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With regard to the distribution of pharmaceuticals, despite the fact that the exception for pharmaceuticals contained in China's accession agreement expired as of December 11, 2004, China did not issue any further regulations and continued to require foreign pharmaceutical companies to sell their finished products through Chinese wholesalers (after hiring Chinese importers to bring their finished products into the country) until mid-2005, when it began allowing the acceptance of applications from foreign pharmaceutical companies for wholesale distribution licenses under the April 2004 distribution regulations and the pre-existing *Rules on the Management of Drug Business Licenses*, issued by the State Food and Drug Administration (SFDA). Since then, U.S. and other foreign pharmaceutical companies have been able to obtain wholesale distribution licenses. At the same time, despite overall progress in this area, many other restrictions affecting the pharmaceuticals sector make it difficult for foreign pharmaceutical companies to realize the full benefits of China's wholesale distribution commitments. The United States is continuing to engage the Chinese regulatory authorities in these areas as part of an effort to promote comprehensive reform of China's healthcare system and to reduce the unnecessary trade barriers that they face.

Meanwhile, U.S. industry is concerned about China's implementation of significant market-opening commitments, scheduled for December 11, 2006, designed to permit foreign enterprises to engage in wholesale distribution of crude oil and processed oil, e.g., gasoline. In early December 2006, China issued regulations – without providing an opportunity for prior public comment – imposing high thresholds and other potential impediments on foreign enterprises seeking to enter the wholesale distribution sector, such as requirements relating to levels of storage capacity, pipelines, rail lines, docks and supply contracts. Based on reports that it had received regarding earlier, selectively circulated drafts, the United States had pressed for the issuance of a draft for public comment and had highlighted the importance of full implementation of its commitments in bilateral meetings with China earlier in 2006 and during the transitional review before the Council for Trade in Services, held in November 2006. In close consultation with U.S. industry, the United States will continue to monitor China's implementation of the December 2006 regulations in 2008 in an effort to ensure that U.S. industry realizes the full benefits of China's commitments in this sector.

Retailing Services

In addition to committing to permit Chinese-foreign joint ventures and wholly foreign-owned enterprises to distribute at the retail level within China any goods that they make in China without any market access or national treatment limitations, effective immediately upon China's WTO accession, China agreed to permit foreign service suppliers to supply retailing services for almost all goods, whether made in China or imported, through joint ventures with minority foreign ownership, subject to geographic restrictions (allowing China to limit market access to five Special Economic Zones and eight cities) and quantitative restrictions (allowing China to limit the number of joint ventures that could operate in six of the eight cities). Excepted goods included books, newspapers and magazines, tobacco, chemical fertilizers, processed oil, pharmaceutical products, pesticides and mulching films. The exceptions for the retailing of books, newspapers and magazines were to have been removed within one year after accession (or

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by December 11, 2002). Within two years after accession (or by December 11, 2003), China agreed to permit foreign service suppliers to supply retailing services through majority foreign-owned joint ventures, subject to the product exceptions set forth above. China also reserved the right to continue to impose the geographic and quantitative restrictions set forth above, although the geographic restrictions were to be eased, with market access being extended to all provincial capitals and two other cities. Within three years after accession (or by December 11, 2004), China agreed to permit foreign service suppliers to supply retailing services through wholly foreign-owned enterprises. In addition, by this time, all geographic and quantitative restrictions were to be eliminated, and the exceptions for pharmaceutical products, pesticides, mulching films and processed oil were also to be eliminated. The exception for chemical fertilizers was to be eliminated within five years after accession (or by December 11, 2006).

As previously reported, China fell behind in implementing its retailing services commitments for joint ventures with minority foreign ownership (scheduled for implementation upon China's accession) and joint ventures with majority foreign ownership (scheduled for implementation by December 11, 2003). Following repeated bilateral and multilateral U.S. engagement during the run-up to the April 2004 JCCT meeting, MOFCOM issued the April 2004 distribution regulations, which belatedly lifted market access and national treatment restrictions on joint ventures engaging in retail services effective June 1, 2004, except for allowed geographic and quantitative restrictions and product exceptions for pharmaceuticals, pesticides, mulching films and processed oil. These regulations also extended this liberalization to wholly foreign-owned enterprises and removed the product exceptions for pesticides and mulching films and all remaining geographic and quantitative restrictions as of the scheduled phase-in date of December 11, 2004, while the regulations removed the product exception for chemical fertilizer as of the scheduled phase-in date of December 11, 2006. As in the wholesale area, the regulations require enterprises to obtain central or provincial-level MOFCOM approval before providing retail services, and they appear to set relatively low qualifying requirements, including relatively modest capital requirements, although in practice foreign (but not domestic) retailers reportedly must meet higher capital requirements.

Many of the same problems that plagued the application and approval process in the wholesale area in 2005 also arose in the area of retailing services, and the United States repeatedly pressed China to accelerate and improve the implementation of its commitments, just as it did in the wholesale area. The changes that took place in the application and approval process as a result of the July 2005 JCCT meeting helped to remedy these problems, particularly MOFCOM's issuance of the *Notice on Entrusting National Economic and Technological Development Zones with the Authority to Approve Foreign-Funded Distribution Firms and International Forwarding Agents* in February 2006.

Nevertheless, other concerns remained, particularly with regard to possible discriminatory application of a provision in the April 2004 distribution regulations allowing the approving authorities to withhold retail distribution license approvals when, as is the case in many cities, urban commercial network plans have not yet been formulated. Subsequently, in April 2006, MOFCOM issued a notice explaining that foreign-invested enterprises would not be granted

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approvals for projects in cities that had not yet finalized their urban commercial network plans. The United States raised concerns about this notice, both bilaterally and during the transitional review before the WTO's Council for Trade in Services in November 2006, because it appeared that domestic enterprises were continuing to receive approvals for their projects in cities without urban commercial network plans in place.

In 2007, the U.S. retail industry became concerned about other extra burdens that it faces, in comparison to domestic retailers, when attempting to expand their operations in China. For example, the licensing process for a foreign retailer seeking to establish a new store begins with a MOFCOM process, which is multi-layered and slow-moving, requiring approvals at the local, provincial and central government levels. Only after the MOFCOM process is completed can the foreign retailer obtain an actual license from SAIC. In contrast, domestic retailers can quickly obtain licenses directly from SAIC. In addition, domestic retailers do not need to satisfy substantive requirements that are imposed on foreign companies, such as an additional minimum capital requirement for each new store or, as discussed above, a requirement that the location city for the new store have an urban commercial network plan in place. The United States raised its concerns about this discriminatory treatment with China during the run-up to the May 2007 SED meeting and subsequently during the transitional review before the Council for Trade in Services in November 2007. The United States has also been raising its concerns during the run-up to the JCCT meeting scheduled for December 2007 and will continue these efforts, if necessary, in 2008.

Meanwhile, questions continue to arise concerning whether China is fully implementing its commitment to allow foreign enterprises to sell processed oil, e.g., gasoline, at the retail level. As explained above, China's first tranche of retail services commitments did not apply to processed oil, as it was one of the excepted goods under China's Services Schedule. However, that exception expired on December 11, 2004, and by that time China committed to permit wholly foreign-owned enterprises to operate gas stations. Instead, China insists that gas stations fall under the chain store provision in its Services Schedule, which permits only joint ventures with minority foreign ownership for "those chain stores which sell products of different types and brands from multiple suppliers with more than 30 outlets." From a business perspective, the ability of foreign enterprises to engage in retail distribution of processed oil will become particularly important once China fully implements its commitments to permit foreign enterprises to engage in wholesale distribution of crude oil and processed oil, required by December 11, 2006. However, as discussed above, the regulations that China issued in the wholesale area in December 2006 impose a number of stringent requirements that appear designed to substantially limit foreign participation in this sector. The United States is working with U.S. industry to assess China's implementation of the regulations on wholesale distribution of crude oil and processed oil and will continue to engage the Chinese government in 2008 in an effort to ensure that U.S. industry realizes the full benefits to which it is entitled in this sector.

Franchising Services

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As part of its distribution commitments, China committed to permit the cross-border supply of franchising services immediately upon its accession to the WTO. It also committed to permit foreign enterprises to provide franchising services in China, without any market access or national treatment limitations, by December 11, 2004.

In December 2004, as previously reported, MOFCOM issued new rules governing the supply of franchising services in China, the *Measures for the Administration of Commercial Franchises*, effective February 2005. These rules raised a number of concerns. Of particular concern was a requirement that a franchiser own and operate at least two units in China for one year before being eligible to offer franchises in China, as it conflicts with the business models of many U.S. franchising companies, including some large hotel chains. The rules also impose high capital requirements and require broad and vague information disclosure by franchisers, with uncertain liability if these disclosure requirements are not met.

Together with U.S. industry, the United States expressed strong concern about these rules and urged China to reconsider them. In 2007, China eased the requirement that a franchiser own and operate at least two units in China by allowing a franchiser to offer franchise services in China if it owns and operates two units anywhere in the world. The United States welcomed this action and will monitor developments in this area closely in 2008.

Sales away from a fixed location

China first permitted direct selling in 1990, and numerous domestic and foreign enterprises soon began to engage in this business. In the ensuing years, however, serious economic and social problems arose, as so-called "pyramid schemes" and other fraudulent or harmful practices proliferated. China outlawed direct selling in 1998, although some direct selling companies were permitted to continue operating in China after altering their business models.

In its WTO accession agreement, China did not agree to any liberalization in the area of sales away from a fixed location, or direct selling, during the first three years of its WTO membership. By December 11, 2004, however, China committed to lift market access and national treatment restrictions in this area.

As previously reported, China was late in implementing its direct selling commitment. The Chinese authorities issued implementing measures – the *Measures for the Administration of Direct Selling* and the *Regulations on the Administration of Anti-Pyramid Sales Scams* – in August 2005, nine months late. In September 2006, MOFCOM also issued the *Administrative Measures on the Establishment of Service Network Points for the Direct Sales Industry*, which clarified some aspects of the earlier measures.

The August 2005 direct selling measures contained several problematic provisions. For example, one provision essentially outlaws multi-level marketing practices allowed in every country in which the U.S. industry operates – reportedly 170 countries in all – by refusing to allow direct selling enterprises to pay compensation based on team sales, where upstream personnel are

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compensated based on downstream sales. The United States has pointed out that China could revise this provision to permit team-based compensation while still addressing its legitimate concerns about pyramid schemes. Other problematic provisions include a three-year experience requirement that only applies to foreign enterprises, not domestic ones, a cap on single-level compensation, restrictions on the cross-border supply of direct selling services and high capital requirements that may limit smaller direct sellers' access to the market. The September 2006 direct selling measure also includes vague requirements that could prove excessively burdensome for small and medium-sized direct sellers.

After the direct selling measures went into effect in December 2005, many companies began to apply for direct selling licenses but were confused by the opaque license review process. Despite MOFCOM's regulatory requirement that direct selling licenses be reviewed within ninety days, many foreign and domestic companies waited for many months for MOFCOM and SAIC to review their license applications. Accordingly, the United States urged China to address the slow pace and lack of transparency in the licensing process, along with the problematic restrictions in the direct selling measures, during the run-up to the April 2006 JCCT meeting. In response, MOFCOM agreed to hold an informal dialogue with U.S. and other foreign industry representatives in the following months to better understand their concerns about the direct selling measures and to facilitate their efforts to navigate the application and approval process for obtaining licenses. Since then, nine U.S. companies have obtained licenses, although few of them have been able to obtain licenses that allow them to conduct direct selling in more than one province in China.

Meanwhile, working closely with U.S. industry, the United States has continued to urge China to reconsider the problematic provisions in its direct selling measures in order to facilitate legitimate commerce and to comply with its WTO commitments. The United States pressed its concerns not only in connection with the April 2006 JCCT meeting, but also in subsequent bilateral meetings as well as during the November 2006 and November 2007 transitional reviews before the WTO's Council for Trade in Services. The United States will continue these efforts in 2008.

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Import Regulation

Tariffs

Through its bilateral negotiations with interested WTO members leading up to its accession, China agreed to greatly increase market access for U.S. and other foreign companies by reducing tariff rates. The agreed reductions are set forth as tariff "bindings" in China's Goods Schedule, meaning that while China cannot exceed the bound tariff rates, it can decide to apply them at a lower rate, as many members do when trying to attract particular imports.

As in prior years, China implemented its scheduled tariff reductions for 2007 on schedule. These reductions, made on January 1, involved only a few products, most of which were chemical products, as almost all of China's tariff reductions took place during the first five years of China's WTO membership.

U.S. exports continued to benefit from China's participation in the Information Technology Agreement (ITA), which requires the elimination of tariffs on computers, semiconductors and other information technology products. China began reducing and eliminating these tariffs in 2002 and continued to do so in the ensuing years, achieving the elimination of all ITA tariffs on January 1, 2005, as the tariffs dropped to zero from a pre-WTO accession average of 13.3 percent. U.S. exports of ITA goods continued to perform well in 2007, as they were projected to exceed $14 billion by the end of the year, increasing by more than 9 percent from January through September 2007, when compared to the same time period in 2006.

U.S. exports also continued to benefit from China's timely implementation of another significant tariff initiative, the WTO's Chemical Tariff Harmonization Agreement, completed in 2005. U.S. exports of chemicals covered by this agreement increased by more than 32 percent from January through September 2007, when compared to the same time period in 2006, and are on a pace to surpass the healthy total of $6.6 billion in 2006.

Overall, China's tariff changes since WTO accession have significantly increased market access for U.S. exporters in a range of industries, as China reduced tariffs on goods of greatest importance to U.S. industry from a base average of 25 percent (in 1997) to 7 percent during the first five years of its WTO membership, while it made similar reductions throughout the agricultural sector (see the Agriculture section below). China's reduced tariffs contributed to another significant increase in overall U.S. exports, which rose approximately 17 percent from January through September 2007, when compared to the same time period in 2006.

Customs and Trade Administration

Like other acceding WTO members, China agreed to take on the WTO obligations that address the means by which customs and other trade administration officials check imports and establish and apply relevant trade regulations. These agreements cover the areas of customs valuation, rules of origin and import licensing.

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Customs Valuation

The WTO Agreement on the Implementation of GATT Article VII (Agreement on Customs Valuation) is designed to ensure that determinations of the customs value for the application of duty rates to imported goods are conducted in a neutral and uniform manner, precluding the use of arbitrary or fictitious customs values. Adherence to the Agreement on Customs Valuation is important for U.S. exporters, particularly to ensure that market access opportunities provided through tariff reductions are not negated by unwarranted and unreasonable "uplifts" in the customs value of goods to which tariffs are applied. China agreed to implement its obligations under the Agreement on Customs Valuation upon accession, without any transition period. In addition, China's accession agreement reinforces China's obligation not to use minimum or reference prices as a means for determining customs value. It also called on China to implement the *Decision on Valuation of Carrier Media Bearing Software for Data Processing Equipment* and the *Decision on Treatment of Interest Charges in Customs Value of Imported Goods* by December 11, 2003.

In January 2002, shortly after China acceded to the WTO, China's Customs Administration issued the *Measures for Examining and Determining Customs Valuation of Imported Goods.* These regulations addressed the inconsistencies that had existed between China's customs valuation methodologies and the Agreement on Customs Valuation. The Customs Administration subsequently issued the *Rules on the Determination of Customs Value of Royalties and License Fees Related to Imported Goods*, effective July 2003. These rules were intended to clarify provisions of the January 2002 regulations that address the valuation of royalties and license fees. In addition, by December 11, 2003, China had issued a measure on interest charges and a measure requiring duties on software to be assessed on the basis of the value of the underlying carrier medium, meaning, for example, the CD-ROM or floppy disk itself, rather than based on the imputed value of the content, which includes, for example, the data recorded on a CD-ROM or floppy disk.

As of December 2007, China has still not uniformly implemented these various measures. U.S. exporters continue to report that they are encountering valuation problems at many ports.

According to U.S. exporters, even though the Customs Administration's measures provide that imported goods normally should be valued on the basis of their transaction price, meaning the price the importer actually paid, many Chinese customs officials are still improperly using "reference pricing," which usually results in a higher dutiable value. For example, imports of wood products are often subjected to reference pricing. In addition, some of China's customs officials are reportedly not applying the rules set forth in the Customs Administration's measures as they relate to software royalties and license fees. Following their pre-WTO accession practice, these officials are still automatically adding royalties and license fees to the dutiable value (for example, when an imported personal computer includes pre-installed software), even though the rules expressly direct them to add those fees only if they are import-related and a condition of sale for the goods being valued.

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U.S. exporters have also continued to express concerns about the Customs Administration's handling of imports of digital media that contain instructions for the subsequent production of multiple copies of products such as DVDs. The Customs Administration has been inappropriately assessing duties based on the estimated value of the yet-to-be-produced copies.

More generally, U.S. exporters continue to be concerned about inefficient and inconsistent customs clearance procedures in China. These procedures vary from port to port, lengthy delays are not uncommon, and the fees charged appear to be excessive, giving rise to concerns about China's compliance with its obligations under Article VIII of GATT 1994.

When the United States first presented its concerns about the customs valuation problems being encountered by U.S. companies, China indicated that it was working to establish more uniformity in its adherence to WTO customs valuation rules. Since then, the United States has sought to assist in this effort in part by conducting technical assistance programs for Chinese government officials on WTO compliance in the customs area. In addition, in 2007, as in prior years, the United States raised its concerns about particular customs valuation problems during the transitional review before the WTO's Committee on Customs Valuation.

Rules of Origin

Upon its accession to the WTO, China became subject to the WTO Agreement on Rules of Origin, which sets forth rules designed to increase transparency, predictability and consistency in both the establishment and application of rules of origin, which are necessary for import and export purposes, such as determining the applicability of import quotas, determining entitlement to preferential or duty-free treatment and imposing antidumping or countervailing duties or safeguard measures, and for the purpose of confirming that marking requirements have been met. The Agreement on Rules of Origin also provides for a work program leading to the multilateral harmonization of rules of origin. This work program is ongoing, and China specifically agreed to adopt the internationally harmonized rules of origin once they were completed. China also confirmed that it would apply rules of origin equally for all purposes and that it would not use rules of origin as an instrument to pursue trade objectives either directly or indirectly.

In March 2001, shortly after China's accession to the WTO, the State Administration of Quality Supervision and Inspection and Quarantine (AQSIQ) issued regulations and implementing rules intended to bring the rules of origin used by China to check marking requirements into compliance with the Agreement on Rules of Origin. U.S. exporters have not raised concerns with China's implementation of these measures.

Almost three years after China's WTO accession, in September 2004, China issued the *Regulations of the Place of Origin for Imported and Exported Goods*, the important overdue regulations intended to bring China's rules of origin into conformity with WTO rules for import and export purposes. These regulations supersede the *Interim Provisions on the Place of Origin for Imported Goods*, issued by the Customs Administration in 1986, and the *Rules on the Place*

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of Origin for Exported Goods, issued by the State Council in 1992. The Customs Administration subsequently issued implementing rules addressing the issue of substantial transformation – the *Rules on Substantial Transformation Criteria Under the Non-Preferential Rules of Origin* – in December 2004. U.S. exporters have not raised concerns with China's implementation of these measures.

Import Licensing

The Agreement on Import Licensing Procedures (Import Licensing Agreement) establishes rules for all WTO members, including China, that use import licensing systems to regulate their trade. Its aim is to ensure that the procedures used by members in operating their import licensing systems do not, in themselves, form barriers to trade. The objective of the Import Licensing Agreement is to increase transparency and predictability and to establish disciplines to protect the importer against unreasonable requirements or delays associated with the licensing regime. The Import Licensing Agreement covers both "automatic" licensing systems, which are intended only to monitor imports, not regulate them, and "non-automatic" licensing systems, which are normally used to administer import restrictions, such as tariff-rate quotas, or to administer safety or other requirements, such as for hazardous goods, armaments or antiquities. While the Import Licensing Agreement's provisions do not directly address the WTO consistency of the underlying measures that licensing systems regulate, they do establish the baseline of what constitutes a fair and non-discriminatory application of import licensing procedures. In addition, China specifically committed not to condition the issuance of import licenses on performance requirements of any kind, such as local content, export performance, offsets, technology transfer or research and development, or on whether competing domestic suppliers exist.

Shortly after China acceded to the WTO, MOFTEC issued regulations revising China's automatic import licensing regime, and it later supplemented these regulations with implementing rules. MOFTEC also issued regulations revising China's non-automatic licensing regime. The United States subsequently raised various concerns with MOFTEC (and its successor, MOFCOM) regarding the regulations on automatic licensing and the regulations on non-automatic licensing in an effort to promote clarity and to ensure that the licensing procedures did not have trade-distorting or restrictive effects. Together with other WTO members, including the EC and Japan, the United States also presented detailed comments on various aspects of these regulations at meetings of the WTO's Import Licensing Committee, including the transitional reviews, in 2002, 2003 and 2004. In 2007, as in prior years, the United States continued to monitor MOFCOM's implementation of these regulations.

In May 2005, after Chinese steel producers negotiated contracts with major foreign iron ore suppliers, the Chinese government began imposing new import licensing procedures for iron ore without prior WTO notification. Even though the WTO's Import Licensing Agreement calls for import licensing procedures that do not have a restrictive effect on trade, China reportedly restricted licenses to 48 traders and 70 steel producers and did not make public a list of the qualified enterprises or the qualifying criteria used. The United States and Australia sought to clarify the operation of the import licensing procedures applicable to iron ore during the

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transitional reviews before the Committee on Import Licensing in October 2005 and the Council for Trade in Goods in November 2005. While China maintained that the Chinese government did not impose any qualifying criteria, it did acknowledge that two organizations affiliated with the Chinese government, the China Iron and Steel Association and the China Chamber of Commerce for Metal, Minerals and Chemicals Importers and Exporters, had been discussing a set of rules regarding qualifying criteria such as production capacity and trade performance. In 2006, the United States continued to monitor this situation, which could set a troubling precedent for the handling of imports of other raw materials. Because China seemed determined to restrict the availability of import licenses, the United States raised its concerns with China bilaterally in October 2006 during a meeting of the U.S.-China Steel Dialogue (Steel Dialogue), created earlier in the year under the auspices of the JCCT. The United States also addressed this issue during the transitional review before the Committee on Import Licensing, held in October 2006, as did Australia. In 2007, China reduced the number of licensed traders from 48 to 42 and reportedly instituted further restrictions on qualifying criteria for iron ore import licenses, including tighter limitations on the size of the enterprises eligible to import iron ore and shipment sizes. The United States will continue to monitor developments in this area closely in 2008.

The United States has also focused considerable attention on import licensing issues that have arisen in a variety of other specific contexts since China's WTO accession. In 2007, these include the administration of tariff-rate quota systems for fertilizer and cotton (discussed below in the sections on Tariff-rate Quotas on Industrial Goods and Tariff-rate Quotas on Bulk Agricultural Commodities), various sanitary and phytosanitary (SPS) measures (discussed below in the section on Sanitary and Phytosanitary Issues) and inspection-related requirements for soybeans, meat and poultry (discussed below in the section on Inspection-Related Requirements).

Non-tariff Measures

In its WTO accession agreement, China agreed that it would eliminate numerous trade-distortive non-tariff measures (NTMs), including import quotas, licenses and tendering requirements covering hundreds of products. Most of these NTMs, including, for example, the NTMs covering chemicals, agricultural equipment, medical and scientific equipment and civil aircraft, had to be eliminated by the time that China acceded to the WTO. China committed to phase out other NTMs, listed in an annex to the accession agreement, over a transition period ending on January 1, 2005. These other NTMs included import quotas on industrial goods such as air conditioners, sound and video recording apparatus, color TVs, cameras, watches, crane lorries and chassis, and motorcycles as well as licensing and tendering requirements applicable to a few types of industrial goods, such as machine tools and aerials.

As has been previously reported, China's import quota system was beset with problems, despite consistent bilateral engagement by the United States. The State Council was late in issuing necessary regulations, and the authorities charged with implementing this system – MOFTEC for some products and the State Economic and Trade Commission (SETC) for others – were late in allocating quotas. Because of a lack of transparency, it was also difficult to assess whether the

quotas were allocated in accordance with the agreed rules. Some of the more difficult problems were encountered with the auto import quota system, resulting at times in significant disruption of wholesale and retail operations for imported autos. While these problems prevented the United States and other WTO members from realizing the full contemplated benefits of these import quotas, China did fully adhere to the agreed schedule for the elimination of all of its import quotas as well as all of its other NTMs, the last of which China eliminated in January 2005. In some cases, China even eliminated NTMs ahead of schedule, as it did with the import quotas on crane lorries and chassis, and motorcycles.

Tariff-rate Quotas on Industrial Products

In its WTO accession agreement, China agreed to implement a system of tariff-rate quotas (TRQs) designed to provide significant market access for three industrial products, including fertilizer, a major U.S. export. Under this TRQ system, a set quantity of imports is allowed at a low tariff rate, while imports above that level are subject to a higher tariff rate. In addition, the quantity of imports allowed at the low tariff rate increases annually by an agreed amount. China's accession agreement specifies detailed rules, requiring China to operate its fertilizer TRQ system in a transparent manner and dictating precisely how and when China is obligated to accept quota applications, allocate quotas and reallocate unused quotas.

As previously reported, since China began implementing its TRQ system for industrial products in 2002, U.S. exporters have expressed concern about a lack of transparency, which made it difficult to assess whether the quota allocations followed the rules set out in China's Goods Schedule, and about the Chinese government's issuance of administrative guidance that discouraged some TRQ holders from freely utilizing their quotas. Despite repeated bilateral engagement and multilateral engagement at the WTO, including formal consultations with China in Geneva under the headnotes in China's Goods Schedule, concerns about transparency and administrative guidance have persisted. At the same time, U.S. fertilizer exports to China have continued to decline significantly, dropping from $676 million in 2002 to $459 million in 2003 and to $306 million in 2004. Following a modest increase to $355 million in 2005, U.S. fertilizer exports to China declined sharply to $232 million in 2006.

In October 2006, perhaps in an attempt by the central authorities to reign in provincial and local efforts to build further unneeded fertilizer capacity, the Tariff Policy Commission of the State Council announced a temporary reduction of the in-quota tariff rate for fertilizer from four percent to one percent, effective November 2006. Although it was initially anticipated that U.S. fertilizer exports to China might increase following this reduction and the scheduled phase-in of foreign enterprises' rights to engage in wholesale and retail distribution of fertilizer within China as of December 11, 2006, U.S. fertilizer exports sharply declined again in 2007. The data for January through September 2007 showed a decline of 48 percent, totaling $79 million as compared to $151 million during the same period in 2006.

Other Import Regulation

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Antidumping

In its WTO accession agreement, China committed to revising its regulations and procedures for antidumping (AD) proceedings by the time of its accession, in order to make them consistent with the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement). That agreement sets forth detailed rules prescribing the manner and basis on which a WTO member may take action to offset the injurious dumping of products imported from another WTO member. China also agreed to provide for judicial review of determinations made in its AD investigations and reviews.

China has become a leading user of AD measures since its accession to the WTO. Currently, China has in place 97 antidumping measures, some of which pre-date China's membership in the WTO, affecting imports from 18 countries and regions. China also has 7 AD investigations in progress. The greatest shortcomings in China's AD practice continue to be in the areas of transparency and procedural fairness. The United States continues to press China both bilaterally and multilaterally to clarify and address these concerns.

China has put in place much of the legal framework for its AD regime. China continues to add pieces of legislation to this framework, although not all of these new rules and regulations have been notified to the WTO in a timely fashion. Shortly before China's accession to the WTO, the State Council issued new AD regulations that went into effect in January 2002 and charged MOFTEC with making determinations of dumping. In early 2002, MOFTEC issued several sets of provisional rules covering initiation of investigations, questionnaires, sampling, verifications, information disclosure, access to non confidential information, price undertakings, hearings, interim reviews, refunds and new shipper reviews. SETC, which at the time was charged with making determinations of injury, issued rules covering industry injury investigations and public hearings in January 2003. These regulations were updated and notified to the WTO's AD Committee following the consolidation of the AD functions of MOFTEC and SETC into the newly formed MOFCOM in March 2003. A revised version of China's governing statute, the *Foreign Trade Law*, which included expanded trade remedy language, came into force in July 2004 and was also eventually notified to the AD Committee. More recently, in August 2006, MOFCOM issued the *Regulations on Information Accession and Information Disclosure in Industry Injury Investigations*, which was notified to the AD Committee in October 2007.

China has also issued rules governing judicial review of AD cases. In August 2002, the Supreme People's Court issued the *Rules Regarding Supreme People's Court Hearings on Judicial Review of International Trade Disputes*, which provide guidance concerning judicial review of administrative agency decisions affecting international trade, including disputes involving AD cases. In September 2002, the Supreme People's Court issued the *Provisions of the Supreme People's Court on Certain Issues Concerning the Applicability of Laws in the Hearing and Handling of Antidumping Administrative Cases*. China did not notify these measures to the AD Committee until January 2007, delaying effective multilateral review of critical elements of China's judicial review mechanism.

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To date, no interested party has filed for judicial review of a Chinese antidumping proceeding. However, as China continues to launch AD investigations and apply AD measures against imports, the opportunity for interested parties to seek judicial review will become more critical.

Within MOFCOM, the Bureau of Fair Trade for Imports and Exports (BOFT) is charged with making dumping determinations and the Bureau of Industry Injury Investigation (IBII) is charged with making injury determinations. In cases where the subject merchandise is an agricultural product, the Ministry of Agriculture may be involved in the injury investigation. The State Council Tariff Commission continues to make the final decision on imposing, revoking or retaining AD duties, based on recommendations provided by the BOFT and the IBII, although its authority relative to MOFCOM has not been clearly defined in the regulations and rules since MOFCOM was established.

In practice, China's conduct of AD investigations in many respects continues to fall short of full adherence to the fundamental tenets of transparency and procedural fairness embodied in the AD Agreement. For example, respondents from the United States and other WTO members that have been subject to Chinese AD investigations continue to express concerns about the lack of detailed information made available to interested parties. While the BOFT has improved somewhat at making documents from AD investigations reasonably available on demand, the IBII continues to have an uneven record with regard to making available to foreign respondents materials generated and submitted during the course of its injury investigations, particularly documents submitted by China's domestic industries. In addition, both BOFT and IBII still fail to make available adequate non-confidential summaries of submissions by Chinese producers, thereby precluding interested parties from gaining a full understanding of potentially important facts and data in the record of an investigation. Compounding this problem is the highly limited disclosure by China's AD authorities of the essential facts underlying decisions and calculations made in the course of dumping and injury investigations. Foreign respondents also continue to criticize China's AD authorities for not providing adequate opportunities for interested parties to provide input for their deliberations, particularly with regard to the IBII's injury determinations. Similarly, foreign respondents continue to criticize the cursory nature of decision making in the IBII's injury investigations, including the analysis regarding the causal link between injury and dumping.

At the WTO, the United States continues to address problems with China's AD practice in regular meetings of the AD Committee. The United States also continues to make vigorous use of the Transitional Review Mechanism to clarify issues and voice concerns regarding China's AD practices. During the most recent transitional review before the AD Committee in October 2007, the United States and other WTO members, including the EC and Japan, reiterated their longstanding concerns regarding transparency and procedural fairness.

The United States also vigorously engages China bilaterally on these matters. In April 2004, the United States and China agreed to establish the Trade Remedies Working Group under the auspices of the JCCT. This working group has given U.S. AD experts a dedicated forum to engage China's AD authorities directly and in detail on issues facing U.S. exporters subject to

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Chinese AD investigations. The working group has held several meetings since its creation in April 2004, with the most recent meeting taking place in April 2007. U.S. AD experts also have frequent informal exchanges with China's AD authorities, which help to promote greater transparency and accountability in China's AD regime.

At the same time, the United States continues to work closely with U.S. companies affected by Chinese AD investigations in an effort to help them better understand the Chinese system. The United States also advocates on their behalf in connection with ongoing AD investigations, with the goal of obtaining fair and objective treatment for them, consistent with the AD Agreement.

As previously reported, in the antidumping investigation of unbleached kraft linerboard (a cardboard-like packaging material) that MOFCOM initiated in March 2004, U.S. respondents raised a variety of substantive and procedural issues, with one of their principal arguments being that Chinese producers had not suffered any material injury. The United States actively supported many of the positions taken by the U.S. respondents, particularly with regard to the injury issue, which raised WTO concerns. Nevertheless, in September 2005, MOFCOM issued its final determination, finding both dumping and injury, and began imposing antidumping duties on imports of U.S. kraft linerboard. Working closely with U.S. industry, the United States pressed MOFCOM to reverse its injury finding and withdraw the antidumping duties, but these efforts were rebuffed. In early January 2006, the United States notified China as a courtesy that it would be filing a request for WTO consultations the following week. Over the weekend, MOFCOM issued an "administrative reconsideration" in which it rescinded the antidumping duties on kraft linerboard imports.

It also appears that the United States' focus on China's WTO obligations may have played a role in MOFCOM's March 2007 termination of the AD investigation of butanols imported from the United States. When the United States made its appearance at the public hearing held by the IBII, the United States emphasized the importance of the IBII's adherence to China's WTO obligations, not only in the areas of transparency and procedural fairness but also with regard to the substantive requirement of a causal link between any injury to the domestic industry and the dumping found to exist. MOFCOM's subsequent termination of the investigation was based on a finding that the facts did not support the domestic industry's allegation of injury.

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Countervailing Duties

In its WTO accession agreement, China committed to revising its regulations and procedures for conducting countervailing duty (CVD) investigations and reviews by the time of its accession, in order to make them consistent with the WTO Agreement on Subsidies and Countervailing Measures (Subsidies Agreement). The Subsidies Agreement sets forth detailed rules prescribing the manner and basis on which a WTO member may take action to offset the injurious subsidization of products imported from another WTO member. Although China did not separately commit to provide judicial review of determinations made in CVD investigations and reviews, Subsidies Agreement rules require independent review.

As previously reported, shortly before China's accession, the State Council issued new CVD regulations, which came into force in January 2002. Later, MOFTEC, which at that time was charged with making determinations of subsidization under China's CVD regime, issued several sets of ministerial rules on initiation of investigations, questionnaires, verifications and hearings. The SETC, which at that time was charged with making determinations of injury in China's CVD proceedings, issued implementing rules covering industry injury investigations and public hearings in January 2003. In March 2003, a general reorganization of the State Council ministries and commissions consolidated the subsidization and injury investigation functions of MOFTEC and SETC into MOFCOM. Updated regulations were later notified to the WTO, as was the revised *Foreign Trade Law*, as discussed above under the heading of Antidumping.

As in the AD area, China continues in its efforts to conform its CVD regulations and procedural rules to the provisions and requirements of the Subsidies Agreement and the commitments in its WTO accession agreement. China's regulations and procedural rules generally track those found in the Subsidies Agreement, although there are certain areas where key provisions are omitted or are vaguely worded. Since China's accession to the WTO, the United States and other WTO members have sought clarifications on a variety of issues concerning China's regulatory framework and have pressed China for greater transparency both during regular meetings and the annual transitional reviews before the Subsidies Committee. The United States will continue to seek clarifications as needed in 2008.

China has not initiated a CVD investigation, either pre- or post-WTO accession. Consequently, it is not yet possible to assess whether China applies its regulations and procedural rules in conformity with WTO rules.

Safeguards

In its WTO accession agreement, China committed to revising its regulations and procedures for conducting safeguard investigations by the time of its WTO accession in order to make them consistent with the WTO Agreement on Safeguards (Safeguards Agreement). That agreement articulates rules and procedures governing WTO members' use of safeguard measures.

As previously reported, shortly before China's WTO accession, the State Council issued the *Regulations on Safeguards*, which became effective in January 2002. Under these regulations, MOFTEC became responsible for determining whether the volume of imports of a given product has increased and (together with SETC) whether there is a causal link between any such imports and injury to the domestic industry. Shortly thereafter, MOFTEC issued two sets of provisional procedural rules, one covering initiations and the other hearings. In 2003, SETC, the agency that was charged with determining injury to the domestic industry, issued the *Rules on Investigations and Determinations of Industry Injury for Safeguards* and the *Rules on Public Hearings with Regard to Investigations of Injury to Industry*. Later that year, a general reorganization of the State Council ministries and commissions consolidated the safeguard functions of MOFTEC and SETC into MOFCOM. In 2004, the State Council issued revised *Regulations on Safeguards*, and MOFCOM issued revised implementing rules to reflect this change.

As with the AD and CVD areas, it appears that China has made an effort to establish a WTO-consistent safeguard regime. While the provisions of China's regulations and procedural rules generally track those of the Safeguards Agreement, there are some potential inconsistencies, and certain omissions and ambiguities remain. In addition, some provisions do not find a counterpart in the Safeguards Agreement. In earlier transitional reviews before the WTO's Committee on Safeguards, the United States noted several areas of potential concern, including transparency, determination of developing country status, treatment of non-WTO members, protection of confidential data, access to non-confidential information, refunding of safeguard duties collected pursuant to provisional measures when definitive measures are not imposed, and the conditions governing the extension of a safeguard measure.

To date, as previously reported, China has conducted only one safeguard proceeding, which resulted in the imposition of tariff-rate quotas on imports of nine categories of steel products from various countries, including the United States, in November 2002. Although U.S. companies exported little of this merchandise to China, there were complaints from interested parties that China's process for allocating quotas under the safeguard measures was unclear, making it difficult for them to determine the quota available and obtain a fair share. China terminated the safeguard measures in December 2003.

Export Regulation

China's WTO accession agreement reinforces China's obligation to only maintain export restrictions allowed under WTO rules. In this regard, Article XI of the GATT 1994 generally prohibits WTO members from maintaining export restrictions (other than duties, taxes or other charges), although certain limited exceptions are allowed. China also agreed to eliminate all taxes and charges on exports, including export duties, except as included in Annex 6 to the Protocol of Accession or applied in conformity with Article VIII of GATT 1994. Article VIII of GATT 1994 only permits fees and charges limited to the approximate cost of services rendered and makes clear that any such fees and charges shall not represent an indirect protection to domestic products or a taxation of exports for fiscal purposes.

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Despite these commitments, since its accession to the WTO, China has continued to impose restrictions on exports of raw materials, including quotas, related licensing requirements and duties, as China's state planners have continued to guide the development of downstream industries. These export restrictions are widespread. For example, China maintains export quotas and sometimes export duties on antimony, coke, fluorspar, indium, magnesium carbonate, molybdenum, rare earths, silicon, talc, tin, tungsten and zinc, all of which are of key interest to U.S. downstream producers.

Normally, these types of export restrictions significantly distort trade, and for that reason the WTO rules outlaw them. In the case of China, the trade-distortive impact is exacerbated because China is the world's leading producer of each of the raw materials at issue (except for molybdenum, for which China is the world's second leading producer).

China's export restrictions affect U.S. and other foreign producers of a wide range of downstream products, such as steel, chemicals, ceramics, semiconductor chips, refrigerants, medical imagery, aircraft, refined petroleum products, fiber optic cables and catalytic converters, among numerous others. The export restrictions create disadvantages for these foreign producers by artificially increasing China's export prices for their raw material inputs, which also drives up world prices. At the same time, the export restrictions artificially lower China's domestic prices for the raw materials due to significant domestic oversupply, enabling China's domestic downstream producers to produce lower-priced products from the raw materials and thereby creating significant advantages for China's domestic downstream producers when competing against foreign downstream producers both in the China market and in export markets.

In an attempt to justify some of China's export restrictions, MOFCOM has cited Article XX(g) of GATT 1994, which permits a WTO member to impose measures relating to the conservation of exhaustible natural resources, provided that such measures are made effective in conjunction with restrictions on domestic production or consumption, and provided they are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade. However, serious questions arise concerning whether China meets this standard because it does not appear to impose restrictions on the domestic side that are in any way comparable to its export restrictions. China's treatment of coking coal, a key steel input, provides a relevant example. China imposes a resource tax on all coal used in producing coking coal, or coke, in China, whether destined for domestic sale or export. Nevertheless, while the resource tax applies equally to domestic sales and exports, China also places other restrictions on coke, but they only apply to exports. China limits exports of coke to 14 million metric tons (MT) per year and additionally imposes 15 percent duties on coke exports. With these export restrictions in place and no comparable restrictions on the domestic side, China produced 298 million MT of coking coal in 2006, and all but 14 million MT of this production was sold in the domestic market.

Beginning shortly after China's WTO accession, the United States repeatedly raised its concerns about China's continued use of export restrictions, particularly on coke and fluorspar, both bilaterally and at the WTO during the annual transitional reviews before the Committee on

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Market Access and the Council for Trade in Goods. The United States also worked with other WTO members with an interest in this issue, including the EC and Japan. In response to these efforts, as previously reported, China refused to modify its policies in this area. In fact, over time, China's state planners have increased the artificial advantages afforded to China's downstream producers by making the export quotas more restrictive and by imposing or increasing export duties on many raw materials at issue.

During the run-up to the JCCT meeting scheduled for December 2007, the United States has been pressing China to eliminate the export quotas and export duties on the 12 raw materials of key interest to U.S. industry, which includes antimony, coke, fluorspar, indium, magnesium carbonate, molybdenum, rare earths, silicon, talc, tin, tungsten and zinc. The United States will continue to pursue this matter in 2008, if necessary, to ensure that China fully meets its WTO commitments and will take further actions seeking the elimination of China's export restrictions, including through WTO dispute settlement, where appropriate.

China's state planners also attempt to manage the export of many intermediate and downstream products, often by raising or lowering the value-added tax (VAT) rebate available upon export and sometimes by imposing or retracting export duties. These practices have caused tremendous disruption, uncertainty and unfairness in the markets for particular products.

Sometimes, as in the case of China's export quotas, the objective of these adjustments is to make larger quantities of a product available domestically at lower prices than the rest of the world. For example, China decided in 2006 to eliminate the 13 percent VAT rebate available on the export of refined metal lead and then, in 2007, imposed a duty of 10 percent on refined metal lead exports. These actions caused a steep decline in China's exports of this intermediate product and have contributed to a sharp rise in world prices, which have gone from approximately $1,300 per metric ton (MT) at the time of China's elimination of the export VAT rebate in 2006 to approximately $3,200 per MT in recent months. Meanwhile, Chinese domestic prices have reportedly declined because of China's captive refined metal lead production, giving China's downstream producers a substantial competitive advantage over foreign downstream producers.

In other recent situations, China has reduced or eliminated VAT export rebates in an attempt to reign in out-of-control expansion of production capacity in particular sectors. China resorts to this practice in part because it has not yet developed a fully functioning market economy and therefore cannot simply leave it to the market to bring about the necessary adjustments. In some instances, the adjustments have benefited U.S. producers by slowing surges in low-priced exports from China to the United States. However, the adjustments can also have harmful consequences, whether or not intended. For example, in November 2006 and April 2007, China reduced export VAT rebates that had been available on a wide range of semi-finished and finished steel products, as part of its efforts to discourage further unneeded creation of production capacity for these products in China. At the same time, these export VAT rebate reductions did not target all steel products, and the result was that Chinese steel producers shifted their production to steel products for which full export VAT rebates were still available, particularly steel pipe and tube

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products, causing a tremendous surge in exports of these products – many of which found their way into the U.S. market.

The United States and other WTO members questioned China's export VAT rebate practices during China's first Trade Policy Review at the WTO, held in April 2006, and have urged China to undertake the economic reforms necessary for it to complete its transition to a market economy. The United States has also raised these concerns during bilateral meetings, such as the Steel Dialogue meetings in October 2006 and August 2007 and the April 2007 meeting of the Structural Issues Working Group, an entity that was created at the April 2004 JCCT meeting. In addition, in the case of export duties not authorized by Annex 6 to its Protocol of Accession, the United States has urged China to eliminate them, given China's specific commitment not to use them.

To date, China has been willing to take steps to remedy some of the unintended consequences of its export VAT rebate reductions when the United States has brought it to China's attention. In July 2007, for example, China issued a notice extending export VAT rebate reductions to most steel pipe and tube products, with the notable exception of oil country tubular goods.

In 2008, the United States will continue to engage China in this area. The United States' basic message will continue to be that China needs to pursue the additional economic reforms that will allow China to rely on the market, rather than government intervention, to bring about needed production capacity adjustments in particular sectors of the economy.

Internal Policies Affecting Trade

Non-discrimination

In its WTO accession agreement, China agreed to assume the obligations of GATT 1994, the WTO agreement that establishes the core principles that constrain and guide WTO members' policies relating to trade in goods. The two most fundamental of these core principles are the Most-Favored Nation (MFN), or non-discrimination, rule – referred to in the United States as "normal trade relations" – and the rule of national treatment.

The MFN rule (set forth in Article I of GATT 1994) attempts to put the goods of all of an importing WTO member's trading partners on equal terms with one another by requiring the same treatment to be applied to goods of any origin. It generally provides that if a WTO member grants another country's goods a benefit or advantage, it must immediately and unconditionally grant the same treatment to imported goods from all WTO members. This rule applies to customs duties and charges of any kind connected with importing and exporting. It also applies to internal taxes and charges, among other internal measures.

The national treatment rule (set forth in Article III of GATT 1994) complements the MFN rule. It attempts to put the goods of an importing WTO member's trading partners on equal terms with the importing member's own goods by requiring, among other things, that a WTO member

accord no less favorable treatment to imported goods than it does for like domestic goods. Generally, once imported goods have passed across the national border and import duties have been paid, the importing WTO member may not subject those goods to internal taxes or charges in excess of those applied to domestic goods. Similarly, with regard to measures affecting the internal sale, purchase, transportation, distribution or use of goods, the importing WTO member may not treat imported goods less favorably than domestic goods.

In its WTO accession agreement, China agreed to repeal or revise all laws, regulations and other measures that were inconsistent with the MFN rule upon accession. China also confirmed that it would observe this rule with regard to all WTO members, including separate customs territories, such as Hong Kong, Macau and Taiwan. In addition, China undertook to observe this rule when providing preferential arrangements to foreign-invested enterprises within special economic areas.

With regard to the national treatment rule, China similarly agreed to repeal or revise all inconsistent laws, regulations and other measures. China also specifically acknowledged that its national treatment obligation extended to the price and availability of goods or services supplied by government authorities or state-owned enterprises, as well as to the provision of inputs and services necessary for the production, marketing or sale of finished products. Among other things, this latter commitment precludes dual pricing, i.e., the practice of charging foreign or foreign-invested enterprises more for inputs and related services than Chinese enterprises. China also agreed to ensure national treatment in respect of certain specified goods and services that had traditionally received discriminatory treatment in China, such as boilers and pressure vessels (upon accession), after sales service (upon accession), and pharmaceuticals, chemicals and spirits (one year after accession).

As previously reported, China reviewed its pre-WTO accession laws and regulations and revised many of those which conflicted with its WTO MFN and national treatment obligations in 2002. Many of these revisions were made to secure national treatment, including with regard to boilers and pressure vessels, after sales service, and the pricing of pharmaceutical products, among other areas. In 2003, China made further revisions covering registration requirements for foreign chemical products and the regulation of spirits.

However, China still does not appear to observe MFN and national treatment requirements in all areas. For example, several U.S. industries reported that China continued to apply the value-added tax in a manner that unfairly discriminates between imported and domestic goods, both through official measures and on an *ad hoc* basis, as discussed below in the Taxation and Subsidies sections. In addition, China's industrial policies on automobiles and steel appear to discriminate against foreign producers as well as imported goods, as discussed below in the Investment section. It also appears that China has applied sanitary and phytosanitary measures in a discriminatory manner since it acceded to the WTO, as discussed below in the Agriculture section. The United States continued to address these and other MFN and national treatment issues with China in 2007, both bilaterally and in WTO meetings, such as the transitional reviews before the Committee on Market Access, the Committee on Trade-Related Investment Measures

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(TRIMS Committee), the Committee on Sanitary and Phytosanitary Measures (SPS Committee), the Subsidies Committee, the Council for Trade in Goods, the Committee on Trade in Financial Services and the Council for Trade in Services. The United States will continue to pursue these issues vigorously in 2008.

Taxation

China committed to ensure that its laws and regulations relating to taxes and charges levied on imports and exports would be in full conformity with WTO rules upon accession, including, in particular, the MFN and national treatment provisions of Articles I and III of GATT 1994.

Since China's WTO accession, certain aspects of China's taxation system have raised serious national treatment concerns. One of these issues – the discriminatory VAT rates applied to imports versus domestically produced semiconductors – was resolved in 2004, although other issues remain. In addition, China continued to use its income tax and VAT systems to provide subsidies that appear to be prohibited under the WTO Subsidies Agreement, as discussed below in the Subsidies section.

As previously reported, in an effort to develop its domestic integrated circuit (IC) industry, China began announcing discriminatory VAT policies in late 2001, although they did not become operational until 2004. Pursuant to a series of measures, China provided for the rebate of a substantial portion of the 17 percent VAT paid by domestic manufacturers on their locally produced ICs. A similar VAT rebate was available to imported ICs, but only if they had been designed in China. China charged the full 17 percent VAT on all other imported ICs. These policies disadvantaged U.S. exports of ICs to China, which totaled approximately $2 billion in 2003, and put pressure on foreign enterprises to shift investment in IC manufacturing to China. Following extensive but unsuccessful bilateral engagement, the United States initiated dispute settlement by requesting formal WTO consultations with China in March 2004. In the ensuing consultations, which took place in April 2004 in Geneva, with third party participation by Japan, the EC and Mexico, the United States laid out its claims under Article III of GATT 1994, which sets forth the WTO's national treatment principle. Through these consultations and a series of bilateral meetings in Washington and Beijing, a settlement was reached in July 2004, pursuant to which China agreed to withdraw the challenged measures.

China has also used VAT policies to benefit domestic fertilizer production. In July 2001, the Ministry of Finance (MOF) and the State Administration of Taxation (SAT) issued a circular exempting all phosphate fertilizers except diammonium phosphate (DAP) from a 13 percent VAT. DAP, a product that the United States exports to China, competes with similar phosphate fertilizers produced in China, particularly monoammonium phosphate. The circular also allowed

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