide China with a definition of "sufficiency" so as to enable his delegation to prepare sufficient responses.

3.9 Referring to China's question on the CTG's mandate, the Chairman stated that it was his understanding that the CTG was following established practice, and that he was giving Members the opportunity to make general comments in order to review the reports of the Council's subsidiary bodies.

3.10 The representative of the United States stated that the jurisdiction of the CTG was the jurisdiction of the subsidiary bodies, and the reports of these bodies were before the CTG. It was, therefore, entirely proper for Members to address the matters that had been raised in those subsidiary bodies. Last year they had proceeded in the same fashion, and China at that time had responded to the questions from other delegations. As concerned the definition of "fully addressed", he stated that in several areas, for example on export restrictions, the US had had a series of questions, some of which had been addressed but some not at all. The questions being asked in the CTG were those which had not previously been addressed. China had not responded to any of the questions in the SPS Committee. The term "fully addressed", therefore, was a polite way of saying that the questions listed in the US submission had not been answered, and the US were now seeking answers in this forum.

3.11 The representative of the European Communities stated that the CTG was simply following already established normal rules of procedure. They had only raised in their submission the issues which had not been answered in the subsidiary bodies. The questions had either not been fully answered or had not been answered sufficiently. As invited by the Chinese delegation, he had quoted a phrase from paragraph 18 of the Protocol, which said that, "China shall provide relevant information", and he believed that this year China, as concerned some issues, had not provided relevant information. However he acknowledged that on some other issues, China had provided relevant information, both in this forum and in the context of bilateral fora. On the issue of submitting their questions, he acknowledged that on some occasions they had not been submitted six weeks in advance. However "typically" did not mean that they had done this each time. That was their target and unfortunately in some cases they had been late, but he hoped that this would not cause any major problems for China. His delegation was approaching this meeting with an open mind and was looking forward to China providing relevant information on their questions.

3.12 The representative of Japan pointed out that their submissions had been made well in advance, so that China could prepare their responses with enough specificity and without any misunderstanding as to the substance of the issues. As for the points raised in paragraph 18 of the Protocol, and on the mandate of the CTG, he shared the views expressed by the US and EC. The competence of the CTG covered the competences that were given to the subsidiary bodies. If any points were not fully addressed in those subsidiary bodies, the CTG itself had the competence to deal with those issues. As concerned the content of Japan's submission, he noted with appreciation that the Japanese representatives in Beijing had received some information from the Chinese Government concerning some specific questions they had posed on coke and coal. The total amount of export licences to be issued for coke and coal was 14 million tonnes. However they still wanted to ask China, as stated in heading 1(d) of document G/C/W/498, to "specify when and how China will issue export licences for 2005 and what will be the total amount of coke authorized by the export licences". The second part of the question had already been responded to by China, via their representatives in Beijing, but they had not been informed how, and they also questioned the timing of the issuance of export licences. He understood that there had to be some sort of standard practice that would apply to export licences. He would appreciate it if China could provide them with some documentation or information on links to websites of the Chinese Government.

3.13 The representative of China stated that the previous three speakers seemed to believe that , as far as the TRM was concerned, the CTG had a mandate to review those questions that had already been taken up by the subsidiary bodies, but none of them was able to provide any legal provision to support this belief. Therefore he was not convinced that their requests could be agreed to or accepted by China.

3.14 With regard to the US' explanation of what "fully addressed" meant, he asked if the US could provide this definition in writing, and believed that such a written submission could help China to prepare their responses in a manner which would fully address the US' concerns. Referring to the remarks made by the US delegates that China had not made a single response in the SPS Committee this year, he urged the US delegates to read the report of that Committee to see whether or not China had addressed some questions, including a question on AQSIQ 73.

3.15 Referring to the statements made by the EC delegate that in accordance with paragraph 18 of the Protocol China was required to provide relevant information, he stated that China had provided relevant information, contained in document G/C/W/505, and that he would be glad to discuss this matter with the EC to see whether the EC's request for full and sufficient answers fell under the definition of "relevant information" mentioned in paragraph 18.

3.16 Referring to the statement made by Japan on the mandate of the CTG as contained in paragraph 18.1 of the Protocol, he drew attention to the last sentence of that paragraph which stated, "Each subsidiary body shall report the results of such review promptly to the relevant Council established by paragraph 5 of Article IV of the WTO Agreement, if applicable, which shall in turn report promptly to the General Council". His understanding of the mandate of this body was to receive reports from those subsidiary bodies which carried out TRMs, which should be in turn reported to the General Council. Nowhere in paragraph 18 did it say that the CTG had a mandate to review those questions that had already been covered by appropriate subsidiary bodies.

3.17 The Chairman stated that as concerned the mandate of the CTG, he would suggest consulting with the Secretariat's Legal Affairs Division, but it was his understanding that since this was the relevant Council, the CTG had the mandate to review the reports of its subsidiary bodies. The CTG would not reopen the reports, but he invited delegations to make general comments on the collective reports of the subsidiary bodies. He then suggested moving to the second stage, China's specific review exercise, where delegations would have another opportunity to take up some of the issues

discussed in the first stage. He also suggested that the CTG take note of the reports of its subsidiary bodies and the statements made.

3.18 It was so agreed.

3.19 The Chairman said that China was required to provide information to the CTG in accordance with paragraph 18.1 of the Protocol of Accession. The relevant information requirements were listed in Annex 1A. China had submitted information as required under Annex 1A of the Protocol of Accession, contained in document G/C/W/505. He also drew attention to the documents by Japan, contained in document G/C/W/498, by the United States, contained in document G/C/W/499, and by the European Communities, contained in document G/C/W/502.

3.20 The representative of China stated that over the past three months the 11 subsidiary bodies of the CTG had concluded this year's TRM on China. Some Members had raised a great many written questions in these reviews and he thanked these Members for their interests in China's policies, measures and practices in its trade regime. Although China had its own opinion of the Transitional Review mechanism they had still faithfully implemented their commitments upon accession and engaged considerable efforts for the review.

3.21 Firstly, prior to the session of the relevant body, China had submitted the information required by Annex 1A to the Accession Protocol. Secondly, with regard to the written questions raised by Members, after consulting the competent authorities they had provided accurate and serious responses. As for the questions raised before this Council, many of them had already been responded to by China in previous reviews. However in the spirit of cooperation China would still explain and clarify these repetitive questions. Thirdly, in order to facilitate the understanding of China's implementation of its commitment on trading rights, China had provided for this meeting the full text of the English version of the Rules of Registration of Foreign Trade Operators, which was enforced on 1 July 2004. Lastly, China had drafted a notification of Quantitative Restrictions and would submit it to the Committee on Import licensing shortly. All these efforts demonstrated China's sincerity and resolution in implementing its commitments upon accession. He believed that the TRM required China's cooperation and also the understanding and good will of other Members.

3.22 In addition, she made some remarks in terms of the notification of China's subsidy policies. As they had emphasized, the Chinese Government attached great importance to the implementation of the transparency obligation of the WTO Agreement on Subsidies and Countervailing Measures. They had also taken note of concerns of Members on various occasions. In recent years the Ministry of Commerce had endeavoured to coordinate all the relevant authorities, to collect information and to study the notification requirements including translating the WTO Notification Handbook. This project alone had already cost a large amount of manpower and financial resources. With all this effort China, at the present stage, had finished some major technical work and planned to submit the notification of China's subsidy policies to the SCM Committee in the next year. Next, she responded to specific questions and comments posed to China prior to this review, as follows:

(i) Export restrictions on coke

3.23 Coke was an exhaustible resource, while the coke industry was highly pollutive and energy-consuming. Therefore in order to protect the environment and achieve sustainable development, China had taken a series of measures to reduce the output of coke. Meanwhile pursuant to GATT Article XX(g), as well as the relevant domestic laws and regulations, coke export was under a global quota administration in China. However, it might take some time to see the results of their efforts in terms of restricting coke production of domestic industry. In the year 2004 the demand for coke in international markets had risen tremendously, which had drawn great attention from the Chinese Government. China, on the one hand, had made efforts to further improve administration on

domestic production and trade and, on the other hand, had tried its best to maintain a quantity of coke exports. On 27 May 2004, nine Ministries had jointly issued certain guidelines on administration and control over the coke industry, which further cleared up the industry by closing coke companies which could not meet the requirements of environmental protection. On 23 July 2004, MOFCOM had issued urgent notice on an administrating order of coke export which required local government and relevant enterprises to strictly comply with the export administration restriction to actively improve their operations and to thoroughly eliminate sales of export licences for coke. The above measures had been proved effective. At present China's exportation of coke was stable and prices had declined rapidly. The export quota for coke in the year 2005 would be 14 million tonnes. The time of applying for export licences was determined by an enterprises when their quota was allocated. Besides, MOFCOM Announcement No. 74 of 2004 clearly stipulated conditions for coke-exporting companies and the procedures for quota application. The allocation of quota was based on standards in line with WTO rules, such as applied quantity and historical performance. Commercial interest was the priority of Chinese coke-exporting companies when choosing their importers. The prices of coke were determined by the market. China hoped that WTO Members would realise the sacrifices China had made as well as the pressure and the dilemma China was facing in terms of environmental protection and natural resource preservation. As a WTO Member China would continue to abide by WTO rules in the future and take measures on the basis of non-discrimination, publicity and transparency to maintain the stable supply of coke in the international markets.

(ii) Export restrictions on fluorite

3.24 In order to protect fluorite, an irreproducible resource, pursuant to GATT Article XX(g) as well as the relevant domestic laws and regulations, China imposed export quota administration on fluorite. The quota was allocated by tendering. As the resources of fluorite kept reducing, the output of fluorite was constantly declining rather than increasing. In addition, with the increasing costs of production and transportation, the price of fluorite both at home and abroad was rising, which in turn led to a decline in the volume of domestic consumption and exportation. This phenomenon was caused by the law of market economy, rather than the administration of the Chinese Government.

(iii) Reallocations of TRQs

3.25 In 2003 the number of reallocations of chemical fertilizer was as follows: NPK 350,000 tonnes; DAP 12,000 tonnes; Urea 20,000 tonnes. All applications for reallocation had been satisfied. In 2004, as the price of fertilizer in international markets was higher than in domestic markets, there was no profit for Chinese importers. Therefore, none of the three types of fertilizer fulfilled their TRQs. After the publication of MOFCOM's announcement No. 51 of 2003, which announced the reallocation of the returned TRQs, there was no new application, so there was no application denied either.

(iv) Transparency

3.26 With regard to the laws of China, Article 7 of the *Legislation Law of the People's Republic of China* stipulated that laws were made and amended by the National People's Congress, or its Standing Committee. According to Article 52 the final version of the law should be published on the Announcements of the National People's Congress or of its Standing Committee. With regard to the regulations according to Article 52 and 62 of the *Legislation Law*, the regulations should be made by the State Council and published on its Announcements. With regard to other measures, Articles 71 and 77 of the *Legislation Law* required that administrative measures should be made and published by the relevant authorities. In addition the *Foreign Trade and Economic Cooperation Gazette of MOFCOM* published all laws and regulations concerning foreign trade and investment.

(v) Border trade

3.27 The Member which had raised this question seemed to have serous misunderstanding: part 14 of Annex 5A to the Protocol of Accession was the subsidy notification on tariff and import duties reduction and exemption made to the SCM Committee, in which China had never committed to eliminate preferential import duties for border trade. As for paragraph 2A of the Protocol, it simply required China to apply the provisions of a WTO Agreement and the Protocol to the entire customs territory of China, including the border trade regions. Moreover, the WTO allowed Members to regard border trade as an exemption to MFN and to grant certain preferential arrangements. At present, except for the following three categories of goods: (a) goods that were prohibited or restricted to import by laws and the regulations; (b) cigarettes, wine, cosmetics and other goods that the Government required to pay full duties; and (c) goods that were subject to anti-dumping measures and safeguards, all other goods that residents of border areas imported for their own needs enjoyed a border trade preferential treatment, which was 50 per cent reduction of import duties and VAT. The purpose of this policy was to promote and facilitate the economic development of frontier provinces and the regions, especially the minority's group region and the western areas. China was further improving the administration of border trade. In fact, the current total amount of border trade accounted for less than 1 per cent of the total import and export amount.

(vi) Government procurement

3.28 Compared with those foreign governments that had decades of experience in government procurement, China had fewer than ten years of experience in dealing with this issue. Nevertheless, since accession China had been actively implementing its commitments in terms of government procurement. The present *Government Procurement Law of the People's Republic of China* contained neither discriminatory regulations nor restrictive measures on non-domestic suppliers or non-domestic goods, projects and services. All foreign suppliers enjoyed the same treatment and had the same opportunities for government procurement projects. The Chinese Government would take foreign suppliers' suggestions and comments into consideration during its process of drafting the specific implementing rules for the *Government Procurement Law*. China was establishing a systematic government procurement framework. At the same time the Chinese Government had invited experts and scholars to look into the issue. However the process was still very much unfinished, and China needed time to study on the occasion of GPA. Therefore China was not in a position to provide a timetable at this stage.

(vii) Tariff lines for SKD and CKD

3.29 China had made clear explanations on this issue in the TRM in the Committee on Market Access. As set forth in paragraph 93 of the Working Party Report, there were no changes in the tariff lines for CKD and SKD.

(viii) SPS measures

3.30 In regard to the risk analysis of SPS measures, in order to ensure that SPS measures were based on risk assessment and science, the Chinese Government had made and publicized *Management Practices of Risk Analysis on Imported Plant and Plant Products* and *Management Practices of Risk Analysis on Imported Animals*. In addition, in order to strengthen the coordination of the risk analysis China had established a cross-departmental *China Risk Analysis Commission* with the participation from various authorities concerned.

3.31 With regard to SPS measures and product quality requirements, the former was clearly distinguished from the latter in the Chinese administration. The already-mentioned notification on Foodstuff Health Standards did not contain any requirements on moisture and impurities. For some

products moisture or temperature would cause microbes to propagate. Therefore, China had made requirements in this respect with the purpose to ensure human health.

3.32 The *Live and Frozen Bird Product Standard* notified by China on 9 August 2002 (G/TBT/N/CHN/6) was still under review and not yet officially approved. During the review process China would take all the concerns of various interested parties into consideration.

3.33 With regard to the AQSIQ Ordinance 7 and Decree 25, the applicant's qualification of quarantine permit was set by two rules which stipulated that enterprises or agents as an independent legal person which could sign a trading contract with foreign parties were qualified to apply import quarantine permits from AQSIQ. The criteria for AQSIQ to accept applications to import quarantine permit was set forth by Article 7 of the AQSIQ Decree No. 25. Article 6 of Ordinance 7 required the owner of the goods to be imported or their agent to provide relevant information. The purpose of this requirement was to enable the competent authority to understand the status of imported goods and therefore to make an accurate assessment of the goods' potential risks.

3.34 In terms of administration of agricultural product processing companies, the functions of AQSIQ and Industrial and Commercial Management Bureau (ICMB) were fundamentally different. ICMB was mainly responsible for the administration and supervision on markets, i.e. to administer and supervise the operation in the region of circulation in accordance with the relevant laws; whereas AQSIQ was held responsible for the monitoring and inspecting of the status of the processing companies in terms of safety, sanitation and quality. As a result, the contents and the requirements of the two inspections of the facilities conducted by these two authorities were different.

3.35 As to the question of why importers had to reapply for a new import inspection permit after the original one expired, that was because China's quarantine requirements were mainly reflected by the quarantine permit to importers. Since frequent changes took place in animal and plant epidemics, import quarantine requirements might vary from different countries or regions, or in different time periods. If importers did not import the commodities covered by an import inspection permit shortly after it was granted or if major changes had taken place in the situation of epidemics of the exporting county of the commodities, the importers had to reapply for a new import inspection permit, by simply returning the original permit to AQSIQ and applying to change another new permit.

3.36 As to the reason why an importer had to specify certain information about a commodity before signing the contract and why it was necessary to reapply for a permit when certain changes happened, this was to facilitate import risk assessment, to identify import quarantine requirements and to schedule import quarantine work.

3.37 On the issue of the AQSIQ Decree No. 73, this only reiterated the requirements of Article 11 of the *Border Animal and Plant Quarantine Law* which was enforced on 1 April 1992 and had been notified to the WTO. This was not a new requirement. Obtaining an import quarantine permit before signing an import contract allowed importers to understand whether they were permitted to import relevant animal or plant products from a certain country or region, and if so, the specific quarantine requirements. On the other hand exporters were also able to identify China's import quarantine requirements from the trading contract. This would also allow the quarantine inspection authority of the exporting country to implement quarantine measures and to produce quarantine certification, in accordance to China's requirements set out by the contract. This would prevent products which did not meet with China's requirements from being exported to China and therefore prevent importers as well as exporters from suffering unnecessary economic losses.

3.38 In regard to the AQSIQ Announcement 111, the HS codes of animal and plant products that were exempted from entry quarantine review and approval would be published on a website. These exemptions were based on the fact that the epidemic risks did not exist for these products any more.

3.39 The representative of Japan requested China to submit the information on export restrictions for coke (including the information received bilaterally in Beijing) in writing to the CTG.

3.40 The representative of the United States thanked the Chinese delegate for her very detailed responses. He believed that the TRM was a very important exercise. When China acceded to the WTO, many of its laws and regulations and other measures in trade areas had not yet been issued, so there was a need to examine those regulations and measures, once they were issued. In addition, China had been given many transition periods to become WTO-compliant, and that was another purpose for this TRM exercise. The TRM could be very beneficial, both for China and other Members, and would help to clarify China's implementation efforts and also to convey Members' expectations to China. It could further clarify areas where there was agreement or disagreement on certain issues. In the US submission, some of the questions addressed matters that had not been fully addressed in subsidiary bodies, and there were also some new issues that they were raising. For the most part their questions were simply seeking clarifications regarding Chinese regulations and measures or Chinese trade practices, or simply seeking relevant data. He highlighted a few areas of concern that the US were trying to convey through their questions:

(i) Firstly, export restrictions on coke: In 2004 this became a significant problem, as the prices for coke, a key steel-related import, more than tripled from the 2003 level, and this was due largely to the shrinking export quota in 2004 as well as the selling of export licences. The US had discussed these issues with China as they arose, and had been pleased with China's short-term response. China had expanded the 2004 quota and cracked down on the selling of export licences, and as a result the price of coke had gone down substantially and more quantities were available. He cautioned, however, that these were just short-term fixes. The US appreciated the measures taken but would also like to see China eliminate export quotas, in particular the export quota system for coke and other raw materials.

(ii) Another concern dealt with SPS measures in China. This was an area where the US was looking for improvements, particularly with regard to the use and publication of risk assessments.

(iii) The last area of concern involved government procurement. The US was in support of China's initiating GPA negotiations, and there had been some recent developments that in the US' view were taking a step backwards. China was in the process of drafting regulations on their procurement of software, and MOFCOM, the Ministry of Commerce and the Ministry of Finance had recently held a public forum where they discussed the proposed guidelines in the area of software procurement. The US had appreciated the opportunity of being part of that forum, but its key concern at this point was the definition of domestic industry and domestic software that seemed to be going forward, which was one that was likely to exclude US software companies from procurements. The US viewed these potential regulations as not benefiting China. It would certainly decrease foreign investment in this sector and could severely limit the future growth of China's software industry. Getting this regulation right was also critical for another reason, i.e. the high software piracy rates in China. It was critical that the Chinese Government remain in the market as a purchaser of foreign software. Therefore this issue was attracting significant attention in Washington and among US industry, and in this light his delegation wanted to be able to work with the Chinese Government to work out a mutually agreeable solution before the regulations were finalized. Finally, although the delegate of China had given a very lengthy, detailed set of responses to the US questions, he felt he might have missed one of the responses. The third US question dealt with data regarding the annual consumption of two types of fertilizer in China, and he felt he did not have a clear understanding of China's response to this question.

3.41 The representative of the European Communities thanked the Chinese delegation for their statement, and requested them to circulate their statement. He also apologised if in his intervention he raised questions which have already, in part, been answered by China. His first point of concern was

export restrictions on raw materials. He had heard from China some element of answers to the questions that they had put in their paper. If his understanding was correct, those answers had mainly focused on coke. However the EC had also posed the same question regarding another raw material, rare earths. Therefore he would welcome additional information from China, both on coke and rare earth, and more precision on whether China intended to impose any due domestic restriction and whether China had any timetable for eliminating the export quota system on both products. The second was automobiles, and here he had not had much precision on the question that the EC had posed, so he would welcome an answer to the question. On subsidy notifications, he understood that the Chinese delegate had said that China would proceed in the next year with the notification of the new sets of subsidies that had been put in place since accession; if that was so, he looked forward to a full and exhaustive notification of this subsidy scheme. The EC also had concerns raised in point three of their paper, in the last paragraph, where they had raised a question on subsidies taking the format of VAT reimbursement, and they would welcome any additional information in that regard. Turning to SPS measures, the EC had posed the same question as the US, and they had added to that issues regarding the extent to which Chinese regulations were based on international standards. They would welcome some precision from China on their assessment of whether they conformed to international standards and, when they did not conform to those international standards, whether they completed sound risk assessment. On the last point, on government procurement, he had heard China say that they had been applying non-discriminatory basic rules for public procurement but that they had not yet finished this business. He asked China to be more explicit on that point; to what extent had they not yet finished? Also, when did they intend to start negotiations to join the GPA, as they had committed to in the Protocol?

3.42 The representative of China stated that with regard to the request for written answers, she would like on behalf of the Chinese delegation to repeat China's position that the information they had submitted in writing prior to this meeting, and the answers provided during the course of the meeting, were sufficient and meaningful. Providing written answers to Members' questions went beyond the provisions of paragraph 18 and would be overly burdensome for China.

3.43 Another representative of China, referring to Japan's question on the allocation of China's quotas for coke, stated that he had downloaded Announcement No. 68 of 2004 of the Ministry of Commerce from the Ministry's website, on quotas for coke, which was 14 million tonnes for the year 2005. In this specific announcement, it was also stated that with regard to the application for quotas, the timing period for application was from 1-15 November, and after that the authorities would allocate the quota before the end of the year. On the question from the US regarding data on the two fertilizers, he noted that this matter had been addressed in the Market Access Committee, and stated that China was working on this issue and would inform the US as soon as they had the statistics.

3.44 On the questions from the EC with regard to the VAT reimbursement issue, if this referred to the Chinese policy regarding the copper industry, he said that China had responded to this issue in great detail in the SCM Committee. He therefore suggested that the EC delegate look at the minutes of that meeting. On the issue of the GPA, the situation in China was that they were at a very initial stage of establishing, rather than reforming, their GPA system. The law was fairly new, and a lot of regulations still had to be drafted, so there was a lot of work to do with regard to further improving the legal system with regard to government procurement. In the meantime, as noticed by other Members, China was doing a lot of preparatory work with regard to their accession to the GPA Agreement. With regard to the rare earth issue, China's position was very clear. They believed that for exhaustible resources they had the right to have export administration. Since the situation was more or less like the situation of coke, they were also trying to find detailed statistics which would support the understanding of their side. On SPS-related issues, China had already stated very clearly detailed answers. He also informed the Council that, as he had promised in the TRMs of the Market Access and Import Licensing Committees, China was providing more notifications and other information to the relevant subsidiary bodies of the Council. In the Import Licensing Committee they had recently

submitted more than ten regulations which would be very helpful for Members in understanding China's efforts to comply with their obligations to the WTO; also in the Market Access Committee China was finalizing its quantitative restrictions notification, a full one, for the year 2004, which would be submitted shortly, in which some of the questions raised by the EC and other Members would be fully addressed, including information on quotas and other details.

3.45 The representative of the European Communities thanked China for their response and requested further information on the following questions:

(i) the precise point in time when the identification of complete vehicles and assemblies occurred after importation;
(ii) the meaning of the reference to so-called "regulated amounts" in respect of classification of assemblies and completed vehicles and their consistency with WTO rules; and
(iii) how China intended to implement the provision of its new automobile policy relating to custom classifications.

3.46 He then followed up on rare earths and clarified that the EC was not asking for statistics as such; their questions were aimed more at identifying the domestic limitations applied on domestic production in accordance to Article 20, which China had to implement in order to justify a restriction on imports.

3.47 The representative of China clarified that China did not have any new separate tariff headings or tariff lines for CKD and SKD of automobiles. The existing practice was that SKD and CKD were all treated as the vehicles themselves, under HS heading 87.03. This was exactly the situation described in paragraph 93 of the Working Party Report on China's Accession. On the specific question on the "regulated amounts", as he had responded in the meeting of the Market Access Committee, the automobile policy itself was simply a framework, and a lot of detailed implementing rules were still to be drafted. He therefore suggested that the delegate of the EC keep an eye on the development of the drafting of these regulations in China. The people concerned would be provided with the opportunity to comment on this issue. On the VAT policy, he drew Members' attention to page 5 of document G/SCM/115, in which there were three paragraphs with regard to the VAT rebate granted for imports of copper raw materials, which were fairly detailed. Regarding rare earth, China was working on that matter and would provide further information when available.

3.48 The Chairman thanked the delegation of China for the answers that it had provided and also those delegations that had raised questions and made comments. Regarding the form of the CTG report, he suggested that the Council proceed in the manner it did last year. This would mean that a brief factual report would be prepared with references to the relevant documents and attached to it the portion of the minutes of this meeting which related to the Transitional Review. The CTG report, together with the reports of the subsidiary bodies, would then be transmitted to the General Council.

3.49 It was so agreed.

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