

**Working Party on the  
Accession of China**

Original: English/  
anglais/  
inglés

### **COMMUNICATION FROM CHINA**

In preparation for the Working Party Meeting to be held on 19-23 June 2000, the Chinese Delegation has submitted the following documentation<sup>1</sup>.

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**Groupe de travail de  
l'accession de la Chine**

### **COMMUNICATION DE LA CHINE**

En vue de la réunion du Groupe de travail qui aura lieu du 19 au 23 juin 2000, la délégation chinoise a communiqué la documentation ci-après.<sup>1</sup>

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**Grupo de Trabajo sobre  
la Adhesión de China**

### **COMUNICACIÓN DE CHINA**

Para preparar la reunión del Grupo de Trabajo que se celebrará del 19 al 23 de junio de 2000, la delegación de China ha presentado la siguiente documentación.<sup>1</sup>

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<sup>1</sup> In English only./En anglais seulement./En inglés solamente.

Amendment of Legislation with WTO Agreements (Draft)	12 June 2000
Information of State-Trading (Draft)	12 June 2000
Checklist of Illustrative TBT Issues for Consideration in Accessions	12 June 2000
Notification Pursuant to Article 5 of the Agreement on Trade-Related Investment Measures	12 June 2000
Implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights	12 June 2000

**AMENDMENT OF LEGISLATION WITH WTO AGREEMENTS (Draft)**

The People's Republic of China

June 12, 2000

<b>Laws and Administrative Regulations</b>	<b>Relevance of the Laws or Regulations to WTO Compliance</b>	<b>Date of Implementation</b>
1. Law of the People's Republic of China on Chinese-foreign Equity Joint Ventures	To be in compliance with Agreement on Trade-Related Investment Measures (TRIMs)	Date of accession
2. Regulations for the Implementation of the Law of the People's Republic of China on Chinese-foreign Equity Joint Ventures	To be in compliance with TRIMs	Date of accession
3. Law of the People's Republic of China on Chinese-foreign Contractual Joint Ventures	To be in compliance with TRIMs	Date of accession
4. Law of the People's Republic of China on Foreign Capital Enterprises	To be in compliance with TRIMs	Date of accession
5. Rules for the Implementation of the Law of the People's Republic of China on Foreign Capital Enterprises	To be in compliance with TRIMs	Date of accession
6. Regulations of the People's Republic of China on the Exploitation of Offshore Petroleum Resources in Cooperation with Foreign Enterprises	To be in compliance with TRIMs	At the expiry of the commitment period
7. Regulations of the People's Republic of China Concerning the Exploitation of On-shore Petroleum Resources in Cooperation with Foreign Enterprises	To be in compliance with TRIMs	At the expiry of the commitment period
8. Interim Provisions on Guiding Foreign Investment Direction	To be in compliance with TRIMs	At the expiry of the commitment period
9. Foreign Trade Law of the People's Republic of China	To be in compliance with General Agreement on Tariffs and Trade 1994	At the expiry of the commitment period
10. Regulations of the People's Republic of China on Anti-dumping and Anti-subsidy	To be in compliance with Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994	Date of accession
11. Interim Measures for Import Administration of Machinery and Electronics Products	To be in compliance with General Agreement on Tariffs and Trade 1994	At the expiry of the commitment period

12. Customs Law of the People's Republic of China	To be in compliance with Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, Agreement on Rules of Origin	Date of accession
13. Regulations of the People's Republic of China on Import and Export Duties	To be in compliance with Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994	At the expiry of the commitment period
14. Rules of the People's Republic of China on the Origin of Export Commodities	To be in compliance with Agreement on Rules of Origin	At the expiry of the commitment period
15. Regulations of the People's Republic of China on Administration of Financial Institutions with Foreign Capital	To be in compliance with General Agreement on Trade in Services	At the expiry of the commitment period
16. Regulations on the Administration of Travel Agencies	To be in compliance with General Agreement on Trade in Services	At the expiry of the commitment period
17. Law of the People's Republic of China on Import and Export Commodity Inspection	To be in compliance with General Agreement on Trade in Services, Agreement on Technical Barriers to Trade	At the expiry of the commitment period
18. Patent Law of the People's Republic of China	To be in compliance with Agreement on Trade-Related Aspects of Intellectual Property Rights	Date of accession

## **INFORMATION OF STATE-TRADING**

(Draft)

June 12, 2000

China maintains enterprises covered by the provisions of Article XVII. The products listed in the Annex 2a-1 and Annex 2a-2 in its Protocol are subject to state trading which is carried out by the following corporations.

### **I. CHINA NATIONAL CHEMICAL IMPORT AND EXPORT CORPORATION (SINOCHEM)**

#### *1. Reason and Purpose*

In order to ensure the stable supply of chemical fertilizer necessary for domestic agricultural production and crude oil and processed oil needed in the domestic market, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) authorized SINOCHEM to have the exclusive right of import and export of chemical fertilizer and the import and export right of certain amount of crude oil and processed oil.

#### *2. Description and Function*

When there is a shortage of supply in respect of chemical fertilizer, crude oil and processed oil resulting in the increase of the domestic prices in question, SINOCHEM will import these products. The domestic selling prices of these products are determined by such factors as import price and operational cost of the corporation.

In light of the demand and supply of crude oil and processed oil in the world market, SINOCHEM will export these products. The export price is mainly composed of product price and operational cost of the corporation, which is approximately the same as the world market price.

### 3. Statistical information

Unit: million tons

A. IMPORT	1997	1998	1999
Crude oil	1.88	3.97	1.97
Process oil	0.13	0.18	0.038
Chemical fertilizer	1.66	3.21	0.15
B. EXPORT	1997	1998	1999
Crude oil	4.33	3.49	2.29
Process oil	0.46	0.20	0.12

## II. CHINA NATIONAL CEREALS, OILS AND FOODSTUFF IMPORT & EXPORT CORPORATION (COFCO)

### 1. Reason and Purpose

Since the steady supply of grain, including wheat, corn and soybean, and sugar and edible oil is directly linked to the livelihood of the 1.2 billion population of China, MOFTEC authorized COFCO to have the import right of wheat, sugar and vegetable oil and the export right of corn and soybeans.

### 2. Description and function

When there is a shortage of supply in respect of wheat, sugar and vegetable oil resulting in the increase of the domestic prices in question, COFCO will import these products from the world market. The domestic selling prices of these products are determined by such factors as import price and operational cost of the corporation.

COFCO will export corn and wheat at price similar to that of the world market, which is determined by such factors as cultivation cost of corn and soybean and operational cost of the corporation.

3. Statistical information

Unit: million tons

<b>Import</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Wheat	0.59	0.89	0.25
Sugar	0.11	0.092	0.0998
Vegetable oil	0.19	0.28	0.299
<b>Export</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Corn	3.63	2.58	2.37
Soybeans	0.10	0.08	0.10

### **III. CHINA NATIONAL TEXTILES IMPORT & EXPORT CORPORATION (CHINATEX)**

#### *1. Reason and Purpose*

Since the steady supply of cotton is directly related to the livelihood of the 1.2 billion population of China, MOFTEC authorized Chinatex to have the import and export right of cotton in light of the demand and supply of cotton in the domestic market.

#### *2. Description and function*

When there is a shortage of supply in respect of cotton resulting in the increase of the domestic price, Chinatex will import cotton from abroad. The domestic selling price is mainly determined by such factors as import price and operational cost of the corporation.

The export price of Chinatex with regard to cotton is determined by such factors as cultivation cost and operational cost of the corporation.

#### *3. Statistical information*

<b>Import</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Cotton	947 tons	0	0
<b>Export</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Cotton	413 tons	45,000 tons	238,000 tons
Raw cotton fabric	88,000 m <sup>2</sup>	82,000 m <sup>2</sup>	104,000 m <sup>2</sup>



#### IV. CHINA NATIONAL TOBACCO IMPORT & EXPORT CORPORATION (CTC)

##### *1. Reason and Purpose*

In order to alleviate the adverse effect of tobacco and its products on the public health of the Chinese people, the State Administration on Tobacco Monopoly authorized the CTC to be the sole importer of tobacco and its products in accordance with *the Law of the People's Republic of China on Tobacco Monopoly*.

##### *2. Description and Function*

The domestic selling prices of tobacco and its products are determined by import price, import tariff and operational price of the corporation.

##### *3. Statistical information*

4.

Import	1997	1998	1999
Tobacco	12000 tons	4000 tons	7000 tons

## V. CHINA NATIONAL METALS AND MINERALS IMPORT & EXPORT CORPORATION (MINMETAL)

### *1. Reason and Purpose*

In order to ensure the reasonable and orderly exploitation of mineral resources and to preserve environment, MOFTEC authorized Minmetal to have the export right of tungsten ores, ammonium paratungstate, tungsten products, antimony products and antimony oxides.

### *2. Description and Function*

The export prices of these products are determined by exploitation cost, export duty and operational cost of the corporation and will be adjusted in response to the fluctuations of world market prices.

### *3. Statistical information*

Unit: tons

<b>Export</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
tungsten ores	413	105	44
ammonium paratungstate	8000	7000	6000
tungsten products	5000	7000	8000
antimony products	18,000	12,000	25,000
antimony oxides.	16,000	15,000	20,000

## **VI. CHINA NATIONAL SILK IMPORT & EXPORT CORPORATION**

### *1. Reason and Purpose*

Since the primary raw materials of silk and greig are provided by farmers in remote regions of China and in order to assist the farmers in these regions to alleviate poverty, MOFTEC authorized China National Silk Import & Export Corporation to have the export right of silk and greig.

### *2. Description and Function*

The export prices of these products are mainly determined by cost of raw materials, processing cost and operational cost of the cooperation.

### *3. Statistical information*

<b>Export</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Greig	13,000 meters	45,000 meters	238,000 meters
Silk	22,000 tons	18,000 tons	24,000 tons

## VII. CHINA NATIONAL NON-FERROUS IMPORT & EXPORT CORPORATION

### *1. Reason and Purpose*

In order to ensure the reasonable and orderly exploration of mineral resources and to preserve environment, MOFTEC authorized China National Non-ferrous Import & Export Corporation to have the export right of tungsten ores, ammonium paratungstate, tungsten products, antimony products and antimony oxides.

### *2. Description and Function*

The export prices of these products are determined by exploitation cost, export duty and operational cost of the cooperation and will be adjusted in response to the fluctuations of world market prices.

### *3. Statistical information*

Unit: tons

A. EXPORT	1997	1998	1999
tungsten ores	388	86	36
ammonium paratungstate	7000	6000	5000
tungsten products	4000	6000	6000
antimony products	14,000	10,000	20,000
antimony oxides.	13,000	13,000	17,000

## VIII. CHINA NATIONAL UNITED OIL CORPORATION

### *1. Reason and Purpose*

In order to ensure the steady supply of energy products, including crude oil and processed oil, MOFTEC authorized China National United Oil Cooperation to have the import and export right of crude oil and processed oil.

### *2. Description and Function*

When there is a shortage of supply in respect of crude oil and processed oil resulting in the increase of the domestic price, China National United Oil Corporation will import these products. The domestic selling price of these products are determined by such factors as import price and operational cost of the corporation.

In light of the demand and supply of crude oil and processed oil in the world market, China International United Oil Corporation will export these products. The export prices are mainly composed of product price and operational cost, which is approximately the same as the world market price.

### *3. Statistical information*

Unit: million tons

<b>Import</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Crude oil	0.23	0.47	1.69
Process oil	0.24	0.19	0.10
<b>A. EXPORT</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Crude oil	9.75	7.84	5.13
Process oil	1.03	0.44	0.27

## **IX. CHINA INTERNATIONAL UNITED PETROLEUM & CHEMICALS CORPORATION**

### *1. Reason and Purpose*

In order to ensure the steady supply of energy products, including crude oil and processed oil, MOFTEC authorized China International United Petroleum & Chemicals Corporation to have the import and export right of crude oil and processed oil.

### *2. Description and Function*

When there is a shortage of supply in respect of crude oil and processed oil resulting in the increase of the domestic price, China International United Petroleum & Chemicals Corporation will import these products. The domestic selling price of these products are determined by such factors as import price and operational cost of the corporation.

In light of the demand and supply of crude oil and processed oil in the world market, China International United Petroleum & Chemicals Corporation will export these products. The export price is mainly composed of the price of these products and operational cost, which is approximately the same as the world market price.

### *3. Statistical information*

Unit: million tons

A. IMPORT	<b>1997</b>	<b>1998</b>	<b>1999</b>
Crude oil	14.61	10.51	18.77
Process oil	1.53	0.34	0.14
<b>Export</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Crude oil	7.58	6.10	3.40
Process oil	0.8	0.34	0.21

## **X. CHINA LIANGFENG CEREALS IMPORT AND EXPORT CORPORATION**

### *1. Reason and Purpose*

Since the steady supply of vegetable oil is directly related to the livelihood of the 1.2 billion population of China, MOFTEC authorized China Liangfeng Cereals Import and Export Corporation to have the import right of vegetable oil and the export right of corn and soybeans.

### *2. Description and function*

When there is a shortage of supply in respect of vegetable oil resulting in the increase of the domestic price, China Liangfeng Cereals Import and Export Corporation will import these products from world market. The domestic selling prices of these products are determined by such factors as import price and operational cost of the corporation.

China Liangfeng Cereals Import and Export Corporation will export corn and wheat at prices similar to the world market prices, which are determined by such factors as cultivation cost of corn and soybean as well as the operational cost of the corporation.

### *3. Statistical information*

unit: million tons

<b>Import</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Vegetable oil	0.14	0.31	0.73
<b>Export</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Corn	2.97	2.11	1.94
soybeans	0.8	0.7	0.8

## **XI. CHINA NATIONAL COAL INDUSTRY IMPORT & EXPORT CORPORATION**

### *1. Reasons and Purpose*

In order to ensure reasonable and orderly exploitation of mineral resources and to preserve environment, MOFTEC authorized China National Coal Industry Import & Export Corporation to have the export right of coal.

### *2. Description and Function*

The export price of coal is determined by exploitation cost, export duty and operational cost of the corporation and will be adjusted in response to the fluctuations of world market prices.

### *3. Statistical information*

Unit: millions tons

<b>Export</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Coal	264.3	280	374.1



## **XII. CHINA NATIONAL NATIVE PRODUCTS AND ANIMAL BY-PRODUCT IMPORT & EXPORT CORPORATION**

### *1. Reason and Purpose*

Since the steady supply of vegetable oil is directly related to the livelihood of the 1.2 billion population of China, MOFTEC authorized China National Native Products and Animal By-product Import & Export Corporation to have the import right of vegetable oil.

Since the primary raw materials of tea are provided by farmers in remote regions of China and in order to assist the farmers in these regions to alleviate poverty, MOFTEC authorized China National Native Products and Animal By-product Import & Export Corporation to have the export right of tea.

### *2. Description and Function*

When there is a shortage of supply in respect of vegetable oil resulting in the increase of the domestic price, China National Native Products and Animal By-product Import & Export Corporation will import such product from the world market. The domestic selling price is determined by such factors as import price and operational cost of the corporation.

The export price of tea is determined by the cost of raw materials, processing cost and operational cost of the corporation.

### *3. Statistical information*

unit: tons

<b>Import</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Vegetable oil	15,000	48,000	196,000
<b>Export</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
Tea	12,000	15,000	17,000

## CHECKLIST OF ILLUSTRATIVE TBT ISSUES FOR CONSIDERATION IN ACCESSIONS

The People's Republic of China  
June 12, 2000

Commitments (by the time of accession)	Compliance by China
1. Standstill: the introduction of new standards, technical regulations and conformity assessment procedures should be fully compatible with the TBT Agreement.	The Chinese Government has made commitments on many occasions that once China gets its WTO membership, it shall observe relevant principles of WTO agreements including principles of TBT Agreement. Currently, TBT agreement in China are related to three laws, namely, the Law of the People's Republic of China on Import and Export Commodity Inspection, Food Hygiene Law of the People's Republic of China, and Methods for Working out Regulations of State Administration for Entry-Exit Inspection and Quarantine which was promulgated in 1999. These laws made stipulations on the development and implementation of inspection standards and technical regulations for import and export commodities as well as corresponding implementing procedures, which are basically in compliance with the principles of TBT Agreement. The Chinese Government is deliberating laws, rules and regulations related to the contents of TBT Agreement in accordance with the principles of TBT Agreement in order to make sure that newly-developed standards, technical regulations and conformity assessment procedures are in compliance with the principles of TBT Agreement.
2. Submission of Statement on Implementation	Once China gets its WTO membership, Ministry of Foreign Trade and Economic Cooperation (MOFTEC) or State Administration for Entry-Exit Inspection and Quarantine of the People's Republic of China (CIQ SA) shall inform WTO/TBT Committee measures taken to assure the implementation and administration of TBT Agreement. China is now getting ready to fulfil the obligation of notification.
3. Establishment and operation of a single Contact Point for Information("inquiry point")	China has informed WTO secretariat that China has set up TBT Inquiry Points. This has been filed with TBT Committee.
4. Identification of authority responsible for notifications, publications and other internal procedures to ensure transparency obligations are met on an ongoing basis:	

Commitments (by the time of accession)	Compliance by China
(a)identification of publication where notices of proposed technical regulations and conformity assessment procedures will appear;	Article 23 and Article 41 of Law of Legislation of the People's Republic of China (hereinafter referred as Legislation Law) stipulate that laws passed by the National People's Congress and its Standing Committee are signed by the President and promulgated as Order of President. Article 62 of the Legislation Law stipulates that the administrative regulations published on the Bulletin of the State Council are authoritative texts. Article 77 of the Legislation Law stipulates that regulations published on the Bulletin of the State Council and on the Gazettes of government agencies are authoritative texts. Article 28 of Methods for Working out Regulations of State Administration for Entry-Exit Inspection and Quarantine stipulates that regulations worked out by CIQ shall be sent to the Gazette of MOFTEC or China Inspection and Quarantine or other news agencies for promulgation. All these publications on technical regulations and conformity assessment procedures concerned are also available from China's TBT Inquiry Points.
(b)identification of authority responsible for making notifications to the WTO.	MOFTEC and CIQ SA
(c)guidance/law to ensure regulatory authorities afford non-discriminatory consideration of comments in the preparation of a final regulation;	China's regulatory authorities involved in working out the final versions of relevant TBT laws and regulations shall take non-discriminatory considerations of public comments. Article 34 and Article 35 of Legislation Law stipulate that the operational arm of National people's Congress shall distribute the drafts of the legal document under deliberation to government agencies and organizations concerned as well as experts for comments. Drafts of legal documents of special importance shall be made public for extensive comments. Article 4, Article5, Article6 and Article 7 of Law of the People's Republic of China on Foreign Trade have provisions about non-discrimination, national treatment and Most-Favored Nation status. Article 9 of Provisional Rules of Implementation for Procedures of Administrative Regulations promulgated by the State Council also has similar content.
(d)guidance/law to ensure regulatory authorities allow a reasonable period of time between the final publication of a technical regulation and conformity assessment procedure and its entry into force so that suppliers can adapt;	For all the technical regulations and conformity assessment procedures current in effect in China, there has been a reasonable period of time between their final publication and entry into force so that the suppliers could adapt.

Commitments (by the time of accession)	Compliance by China
(e) publication and notification of work program for standards and non-governmental conformity assessment procedures, including publication of notices of draft standards and an opportunity for public comment.	(a) Before standards and conformity assessment procedures as well as their corresponding work programs for import and export commodity inspection are promulgated, public comments are widely solicited.
5. Development and Application of Technical Regulations and Conformity Assessment Procedures: Existence of legal and/or administrative underpinnings (or reasonable measures" as appropriate) to ensure ongoing compliance with provisions of the agreement concerning, in particular:	Article 56 of the Legislation Law stipulates that the State Council shall work out administrative regulations according to the Constitution and other laws. Article 71 of the Legislation Law stipulates that ministries and commissions shall work out regulations within their respective authorities based on the laws and the administrative regulations, decisions and orders of the State Council.
(a) non-discrimination with respect to the treatment of products;	China applies same technical regulations and conformity assessment procedures to import products from all countries as for domestic products.
(b) the prohibition of unnecessary obstacles to international trade and the consideration of less trade-restrictive alternatives to fulfilling legitimate objectives;	According to the principles of WTO/TBT agreement, only to those entry-exit products concerning national security, human life and health, life and health of animals and plants, and environment protection as well as fraudulent practices are subject to the reasonable and necessary statutory inspection and quarantine measures of China.
(c) the ongoing review of technical regulations to ensure they are appropriate to achieve the desired legitimate objective;	Chinese departments competent for developing technical regulations review the existing regulations on a regular basis so as to ensure their conformity with the expected legislative objectives. Article 74 of Legislation Law has explicit provisions concerning the procedures for the ministries and commissions to work out their respective regulations, that is, by drawing references from procedures for working out the administrative regulations by State Council.
(d) the consideration of appropriate international standards, guides and recommendations as a basis for technical regulations and conformity assessment procedures;	For many years, China has been following the principle that the international standards, guidelines and recommendations serve as basis for national technical regulations and conformity assessment procedures.
(e) the consideration of equivalent technical regulations of other Members;	China considers equivalent technical regulations of other Members.

Commitments (by the time of accession)	Compliance by China
(f)the acceptance of the results of conformity assessment procedures conducted by bodies in an exporting Member country;	China shall accept the conformity assessment results by the competent bodies of the exporting parties, so long as such bodies and their conformity assessment procedures are recognized by competent Chinese authorities.
(g)non-discriminatory and cost-based fee structure.	China applies same charges and same conformity assessment procedures to import products from all countries as for domestic products. All the related charges are on cost-recovery basis.
6. Development and Application of Standards and Conformity Assessment Procedures: Existence of legal and/or administrative underpinnings(or “reasonable measures” as appropriate) to ensure ongoing compliance with provisions of the agreement concerning, in particular;	
(a)non-discrimination with respect to the treatment of products;	China applies same inspection standards and conformity assessment procedures to import products from all countries as for domestic products.
(b)the prohibition of unnecessary obstacles to international trade;	According to the principles of WTO/TBT agreement, only those entry-exit products concerning national security, human life and health, life and health of animals and plants, and environment protection as well as fraudulent practices are subject to the reasonable and necessary statutory inspection and quarantine measures of China.
(c)the consideration of appropriate international standards, guides and recommendations as a basis for standards;	In the past several years, China has been following the principle that the international standards, guidelines and recommendations serve as basis of national technical regulations and conformity assessment procedures.
(d)non-discriminatory and cost-based fee structure.	China applies same charges and same conformity assessment procedures to import products from all countries as for domestic products. All the related charges are on cost-recovery basis.

**NOTIFICATIONS PURSUANT TO ARTICLE 5 OF  
THE AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES**  
THE PEOPLE'S REPUBLIC OF CHINA  
June 12, 2000

*Table I: Local Content Requirement*

<b>Measures</b>  <b>Format</b>	<b>Law of the People's Republic of China on Foreign Capital Enterprises Article 15</b>	<b>Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures Article 9</b>	<b>Regulations for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures Article 57</b>	<b>Automobile Industrial Policy Article 31, 42, 43, 44</b>
1. The category in the illustrative list under which the measure falls	Local Content Requirement	Local Content Requirement	Local Content Requirement	Local Content Requirement
2. Whether the Trim is applied by the government of the Member under discretionary authority or mandatory legislation	Mandatory legislation	Mandatory legislation	Mandatory legislation	Mandatory Legislation
3. The criteria for determining to which enterprises it applies in sufficient detail to enable those enterprises to be identified	Wholly foreign owned enterprises	Chinese-Foreign Equity Joint Ventures	Chinese-Foreign Equity Joint Ventures	Chinese-Foreign Equity Joint Ventures and Contractual Enterprises in the automobile industry.
4. Whether the legislation requires the measure to be applied to new enterprises or new investments of existing enterprises.	It applied.	It applied.	It applied.	It applied.
5. Whether compliance with the measure by the enterprise is (a) mandatory or (b) necessary to obtain an advantage	Enforceable under domestic law	Enforceable under domestic law	Enforceable under domestic law	It is necessary to obtain an advantage as preferential tariffs on imports
6. Detail on the specific products	Raw and semi-processed materials, fuels and other materials.	Raw and semi-processed materials, fuels, auxiliary equipment, etc.	Required machinery, equipment, raw materials, fuel, parts, means of transport and office equipment, etc.	Auto parts
7. The date of implementation	Apr. 12, 1986	Apr. 4, 1990	Sep. 20, 1983	Feb. 19, 1994
8. Provision for its phasing-down and/or elimination	Under modification	Under modification	Under modification	It's under modification now.

<b>Measures</b>	<b>Law of the People's Republic of China on Foreign Capital Enterprises Article 15</b>	<b>Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures Article 9</b>	<b>Regulations for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures Article 57</b>	<b>Automobile Industrial Policy Article 31, 42, 43, 44</b>
<b>Format</b>				
9. The domestic law, regulation or administrative guideline under which the TRIM is applied	Law of the People's Republic of China on Foreign Capital Enterprises	Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures	Regulations for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures	Automobile Industry Policy
10. The level of government applying the TRIM	Central government	Central government	Central government	Central government

**Table II: Foreign Exchange Balance Requirement**

<b>Measures</b>	<b>Provisions of the State Council for the Encouragement for foreign Investment Article 2</b>	<b>Rules for the Implementation of the Law of The People's Republic of China on Foreign-Capital Enterprises Article 3 (2), 56</b>	<b>Rules for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures Article 75</b>	<b>Automobile Industrial Policy Article 31(3)</b>
<b>Format</b>				
1. The category in the illustrative list under which the measure falls	Foreign Exchange Balance Requirement	Foreign Exchange Balance Requirement	Foreign Exchange Balance Requirement	Foreign Exchange Balance Requirement
2. Whether the Trim is applied by the government of the Member under discretionary authority or mandatory legislation	Mandatory Legislation	Mandatory Legislation	Mandatory Legislation	Mandatory Legislation
3. The criteria for determining to which enterprises it applies in sufficient detail to enable those enterprises to be identified	Foreign investment enterprises whose products are mainly for export, which have a foreign exchange surplus after deducting from their total annual foreign exchange revenues the annual foreign exchange expenditures incurred in production and operation and the foreign exchange needed for the remittance abroad of the profits earned by foreign investors.	Wholly foreign owned enterprises	Chinese-Foreign Equity Joint Ventures	Chinese-Foreign Equity Joint Ventures and Contractual Enterprises in the automobile industry.
4. Whether the legislation requires the measure to be applied to new enterprises or new investments of existing enterprises.	It applied.	It applied.	It applied.	It applied.
5. Whether compliance with the measure by the enterprise is(a)mandatory or (b)necessary to obtain an advantage	To obtain an advantage as preferential policies on income taxes.	Mandatory under domestic law	Mandatory under domestic law	Mandatory under domestic law
6. Detail on the specific products	No specific products.	No specific products	No specific products	Auto and auto parts
7. The date of implementation	Oct. 11, 1986	Dec. 12, 1990	Sep. 20, 1983	Feb. 19, 1994



<b>Measures</b>	<b>Provisions of the State Council for the Encouragement for foreign Investment Article 2</b>	<b>Rules for the Implementation of the Law of The People's Republic of China on Foreign-Capital Enterprises Article 3 (2), 56</b>	<b>Rules for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures Article 75</b>	<b>Automobile Industrial Policy Article 31(3)</b>
<b>Format</b>				
8. Provision for its phasing-down and/or elimination		Under modification	Under modification	Under modification
9. The domestic law, regulation or administrative guideline under which the TRIM is applied	Provisions of the State Council for the Encouragement of Foreign Investment	Rules for the Implementation of the Law of The People's Republic of China on Foreign-Capital Enterprises	Rules for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures	Automobile Industry Policy
10. The level of government applying the TRIM	Central government	Central government	Central government	Central government

# **IMPLEMENTATION OF THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS**

The People's Republic of China  
June 12, 2000

## ***PART I***

<b>TRIPS AGREEMENT</b>	<b>CHINA</b>
<b>General Obligations</b>	<b>IP Agreements to which China acceded and effected</b>
<p><b>Article 2</b> Compliance with Articles 1 through 12 and Article 19 of the Paris Convention for the Protection of Industrial Property in respect of Parts II, III, and VI of the TRIPS Agreement.</p>	<p>Convention Establishing the World Intellectual Property Organization since June 3, 1980.</p> <p>Paris Convention for the Protection of Industrial Property since March 19, 1985.</p> <p>Madrid Agreement Concerning the International Registration of Marks since October 4, 1989.</p> <p>Berne Convention for the Protection of Literary and Artistic Works since October 15, 1992.</p> <p>Universal Copyright Convention since October 30, 1992.</p> <p>Geneva Phonograms Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms since April 30, 1993.</p> <p>Patent Cooperation Treaty since January 1, 1994.</p> <p>Nice Agreement Concerning the International Classification of Goods and Service for the Purpose of the Registration of Marks since August 5, 1994.</p> <p>Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purposes of Patent Procedure since July 1, 1995.</p> <p>Protocol Relating to the Madrid Agreement concerning the International Registration of Marks since December 1, 1995.</p> <p>Locarno Agreement Establishing an International Classification of Industrial Designs since September 19, 1996.</p> <p>Strasbourg Agreement Concerning the International Patent Classification since June 19, 1997.</p> <p>International Convention for the Protection of New Plant Varieties since April 23, 1999</p>
	<b>Domestic legislation on IP rights protection</b>
	Trademarks, service marks, collective marks, identifying marks and trade names are protected by the Trademark Law that took effect on March 1, 1983, and other regulations or rules related.

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	<p>Inventions-creations including patents, utility models and industrial designs are protected by the Patent Law that took effect on April 1, 1985</p> <p>Literary, artistic and scientific works including computer software are protected by the Copyright Law that took effect on June 1, 1991.</p> <p>Repression of unfair competition is governed by the Unfair Competition Law that took effect on December 1, 1993.</p> <p>Regulation on Custom Protection of Intellectual Property Rights was promulgated on July 5, 1995 and effective as of October 1, 1995.</p> <p>New plant varieties are protected by the Provisions on Protection of New Plant Varieties that took effect on October 1, 1997.</p> <p>At present no legislation on protection of indications of source or appellations of origin except some administrative orders.</p>
<p><b>Article 3.</b> Requires members to provide national treatment to the other member nationals.</p>	<p><b>Patent Law</b> <b>Article 18</b> Where any foreigner, foreign enterprise or other foreign organization having no habitual residence or business office in China files an application for a patent in China, the application shall be treated under this Law in accordance with any agreement concluded between the country to which the applicant belongs and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of reciprocity.</p> <p><b>Copyrights Law</b> <b>Article 2</b> Works of Chinese citizens, legal persons or entities without legal personality, whether published or not, shall enjoy copyright in accordance with this Law. Works of foreigners first published in the territory of the People's Republic of China shall enjoy copyright in accordance with this Law. Any work of a foreigner published outside the territory of the People's Republic of China which is eligible to enjoy copyright under an agreement concluded between the country to which the foreigner belongs and China, or under an international treaty* to which both countries are parties, shall be protected in accordance with this Law. (* Berne Convention etc.)</p> <p><b>Trademark Law</b> <b>Article 9</b> Any foreigner or foreign enterprise intending to apply for the registration of a trademark in China shall file an application in accordance with any agreement concluded between the People's Republic of China and the country to which the applicant belongs, or according to the international treaty to which both countries are parties, or on the basis of the principle of reciprocity.</p>

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Industrial Designs	Citation to appropriate law
<p><b>Art.25</b> Requirements for Protection.</p> <p>1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.</p> <p>2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.</p>	<p><b>Patent Law:</b> <b>Article 23.</b> Any design for which patent right may be granted must not be identical with or similar to any design which, before the date of filing, has been publicly disclosed in publications in the country or abroad or has been publicly used in the country.</p> <p><b>Implementing Regulations of the Patent Law</b> <b>Rule 2.</b> “Design” in the Patent Law means any new design of shapes, pattern, color, or their combination, of a product, which creates an aesthetic feeling and is fit for industrial application. (Textile designs are included in the scope of protection provided in the Patent Law and it’s Implementing Regulations.)</p>
<p><b>Article 26.3</b> Protection should last at least 10 years.</p>	<p><b>Patent Law</b> <b>Article 45</b> The duration of patent right for inventions shall be twenty years, the duration of patent right for utility models and patent right for designs shall be ten years, counted from the date of filing.</p>

TRIPS AGREEMENT	CHINA
Patent	Citation to appropriate law
<p><b>Article 27</b> Provide patents protection for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are industrially applicable. Exceptions are permitted for diagnostic, therapeutic and surgical methods, and for plants and animals, except for microorganisms and non-biological and microbiological processes. Exceptions are also permitted for reasons of order public or morality.</p>	<p><b>Patent law</b> <b>Article 2</b> In this Law, “Inventions-creations” mean Inventions utility models and designs.</p> <p><b>Patent law</b> <b>Article 22.1</b> Any invention or utility model for which patent right may be granted must possess novelty, inventiveness and practical applicability.</p> <p><b>Patent law</b> <b>Article 25</b> For any of the following, no patent right shall be granted: (1) scientific discoveries; (2) rules and methods for mental activities; (3) methods for the diagnosis or for the treatment of diseases; (4) animal and plant varieties; (5) substances obtained by means of nuclear transformation. For processes used in producing products referred to in item (4) of the preceding paragraph, patent right may be granted in accordance with the provisions of this Law.</p> <p><b>Patent law</b> <b>Article 5</b> No patent right shall be granted for any invention-creation that is contrary to laws of the State or social morality or that is detrimental to public interest.</p>
<p><b>Article 28.1</b> A patent shall confer on its owner the rights to prevent third parties from making, using, offering for sale, selling, or importing a patented product, or from using a patent process or using, offering for sale, selling or importing a product obtained directly by that process.</p>	<p><b>Patent law</b> <b>Article 11</b> 1.After the grant of the patent right for an invention or utility model, except as otherwise provided for in the law, no entity or individual may, without the authorization of the patentee, make, use or sell the patented product, or use the patented process and use or sell the product directly obtained by the patented process, for production or business purposes. 3.After the grant of the patent right, except as otherwise provided for in the law, the patentee has the right to prevent any other person from importing, without its or his authorization, the patented product, or the product directly obtained by its or his patented process, for the uses mentioned in the preceding two paragraphs.</p> <p><b>The drafted amendment of the Patent Law will confer on patent owners the right of “offering for sale”.</b></p>

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<p><b>Article 28.2</b> Provide patent owner the right of assign or transfer by succession the patent and to conclude licensing contracts.</p>	<p><b>Patent Law</b> <b>Article 10</b> 1.The right to apply for a patent and the patent right may be assigned.</p> <p><b>Law of Succession (Article 3)</b> Estate denotes the lawful property owned by a citizen personally at the time of his death, which consists of: (6) property rights pertaining to copyright and patent rights.</p>
<p><b>Article 29</b> Members shall require the applicant to disclose the invention clearly so that a person skilled in the art can carry it out, and may require the applicant to indicate the best mode and information concerning corresponding foreign applications and grants.</p>	<p><b>Patent Law</b> <b>Article 26</b> Where an application for a patent for invention or utility model is filed, a request, a description and its abstract, and claims shall be submitted. ..... The description shall set forth the invention or utility model in a manner sufficiently clear and complete so as to enable a person skilled in the relevant field of technology to carry it out; where necessary, drawings are required. The abstract shall state briefly the main technical points of the invention or utility model.</p> <p><b>Regulations of Patent Law</b> <b>Rule 18</b> 1.The description of an application for a patent for invention or utility model shall be presented in the following manner and order: (8) describe in detail the best mode contemplated by the applicant for carrying out the invention or utility model; this shall be done in terms of examples, where appropriate, and with reference to the drawings, if any.</p>
<p><b>Article 30</b> Ensure that exceptions to exclusive patent rights do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.</p>	<p><b>Patent Law</b> <b>Article 62</b> None of the following shall be deemed an infringement of the patent right: (1) Where, after the sale of a patented product that was made by the patentee or with the authorization of the patentee, any other person uses or sells that product; (2) Where any person uses or sells a patented product not knowing that it was made and sold without the authorization of the patentee; (3) Where, before the date of filing of the application for patent, any person who has already made the identical product, used the identical process, or made necessary preparations for its making or using, continues to make or use it within the original scope only; (4) Where any foreign means of transport which temporarily passes through the territory, territorial waters or territorial airspace of China uses the patent concerned, in accordance with any agreement concluded between the country to which the foreign means of transport belongs and China, or in accordance with any international treaty to which both countries are party, or on the basis of the principle of reciprocity, for its own needs, in its devices and installations; (5) Where any person uses the patent concerned solely for the purposes of scientific research and experimentation.</p>

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<p><b>Article 31</b> Compulsory licenses can be issued only when enumerated conditions are met, including such things as notice, remuneration, limitations on use and transfer of the licenses, etc.</p>	<p><b>Patent Law</b></p> <p><b>Article 51</b> Where any entity which is qualified to exploit the invention or utility model has made requests for authorization from the patentee of an invention or utility model to exploit its or his patent on reasonable terms and such efforts have not been successful within a reasonable period of time, the Patent Office may, upon the application of that entity, grant a compulsory license to exploit the patent for invention or utility model.</p> <p><b>Article 52</b> Where a national emergency or any extraordinary state of affairs occurs, or where the public interest so requires, the Patent Office may grant a compulsory license to exploit the patent for invention or utility model.</p> <p><b>Article 53</b> Where the invention or utility model for which the patent right was granted is technically more advanced than another invention or utility model for which a patent right has been granted earlier and the exploitation of the later invention or utility model depends on the exploitation of the earlier invention or utility model, the Patent Office may, upon the request of the later patentee, grant a compulsory license to exploit the earlier invention or utility model. Where, according to the preceding paragraph, a compulsory license is granted, the Patent Office may, upon the request of the earlier patentee, also grant a compulsory license to exploit the later invention or utility model.</p> <p><b>Article 54</b> The entity or individual requesting, in accordance with the provisions of this Law, a compulsory license for exploitation shall furnish proof that it or he has not been able to conclude with the patentee a license contract for exploitation on reasonable terms.</p> <p><b>Article 55</b> The decision made by the Patent Office granting a compulsory license for exploitation shall be registered and announced.</p> <p><b>Article 56</b> Any entity or individual that is granted a compulsory license for exploitation shall not have an exclusive right to exploit and shall not have the right to authorize exploitation by any others.</p> <p><b>Article 57</b> The entity or individual that is granted a compulsory license for exploitation shall pay to the patentee a reasonable exploitation fee, the amount of which shall be fixed by both parties in consultations' Where the parties fail to reach an agreement, the Patent Office shall adjudicate.</p> <p><b>Article 58</b> Where the patentee is not satisfied with the decision of the Patent Office granting a compulsory license for exploitation or with the adjudication</p>

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	regarding the exploitation fee payable for exploitation, he or it may, within three months from the receipt of the notification, institute legal proceedings in the people s court.
<p><b>Article 32</b> Provide an opportunity for judicial review of any decision to revoke or forfeit a patent.</p>	<p><b>Patent Law</b> <b>Article 43</b> 2. Where the applicant for a patent for invention, the patentee of an invention or the Person who made the request for revocation of the patent right for invention is not satisfied with the decision of the Patent Reexamination Board, he or it may, within three months from the date of receipt of the notification, institute legal proceedings in the people’s court.</p> <p><b>Article 49</b> 2. Where any party is not satisfied with the decision of the Patent Reexamination Board declaring the patent right for invention invalid or upholding the patent right for invention, such party may, within three months from receipt of the notification of the decision, institute legal proceedings in the people's court.</p>
<p><b>Article 33</b> Provide the term of patent at least 20 years from the filing date.</p>	<p><b>Patent Law</b> <b>Article 45</b> The duration of patent right for inventions shall be twenty years, the duration of patent right for utility models and patent right for designs shall be ten years, counted from the date of filing.</p>
<p><b>Article 34</b> Shift the burden of proof in patent infringement action to the defendants in the case that the product obtained by the patented process is new, or where it is a substantial likelihood that the identical product was made by the process and patent owner has been unable through reasonable efforts to determine the process actually used.</p>	<p><b>Patent Law</b> <b>Article 60</b> 2. When any infringement dispute arises, if the patent for invention is a process for the manufacture of a new product, any entity or individual manufacturing the identical product shall furnish proof of the process used in the manufacture of its or his product.</p> <p><b>In the drafted amendment of the Patent Law, this provision will be revised as “where any infringement dispute concerns a patented process for the manufacture of a new product, any entity or individual manufacturing the identical product shall prove that the process he used is different from the patented process”.</b></p>
Plant Varieties	Remarks
<p><b>Article 27</b> Members shall provide for the protection of plant varieties either by patents or by an effective <i>sui generis</i> system or by any combination thereof.</p>	<p>Provisions on Protection of New Plant Varieties entered into force on October 1, 1997.</p>



TRIPS AGREEMENT	CHINA
Integrated-Circuits Layout Designs	Remarks
<b>Article 35, Article 36 and Article 38</b> Require members to provide protection for layout designs of integrated circuits.	Regulations on this subject are being drafted.

(to be continued)

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