

PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

Preamble

The World Trade Organization ("WTO"), pursuant to the approval of the Ministerial Conference of the WTO accorded under Article XII of the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement"), and the People's Republic of China ("China"),

Recalling that China was an original contracting party to the General Agreement on Tariffs and Trade 1947,

Taking note that China is a signatory to the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations,

Taking note of the Report of the Working Party on the Accession of China in document WT/ACC/CHN/49 ("Working Party Report"),

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

Agree as follows:

Part I - General Provisions

1. General

1. Upon accession, China accedes to the WTO Agreement pursuant to Article XII of that Agreement and thereby becomes a Member of the WTO.

2. The WTO Agreement to which China accedes shall be the WTO Agreement as rectified, amended or otherwise modified by such legal instruments as may have entered into force before the date of accession. This Protocol, which shall include the commitments referred to in paragraph 342 of the Working Party Report, shall be an integral part of the WTO Agreement.

3. Except as otherwise provided for in this Protocol, those obligations in the Multilateral Trade Agreements annexed to the WTO Agreement that are to be implemented over a period of time starting with entry into force of that Agreement shall be implemented by China as if it had accepted that Agreement on the date of its entry into force.

4. China may maintain a measure inconsistent with paragraph 1 of Article II of the General Agreement on Trade in Services ("GATS") provided that such a measure is recorded in the List of Article II Exemptions annexed to this Protocol and meets the conditions of the Annex to the GATS on Article II Exemptions.

2. Administration of the Trade Regime

(A) Uniform Administration

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

2. China shall apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures of the central government as well as local regulations, rules and other measures issued or applied at the sub-national level (collectively referred to as "laws, regulations and other measures") pertaining to or affecting trade in goods, services, trade-related aspects of intellectual property rights ("TRIPS") or the control of foreign exchange.

3. China's local regulations, rules and other measures of local governments at the sub-national level shall conform to the obligations undertaken in the WTO Agreement and this Protocol.

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

(B) Special Economic Areas

1. China shall notify to the WTO all the relevant laws, regulations and other measures relating to its special economic areas, listing these areas by name and indicating the geographic boundaries that define them. China shall notify the WTO promptly, but in any case within 60 days, of any additions or modifications to its special economic areas, including notification of the laws, regulations and other measures relating thereto.

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

3. Except as otherwise provided for in this Protocol, in providing preferential arrangements for enterprises within such special economic areas, WTO provisions on non-discrimination and national treatment shall be fully observed.

(C) Transparency

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

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

3. China shall establish or designate an enquiry point where, upon request of any individual, enterprise or WTO Member all information relating to the measures required to be published under paragraph 2(C)1 of this Protocol may be obtained. Replies to requests for information shall generally be provided within 30 days after receipt of a request. In exceptional cases, replies may be provided within 45 days after receipt of a request. Notice of the delay and the reasons therefor shall be

provided in writing to the interested party. Replies to WTO Members shall be complete and shall represent the authoritative view of the Chinese government. Accurate and reliable information shall be provided to individuals and enterprises.

(D) Judicial Review

1. China shall establish, or designate, and maintain tribunals, contact points and procedures for the prompt review of all administrative actions relating to the implementation of laws, regulations, judicial decisions and administrative rulings of general application referred to in Article X:1 of the GATT 1994, Article VI of the GATS and the relevant provisions of the TRIPS Agreement. Such tribunals shall be impartial and independent of the agency entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

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

3. Non-discrimination

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

- (a) the procurement of inputs and goods and services necessary for production and the conditions under which their goods are produced, marketed or sold, in the domestic market and for export; and
- (b) the prices and availability of goods and services supplied by national and sub-national authorities and public or state enterprises, in areas including transportation, energy, basic telecommunications, other utilities and factors of production.

4. Special Trade Arrangements

Upon accession, China shall eliminate or bring into conformity with the WTO Agreement all special trade arrangements, including barter trade arrangements, with third countries and separate customs territories, which are not in conformity with the WTO Agreement.

5. Right to Trade

1. Without prejudice to China's right to regulate trade in a manner consistent with the WTO Agreement, China shall progressively liberalize the availability and scope of the right to trade, so that, within three years after accession, all enterprises in China shall have the right to trade in all goods throughout the customs territory of China, except for those goods listed in Annex 2A which continue to be subject to state trading in accordance with this Protocol. Such right to trade shall be the right to import and export goods. All such goods shall be accorded national treatment under Article III of the GATT 1994, especially paragraph 4 thereof, in respect of their internal sale, offering for sale, purchase, transportation, distribution or use, including their direct access to end-users. For those goods listed in Annex 2B, China shall phase out limitation on the grant of trading rights pursuant to the schedule in that Annex. China shall complete all necessary legislative procedures to implement these provisions during the transition period.

2. Except as otherwise provided for in this Protocol, all foreign individuals and enterprises, including those not invested or registered in China, shall be accorded treatment no less favourable than that accorded to enterprises in China with respect to the right to trade.

6. State Trading

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

2. As part of China's notification under the GATT 1994 and the Understanding on the Interpretation of Article XVII of the GATT 1994, China shall also provide full information on the pricing mechanisms of its state trading enterprises for exported goods.

7. Non-Tariff Measures

1. China shall implement the schedule for phased elimination of the measures contained in Annex 3. During the periods specified in Annex 3, the protection afforded by the measures listed in that Annex shall not be increased or expanded in size, scope or duration, nor shall any new measures be applied, unless in conformity with the provisions of the WTO Agreement.

2. In implementing the provisions of Articles III and XI of the GATT 1994 and the Agreement on Agriculture, China shall eliminate and shall not introduce, re-introduce or apply non-tariff measures that cannot be justified under the provisions of the WTO Agreement. For all non-tariff measures, whether or not referred to in Annex 3, that are applied after the date of accession, consistent with the WTO Agreement or this Protocol, China shall allocate and otherwise administer such measures in strict conformity with the provisions of the WTO Agreement, including GATT 1994 and Article XIII thereof, and the Agreement on Import Licensing Procedures, including notification requirements.

3. China shall, upon accession, comply with the TRIMs Agreement, without recourse to the provisions of Article 5 of the TRIMs Agreement. China shall eliminate and cease to enforce trade and foreign exchange balancing requirements, local content and export or performance requirements made effective through laws, regulations or other measures. Moreover, China will not enforce provisions of contracts imposing such requirements. Without prejudice to the relevant provisions of this Protocol, China shall ensure that the distribution of import licences, quotas, tariff-rate quotas, or any other means of approval for importation, the right of importation or investment by national and sub-national authorities, is not conditioned on: whether competing domestic suppliers of such products exist; or performance requirements of any kind, such as local content, offsets, the transfer of technology, export performance or the conduct of research and development in China.

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

8. Import and Export Licensing

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

- (a) China shall publish on a regular basis the following in the official journal referred to in paragraph 2(C)2 of this Protocol:
- by product, the list of all organizations, including those organizations delegated such authority by the national authorities, that are responsible for authorizing or approving imports or exports, whether through grant of licence or other approval;
 - procedures and criteria for obtaining such import or export licences or other approvals, and the conditions for deciding whether they should be granted;
 - a list of all products, by tariff number, that are subject to tendering requirements, including information on products subject to such tendering requirements and any changes, pursuant to the Agreement on Import Licensing Procedures;
 - a list of all goods and technologies whose import or export are restricted or prohibited; these goods shall also be notified to the Committee on Import Licensing;
 - any changes to the list of goods and technologies whose import and export are restricted or prohibited.

Copies of these submissions in one or more official languages of the WTO shall be forwarded to the WTO for circulation to WTO Members and for submission to the Committee on Import Licensing within 75 days of each publication.

- (b) China shall notify the WTO of all licensing and quota requirements remaining in effect after accession, listed separately by HS tariff line and with the quantities associated with the restriction, if any, and the justification for maintaining the restriction or its scheduled date of termination.
- (c) China shall submit the notification of its import licensing procedures to the Committee on Import Licensing. China shall report annually to the Committee on Import Licensing on its automatic import licensing procedures, explaining the circumstances which give rise to these requirements and justifying the need for their continuation. This report shall also provide the information listed in Article 3 of the Agreement on Import Licensing Procedures.
- (d) China shall issue import licences for a minimum duration of validity of six months, except where exceptional circumstances make this impossible. In such cases, China shall promptly notify the Committee on Import Licensing of the exceptional circumstances requiring the shorter period of licence validity.

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

9. Price Controls

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

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

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

10. Subsidies

1. China shall notify the WTO of any subsidy within the meaning of Article 1 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), granted or maintained in its territory, organized by specific product, including those subsidies defined in Article 3 of the SCM Agreement. The information provided should be as specific as possible, following the requirements of the questionnaire on subsidies as noted in Article 25 of the SCM Agreement.

2. For purposes of applying Articles 1.2 and 2 of the SCM Agreement, subsidies provided to state-owned enterprises will be viewed as specific if, inter alia, state-owned enterprises are the predominant recipients of such subsidies or state-owned enterprises receive disproportionately large amounts of such subsidies.

3. China shall eliminate all subsidy programmes falling within the scope of Article 3 of the SCM Agreement upon accession.

11. Taxes and Charges Levied on Imports and Exports

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

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

3. China shall eliminate all taxes and charges applied to exports unless specifically provided for in Annex 6 of this Protocol or applied in conformity with the provisions of Article VIII of the GATT 1994.

4. Foreign individuals and enterprises and foreign-funded enterprises shall, upon accession, be accorded treatment no less favourable than that accorded to other individuals and enterprises in respect of the provision of border tax adjustments.

12. Agriculture

1. China shall implement the provisions contained in China's Schedule of Concessions and Commitments on Goods and, as specifically provided in this Protocol, those of the Agreement on Agriculture. In this context, China shall not maintain or introduce any export subsidies on agricultural products.

2. China shall, under the Transitional Review Mechanism, notify fiscal and other transfers between or among state-owned enterprises in the agricultural sector (whether national or sub-national) and other enterprises that operate as state trading enterprises in the agricultural sector.

13. Technical Barriers to Trade

1. China shall publish in the official journal all criteria, whether formal or informal, that are the basis for a technical regulation, standard or conformity assessment procedure.

2. China shall, upon accession, bring into conformity with the TBT Agreement all technical regulations, standards and conformity assessment procedures.

3. China shall apply conformity assessment procedures to imported products only to determine compliance with technical regulations and standards that are consistent with the provisions of this Protocol and the WTO Agreement. Conformity assessment bodies will determine the conformity of imported products with commercial terms of contracts only if authorized by the parties to such contract. China shall ensure that such inspection of products for compliance with the commercial terms of contracts does not affect customs clearance or the granting of import licences for such products.

4. (a) Upon accession, China shall ensure that the same technical regulations, standards and conformity assessment procedures are applied to both imported and domestic products. In order to ensure a smooth transition from the current system, China shall ensure that, upon accession, all certification, safety licensing, and quality licensing bodies and agencies are authorized to undertake these activities for both imported and domestic products, and that, one year after accession, all conformity assessment bodies and agencies are authorized to undertake conformity assessment for both imported and domestic products. The choice of body or agency shall be at the discretion of the applicant. For imported and domestic products, all bodies and agencies shall issue the same mark and charge the same fee. They shall also provide the same processing periods and complaint procedures. Imported products shall not be subject to more than one conformity assessment. China shall publish and make readily available to other WTO Members, individuals, and enterprises full information on the respective responsibilities of its conformity assessment bodies and agencies.

(b) No later than 18 months after accession, China shall assign the respective responsibilities of its conformity assessment bodies solely on the basis of the scope of work and type of product without any consideration of the origin of a product. The respective responsibilities that will be assigned to China's conformity assessment bodies will be notified to the TBT Committee 12 months after accession.

14. Sanitary and Phytosanitary Measures

China shall notify to the WTO all laws, regulations and other measures relating to its sanitary and phytosanitary measures, including product coverage and relevant international standards, guidelines and recommendations, within 30 days after accession.

15. Price Comparability in Determining Subsidies and Dumping

Article VI of 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 shall apply in proceedings involving imports of Chinese origin into a WTO Member consistent with the following:

- (a) In determining price comparability under Article VI of the GATT 1994 and the Anti-Dumping Agreement, the importing WTO Member shall use either Chinese prices or costs for the industry under investigation or a methodology that is not based on a strict comparison with domestic prices or costs in China based on the following rules:
- (i) If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability;
 - (ii) The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.
- (b) In proceedings under Parts II, III and V of the SCM Agreement, when addressing subsidies described in Articles 14(a), 14(b), 14(c) and 14(d), relevant provisions of the SCM Agreement shall apply; however, if there are special difficulties in that application, the importing WTO Member may then use methodologies for identifying and measuring the subsidy benefit which take into account the possibility that prevailing terms and conditions in China may not always be available as appropriate benchmarks. In applying such methodologies, where practicable, the importing WTO Member should adjust such prevailing terms and conditions before considering the use of terms and conditions prevailing outside China.
- (c) The importing WTO Member shall notify methodologies used in accordance with subparagraph (a) to the Committee on Anti-Dumping Practices and shall notify methodologies used in accordance with subparagraph (b) to the Committee on Subsidies and Countervailing Measures.
- (d) Once China has established, under the national law of the importing WTO Member, that it is a market economy, the provisions of subparagraph (a) shall be terminated provided that the importing Member's national law contains market economy criteria as of the date of accession. In any event, the provisions of subparagraph (a)(ii) shall expire 15 years after the date of accession. In addition, should China establish, pursuant to the national law of the importing WTO Member, that market economy conditions prevail in a particular industry or sector, the non-market economy provisions of subparagraph (a) shall no longer apply to that industry or sector.

16. Transitional Product-Specific Safeguard Mechanism

1. In cases where products of Chinese origin are being imported into the territory of any WTO Member in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products, the WTO Member so affected may request consultations with China with a view to seeking a mutually satisfactory solution, including whether the affected WTO Member should pursue application of a measure under the Agreement on Safeguards. Any such request shall be notified immediately to the Committee on Safeguards.

2. If, in the course of these bilateral consultations, it is agreed that imports of Chinese origin are such a cause and that action is necessary, China shall take such action as to prevent or remedy the market disruption. Any such action shall be notified immediately to the Committee on Safeguards.

3. If consultations do not lead to an agreement between China and the WTO Member concerned within 60 days of the receipt of a request for consultations, the WTO Member affected shall be free, in respect of such products, to withdraw concessions or otherwise to limit imports only to the extent necessary to prevent or remedy such market disruption. Any such action shall be notified immediately to the Committee on Safeguards.

4. Market disruption shall exist whenever imports of an article, like or directly competitive with an article produced by the domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat of material injury to the domestic industry. In determining if market disruption exists, the affected WTO Member shall consider objective factors, including the volume of imports, the effect of imports on prices for like or directly competitive articles, and the effect of such imports on the domestic industry producing like or directly competitive products.

5. Prior to application of a measure pursuant to paragraph 3, the WTO Member taking such action shall provide reasonable public notice to all interested parties and provide adequate opportunity for importers, exporters and other interested parties to submit their views and evidence on the appropriateness of the proposed measure and whether it would be in the public interest. The WTO Member shall provide written notice of the decision to apply a measure, including the reasons for such measure and its scope and duration.

6. A WTO Member shall apply a measure pursuant to this Section only for such period of time as may be necessary to prevent or remedy the market disruption. If a measure is taken as a result of a relative increase in the level of imports, China has the right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the trade of the WTO Member applying the measure, if such measure remains in effect more than two years. However, if a measure is taken as a result of an absolute increase in imports, China has a right to suspend the application of substantially equivalent concessions or obligations under the GATT 1994 to the trade of the WTO Member applying the measure, if such measure remains in effect more than three years. Any such action by China shall be notified immediately to the Committee on Safeguards.

7. In critical circumstances, where delay would cause damage which it would be difficult to repair, the WTO Member so affected may take a provisional safeguard measure pursuant to a preliminary determination that imports have caused or threatened to cause market disruption. In this case, notification of the measures taken to the Committee on Safeguards and a request for bilateral consultations shall be effected immediately thereafter. The duration of the provisional measure shall not exceed 200 days during which the pertinent requirements of paragraphs 1, 2 and 5 shall be met. The duration of any provisional measure shall be counted toward the period provided for under paragraph 6.

8. If a WTO Member considers that an action taken under paragraphs 2, 3 or 7 causes or threatens to cause significant diversions of trade into its market, it may request consultations with China and/or the WTO Member concerned. Such consultations shall be held within 30 days after the request is notified to the Committee on Safeguards. If such consultations fail to lead to an agreement between China and the WTO Member or Members concerned within 60 days after the notification, the requesting WTO Member shall be free, in respect of such product, to withdraw concessions accorded to or otherwise limit imports from China, to the extent necessary to prevent or remedy such diversions. Such action shall be notified immediately to the Committee on Safeguards.

9. Application of this Section shall be terminated 12 years after the date of accession.

17. Reservations by WTO Members

All prohibitions, quantitative restrictions and other measures maintained by WTO Members against imports from China in a manner inconsistent with the WTO Agreement are listed in Annex 7. All such prohibitions, quantitative restrictions and other measures shall be phased out or dealt with in accordance with mutually agreed terms and timetables as specified in the said Annex.

18. Transitional Review Mechanism

1. Those subsidiary bodies¹ of the WTO which have a mandate covering China's commitments under the WTO Agreement or this Protocol shall, within one year after accession and in accordance with paragraph 4 below, review, as appropriate to their mandate, the implementation by China of the WTO Agreement and of the related provisions of this Protocol. China shall provide relevant information, including information specified in Annex 1A, to each subsidiary body in advance of the review. China can also raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in this Protocol, in those subsidiary bodies which have a relevant mandate. 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.

2. The General Council shall, within one year after accession, and in accordance with paragraph 4 below, review the implementation by China of the WTO Agreement and the provisions of this Protocol. The General Council shall conduct such review in accordance with the framework set out in Annex 1B and in the light of the results of any reviews held pursuant to paragraph 1. China also can raise issues relating to any reservations under Section 17 or to any other specific commitments made by other Members in this Protocol. The General Council may make recommendations to China and to other Members in these respects.

3. Consideration of issues pursuant to this Section shall be without prejudice to the rights and obligations of any Member, including China, under the WTO Agreement or any Plurilateral Trade Agreement, and shall not preclude or be a precondition to recourse to consultation or other provisions of the WTO Agreement or this Protocol.

4. The review provided for in paragraphs 1 and 2 will take place after accession in each year for eight years. Thereafter there will be a final review in year 10 or at an earlier date decided by the General Council.

Part II - Schedules

1. The Schedules annexed to this Protocol shall become the Schedule of Concessions and Commitments annexed to the GATT 1994 and the Schedule of Specific Commitments annexed to the GATS relating to China. The staging of concessions and commitments listed in the Schedules shall be implemented as specified in the relevant parts of the relevant Schedules.

¹ Council for Trade in Goods, Council for Trade-Related Aspects of Intellectual Property Rights, Council for Trade in Services, Committees on Balance-of-Payments Restrictions, Market Access (covering also ITA), Agriculture, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Subsidies and Countervailing Measures, Anti-Dumping Measures, Customs Valuation, Rules of Origin, Import Licensing, Trade-Related Investment Measures, Safeguards, Trade in Financial Services.