

**CHINA CUSTOMS VALUATION AND THE WTO
VALUATION AGREEMENT**

By

ZHANG WEI-LIANG

THESIS

Submitted to
School of Public Policy and Management, KDI
in partial fulfillment of the requirements
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ABSTRACT

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This paper develops China's efforts to fully comply with the WTO Valuation Agreement. After the long and arduous negotiations, China signed the Protocol on its Accession into WTO and became a WTO member in December 2001, China had undertaken necessary commitments in trade regime and Customs regime. Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 is one of the most important commitments. In 2000, China amended its Customs Law to adopt the transaction value required by the WTO Valuation Agreement. After the accession to the WTO, China promulgated the Rules of the General Customs Administration of the People's Republic of China Regarding the Determination of the Customs Value of Imported and Exported goods on January 1, 2002. The main contents of law and the practices of Customs valuation are analyzed to depict China's compliance and consistence with the valuation methods and requirements in the WTO Valuation Agreement. Meanwhile, some problems may still exist in the enforcement of Customs Law and regulations concerning the transparency and improper practices of Customs valuation. The possible suggestions are researched and proposed for improvement in this field. The paper concludes that China Customs will fully comply with the WTO Valuation Agreement since Chinese government reiterated the implementation of its commitments and obligations. China's participation in the WTO

trading system will surely facilitate China's foreign trade and the world trade, and will be an important part of world economy.

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TABLES OF CONTENTS

Chapter I Introduction

1. History of China's Accession to the GATT/WTO
2. China's Journey to the GATT/WTO Membership
 - 2.1 China's Request for "Resumption" of Contracting Party Status in GATT
 - 2.2 Efforts Made by the P.R. China
 - 2.3 Successful Accession to the WTO
 - 2.4 Accession to the WTO as a Developing Country

Chapter II China's commitments and the WTO Valuation Agreement

1. The Commitments Undertaken by China
2. The WTO Agreement on Customs Valuation
 - 2.1 Rules of the Agreement on Customs Valuation
 - 2.2 The Main Standard: Transaction Value
 - 2.3 Determining Customs Value: Permitted Adjustments to the Price Paid for Goods
 - 2.4 Instances Where Customs Can Reject the Transaction Value Declared by the Importer
 - 2.5 Five Other Standards

Chapter III China's Customs Regime and Legislation after WTO

1. New Customs Law
2. Rules Regarding the Determination of Customs Value

Chapter IV Comparison China's Customs Law & Rules and WTO

Valuation Agreement

1. Meeting the WTO Requirements
 - 1.1 Customs Valuation
 - 1.2 Rules Regarding Determination of Customs Value

- 1.3 Some Unclear Expressions in the Rules
2. The Right to Explanation and the Right of Appeal
- 2.1 Advance Ruling and Announcement System
3. Modernizing Customs Clearance Procedures
- 3.1 Use of Automated System and EDI
- 3.2 The Right of Pre-Declaration Inspection and Sampling
- 3.3 The Right to Amend and Cancel Declaration
- 3.4 Wider Use of Customs Security
4. New Customs Powers and Accountability
5. Appraisal of the Law and Rules

Chapter V Customs Valuation Fraud

1. Understanding of Customs Valuation Fraud and “Document Laundering”
2. Customs Valuation Fraud Case
3. Valuation Dispute and Settlement
4. Valuation Fraud Area for Improvement

Chapter VI Other Problems Concerning the Enforcement of the Law and Rules

1. Customs Valuation
2. Transparency
3. Lack of Coordination

Chapter VII Suggestions for Better Compliance

1. Enhance Customs Clearance and Protective Measure
- 1.1 Amendments to Customs Declaration
- 1.2 Applying WTO Rules to Customs Valuation
2. Strengthening Supervision over Customs Officers
3. Cooperation between Trade and Customs/other Agencies
4. Importers and Exporters

- 4.1 Business Implications
- 4.2 Import and Export Licensing
5. Technical Assistance
6. Transparency

Chapter VIII Conclusion

Appendix: The Rules Regarding the Determination of Customs Value

Chapter I Introduction

1. History of China's Accession to the GATT/WTO

--- China was one of the 23 founding members of GATT. China became a contracting party on May 21, 1948.

--- The Kuomintang Government moved to Taiwan and withdrew from the GATT, on May 5, 1950, without the authority of the only legitimate government of the People's Republic of China.

--- In 1982, China was granted observer status in GATT.

--- In June 1986, China requested "resumption" of its contracting party status, on the basis that the withdrawal (by the Kuomintang) was null and void.

--- In May 1987, the GATT established the Working Party on China's Status and China started its long journey of negotiations for the GATT/WTO membership.

--- In January 1995, China failed to become an original member of the WTO and submitted an application for accession to the WTO the same year.

--- China became a member of WTO in December 2001.

2. China's Journey to GATT/WTO Membership

2.1 China's Request for "Resumption" of Contracting Party Status in GATT

The People's Republic of China (hereinafter referred to as the PRC or China) submitted its request for "resumption of its status as a GATT contracting party" in mid 1986. As reviewed in the *GATT Activities 1987* (page 108):

China, a founding member of GATT, indicated to the Council in June 1986 its wish to resume GATT membership (see *GATT Activities 1986*). In March 1987, China submitted a memorandum on its foreign trade regime to the Council that subsequently established a working party open to all contracting parties.

In May 1987, the Council adopted the following terms of reference of the Working Party:

“China has submitted to the GATT Contracting Parties a request to resume its status as a contracting party and a Memorandum on the People’s Republic of China's Foreign Trade Regime. On March 4 1987, the Council established a Working Party. This working party will examine the foreign trade regime of the People's Republic of China, develop a draft Protocol setting out the respective rights and obligations, provide a forum for the negotiation of a schedule, address as appropriate other issues concerning the People’s Republic of China and the GATT, including procedures for decision-making by the Contracting Parties, and make recommendations to the Council.”

2.2 Efforts Made by the P.R. of China

With the first meeting in October 1987 and five meetings in 1988, the GATT Secretariat characterized the Working Party’s progress as follows in *GATT Activities 1988* (at 129):

The Working Party held further meetings in April, June, September and December, characterized by comprehensive exchanges of detailed questions from participants and replies from China. This initial exploratory phase was thus completed and the Working

Party was expected to begin consideration of the possible terms of a Protocol in 1989. As it was reviewed in *GATT Activities 1989* at 130-131:

By April of 1989, the Working Party examining China's request to resume its membership of GATT had reached a relatively advanced stage, having largely completed its assessment of China's foreign trade regime and economic reform programs. There remained, nevertheless, some doubts among participants regarding pricing mechanisms within the Chinese economy, customs procedures, bilateral trade agreements and the need for greater transparency in trade regulations.

It was intended that the June meeting of the Working Party would begin consideration of the elements which would form the basis of a protocol. The Working Party met again in December to consider a report by the Chinese authorities on the current state of economic reform and intentions for the future. At this meeting participants were anxious to clarify whether the recent cutbacks in imports and slowdown in the pace of reform was a short-term reaction to an overheated economy or represented a more permanent change of approach. The Working Party decided that the examination should be continued at a meeting to be held in the spring of 1990.

The next meeting was in the fall of 1990 after which it was around a year and a half before activity resumed on China's accession. During 1992, there were three Working Party meetings and a bifurcated approach was taken, continuing the examination of the Chinese trade regime while also holding bilateral market access commitments and discussing possible elements of a protocol of accession. China had been participating in

the Uruguay Round negotiations and was anxious to complete its accession program to be an original member of any new entity. “Throughout the year of 1993, China expressed its wish that the negotiations on its status as a contracting party be concluded in time for China to become an original member of the World Trade Organization.” While the efforts of the PRC and the Working Party continued at a high level in 1994, China had not completed its negotiations prior to the commencement of the WTO although agreement was reached on various areas of the draft protocol including “the administration of China’s trade regime; special economic areas and transparency; special trading arrangements; state trading; import and export licensing; foreign exchange controls; price controls; taxes and levies charged on imports and exports and agricultural policies.”

2.3 Successful Accession to the WTO

When negotiations did not conclude in 1995, the PRC submitted an application for accession to the WTO under Article XII and requested the conversion of “the existing Working Party to the Working Party on China’s Accession to WTO.” It took 18 more meetings over the next six years (2 in 1996, 4 in 1997, 2 in 1998, 6 in 2000 and 4 in 2001) to conclude the Working Party process, with the intensity of the process picking up following bilateral agreements with the United States (11/15/1999) and the EU (5/19/2000).

With the Working Party having concluded its activities on September 17, 2001, the package of documents generated were forwarded for consideration by the WTO’s 4th Ministerial Conference in Doha, Qatar in November 2001. By consensus, the Ministerial

Conference approved the text of the agreement governing China's accession to the WTO on November 10. China signed the document the following day and submitted its notification that the PRC had completed domestic ratification of its accession package immediately thereafter. Thirty days later on December 11, 2001, China became the 143rd member of the World Trade Organization. The accession of China to the WTO is an important event both for existing WTO members and for China. Membership brings many rights and carries wide-ranging obligations. Because of the size and growth of the Chinese economy over the last two decades and the structure of the Chinese economic system, the process of accession has been complicated, has extended over 15 years and requires significant additional changes in the Chinese economic system in the future.

2.4 Accession to the WTO as a Developing Country

One of the issues of major importance for the relationship of China with other WTO members is whether China will assume full "developing country" rights. China pursued for many years the position of seeking specific confirmation in its accession documents that China was a developing country. As within the UN system, designation as a developing country is a matter of self-selection, the debate was in fact more about whether major trading nations or blocks such as the US, EC, Japan, etc. would accept China receiving all of the special and differential treatment rights provided within the WTO agreements for developing countries. Because of the tremendous growth in exports from China and perceived lack of need by many trading partners for China to receive across the board special and differential treatment, the US, EC and other WTO members insisted on China agreeing to waive certain rights it could otherwise assert as a

“developing country”. Actually, China wants to be classified as a developing country and the US wants it classified under the developed country standard, which would preclude the ten per cent subsidy that China provides. As is true for nearly all countries, China’s protocol does not contain any explicit mention that China is to be treated as a developing country. But China’s situation makes a complicated protocol necessary only where the acceding country is not in compliance or where the nature of the economic system raises questions about whether existing members will, in fact, be receiving benefits after accession.

In such cases, either special phase-in periods are identified or additional requirements mapped out. China has a significant number of areas where full compliance or full liberalization by the time of accession was not possible. Therefore, China designated itself to be a developing country when China became a WTO member in order that China could still enjoy special and preferential treatment in some fields of its commitments. Even so, China would like to undertake the commitments as more as possible in the light of domestic economic development and situation. Full compliance with the WTO Valuation Agreement to accept the transaction value for the determination of customs value of imported goods is one of the examples. Furthermore, the issue of developing country will be of considerable importance in the future trade relationship between China and other member countries, including in the Doha Development Round.

Chapter II China's Commitments and the WTO Valuation

Agreement

1. The Commitments Undertaken by China

When a country or customs territory accedes to the WTO, it is expected to be in conformance with the full array of obligations contained in the various WTO agreements. After the successful conclusion of negotiations on the terms of China's membership in the WTO, the WTO issued a press release in which it summarized the major results of the just-concluded negotiations, as follows:

As a result of the negotiations, China has agreed to undertake a series of important commitments to open and liberalize its regime in order to better integrate in the world economy and offer a more predictable environment for trade and foreign investment in accordance with WTO rules.

As a WTO member, China has given a commitment that it will comply strictly with WTO requirements. China will provide significantly improved market access on a secure basis, including in the agricultural, industrial and services sectors, with in-built provision for growth in access. Tariffs will be bound (i.e. guaranteed) in the WTO, non-tariff measures that cannot be justified in the WTO will be eliminated, restrictions on the right of enterprises within China to engage in trade will be phased out, and China's system of standards will be brought more into line with international norms. China will reform other trade regulations and administrative practices in a way that will support further

growth in trade. Among some of the commitments undertaken by China are the following:

--- China will provide non-discriminatory treatment to all WTO Members. All foreign individuals and enterprises, including those not invested or registered in China, will be accorded treatment no less favorable than that accorded to enterprises in China with respect to the right to trade.

--- China will eliminate dual pricing practices as well as differences in treatment accorded to goods produced for sale in China in comparison to those produced for export.

--- Price controls will not be used for purposes of affording protection to domestic industries or services providers.

--- The WTO Agreement will be implemented by China in an effective and uniform manner by revising its existing domestic laws and enacting new legislation fully in compliance with the WTO Agreement.

--- Within three years of accession all enterprises will have the right to import and export all goods and trade them throughout the customs territory with limited exceptions.

--- China will not maintain or introduce any export subsidies on agricultural products.

As a matter of fact, China is expected to provide most favored nation treatment on tariffs to all WTO member nations on accession and to provide national treatment to WTO-member goods after entry into the importing country. Where trade remedies are provided for dumping or subsidization or when safeguard actions are permitted, China is expected to have laws, regulations and practices that conform with WTO norms in Articles VI and XIX of GATT 1994 and the various agreements implementing these

articles (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Agreement on Implementation of Article VII of the GATT 1994, Agreement on Subsidies and Countervailing Measures, Agreement on Safeguards.) In other areas, like the protection of intellectual property rights, China will implement the TRIPS (Trade-related Aspects of Intellectual Property Rights) Agreement in full from the date of accession. At the same time, China will reserve the right of exclusive state trading for products such as cereals, tobacco, fuels and minerals and maintain some restrictions on transportation and distribution of goods inside the country, many of the restrictions that foreign companies have at present in China will be eliminated or considerably eased after a 3-year phase-out period. The paper is intended to focus on China's commitment of Implementation of the Agreement on Article VII of the General Agreement on Tariffs and Trade 1994 and China's Customs Valuation.

2. The WTO Agreement on Customs Valuation

The Customs value on imported goods is determined mainly for the purpose of applying ad valorem duties. It constitutes the taxable basis for Customs duties. It is also an essential element for trade statistics, for monitoring quantitative restrictions, tariff preferences and for collecting internal nation taxes, etc.

The WTO Valuation Agreement, formally known as the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994, replaced the GATT Valuation Code as a result of the Uruguay Round multilateral trade negotiations which created the WTO in 1994. The GATT Valuation Code was originally

created in 1979 during the Tokyo Round of multilateral trade negotiations with a view to ensuring that the effect of tariff concessions would not be derogated by non-tariff barriers, one of them being arbitrary Customs valuation regimes which were prevalent at that time. The Agreement establishes a Customs valuation system that primarily bases the Customs value on the transaction value of the imported goods, which is the price actually paid or payable for the goods when sold for export to the country of importation, plus certain adjustments. In cases where the Customs value cannot be determined on the basis of the transaction value, it will be determined using one of the following methods:

- The transaction value of identical goods;
- The transaction value of similar goods;
- The deductive value method;
- The computed value method;
- The fall-back method.

The above valuation methods must be used in hierarchical order.

2.1 Rules of the Agreement on Customs Valuation

The detailed WTO rules on the valuation of goods for customs purposes are contained in the Agreement on Implementation of Article VII of GATT 1994 (the Agreement on Customs Valuation). The Agreement's valuation system is based on simple and equitable criteria that take commercial practices into account. By requiring all member countries to harmonize their national legislation on the basis of the Agreement's rules, it seeks to ensure uniformity in the application of the rules so that importers can assess with certainty in advance the amounts of duties payable on imports.

2.2 The Main Standard: Transaction Value

The basic rule of the Agreement is that the value for customs purposes should be based on the price actually paid or payable when sold for export to the country of importation (e.g. the invoice price), adjusted, where appropriate, to include certain payments made by buyers such as the costs of packing and containers, assists, royalties and license fees. The rules exclude buying commissions and special discounts obtained by sole agents and sole concessionaires from being taken into account in arriving at dutiable value.

The Tokyo Round Agreement strictly limited the discretion available to Customs to reject transaction value to the small number of cases. This was a matter of concern to numerous developing countries. They considered that the rule unduly inhibited the ability of their customs administrations to deal with the traders' practice of undervaluing imported goods in order to reduce incidence on duties.

The decision regarding cases where customs administrations have reasons to doubt the truth or accuracy of the declared value (also known as the Decision on Shifting the Burden of Proof), adopted as a result of the initiative taken by developing countries during the Uruguay Round, corrects this lacuna. The Tokyo Round Agreement placed the burden of proof on Customs if it rejected the transaction value declared by the importer. The Uruguay Round decision shifts the burden of proof on to the importers when Customs, on the basis of the information on prices and other data available to it, "has

reason to doubt the truth or accuracy of the particulars or of documents produced in support” of declarations made by the importers.

2.3 Determining Customs Value: Permitted Adjustments to the Price Paid for Goods

(Agreement on Customs Valuation, Article 8)

In order to arrive at the transaction value, Article 8 of the Agreement on Customs Valuation provides that payments made for the following elements can be added to the price actually paid or payable (i.e. the invoice price) by the importer for the imported goods:

- Commissions and brokerage, except buying commissions;
- Costs of, and charges for, packing and containers;
- Assists, i.e. goods (materials, components, tools, dies, etc.) or services (designs, plans, etc.) supplied free or at reduced cost by the buyer for use in the production of the imported goods;
- Royalties and license fees;
- Subsequent proceeds of any sale accruing to the seller as a result of the resale or use of imported goods;
- The cost of transport, insurance and related charges to the place of importation, if the country bases its valuation on CIF prices.

The Article further clarifies that no additions other than for the elements mentioned above shall be made to the price paid or payable in order to arrive at the transaction value. The Article, in addition, enumerates charges or costs that should not be added to customs

value, if they can be distinguished from the price actually paid or payable. These are: freight after importation into the customs territory of the importing country; cost of construction, erection, assembly, maintenance or technical assistance occurring after importation; duties and taxes of the importing country.

2.4 Instances Where Customs Can Reject the Transaction Value Declared by the Importer

(a) When there is no sale.

(b) When there are restrictions on the disposition or use of the goods by the buyer. The transaction value need not be accepted if the sales contract imposes some restrictions on the use or disposition of goods except where:

---The restriction is imposed by law (e.g. packaging requirements);

---The restrictions limit the geographical area in which the goods may be sold (e.g. distribution contract which limits sales to European countries);

---The restrictions do not affect the value of goods (e.g. the new model imported should not be sold before a particular date).

(c) When the sale or price is subject to some conditions for which the value cannot be determined (e.g. the seller establishes the price of the imported goods on condition that the buyer also buys other goods in specified quantities).

(d) When part of the proceeds of any subsequent resale by the buyer accrues to the seller.

(e) Where the buyer and seller are related and if the price is influenced by the relationship.

In order to ensure that the transaction value is rejected by Customs in such cases on an objective basis, the Agreement on Customs Valuation stipulates that national legislation should provide certain rights to importers. First, where Customs expresses doubts as to the truth or accuracy of a declared value, importers should have a right to provide an explanation, including documents or other evidence to prove that the value declared by them reflects the correct value of the imported goods. Second, where Customs is not satisfied with the explanations given, importers should have a right to ask Customs to communicate to them in writing its reasons for doubting the truth or accuracy of the declared value. This provision is intended to safeguard the interests of importers, by giving them the right to appeal against the decision to higher authorities and, if necessary, to a tribunal or other independent body, within the customs administration.

Article 2(a) and Article 2(b) of the Agreement on Customs Valuation also stipulate that the rule that transaction values declared by importers should be used for valuation of goods applies not only to arms-length transactions but also to transactions between related parties. In the latter transactions, which generally take place among transnational corporations and their subsidiaries or affiliates, prices are charged on the basis of transfer pricing which may not always reflect the correct or true value of the imported goods. Even in such cases, the Agreement requires Customs to enter into consultations with the importer, in order to ascertain the type of relationship, the circumstances surrounding the transaction and whether the relationship has influenced the price. If Customs after such examination finds that the relationship has not influenced the declared prices, the transaction value is to be determined on the basis of those prices.

Further, in order to ensure that in practice the transaction value is not rejected simply on the grounds that the parties are related, the Agreement gives importers the right to demand that the value should be accepted when they demonstrate that the value approximates the test values arrived at on the basis of:

- Customs value determined in past import transactions occurring at about the same time between unrelated buyers and sellers of identical or similar goods, or
- Deductive or computed values calculated for identical or similar goods (see below).

2.5 Five Other Standards (Agreement on Customs Valuation, Annex I: General Note)

In order to protect the interests of importers and to ensure that the value in such cases is determined on a fair and neutral basis, the Agreement limits the discretion available to Customs to using the five standards it lays down. The Agreement further insists that these standards should be used in the sequence in which they appear in the text, and only if Customs finds that the first standard cannot be used should the value be determined on the basis of the succeeding standards. The standards, presented in the sequence in which they are to be used, are discussed below:

- The transaction value of identical goods (Article 2 of the Valuation Agreement)

Where value cannot be determined on the basis of the transaction value, it should be established by using an already determined transaction value for identical goods.

- The transaction value of similar goods (Article 3 of the Valuation Agreement)

Where it is not possible to determine value on the basis of the above method, it should be determined on the basis of the transaction value of similar goods. Under both these

methods, the transactions selected must relate to imported goods that were sold for export to the country of importation and at about the same time as the goods being exported.

Rules for determining whether goods are identical or similar (Agreement on Customs Valuation, Article 15:2)

Whether the goods are identical or similar to those in the transaction to be valued is determined by taking into account the characteristics described below.

Goods are identical if they are the same in all respects including physical characteristics, quality and reputation; Goods are similar if they closely resemble the goods being valued in terms of components, materials and characteristics and are capable of performing the same functions and are commercially interchangeable with the goods being valued.

In addition, in order to be treated as identical or similar, the goods must have been produced by the same producer in the same country. As the goods being valued, where, however, import transactions involving identical or similar goods produced by the same producer in the country of production of the goods being valued do not exist, goods produced by a different producer in the same country must be taken into account.

--- Deductive value (Agreement on Customs Valuation, Article 5)

Deductive value is determined on the basis of the unit sales price in the domestic market of the imported goods being valued or of identical or similar goods after making

deductions for such elements as profits, customs duties and taxes, transport and insurance, and other expenses incurred in the country of importation.

--- Computed value (Agreement on Customs Valuation, Article 6)

The computed value is determined by adding to the cost of producing the goods being valued “an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.”

--- Fallback method (Agreement on Customs Valuation, Article 7)

Where customs value cannot be determined by any of the four methods described above, it can be determined by using any of the previous methods in a flexible manner, provided that the criteria employed are consistent with Article VII of the General Agreement. The value so fixed should not, however, be based on the following factors, among others: the price of goods for export to a third country market; minimum customs values; arbitrary or fictitious values.

Agreement on Customs Valuation, Article 6; Note to Article 6

As a general rule, the Agreement visualizes that where a transaction value is not accepted, the value should be determined by using the above standards on the basis of the information available within the country of importation. However, it recognizes that in order to determine a computed value, it may be necessary to examine the costs of producing the goods being valued and other information, which has to be obtained from outside the country of importation. The Agreement therefore suggests, in order to ensure

that the importer is not subjected to unnecessary burdens, that the computed value standard should be used only when buyer and seller are related and the producer is prepared to provide to the customs authorities in the importing country the necessary cost data and facilities for their subsequent verification.

Chapter III China's Customs Regime and Legislation after WTO

Perhaps the most immediate and apparent changes brought about by China's accession to the WTO lie in China's customs regime. Not only does WTO accession oblige China to abide by the WTO Agreement, the implementation of this and related agreements means that the customs regime will become more transparent and uniform.

Some expressed their concern regarding the methods used by China to determine the customs value of goods, in particular regarding the practice of using "minimum or reference prices" for certain goods, which would be inconsistent with the Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation Agreement). Other WTO-consistent means were available to Members doubting the veracity of declared transaction values. In response, China stated that China had ceased to use and would not reintroduce "minimum or reference prices" as a means to determine customs value.

China recalled that the overwhelming majority of China's customs duties were ad valorem duties. The customs value of imported goods was assessed according to the CIF price based on the transaction value, as defined in the Customs Valuation Agreement. If the transaction value of imported goods could not be determined, the customs value was

determined based on other means provided for in the Customs Valuation Agreement. China confirmed that, upon accession, China would apply fully the Customs Valuation Agreement, including the customs valuation methods set forth in Article 1 through Article 8 of the WTO Valuation Agreement.

1. New Customs Law

The amended Customs Law of the People's Republic of China, which was promulgated on 8 July 2000 and came into force on 1 January 2001, includes substantial changes to the Customs Law enacted in 1987. As the new legal framework for China's Customs regime, it will usher in a wave of detailed regulations that will transform many of the basic Chinese Customs practices. The revised Customs Law consists of nine chapters and 102 articles, including two new chapters, 42 additional articles and 27 amended articles.

The new Customs Law aims to strengthen the legal framework governing customs activities to bring China's customs systems into line with the international practices embodied in the Kyoto Customs Convention and WTO Customs Valuation Agreement. China's commitment to use transaction value in the amended law brings the PRC valuation practices closer to those outlined in the WTO Customs Valuation Agreement, which China has committed to follow as a WTO member.

Even prior to its entry into the world trade body, China amended its Customs Law to comply with WTO requirements and international practices. In particular, the amended law:

--- Provides for the use of the “transaction value” as the basis for determining the dutiable value of goods for levying import customs duty in accordance with the WTO Customs Valuation Agreement. A new set of regulations on the implementation of this practice became effective on 1 January 2002.

--- Establishes the principle of “rules of origin” in accordance with the WTO Agreement on Rules of Origin. The rules of origin principle determines the origin of goods for determining whether or not such goods are entitled to preferential tariff rates and/or anti-dumping duties in accordance with trade sanctions.

--- Grants importers the right to revise or cancel their customs declarations under certain conditions, whereas the old law makes no such exception.

--- Grants importers the right to examine their goods or obtain samples of goods before customs declarations to reduce the risk of incorrect declarations.

--- Establishes customs classification and test procedures and gives Customs the right to request importers to provide information relevant for customs classification, and if necessary, to conduct tests and examinations.

--- Establishes the administrative arbitration system where Customs may make advance administrative rulings on customs classification issues and the like in respect of imported or exported goods upon request.

--- Provides that Customs shall protect intellectual property rights of imported and exported goods in accordance with relevant laws and regulations.

One of the most significant changes to the customs regime as a result of China’s WTO entry is the reduction of tariffs. Under its accession package, China is committed to

significantly reduce tariffs. As a start, China has already substantially reduced its tariff rates from the average rate of 15.3 percent to 12 percent in 2002. The reduction affected 5332 customs product categories, accounting for 73 percent of the total. It is anticipated that the average duty rate will further be reduced to about 9 percent by 2005.

2. The Rules Regarding the Determination of Customs Value

Due to the fact that China has adopted the transaction value as the basis for determining customs value of imported goods, in order to provide the detailed rules regarding customs valuation, the General Administration of Customs promulgated and published the Rules of General Administration of Customs of the People's Republic of China Regarding Determination on Customs Value of Imported and Exported Goods (hereinafter referred to as the Rules), on December 25, 2001. The Rules shall come into force on January 1, 2002. The Rules are formulated to determine correctly the customs value of imported and exported goods in accordance with the Customs Law of the People's Republic of China, the Regulations on Import and Export Tariff of the People's Republic of China and other related laws and regulations. Customs administration shall, in accordance with the Rules, determine the customs value of imported and exported goods complying with the principles of objectivity, fairness and uniformity. Now we could see that China had established a legal framework to provide guidelines on valuation and better apply the valuation rules (see Appendix: the legal text of the Rules).

Chapter IV Comparison China's Customs Law & Rules and WTO Valuation Agreement

1. Meeting the WTO Requirements

The amended Customs Law institutes a new customs tariff regime and stipulates the transaction value as the basis of customs valuation, while the Rules depicts the detailed concrete guidelines on the determination of customs value, bringing China Customs into line with WTO rules, particularly in terms of the following issues:

1.1 Customs Valuation

The most important issue in Customs Law is the calculation and levying of customs duty on imported goods. The exact amount of customs duty payable depends upon, among other factors, the classification of imported goods, valuation methods, rules of origin and duty rates. Since the Tokyo Round of the General Agreement on Tariffs and Trade negotiations in 1979, GATT members have agreed to adopt "transaction value" as the primary basis for valuation of imported goods. This agreement was eventually absorbed into Annex 1A of the 1994 WTO Agreement which is more commonly known as the WTO Customs Valuation Agreement.

Although GATT members established transaction value as the primary basis for customs valuation since 1979, China refused to completely adopt transaction value as its valuation method when it amended its Customs Law and Customs Tariff Regulations in 1987. Under the 1987 Customs Law, the dutiable value of imported goods shall be the “normal CIF (cost, insurance and freight) value of the imported goods determined by Customs”. In essence, this statutory provision legally gave Customs complete discretion to accept or reject the value of imported goods stated in import documents. Like other developing countries, China took a non-conformity and defensive approach to reduce the loss of Customs revenue through transfer-pricing arrangements by trading parties. This non-conformity ended when China became a member of the WTO in December 2001.

Article 55 of the amended Customs Law now provides that “the dutiable value of imported goods shall be based on the transaction price as examined and determined by Customs.” China promised to abide by the WTO Agreement on Customs Valuation and use transaction value rather than “minimum value” and “reference value” in its customs valuation following its entry into the WTO. Accordingly, China announced that the “Rules of the PRC Customs Administration Regarding the Determination on Customs Value of Imported and Exported Goods” would take effect on 1 January 2002, replacing the provisions promulgated in 1992 and the provisions for the processing trade in 1999.

The implementation of the new provisions will prove favorable to enterprises engaged in the import of goods. China used to follow the principle of “normal value” in its customs valuation. This “normal value” is a “reference value” used by customs for the

examination and approval of customs declarations and is somewhat arbitrary. If customs reckon that the value declared by the importer is obviously below its “normal value”, they will reject the declaration and make their own valuation. This practice gives customs too much power. Customs tend to neglect the truthfulness and completeness of the declaration, or worse, make their own arbitrary valuation on the basis of the reference value. One of the major complaints of traders is that there are too many unforeseeable cost risks doing business in China. The implementation of the new provisions can ensure that importers will be able to estimate the import tax and operating costs before importing their goods.

Transaction value is a price definition that respects the realities of trade. The actual price or price payable in a transaction will be accepted as dutiable value after the necessary adjustments if it meets certain given conditions. To a certain extent, the WTO Agreement on Customs Valuation based on transaction value limits customs’ law-enforcement authority and means in the assessment of dutiable value. Thus, the implementation of the Agreement poses a challenge to the tax collection and administration systems of the customs of all countries, and the PRC Customs is no exception. However, this is not saying that customs will no longer make its valuation on imported and exported goods and will accept the declared price or contract price of the importers or exporters. The Agreement gives the customs the right to determine the final dutiable value of import and export commodities. Thus, when in doubt, customs has the power to require the importer to produce further evidence (including supplementary documents or other proofs). If customs still has reasons to doubt the truthfulness or

completeness of the declared value after the importer has produced the above-mentioned evidence, it may decide not to use the transaction value to evaluate the dutiable value. After assessing the final dutiable value, customs should notify the importer of its decision and state the reasons.

1.2 Rules Regarding the Determination of Customs Value

Article 3 of the Rules stipulates that the customs value of the imported goods shall be determined by customs administration on the basis of the transaction value, including the charges associated with the transport of imported goods and the cost of insurance and associated costs incurred prior to unloading of the goods at the port within the customs territory of the People's Republic of China. The transaction value of the imported goods is the price actually paid or payable for the goods by the buyer adjusted in accordance with the provisions of Article 4 and Article 5 of the Rules.

Articles 3, 4 and 5 of the Rules mainly stipulate that factors concerning the costs, value, royalties and license fees associated with the imported goods shall be considered by China Customs to determine the customs value on the basis of the transaction value. These articles are fully consistent with Article 1, Article 8:1, 8:2 and the Note to Article 1 of the WTO Valuation Agreement.

Articles 6, 34 and 42 of the Rules deal with the related persons and their relationship. Article 42 further mentions the grounds for deeming the parties to be related. Article 34 also provides that when believing with grounds that the relationship between the buyer

and seller influenced the transaction value, customs administration shall issue a written notice to the importer with the grounds for belief and ask for further explanation in written form, including documents or other evidence, that could demonstrate the declared value is not influenced by the relationship between the buyer and seller. If, within 15 days from the date of issuance of the notice, the importer fails to provide further information or the customs administration still, after examining the document or evidence provided, has reasonable doubts that, the relationship between the buyer and seller did influence the transaction value, customs administration may refuse to accept the declared value and determine the customs value in accordance with the provisions in Article 7 to Article 11 of the Rules.

Articles 7 to 11 of the Rules provide the circumstance under which the customs value of the imported goods cannot be determined under the provisions of Article 3, China Customs shall apply the other five methods in its sequential order. In applying the transaction value method of identical or similar goods, customs value shall be based on the transaction value of identical or similar goods imported at or about the same time as the goods being valued. The transaction value of identical or similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value, and an adjustment shall be made to take account of differences in costs and charges between the imported goods and the identical or similar goods in question arising from differences in distances and modes of transport on the basis of objective and quantifiable data. If no such transaction value of identical or similar goods is found, the transaction value of the identical or similar goods sold at a

different commercial level and/or in different quantities, adjusted on the basis of information accurately establishing the amount to take account of differences in prices, costs or other charges attributable to commercial level, quantity, and/or distance and modes of transport, shall be used to determine the customs value on the basis of objective and quantifiable data. In determining the customs value under Article 8 of the Rules, the transaction value of the identical or similar goods of the same manufacturer shall be used in the first place, other transaction values of the identical or similar goods in the manufacturing country or region can only be used when the transaction value of the identical or similar goods of the same manufacturer is not found.

If more than one transaction value of identical or similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods. Furthermore, at the request of the importer, the order of the application of the deductive value and the computed value might be reversed, provided that sufficient information been submitted.

Reasonable means provided in Article 11 of the Rules is the same as the Fall-back method in Article 7 of the WTO Valuation Agreement if the customs value of the imported goods cannot be determined under the provisions of Articles 1 through 6 in WTO Agreement. In applying reasonable means, the customs value of imported goods shall be determined in a manner consistent with the principles and general provisions of the Rules and on the basis of information available in the customs territory of China, other than the prices of the following: (a) the selling price in the customs territory of

China of the goods wherein produced; (b) the higher of the alternative values; (c) the selling price of the goods on the domestic market of the country of exportation; (d) the price computed other than the values or costs of the first paragraph of Article 10 of the Rules; (e) the selling price of the goods for export to a third country or region other than the People's Republic of China; (f) minimum customs value, arbitrary or fictitious values.

In contrast to the WTO Valuation Agreement, the above articles are fully consistent with Articles 2 through 6 in the WTO Valuation Agreement.

The provisions, in Articles 12 to 20 in Chapter II of the Rules, mainly deal with the customs value of special imported goods on the basis of transaction value of imported goods plus the value added incurred from the inward processing and/or outward procession of the products. The customs value of the imported goods, under the lease arrangement or through the way of barter trade, consignment, contribution and donation, shall be determined in accordance with the provisions of Articles 7 through 11 of the Rules.

The provisions in Articles 21 of the Rules stipulate that the customs value of exported goods shall be determined by Customs administration on the basis of transaction value of the goods for sale outside of the territory, including the inland freight, insurance and other charges which are collected for transporting the goods to the port of departure within the customs territory of China before loading, but the customs duties and taxes, if included, shall be deducted. In case that the customs value of exported goods cannot be

determined under Article 21 of the Rules, customs administration shall employ the valuation methods in WTO Valuation Agreement in the sequential order to determine the customs value.

The provisions in Chapter VI of the Rules provide that customs administration may exercise the necessary authorities to examine the truth or accuracy of the declared value. When a declaration has been presented and where the customs administration has reason to doubt the truth or accuracy of the particulars or of documents produced in support of this declaration, the customs administration may ask the importer to provide further explanation, including documents or other evidence, that the declared value represents the total amount actually paid or payable for the imported goods, adjusted in accordance with the provisions of Article 8 of the Rules. If, after receiving further information, or in the absence of a response, the customs administration still has reasonable doubts about the truth or accuracy of the declared value, it may, bearing in mind the provisions of Article 33 of the Rules, be deemed that the customs value of the imported goods cannot be determined under the provisions of Article 1 of the Agreement. Before taking a final decision, the customs administration shall communicate to the importer, in writing if requested, its grounds for doubting the truth or accuracy of the particulars or documents produced and the importer shall be given a reasonable opportunity to respond. When a final decision is made, the customs administration shall communicate to the importer in writing its decision and the grounds therefore.

Article 32 of the Rules provides that when customs administration exercises the authorities, the importer, exporter or relevant entities are obliged to provide true information, books of account and other relevant documentation evidence in written or electronic forms. No refusal, delay or concealment is allowed.

Articles 33, 34 and 35 of the Rules stipulate that when doubting the truth or accuracy of the declared value, China Customs shall issue a written notice to the importer or exporter with the grounds for doubts and ask for further explanation in written form; when believing with grounds that the relationship between the buyer and seller influenced the transaction value, China Customs shall issue a written notice to the importer with the grounds for belief and ask for further explanation in written form; where customs administration refuses to accept the declared value as customs value and decide to determine the customs value under the provisions of Article 8 or Article 22 (a) and (b) of the Rules, Customs administration may consult over price with the importer or exporter to acquire the appropriate transaction value of the identical or similar goods.

Articles 36, 37 of the Rules describe that some rights are granted to the importer and exporter. And customs administration shall keep confidential of the information, which is proprietary information provided by the buyer, the seller or other parties relating to the transaction.

In addition to the right of importers to be consulted at all stages of the determination of dutiable value, the Agreement requires national legislation on the valuation of goods to provide the following rights to importers:

Agreement on Customs Valuation, Article 13

--- The right to withdraw imported goods from Customs, when there is likely to be a delay in the determination of customs value, provided they leave a sufficient guarantee in the form of a surety or deposit to cover the payment of customs duties for which goods may be liable. And customs administration shall keep confidential of the information, which is proprietary information provided by the buyer, the seller or other parties relating to the transaction.

Agreement on Customs Valuation, Article 10

--- The right to expect that any information of a confidential nature that is made available to Customs shall be treated as confidential.

Agreement on Customs Valuation, Article 11

--- The right to appeal, without fear of penalty, to an independent body within the customs administration and to a judicial authority against decisions taken by Customs.

Article 39 provides that the importer or exporter who dissent from the decision of the customs administration on the customs valuation may apply for appeal in accordance with the relevant provisions of the Customs Law of the People's Republic of China and the Regulations on Import and Export Tariff of the People's Republic of China.

Article 40 stipulates the legal responsibilities. Any action in violation of the Rules shall be dealt with by customs administration in accordance with the Customs Law of the People's Republic of China and the Implementing Regulations on Imposing Administrative Penalties under the Customs Law of the People's Republic of China.

Where the violation constitutes criminal, it shall be referred to judicial authorities and be subject to criminal penalties in accordance with the laws.

1.3 Some Unclear Expressions in the Rules

Through comparison with WTO Valuation Agreement, I personally find that the Customs Law and the Rules regarding the determination of Customs Value are, in principle, in conformity with WTO Valuation Agreement. Therefore, I would like to state the main improvement and changes or differences in the fields of the determination of Customs Value, by further analyzing and comparing with the old Rules regarding the Determination of Customs Value.

--- From the perspective of the definition of transaction value, it is legally defined in the Customs Law and the Rules that transaction value is used as the basis for determining the dutiable value of goods for levying import Customs duty, not the “normal value” or “reference price” popularly used in the past.

--- In view of factors taken into account, such as commissions, it is more clearly and tightly stated in the Rules that commissions and brokerage, except buying commission, shall be recorded for the determination of Customs value, but in the past, only sale’s commission was recorded.

--- In regard to discount, it is not considered due to the fact that actual payment for the goods will be used as the basis for the determination of the Customs value, in whatever forms the discount are provided. In the past, China Customs valuation included the cash discount.

--- Regarding the royalties and license fees, now the definitions have been in uniformity. In determining Customs value, the fees for the right to reproduce the imported goods

within the Customs territory shall not be added into the price actually paid or payable.

The only exception is that when they are considered as a condition for sale of the goods being valued. As an example of this, if they are conditions for sale of the valued goods, such as trademark or copyright, they will be recorded in the determination of Customs value. In the past, China practiced that whatever they were related to the imported goods, they were added into the price for Customs valuation.

--- In view of the establishment of relationships between the buyer and the seller, Article 42 (f) of the Rules states, "One party directly or indirectly owns, controls or holds 5 percent or more of the outstanding voting stock or shares of the other party", which is a bit different from what 4 (d) of Article 15 of the Agreement, "any person directly or indirectly owns, controls or holds 5 percent or more of the outstanding voting stock or shares of both of them". I think the expressions of "any person" and "both of them" are much wider than those of "one party" and "the other party".

Furthermore, Article 42 states, "If the buyer and seller are associated in business with each other in that one is the sole agent, sole distributor or sole concessionaire of the other, they, if fall within the criteria of the foregoing paragraphs, shall be deemed to be related".

My understanding is that if they do not fall within the criteria of those paragraphs, even if they are associated in business with each other in that one is the sole agent, sole distributor or sole concessionaire of the other, they shall not be deemed to be related.

Therefore, compared with the expression of 5 of Article 15 in the Agreement, "Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purpose of this Agreement if they fall within the criteria of the paragraph

4”. I think this part of expression of Article 42 of the Rules is different and may not comply with the expression of 5 of Article 15 in the Agreement.

--- Concerning the identical and similar goods, the definitions given in Paragraphs 6 and 7 of Article 41 of the Rules, though not so detailed as 2 of Article 15 of the Agreement, are in conformity with 2 of Article 15 of the Agreement. China now has followed the way that identical and similar goods are valued, as prescribed in the Agreement. In the past, China Customs adopted the price of imported identical or similar goods on international market for Customs valuation purpose, and paid no attention to that whether those goods were produced in the same country or by the same producer, thus making the Customs value of those goods being valued higher than their actual price. As an example of this, the identical or similar goods produced in Malaysia through joint venture with Japan, due to the fact that those goods had the same quality or function as they were produced in Japan, were treated in the same way as the Japanese products for Customs purpose.

--- With regard to the reasonable means (fall-back method), Article 11 of the Rules shows that China has practiced the same means as the WTO valuation method described. But China Customs used to adopt minimum Customs value or arbitrary value, which were totally prohibited by WTO Rules.

2. The Right to Explanation and the Right of Appeal

Under Articles 16 and 17 of the WTO Customs Valuation Agreement, a member’s customs administration must provide a written explanation of how it determined a particular customs value at an importer’s request. Further, under the April 1994 WTO Ministerial Decision relating to the WTO Customs Valuation Agreement, when the customs administration has reasonable doubts about the “truth or accuracy” of a declared

customs value, it may request additional information from an importing party. If the customs administration remains in doubt after reviewing the information provided, it must provide the importer with an explanation of the grounds for doubting the truth or accuracy of the declared value. These provisions, which effectively shift the burden of proof on to the customs administration, help prevent arbitrary determinations. Under the 1987 PRC Customs Law, importers did not have the right to request explanations from Chinese Customs. Whilst the amended Customs Law does not expressly provide for a right to explanation, this right is likely to be reflected in the forthcoming amendments to the Customs Tariffs Regulations and other related implementing regulations. Trading parties will applaud such amendments not only for their better understanding of China Customs Law and the Rules, but also for their transparent concern.

2.1 Advance Ruling and Announcement System

Article 43 of the amended PRC Customs Law allows parties to apply for advance rulings on the classification of goods and other customs issues. Under this provision, China Customs must publicize these rulings for the general public's reference.

This advance ruling system, if properly implemented, will make the China customs system significantly more transparent and predictable. In fact, prior to the amended Customs Law, China Customs had been experimenting with an advanced ruling system on a limited scale. Under the Customs Classification Rulings Measures issued in February 2000, parties were able to request advance rulings on the classification of goods prior to actual importation or exportation. However such rulings only applied to the

applicant's goods. Article 43 of the amended Customs Law extends such administrative rulings to the same type of goods imported or exported by any other parties, similar to the current practices performed by many WTO members.

3. Modernizing Customs Clearance Procedures

The amended Customs Law updates PRC customs procedures in a number of important ways.

3.1 Use of Automated Systems and EDI

With the increasing reliability and popularity of the Internet, both local and foreign firms have growing expectations for e-commerce (business-to-business and business-to-consumer) and e-government (business-to-government) transactions in China. The amended Customs Law now provides a legal basis for recognizing and further developing electronic customs declarations.

China Customs has been experimenting with the use of electronic communication and networking technology for quite some time, and has made significant progress. Since January 1, 1999, exporters have been required to complete "foreign exchange settlement verification" via a computer system that has been networked between China Customs and the State Administration of Foreign Exchange (SAFE). Moreover, since 30 September 2000, all import licenses have been applied for and granted electronically via a computer system that links Chinese Customs and the Ministry of Foreign Trade and Economic Cooperation (MOFTEC , currently referred to as Ministry of Commerce).

3.2 The Right to Pre-Declaration Inspections and Sampling

Article 27 of the amended PRC Customs Law meets China's obligations under Standard 3.9 of the Kyoto Customs Convention's General Annex in respect of allowing importers to inspect shipments and take samples before making customs declarations. This measure should help reduce the liability risk of importers and customs brokers making incorrect customs declarations because they lack knowledge of a shipment's actual contents.

3.3 The Right to Amend and Cancel Declarations

Article 26 of the amended Customs Law provides that parties can amend or cancel a submitted customs declaration if China Customs deems they have "valid reasons" for such a request. However the actual benefits of this provision will largely depend on how "valid reasons" are defined in the forthcoming customs clearance regulations. Whether China Customs will accept advertence as a valid reason is unclear, as is the level of proof that Customs will accept from trading parties to allow the amendment or cancellation of a submitted customs declaration.

3.4 Wider Use of Customs Security

A new Chapter Six (Articles 66 to 70) has been added in the amended Customs Law to provide for the wider use of "customs security" when importers or exporters request the clearance or return of goods from Customs pending a final determination on customs duty or other customs measures. This provision meets China's obligation under Standard

5.5 of the Kyoto Customs Agreement's General Annex. This requires China to accept a pledge of "general security" from trading parties for various customs matters. When compared with the Customs Security Measures issued in 1987, Chapter Six of the amended Customs Law appears to permit the use of customs security under more circumstances, and allows more non-Renminbi forms of security cash deposits to be accepted by China Customs. This should help strike a balance between commercial firms' need to clear Customs expeditiously and Custom's need to protect revenue and discourage violations.

4. New Customs Powers and Accountability

Smuggling is a serious problem in China. The multibillion dollar smuggling syndicate in Xiamen, Fujian Province, recently uncovered by the Chinese Government, is just one of many cases in China. Although China has significantly lowered its customs duties on imports over the last ten years, the huge volume of imports into China still makes smuggling an extremely lucrative business. According to China Customs and MOFTEC (now Ministry of Commerce), the anti-smuggling campaign launched by the central government in 1998 led to a nearly doubling of Customs duty revenue in that year, along with the prosecution of many local Customs directors and local Communist Party cadres.

As part of the 1998 national campaign to combat rampant smuggling, the central government established the Anti-Smuggling Investigation Bureau (ASIB) under the joint governance of China Customs and the Ministry of Public Security. Article 4 of the amended Customs Law gives full legal endorsement to the establishment of the ASIB and

its authority to conduct criminal investigations. This legal endorsement is critical to ASIB's legitimacy because, under the 1996 PRC Criminal Procedure Law, only public security bureaus and other government organizations are specifically authorized by national law to carry out searches, detentions and criminal investigations. Under the 1987 Customs Law, China Customs had rather limited investigative powers outside "Customs Control Zones", demarcated around Customs entry points. Article 6 (4) of the amended Customs Law now gives China Customs the power to conduct investigations of suspected offenders outside Customs control areas. Moreover, Article 6 (5) gives China Customs new powers to search suspects' records and documents, at postal organizations and financial institutions, provided that a local Customs director authorizes the conduct of these searches.

5. Appraisal of the Law and Rules

The outcomes of the amendments to China's Custom Law are threefold. Firstly, the amendments align China's Customs Tariff regime with WTO requirements. Secondly, they bring China Customs system into line with the more modern and rational customs systems contemplated by the 1999 Amendment Protocol to the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Customs Convention). The 1999 Amendment Protocol seeks to simplify and coordinate customs procedures among members so as to meet the demands of a rapidly growing volume of international trade as well as developments in information technology that are affecting international trade and customs practice. Thirdly, the amended Customs Law confers

more investigative and enforcement powers upon China Customs whilst at the same time subjecting these increased powers to a greater degree of accountability.

The amended China's Customs Law is a praiseworthy development in China's law. Whilst many systemic, political and organizational issues still need to be tackled before Customs can be built into a completely modern and professional organization, the amended PRC Customs Law is a much needed first step towards this end. As a basis for the national framework legislation, it is inevitably general. Traders now hope the forthcoming customs implementation regulations will be specific enough to further the goal of creating a transparent, objective, predictable and rational legal customs regime. Furthermore, the Rules provide more detailed practices of determining the customs value of imported goods for both importers and exporters.

Chapter V Customs Valuation Fraud

1. Understanding of Customs Valuation Fraud and “Document Laundering”

In view of the practices of other countries, the implementation of WTO Agreement on Customs Valuation will affect the tariff revenue to different extents. The decline of customs revenue will be more serious particularly in developing countries. China faces a serious struggle in combating price fraud after its entry into the WTO. However, I believe that by gradually improving China Customs' law-enforcement environment and enhancing enterprises' awareness of law and taking more effective measures in dealing with frauds, the impact on tariff revenue can be reduced to the minimum. “Document

laundering” was a typical way of valuation fraud that China Customs faced. The activity refers to smugglers, in collusion with dishonest foreign businesses, concealing original documents and producing fraudulent documents. Through “document laundering”, smugglers turned high value goods into lower value goods, a high rate of duty on certain goods became a low rate, and large amounts of goods shrank to small amounts. Other forms of valuation fraud included concealing actual import costs that should be declared and devaluing imported goods. The hope is expressed that all domestic trading companies would run their businesses legally and honestly, which was essential to stop the incidence of valuation fraud smuggling from growing in China.

Valuation fraud is a prominent way of illegal smuggling after China’s entry into WTO. With China’s entry into WTO, there have been some new trends in illegal smuggling activities. Especially after the implementation of “WTO Customs Valuation Agreement”, when Customs began to implement the rule of accessing Customs value on the actual transaction value, it has become a prominent way of smuggling that some lawless businessmen use valuation fraud to evade Customs duties.

Valuation fraud refers to the kind of smuggling that import and export businesses, when declaring to the Customs the value of imported and exported goods, deliberately under-declare or over-declare the actual transaction value to shirk the responsibility of paying Customs duties or settling payment of foreign exchanges. For one example, when the customs duty rates or rates of duties at importation of the imported goods are not zero, the businesses deliberately under-declare the actual transaction value of the imported

goods. The Customs value calculated according to set formula will become lower. The businesses will then pay fewer duties. For another example, if the businesses deliberately under-declare the value of the exported goods, the foreign exchanges that should be settled into China will be smaller while part of the proceeds from the goods sold is settled and deposited in foreign banks, thus accumulating foreign exchanges for further smuggling of imported goods.

Evasion of duties with valuation fraud is an illegal criminal activity fought against by all the Customs Houses in the world. At present, comparatively typical forms of valuation fraud confront with China Customs are as follows:

(1) “Document Laundering” by using special commercial relations

Smugglers, by using special commercial relations, collude with foreign illegal transferring businesses. When goods are imported into the country through transit, the transferring businesses conceal the original documents and produce fraudulent documents in their name for smugglers to make Customs declarations in the country. Through “document laundering”, commodities are laundered into lower value commodities. High duty rate commodities are laundered into that of low duty rate, large quantity of commodities is laundered into a small quantity and commodities subject to trade control are laundered into non-controlled commodities.

(2) Concealment of the actual import cost that should be declared

The concealment mainly includes some of the contract goods that relate to the payment due to the seller, relative fees that should be calculated in the Customs value and the royalties of those products with high additional values and technology.

(3) Devaluation of the imported goods or goods consigned for sale free of charge

As those commodities imported free of charge are generally of a small quantity and no commercial invoices are required when declared to the valuation assessment on this type of commodities. Some of the smugglers then use devaluation to evade Customs duties. Apart from that, when smugglers import goods consigned for sale on commission, they also devalue the transaction value to evade Customs duty.

(4) Offsetting the value of the imported goods with the reduction from previous transactions

Such an offsetting is quite common between the buyer and the seller who have long term of cooperation, especially for those commodities of which the prices change in a quick speed and by a big margin. According to WTO Customs Valuation Agreement, Customs shall accept reasonable reduction or cash discount of the seller on the imported goods, but shall not accept offsetting the value of the imported goods with reduction from previous transactions. But smugglers often use such a trick to devalue or conceal the real value of the goods to evade duties.

China had realized the problems of valuation fraud. Valuation fraud involves many aspects that could not be easily detected. That's why China Customs have suspected

many cases of valuation fraud, but the successful detection and seizure could be hard to prove and certify.

2. Customs Valuation Fraud Case

The first successful case was reported on November 28, 2002 by Customs Investigation Bureau concerning the valuation fraud since China's entry into WTO. Huangpu Customs House, Guangdong Province acknowledged that a smuggling case suspected of under-declaration and smuggling of 3,000 metric tons of edible oil, worthy of \$1.61 million, by "ex-territorial Document Laundering" and paying through the "Underground Banks", was detected.

Early March this year, Investigation Task Force of Huangpu Customs got the tip-off that a cargo vessel named "Chunrong" was suspected of fraudulent declaration of 400 metric tons of refined palm oil. When they got there to look into the cargo shipment, they discovered that the value declared for another consignment of 3,000 metric tons of mixed edible oil was \$315 per metric ton, which was \$50 per metric ton lower and inconsistent with the Hong Kong market price. Then an immediate investigation was conducted. Now we know the result of the investigation was as follows:

After investigation, Customs officers found that Company A in China imported the consignment as Company B's agent. By checking against the accounting books and original invoices kept by Company B, they discovered a fax sent from Company C in Hong Kong, requesting Company B (private company) to pay a deposit of \$105,000 for an order of 3,000 metric tons of edible oil. This is an abnormal business practice. In

according with the stipulations, all payment for international trade should be effected by the operating company through Letter of Credit issued by domestic banks. It was obviously abnormal to pay a deposit in Hong Kong, thus the declaration value should have included the deposit. This is an intentionally fraudulent under-declaration. The fact certified the judgment that Company B, after signing the contract with Company C for ordering 3,000 metric tons of edible oil, provided false contract, incomplete and fraudulent invoice to Company A by laundering documents in Hong Kong in order to evade customs duty. And the un-declared deposit would be paid through “underground bank” to Company C in Hong Kong, then, the “underground bank” will charge Company B the same amount of the deposit by producing the draft. The case was successfully detected and closed as the first valuation fraud case since China’s entry into WTO.

3 . Valuation Dispute and Settlement

It is also noted that the Customs Law provided for appeal procedures. In the event of a dispute over calculation of duty paid or payable with the Customs, the dissatisfied importer could apply to Customs for a reconsideration of the case. If the appeal was rejected, the importer could sue at the People's Court in China.

Under the terms of a Decision adopted in the Uruguay Round, Customs may reject the declared value of a good for the purposes of levying a duty when it has reason to suspect that the value declared by importers or of the documents submitted by them under-values or over-values the goods.

In order to protect the interests of importers in such situations, Customs is required to provide them with an opportunity to justify their price. Where Customs is not satisfied with the justifications given, it is obliged to give to these importers in writing its reasons for not accepting the transaction value declared by them. The Agreement limits the discretion available to Customs in determining dutiable value when the transaction value is not accepted by laying down five specific methods for establishing value. In determining value based on these methods, Customs is required to consult the importers and consider their views.

One important factor restraining invocation of dispute settlement has been the cost to governments associated with bringing cases to the WTO. These costs, which are not only financial but also related to the scarcity of administrative resources, have constrained many developing countries in particular from using the system to their full advantage, which in turn is a factor discouraging enterprises to complain.

An official of the International Cooperation Department of China Customs General Administration provided for information on China's handling of customs categorization or valuation disputes under Article 10 of the WTO Agreement. He said that in cases where a foreign company disputed the categorization or valuation for a particular product, it should first request a review of the case with the local customs office at the port of entry. If the local review did not produce a satisfactory result, the company could then appeal its case to the Customs General Administration headquarters in Beijing. In cases

where the appeal failed, the company could, as a last resort, file a lawsuit in the Chinese court system.

Problems at the port of entry most commonly result from misclassification of the import or an insufficient understanding by the local customs inspector of customs regulations or policies. For this reason, cases are often referred to customs headquarters for review, a process that can often take several months. In cases where the foreign company's investment in China is substantial, the Ministry of Foreign Trade and Economic Cooperation (MOFTEC , now Ministry of Commerce) has sometimes become involved in these appeals.

4. Valuation Fraud Area for Improvement

Customs Valuation Agreement is an essential part of WTO legal framework, the nucleus of which is that in determining the duty-paying value of imported goods, the Customs must take the purchase price as the basis. If it is impossible to determine the purchase price, the duty-paying value of goods should be determined by stipulated methods and procedures. Valuation Agreement is based on the good faith and law-abidingness of importers. Fraud on the prices of imports and exports is one of the important means employed by lawless persons to evade taxes and make marginal profits. To efficiently check fraud on prices, China Customs subsequently adopted such methods as minimum price and customs reference price in the past. They had played an important role in preventing loss of revenue. However, with the implementation of “WTO Valuation Agreement”, reference price and price data can no longer be simply made

duty-paying value for tax purposes. It is essential to create a complete management mechanism, which not only meets the requirements of “WTO Valuation Agreement” but also effectively prevents the management risk posed by serious price frauds to the China Customs. This is a direct and challenging task faced by China Customs in the work related to China’s entry into the WTO. Therefore, in order to strengthen Customs supervision and control over the work of customs valuation, the customs value control system should be established and will be summarized as follows:

--- Adoption of price declaration system

Under the system importers are required to declare bona fide the prices of imported goods to the Customs. This enables the Customs to have a full understanding of whether there exist certain extraordinary economic relations between importers and exporters and whether importers have to pay directly or indirectly to seller’s fees other than prices of the goods themselves, as well as other details relating to the purchase prices. To make importers understand their liability for price declaration and lead them to abide by the law and exercise strict self-discipline will, to a certain degree, reduce frauds on the price. Meanwhile, such declaration regulates the Customs act of valuation. It serves as legal certificate for making valuation decisions, conducting value investigations of price fraud.

--- Intensification of work on price information

Collect price data both at home and abroad by fully employing scientific and technological means and through a wide variety of channels; follow closely prices and quotations on the international market and precisely grasp details of purchase price, so that the Customs valuation officers will understand in time price information on all commodities and possess reference data for on-the-spot valuation.

--- Introduction of mechanism for valuation risk control

Risk control is an advanced mode of management advocated by the Customs over the world. In Chinese Customs valuation work, a comprehensive analysis will be made of factors constituting a risk to the Customs valuation control in accordance with the variety, quantity, price and taxation of imported goods, their demand and supply in the market as well as the business operation and good-will of enterprises. Based on this, a management by classification will be maintained of imported enterprises and goods, and the Customs valuation force will be deployed in manners suited to categories of enterprises and goods and their risk exposure, so as to maximize the benefits of the Customs valuation control.

--- Tightening of follow-up price control

Though not a document against price frauds, the valuation agreement fully asserts the Customs right to oppose frauds on the price. Article 17 of the Agreement expressly stipulates that the Customs is entitled to examine the truth or accuracy of all representations in documents and declarations. We will, through declared price control and risk analysis, conduct follow-up price investigations into key commodities and enterprises and by checking the original corporate bills, accounting books and relevant data, obtain information on the production, operation and marketing and check whether declared prices of imported goods are genuine, complete and free of suspected frauds relating to price. All this is designed to eventually determine the duty-paying value and obtain first-hand information for investigation of price frauds.

In view of the new situation of valuation frauds since this year, China Customs should reinforce the effort against smuggling. At the same time Customs shall further

enhance the work of Customs valuation. Customs shall have a good collection and management of price information of commodities in various parts of the world and conducting actively price risk analysis so as to maintain a strict supervision on the prices of main imported commodities. Three measures are suggested to deal with valuation frauds: (a) to announce a list of the businesses, which have convicted illegal criminal smuggling with valuation frauds. These businesses will be listed into the “Black List” of Customs throughout China for focal supervision and control. This means that those businesses, declaring to whichever Customs at whatever port of entry in China, will be locked automatically by the Customs for special supervision and control. (b) to announce telephone numbers of the General Administration of Customs and local Customs district throughout China for reporting against valuation fraud. All are welcome to stand up bravely to fight against the illegal criminal activities of duty evasion with valuation fraud. Any meritorious reporting will receive rewards if the reporting or clues leads to successful detection or seizure of fraudulent valuation cases according to relative state stipulations. (c) to keep nationwide launching a special campaign against duty related cases. Customs shall exercise fully the rights of auditing, administrative and criminal investigation entitled by the Customs Law to fight pertinently the smuggling activity of valuation fraud, with a special focus on the smuggling activity of “document laundering”. If necessary, Customs will rely on international Customs organizational mutual assistance agreements to carry out transactional anti-fraud investigation into serious cases suspected of valuation fraud. At the same time, China Customs shall enhance our comprehensive management on anti-valuation fraud, further improve anti-smuggling management mechanism, strengthen communication and coordination with relative competent

departments, law enforcement and judicial organs, and reinforce cooperation with such agencies as industry and commerce, taxation, foreign exchange and banks so as to form a joint force against valuation fraud. Customs shall also set up model businesses with high credibility and good record of self-compliance to promote facilitation with compliance.

Furthermore, an anti-valuation fraud mechanism, consisting of investigators, duty-collectors, price examiners, auditors and spot supervisors, should be strengthened and perfected to improve the environmental enforcement of laws and regulations. They have access to information and information exchange concerning the performances of their duties and cooperate with each other to fight against the valuation frauds. Further cooperation should be strengthened among China Customs, Hong Kong Customs and other international Customs Services.

Chapter VI Other Problems Concerning the Enforcement of the Law and Rules

1. Customs Valuation

According to China Customs regulations, the dutiable value of an imported good is its CIF price, which includes the normal transaction price of the good, plus the cost of packing, freight, insurance, and seller's commission. In August 1998, the Customs Administration launched an ambitious program to standardize enforcement of customs regulations throughout China as part of a larger campaign to combat smuggling. The program has reduced some of the flexibility of local customs officials to "negotiate"

duties. However, customs officials still have wide discretion concerning the category in which an import is placed.

Before the adoption of the transaction value, China Customs has been applying a minimum value system for customs valuation. When goods are imported, importers are to declare the relevant import data onto an EDI system where the PRC Customs would use to verify among others, the value of the imports. The EDI system consists of a Customs Minimum Value Database where comparison would be made to the import or transaction price declared. If the declared value of the import is found to be lower than the minimum value computed for an identical good or similar good, as reflected in the Database, the Customs would impose a dutiable value for the import they deem fit using the minimum value as the basis for computation. Should the importer decide to challenge the minimum value imposed, he can make an application to pay duty under protest with the PRC Customs. The importer would thereafter import the goods paying a deposit for the amount of duty payable for the difference in value between the transaction price and the minimum price imposed. A set of Customs Verification Form will be provided to the importer to fill out relevant information and attached with relevant document its import value. The PRC Customs would thereafter review the documents presented and make a decision on the application. It would usually take less than three months for the PRC Customs to reach a finding on the application. Should the importer be found to be able to justify its import price, the PRC Customs would refund the amount of deposit paid in relation to the goods.

China Customs had finalized the Customs Valuation method in the Rules Regarding the Determination on Customs Value of the Imported and Exported Goods. From now on, China Customs will implement the customs valuation method in accordance to the WTO Valuation Agreement i.e. adopting transaction value as the dutiable value for imported goods. But some problems occasionally occurred in the practical exercises of the new customs valuation methods. They are as follows:

--- Continued use of reference pricing at ports: China has adopted the terms of the Customs Valuation Agreement, which states that imported goods should be valued on the basis of their transaction price, i.e., which the importer actually paid for them. Nevertheless, according to some companies many Chinese customs officers are still using “reference pricing”, a valuation method only to be employed if officers suspect the transaction price is inaccurate.

--- Ignorance of the “condition of sale” rule: Under WTO rules, an importing country may, when valuing imports, add to the transaction price of the goods any royalties or fees paid to the exporter if those fees are a condition of exporting the goods. Before promulgating China’s new valuation rules in January 2002, China had no “condition of sale” rule. Instead, it followed a much broader domestic provision of stipulating that any royalty or fee associated with an import should automatically be included in the import’s dutiable value. Reportedly, China customs officers are still automatically adding royalties and fees to the dutiable value of all imports, despite complaints by some companies.

Where declared customs values are less than reference prices held on databases, China Customs will often require the value to be uplifted, which is contrary to WTO rules.

Alternatively, if China Customs are not satisfied with a declared value, customs may require a deposit to be paid to uplift the price. These deposits are often hard to recover, even when the declared price is proven correct.

Furthermore, inaccurate understanding of the valuation definitions led to an increase of dispute cases. Despite the fact that training and propaganda was organized, “normal value” still has impact on some customs officers, they determine the customs value on basis of “normal value” once they deem the price under-declared; another one-sided understanding of the valuation definition is that they regard the declared value as transaction value. The former arbitrarily determine customs value to harm the importer’s legal rights, causing potential valuation disputes and an increase of dispute reconsideration while the latter may mislead customs officers to abstain from determining customs value, leading to belittling revenue guarantee. The results of some dispute reconsideration embarrassed Customs to accept the value declared by the importers due to insufficient evidence or improper valuation methods. All this would bring about negative effect on China’s implementation of WTO Valuation Agreement.

This may indicate that Customs officers need to change the past improper practices of valuation method and adapt themselves to the new Customs valuation methods as required in the WTO Valuation Agreement.

2. Transparency

It is increasingly easy to find information about economic and trade regulations in the print and electronic media. The 1992 U.S.-China bilateral market access MOU committed

China to publishing all relevant laws, rules, regulations, administrative guidance and policies governing foreign trade that are not currently published. In conjunction with this commitment, China designated the MOFTEC Gazette (Wengao) as the official register for publication of all laws and regulations relating to international trade. Most government ministries have taken to publishing digests of their regulations, both in hardcopy and on their websites. The State Council (www.cei.gov.cn) and MOFTEC (now Ministry of Commerce and www.mofcom.gov.cn.) websites are good first sources of information on Chinese foreign trade law. Economic newspapers now routinely carry the text of government policies and regulations. In addition, a number of commercial entities now offer databases and translations of many regulations. However, despite this progress transparency is still a problem. Chinese officials routinely implement policies based on “guidance” or “opinions” not available to foreign firms and they have not always been willing to consult with Chinese and foreign industry representatives before new regulations are implemented. It can be extremely difficult to obtain copies of draft regulations, even when they have a direct effect on foreign investment. Furthermore, many decisions are left to the discretion of the implementing bureaucrats, who can make decisions without resorting to public comment or open procedures.

Laws and regulations in China tend to be far more general than in most OECD countries. This vagueness allows Chinese courts and officials to apply them flexibly, which results in inconsistencies. Companies have difficulty determining precisely whether or not their activities contravene a particular regulation. Agencies at all levels of government have rulemaking authority, resulting in regulations that are frequently

contradictory. Finally, while there seems to be no shortage of rules and regulations, there are few procedures in place to appeal regulatory decisions.

Lack of transparency of import and export procedures, especially at the level of regulations and customs administrative guidelines, is a major concern for international trade, and one which disproportionately affects companies located in underdeveloped countries which have fewer resources to obtain needed information. Calls have been made accordingly for the creation of a single comprehensive database, accessible by Internet, assembling all relevant laws, rules and procedures for import and export. The germ of this already exists among the WTO's database for tariffs and in databases being developed by and within the EU, by APEC and no doubt other groupings, and of course within national trade databases. It will be necessary in the WTO discussions to evaluate the most efficient means of ensuring maximum transparency and availability to traders by exploiting existing national and international sources, avoiding duplication, and to the extent that more information is needed, to ensure that sufficiently detailed and comprehensive transparency requirements are established.

3. Lack of Coordination

Lack of coordination of different agencies concerned with import and export, and the resulting requirement to subject cargoes to multiple checks at different times and places, has been cited by traders as a major concern. In view of the multiplication of regulatory controls world-wide, some rationalization of procedural aspects of such controls is essential to streamline trade flows, while IT-based means of information exchange

between traders and government and between government agencies makes it more feasible.

Proposals were made in the field of coordinating the provision of information to different government agencies. These, however, could be complemented with provisions to ensure, notably at import, that goods are subject only to a single physical intervention, normally by customs on behalf of other agencies. In other words, administrations would ensure, over time, a level of coordination and delegation of controls to customs to enable all verifications of customs value determination to be done once only. The overall aim should be to set a norm of such integration, subject to possible exceptions (where customs may not be qualified to carry out specific expert functions such as health and safety data and certificate), but with the burden of proof clearly lying on the administration seeking to maintain separate or unharmonized control functions.

The compliance and cooperation should be organized much more efficiently, while the use of a single interface with the administration makes it easier for traders to align their computer networks with the receiving agency. Administrations benefit through the optimal use of their customs personnel and databases, and the reduction of fraud or due to better coordinated information between agencies: a so-called win situation.

Chapter VII Suggestions for Better Compliance

1. Enhance Customs Clearance and Protective Measures

The old Customs Law has not provided for the legal effect of electronic customs declaration, giving rise to a number of problems in customs clearance management. Article 25 of the new law specifies the legal effect of electronic declaration, granting it the same legal status as paper declaration. The classification of import and export commodities does not only determine the applicable rate of duties, but also serves as the basis for implementing trade control measures, such as import and export licensing and quotas. The new Customs Law contains relevant provisions in this regard. Also, it is set out that the results of the tests conducted by the Customs Laboratory or laboratories appointed by the Customs will be used as the scientific basis for the classification of commodities.

1.1 Amendments to Customs Declarations

Inaccurate data input in customs declarations due to technical hiccups or other special reasons are considered inevitable and the Customs should deal with this on a case-by-case basis, allowing amendment or cancellation to be made. Such provisions are included in the Kyoto Convention and Article 26 of China's new Customs Law contains provisions to that effect. Pre-declaration inspection of goods due to various reasons (e.g. geographical restriction), a consignee of imported goods may not know the actual

condition of the goods and cannot make an accurate customs declaration. It is therefore reasonable for the consignee to inspect the goods prior to declaration. Article 27 of China's new Customs Law includes relevant stipulations in the Kyoto Convention and protection of the consignee's rights.

1.2 Applying WTO Rules to Customs Valuation

Taking "transaction value" defined in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 adopted in the Uruguay Round as the primary basis for customs value of imported goods is a common international practice. While China has agreed to align with this international practice, some customs officers still use "normal value" defined in the Brussels Convention on Customs Valuation as the basis for customs valuation. To overcome the discrepancy is to require customs officers to grasp a comprehensive understanding of the WTO rules on transaction value. Customs officers should be aware of the valuation factors, which may influence the transaction value. Valuation factors are the various elements, which must be taken into account by addition (dutiabale factors) to the extent these are shown to be not already included in the price actually paid or payable or deduction (non-dutiabale factors) from the total price incurred in determining the customs value, for valuation purposes.

2. Strengthening Supervision over Customs Officers

To effectively supervise the work of customs officers and protect the lawful rights of the parties concerned, a sound supervisory system to monitor the enforcement and observance of law by customs officers should be established. To those whose lawful

rights have been harmed as a result of improper administration on the part of the customs authority, compensation will be made. A withdrawal system requiring a customs officer to withdraw from the investigation of any cases involving conflict of interest is to be established. A training and appraisal system will be set up under which customs officers must be trained and appraised regularly. Those not meeting the required standards may not remain in office. Customs officers shall be trained to accept the new concept of valuation and to have an accurate understanding of the transaction value in order to bring into line with the WTO rules and international trade norms. Customs officers should be aware that Customs has rights and reasons to doubt and reject the declared value and the transaction value if information is not sufficient. Meanwhile, the mission of the Customs value is to safeguard the national revenue and to protect the rights of importers and exporters.

3. Cooperation between Trade and Customs/other Agencies

We have heard the complaint that some customs administrations still adopt a confrontational stance towards the trading community. This attitude leads to the failure to distinguish between compliant and non-compliant traders, perpetuates the application of excessive and unnecessary control procedures and prevents the development between both parties of trade facilitation solutions of mutual benefit. It is observed that administrations that cooperate actively with traders benefit the most in terms of efficiency, achieving levels of compliance, and morale.

The revision of the Kyoto Convention moves in the right direction by suggesting that customs administrations seek to cooperate with representatives of trade. This concept could however be developed further in terms of requiring such cooperation, or in ensuring the involvement in any government-trade relationship of all interested parties such as other government agencies, transport operators, freight forwarders, chambers of commerce, banks etc. In the light of that it would be useful to consider the scope for WTO rules requiring each Member to set up a systematic mechanism of cooperation on trade facilitation. This could be a provision or based on adoption of the measures concerning the establishment of national trade facilitation bodies. A provision of this nature would lead over time to the needed changes in attitude, and ensure the domestic agreement on and implementation of trade facilitation measures, through making this a political priority.

4. Importers and Exporters

It is important that governments rely on their private sector to act as part of surveillance mechanisms, encouraging firms to identify policies by trading partners that appear to violate WTO rules. For this to be effective, it is necessary that the private sector be well-informed about what the rules are, and that the government creates incentives for officials to listen and respond to complaints. This can be achieved through training and outreach programs and the creation of consultative mechanisms with the private sector and consumer organizations. The latter are vital if a nation is to be able to use the WTO dispute settlement mechanisms as these groups must generate the information the government needs to defend the national interest.

The result of these various incentives is a collective action problem that leads to an inefficient outcome, both for individual firms and for the trading system as a whole. The problem is similar to that of the production of a public good, where without cooperation under-provision is likely to result. Solutions to these information and enforcement problems should focus on increasing the incentive for firms to collect data and transfer this to the government to allow it to contest discriminatory policies. This could be done by reducing the costs of collecting such information by supporting the development of centralized information collection points (e.g., through chambers of commerce), and increasing the incentive for government to pursue legitimate cases (e.g., by passing legislation that require governments to motivate decisions not to pursue cases).

China's WTO commitments will provide new opportunities in a wide range of sectors including wool, sugar, wheat, barley, meat, seafood, horticulture, dairy, cotton, rice, oilseeds, wine, processed food, hides and skins, chemicals, pharmaceuticals, metals, information technology, automotive, telecommunications services, and in the financial and professional services sectors. WTO membership will also result in a more open, secure and predictable business environment in China since China has undertaken commitments to reduce trade barriers and limit future increases, to improve significantly its administration of trade regulations, and to increase the transparency in the way such measures are applied.

Business firms should have a better understanding of the implementation of the new method of valuation. First, companies should achieve a better understanding of the relevant laws and regulations in order to have a clear idea of their rights and obligations. For example, importers and exporters have the right to ask customs for a written explanation on how the dutiable value of their import/export goods is determined. They also have the right to take delivery of their goods. When customs decides to defer its valuation of the dutiable value of the import or export commodities, an importer or exporter may take delivery of his goods first after paying the necessary deposit to customs. Second, companies should honestly make customs declarations. The Agreement on Customs Valuation is based on credibility and the method of transaction value reflects the reality of the transaction.

A firm also needs to be certain of the value for duty purposes that will be placed on its exports or imports as they cross a border. This value will have a critical role in determining the price effect of the customs duty. This is because when customs duties are levied on an *ad valorem* basis, that is as a proportion of the value of imported goods, the actual incidence of duty depends on how Customs determines dutiable value.

4.1 Business Implications

The basic aim of the Agreement is to protect the interests of honest traders by requiring that Customs should accept for determining dutiable value the price actually paid by the importer in a particular transaction. This applies to both arms-length and related-party transactions. The Agreement recognizes that the prices obtained by different

importers for the same products may vary. The mere fact that the price obtained by a particular importer is lower than that at which other importers have imported the product cannot be used as a ground for rejecting the transaction value. Customs can reject the transaction value in such situations only if it has reasons to doubt the truth or accuracy of the declared price of the imported goods. Even in such cases, it has to give importers an opportunity to justify their price and if this justification is not accepted, to give them in writing the reasons for rejecting the transaction value and for determining the dutiable value by using other methods. Furthermore, by providing importers the right to be consulted throughout all stages of the determination of value, the Agreement ensures that the discretion available to Customs for scrutinizing declared value is used objectively.

At present, goods stored in warehouses or other venues outside customs-regulated zones are subject to strict examination requirements. However, for goods stored in warehouses or other venues at ports, railway stations and airports under customs supervision, the authority has not implemented the licensing or registration system. For this purpose, Article 38 of the new Customs Law further clarifies the legal obligations to be borne by the keeper of such goods. Duty collection Under the existing Customs Law, when a taxpayer has no credit balance in his bank account or no imported goods which can be put up for sale to offset the amount of duty payable, nothing can be done by the Customs. As a result, long overdue duties often turn into bad debts. In order to protect government tax revenue, Article 60 of the new law sets out specific enforcement measures for the collection of customs duty. Enforcement measures Currently, if a taxpayer transfers his properties before making delayed payment of duty or during the

period of tax remission, or transfers his properties by means of asset restructuring or change of operation mode, the Customs are not empowered to take any action against such activities. This has resulted in heavy losses of tax revenue. To deal with this problem, Article 61 of the revised law provides for the mandatory enforcement of measures recovering such duties.

4.2 Import and Export Licensing

Traditionally, the right to import and export was tightly regulated. This regime is expected to be relaxed with China's WTO entry. Under China's WTO accession package, it has committed to phasing in import/export rights for minority joint ventures within one year, majority joint ventures within two years and wholly foreign-owned enterprises within three years. Such rights will also be extended to foreign enterprises without a presence in China. Furthermore, goods subject to state trading and designated state trading are gradually being relaxed.

With China's accession to the WTO, companies should expect significant improvements in the customs regime. Accession requires more transparency in the regime and calls for more scrutiny in product classification, origin and valuation. Implementation of the WTO Customs Valuation Agreement provides importers with greater certainty and with opportunities to re-examine and optimize their transaction structures to generate tariff savings. Tariff reductions provide importers with savings opportunities if they time their imports to take advantage of the tariff changes.

5. Technical Assistance

The WTO Valuation Agreement establishes a Committee on Customs Valuation composed of representatives from each of the Members for the purpose of affording Members the opportunity to consult on matters relating to the administration of the customs valuation system by any Member or the furtherance of the objectives of the Agreement.

The WTO Valuation Agreement mandates the WCO to administer the Agreement and the Agreement also establishes a Technical Committee on Customs Valuation under the auspices of the World Customs Organization with a view to ensuring, at the technical level, uniformity in interpretation and application of the Agreement. The responsibilities of the Technical Committee include advising on specific technical matters as requested by Members or by a panel in a dispute.

The responsibility of the Technical Committee is to ensure uniformity in the interpretation and application of the Agreement at the technical level. The Technical Committee maintains a close working relationship with the WTO Committee on Customs Valuation, which manages all the trade policy aspects of the Agreement. The major responsibilities of the Technical Committee are:

--- To examine specific technical problems arising from the day-to-day administration of the Customs valuation systems of Members and to give advisory opinion on appropriate solutions based upon the facts presented.

--- To furnish information and advice on questions concerning the valuation of imported goods as requested by Members.

--- To study valuation laws, procedures and practices as they relate to the Agreement.

--- To facilitate technical assistance to Members with a view to furthering the international acceptance and understanding of the Agreement.

My suggestion is that a group of experts on customs valuation should be established and shall consist of auditors, accountants and technical personnel to provide consultation and advice on valuation problems for all Customs Houses throughout China in order to guarantee the determination of customs value on the basis of uniformity, fairness and objectiveness, and to strengthen the efficient coordination mechanism. Meanwhile the experts shall take advantage of the technical assistance provided by the Committee and shall be responsible for delivering the advice and solutions on the better implementation of the WTO Valuation Agreement to customs officers who deal with the work of determining the customs value of imported and exported goods. This will be one good step to bring all customs valuation practices into the conformity with the WTO rules.

6. Transparency

Enhanced transparency, among other things, would ensure a reduction in the discretionary treatment of goods at the border. As part of China's WTO commitments (set out in the Protocol on the Accession of the Working Party of China), China agreed to enforce only "those laws, regulations and other measures pertaining to or affecting trade in goods and services, TRIPs or the control of foreign exchange that are published and

readily available to other WTO members.” China also agreed to establish an official journal publishing all trade-related laws and regulations, and to establish an inquiry point where WTO-related information could be obtained. Furthermore, China has committed itself to admonishing all laws and regulations in a uniform, impartial, and reasonable manner. Finally, China agreed to “make available to WTO members, upon request, all laws, regulations and other measures pertaining to or affecting trade in goods, services, TRIPs or the control of foreign exchange before such measures are implemented or enforce.”

Progress to Date: (a) In compliance with China’s WTO commitments, China has established a WTO Enquiry and Notification Center under MOFTEC (now Ministry of Commerce). The center opened on January 14, 2002 and has received more than 350 formal inquiries in China’s first six months of operation. Inquiry forms can now be accessed online, and written inquiries are answered within 30 days; (b) China has begun to issue notifications regarding the promulgation of new regulations, and has created a website to aid that effort. The website publishes all promulgated laws and regulations, and can be found at www.chinawto.gov.cn; (c) The MOFTEC (MOFCOM) Gazette has become the China Gazette of Foreign Trade and Cooperation. The publication will feature new MOFTEC (MOFCOM) rules, circulars and regulations. (d) Private sectors sources in China indicate that they are getting greater advance notice regarding draft laws and regulations and are pleased to see a general trend in the direction of more transparent policymaking by the central government. They note certain ministries are making special progress in this area.

There is no doubt that the obligation of transparency under the WTO agreements will be viewed by many within China as an unwelcome intrusion into domestic affairs. It should be recognized, however, that the obligation of transparency is reciprocal among all member states. As a result, what China loses through the disruption of the *status quo*, the greater burdens of disclosure and the loss to some of special privileges will be more than made up through greater access to foreign markets, which are more open and predictable precisely because of the transparency obligation. In effect, the overall imposition of the transparency obligation facilitates the smooth operation of the multilateral trading system and insures that the system operates in fashion consistent with the WTO principles. As explained, greater transparency also will bring major internal benefits to China.

Transparency is widely regarded as a Western notion that is being pushed on non-Western societies as part of the movement toward greater adherence to rule of law. It is true that transparency is more descriptive of the Western industrialized countries than China or many other countries in East and South East Asia. But there is ample evidence that transparency in governance and economic activities is far superior to the alternatives and if China is going to continue its drive toward a more affluent and globally integrated society, China too will have to embrace transparency. But it seems clear that a widespread infusion of transparency in China will only occur when China realizes that transparency is in its own self-interest. It may be that the China leadership's battle against corruption combined with China's accession to the WTO will provide the stimulus for greater transparency, but until the point that China recognizes transparency as in its own

best interest, I expect that China may struggle with its transparency obligations under the WTO.

It is apparent that the obligation of transparency is intended to assure that the concessions agreed to by China are in fact available to enterprises of the other member states. Transparency also is one of the principal devices used to monitor China's adherence to the terms of the WTO agreements. Because of the widespread skepticism about China's willingness or ability to comply with its WTO obligations, China's compliance is likely to be watched closely, which is why China's overarching obligation of transparency will be of special significance. To forestall future complaints, China has agreed to the establishment of a WTO mechanism for reviewing its compliance with the WTO commitments. This mechanism provides for an annual review of China's compliance efforts for eight years after its accession, with the final review coming in the tenth year. Still, the world's judgment on China's accession to the WTO is going to depend in large part on the transparency of its domestic rules affecting international trade and how forthcoming China is with relevant, reliable information for the WTO review mechanism. But because of China's growing economic and political power, it seems inevitable that China will be held to a very high compliance standard, with transparency as a key component.

Chapter VIII Conclusion

The history of fourteen and half year's arduous negotiations finally led China to be a WTO member in December 2001. The accession to WTO implies that China will enjoy the benefits and rights while undertaking the necessary commitments of the WTO Agreement. It goes without saying that China's membership in the WTO involves two distinct processes. The first led up to the accession protocol whereby the WTO Ministerial Conference held in Doha, Qatar formally approved China's accession. The process defined the legal framework of China's accession, specifying the commitments that China was to undertake. The other process, that is to say, is the implementation process, whereby China proceeds to put those commitments into practice in the form of its own policy measures. At the same time, even in the midst of its reform-and-opening policy efforts China has been actively building up its legal system. China has promulgated what is for a developing country a vast number of laws, ordinances, and notifications.

The paper mainly focuses on one of the commitments---the implementation of the Article VII of the General Agreement on Tariffs and Trade 1994 (Agreement on Customs Valuation). Chinese Government has committed to fully comply with the WTO Valuation Agreement in the Protocol. The WTO Valuation Agreement establishes a Customs valuation system that primarily bases the Customs value on the transaction value of the

imported goods, which is the price actually paid or payable for the goods when sold for export to the country of importation, plus certain adjustments. Since China's past practices of customs valuation has been based on the "minimum price" or "reference price" which is completely inconsistent with the WTO valuation rules, China has managed the domestic reforms required by WTO accession by amending the Customs Law and promulgating the Rules regarding the determination of customs value in order to abide by the WTO rules. By analysis of the Customs Law and the Rules and comparison with the WTO requirements in the customs valuation field, it is noticed that all the provisions are consistent with WTO valuation requirements. But some problems still exist in the practical application of the transaction value, such as the continuous use of reference value, the improper understanding of the rules and the habitual use of the past practices. Furthermore, China has realized the problem of customs valuation fraud in the current business practices and has taken the necessary measures to strengthen the supervision and control over the work of Customs valuation. All this will influence full compliance with the WTO Valuation Agreement. Therefore, possible suggestions are proposed to deal with those problems for a better compliance. I am sure that these suggestions will be helpful to China Customs' improvement in the compliance with the WTO Valuation Agreement.

Now that China has finished its accession negotiations, the real work begins. After all, WTO rules and principles affect many aspects of public policy at different levels of government. In fact, it is changes to China's domestic policies that bring the greatest long-term benefits to China's consumers and businesses. WTO Membership also means

that China will be---for the first time---a major player in global trade negotiations, helping to open new markets and shape new WTO rules. Since Chinese government has reiterated to fully comply with the WTO Valuation Agreement, I am sure that China could do as it has committed. The development in the fields of customs valuation demonstrates that Chinese government's intention to fulfill commitments was serious and China has the ability to undertake those commitments. By promising the commitments, China will play an important part in the world trading system and make its contributions to globalization.

APPENDIX

APPENDIX

The Rules of General Administration of Customs of the People's Republic of China Regarding Determination on Customs Value of Imported and Exported Goods

Chapter I General Provisions

Article 1 The Rules are formulated to determine correctly the customs value of imported and exported goods in accordance with the *Customs Law of the People's Republic of China*, the *Regulations on Import and Export Tariff of the People's Republic of China* and other related laws and regulations.

Article 2 Customs administration shall, in accordance with the Rules, determine the customs value of imported and exported goods complying with the principles of objectivity, fairness and uniformity.

Chapter II Customs Value of Imported Goods

Article 3 The customs value of the imported goods shall be determined by customs administration on the basis of the transaction value, including the charges associated with the transport of imported goods and the cost of insurance and associated costs incurred prior to unloading of the goods at the port within the customs territory of the P.R.China.

The transaction value of the imported goods is the price actually paid or payable for the goods by the buyer adjusted in accordance with the provisions of Article 4 and Article 5, provided:

- (a) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which are imposed by laws and regulations, limit the geographical area for resale or do not have substantial effect on the value of the goods;

- (b) that the price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;
- (c) that no part of the proceeds of any subsequent resale, disposal or use of the imported goods by the buyer will accrue directly or indirectly to the seller, unless an adjustment can be made in accordance with the provisions of Article 4; and
- (d) that the buyer and seller are not related, or where the buyer and seller are related, that the provisions of Article 6 shall be applied.

Article 4 In determining the customs value of the imported goods, the following shall be added:

- (a) the costs incurred by the buyer:
 - (i) commissions and brokerage, except buying commissions;
 - (ii) the cost of containers which are treated as being one with the goods in question;
 - (iii) the cost of packing whether for labor or materials;
- (b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer to the seller free of charge or at reduced cost:
 - (i) materials, components, parts and similar items incorporated in the imported goods;
 - (ii) tools, dies, moulds and similar items used in the production of the imported goods;
 - (iii) materials consumed in the production of the imported goods;
 - (iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the customs territory of the P.R.China and necessary for the production of the imported goods.
- (c) royalties and license fees related to the imported goods that the buyer must pay, either directly or indirectly, as a condition for sale of the goods being valued to the People's Republic of The People's Republic of China;
- (d) the value of any part of the proceeds of any subsequent resale, disposal or use of the goods that accrues directly or indirectly to the seller.

For the above-mentioned values and costs, the importer of the goods shall provide customs administration with information on the basis of objective and quantifiable data. If such information is not available, the customs value shall be determined by customs administration in accordance with the provisions of Article 7 through Article 11, inclusive.

Article 5 In determining the customs value of imported goods, the followings, provided that they are distinguished from price actually paid or payable for the imported goods, shall not be included:

- (a) charges for construction, erection, assembly, maintenance, technical assistance undertaken after importation on goods such as industrial plant, machinery and equipment;
- (b) the cost of transport of the goods after importation;

(c) import duties and other internal taxes.

Article 6 Where the seller and the buyer are related within the meaning of Article 42, the transaction value shall be accepted whenever the customs administration considers that the relationship did not influence the price or the importer demonstrates that such value closely approximates to the one of the following occurring at or about the same time:

- (a) the transaction value in sales to unrelated buyers of identical or similar goods for export to the People's Republic of China;
- (b) the customs value of identical or similar goods as determined under Article 9;
- (c) the customs value of identical or similar goods as determined under Article 10.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 4 and Article 5 and costs incurred by the seller in sales in which the seller and buyer are not related and that are not incurred by the seller in sales in which the seller and the buyer are related.

Article 7 where the customs value of the imported goods cannot be determined under the provisions of Article 3, customs administration shall apply the following methods in its sequential order:

- (a) transaction value of the identical goods;
- (b) transaction value of the similar goods;
- (c) deductive value;
- (d) computed value; and
- (e) reasonable means.

At the request of the importer, the order of the application of the deductive value and the computed value might be reversed, provided that sufficient information been submitted.

Article 8 In applying the transaction value method of identical or similar goods, customs value shall be based on the transaction value of identical or similar goods imported at or about the same time as the goods being valued.

In applying the foregoing paragraph, the transaction value of identical or similar goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value, and an adjustment shall be made to take account of differences in costs and charges between the imported goods and the identical or similar goods in question arising from differences in distances and modes of transport on the basis of objective and quantifiable data.

If, in applying the foregoing paragraph, no such transaction value of identical or similar goods is found, the transaction value of the identical or similar goods sold at a different commercial level and/or in different quantities, adjusted on the basis of information accurately establishing the amount to take account of differences in prices,

costs or other charges attributable to commercial level, quantity, and/or distance and modes of transport, shall be used to determine the customs value on the basis of objective and quantifiable data.

In determining the customs value under this Article, the transaction value of the identical or similar goods of the same manufacturer shall be used in the first place, other transaction values of the identical or similar goods in the manufacturing country or region can only be used when the transaction value of the identical or similar goods of the same manufacturer is not found.

If more than one transaction value of identical or similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 9 In applying the deductive value method, the resale price of the identical or similar goods of the imported goods being valued shall be used to determine the customs value, provided that the imported goods or identical or similar imported goods are sold in the customs territory of the P.R. China:

- (a) at or about the time of importation of the goods being valued;
- (b) in the condition as imported;
- (c) in the first sale within the customs territory of the People's Republic of China.
- (d) in the greatest aggregate quantity;
- (e) to an unrelated party within the customs territory of the P. R. China.

In determining customs value of the imported goods under the foregoing paragraph, the following items must be deducted:

profit, general expenses and commissions usually paid, which are incurred in connection with sales within the customs territory of the P.R.China of imported goods of the same class or kind as the goods in question;

- (a) the cost of transport, insurance, loading and unloading and other fees or charges after importation;
- (b) customs duties and taxes on importation, and other national taxes by reason of the importation or sale of the goods thereof.

In determining the customs value of the imported goods under the paragraph 1 and 2, if neither the goods being valued nor the identical nor similar goods are sold within the customs territory of the P.R.China at or about the same time of importation of the goods being valued, the resale time could be extended to 90 days after the date of such importation if the other conditions provided in paragraph 1 are satisfied.

Where neither the goods being valued nor the identical nor similar goods are sold within the customs territory of the P.R.China in the condition as imported, at the request of importer, the price of the goods after further processing shall be used to determine the customs value, due allowance being made for the value added for such processing, provided other conditions set in paragraph 1 are satisfied.

In determining the items to be deducted under this Article, principles and methods applied shall be consistent with the generally accepted accounting principles in the P.R. China.

Article 10 In applying the computed value method, customs value shall consist of the sum of the following items:

- (a) the cost or value of raw materials and fabrication or other processing employed in producing the imported goods;
- (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the imported goods being valued which are sold for export to the customs territory of the People's Republic of China;
- (c) the cost of transport, insurance and other charges incurred prior to unloading the goods at the port of entry or place of importation within the customs territory of the P. R. China.

In determining the customs value of the imported goods under the foregoing paragraph, customs administration may conduct on-site verification of the information provided by the producer of the goods in another country with the agreement of the producer and notification in advance to the government of the country of origin in question.

In determining the values or costs under the first paragraph, principles and methods applied shall be consistent with the generally accepted accounting principles applied in the country where the goods are produced.

Article 11 In applying reasonable means, the customs value of imported goods shall be determined in a manner consistent with the principles and general provisions of the Rules and on the basis of information available in the customs territory of the P. R.China, other than the prices of the following:

- (a) the selling price in the customs territory of the P.R.China of the goods wherein produced;
- (b) the higher of the alternative values;
- (c) the selling price of the goods on the domestic market of the country of exportation;
- (d) *the price computed other than the values or costs of the first paragraph of Article 10;*
- (e) the selling price of the goods for export to a third country or region other than the People's Republic of China;
- (f) minimum customs value, arbitrary or fictitious values.

Chapter III Customs Value of Special Imported Goods

Article 12 Where the materials and parts for inward processing and the finished product are subject to customs duties for importation or customs duties for domestic sale, the customs value shall be determined in accordance with the provisions of Chapter II, and

- (a) the customs value of the imported materials and parts for inward processing which are subject to customs duties shall be determined on the basis of the value declared of the materials and parts at the time of entry for customs purpose;
- (b) the customs value of the materials and parts for inward processing which are bought by the importer and the finished product (including scrap, waste or byproduct) thereof, for domestic sale, shall be determined on the basis of the value of importation of the materials and parts;
- (c) the customs value of the materials and parts for inward processing which are provided by a person outside of the customs territory and the finished product (including scrap, waste or byproduct) thereof, for domestic sale, shall be determined on the basis of the value of the materials and parts at the time of making entry for domestic sale;
- (d) the customs value of the finished product (including scrap, waste or byproduct) for domestic sale which is produced by an enterprise within an inward processing zone shall be determined on the basis of the value of the finished product at the time of making entry for domestic sale;
- (e) the customs values of materials and parts and the finished product (including scrap, waste or byproduct) thereof for domestic sale by a processing enterprise within a customs bonded area shall be determined on the basis of the values of materials and parts and the finished product, respectively, at the time of making entry for domestic sale. If there is content of domestic materials and parts in the finished product, the customs value of the finished product shall be determined on the basis of the value of the materials and parts thereof, which are imported at the time of importation.
- (f) the customs value of the leftover materials, which are attributable to processing, shall be determined on the basis of the value at the time of making entry for domestic sale.

Article 13 The customs value of the goods (excluding materials and parts for inward processing and the finished product thereof) which are sold from a customs bonded area or a inward processing zone or withdrawn from a customs warehouse for domestic sale shall be determined on the basis of the values verified by the customs at the time being sold from a customs bonded area or a inward processing zone or a customs warehouse. If the customs value cannot be determined by reviewing the selling price, customs administration shall determine the customs value in accordance with the provisions of Article 7 through Article 11, inclusive of the Rules.

Where the selling price does not contain the cost of storage, transport and other associated charges incurred within the area, zone or warehouse thereof, those costs and charges shall be included on base of objective and quantifiable data.

Article 14 The customs value for machine, tool, vehicle or other goods which is exported for repair, if a declaration of exportation made to Customs, and is consequently re-imported within the period required by Customs, shall be determined on the basis of the costs of repair service, the materials and parts used in the repair, and the freight, insurance and other charges for transport of re-importation.

Article 15 The customs value for goods which is exported for outward processing with a declaration of exportation made to the Customs, and is consequently re-imported within the time period required by Customs, shall be determined on the basis of the costs of outward processing and the cost of materials and parts used for the processing, and the freight, insurance and other charges for transport of re-importation.

Article 16 The customs value of the goods of temporary importation approved by customs administration shall be determined in accordance with the provisions of Article 7 through Article 11, inclusive.

Article 17 The customs value of the imported goods under a lease arrangement shall be determined in accordance with the following means:

- (a) the customs value of the goods under a lease transaction shall be determined on the basis of the rental charge paid or payable for the lease arrangement during the period thereof;
- (b) the customs value of the goods which are purchased under a lease transaction with an option of purchase shall be determined on the basis of the price under an option of purchase;
- (c) at the request of the lessee for one-off payment of customs duties and taxes and under the approval of Customs, the customs value shall be determined in accordance with the provisions of Chapter II of the Rules.

Article 18 The customs value of commercial samples, exhibitions and advertising items, which are purchased under an option of purchase, shall be determined on the basis of the price under an option of purchase.

Article 19 The customs value of the goods which were imported under the duty-exemption or duty-reduction programs and are subject to full payment of customs duties and taxes shall be determined on the basis of the value of the goods determined at the time of importation, deducting the depreciation value. The formula shall be expressed as follows:

$$\text{Customs value} = \text{Value of the goods determined at the time of importation} \times \left(1 - \frac{\text{The time accurately used as of the application for paying duties (in term of months)}}{\text{Statutory years for customs custody}}\right) \times 12$$

Article 20 The customs value of the imported goods through the way of barter trade, consignment, contribution, donation and etc. shall be determined in accordance with the provisions of Article 7 through Article 11 of the Rules.

Chapter IV Customs Value of Exported Goods

Article 21 The customs value of exported goods shall be determined by customs administration on the basis of transaction value of the goods for sale outside of the territory, including the inland freight, insurance and other charges which are collected for transporting the goods to the port of departure within the customs territory of the P.R.China before loading, but the customs duties and taxes, if included, shall be deducted.

The transaction value of exported goods is the price actually paid or payable by the buyer to the seller of the goods, which is sold for export outside of the customs territory of the P. R. China.

Article 22 Where the customs value of exported goods cannot be determined under the foregoing article, customs administration shall employ the following methods in the order to determine the customs value:

- (a) transaction value of the identical goods exported to same country or region at or about the same time;
- (b) transaction value of the similar goods exported to same country or region at or about the same time;
- (d) deductive value calculated on the basis of cost, profit and general expense for producing the identical or similar product within the customs territory;
- (e) reasonable means.

Article 23 Any commissions paid to a person out of the customs territory, if identified separately, shall be deducted.

Chapter V Calculation of Freight, Insurance and other Charges in the Customs Value of Imported and Exported Goods

Article 24 Freight, insurance and other charges of imported goods shall be calculated as follows:

- (a) if imported by ocean freight, the charges for transport to the unloading port within the customs territory, if the unloading port is at an inland river, to the unloading port at the inland river, shall be valued;
- (b) if imported by land carrier, the charges for transport to the first land port within the customs territory shall be valued; if paid to the port of destination, the charges for transport to the destination shall be valued;
- (c) if imported by air transportation, the charges for transport to the first airport within the customs territory shall be valued. If the destination airport is another airport other than the first one, the charges for the transport to the destination airport shall be valued.

Article 25 The freight for land, air or ocean transportation shall be determined in accordance with the charges actually paid or payable. If the freight (s) cannot be determined or do not occur at all, customs administration shall calculate the cost on the

basis of the freight rate or amount published by the transportation industry at the time of importation.

Article 26 The cost of insurance for goods imported by land, air or ocean transportation shall be determined in accordance with the charges actually paid. If the insurance for imported goods cannot be determined or do not occur, customs administration shall calculate the cost of insurance on the basis of 0.3% of the sum of C & F.

Article 27 For the goods imported by mail, postage shall be treated as freight, insurance and other charges for transport.

Article 28 Where the goods are imported by railway or highway transportation and transacted in the term of DAF (Delivered at frontier), customs administration shall calculate the freight, insurance and other charges on the basis of 1% of the price of the goods.

Article 29 Where the imported goods are vehicles, which are transported by their motion, customs administration may not value the freight.

Article 30 The freight and insurance charges for transport from the port of departure within the customs territory to the port out of the customs territory, if included in the selling price of the exported goods, shall be deducted.

Chapter VI Examination and Verification of Customs Value

Article 31 The consignors or consignees of the imported or exported goods are obliged to declare the transaction value to customs administration truthfully and accurately and submit documents, written and electronic data including but not limited to invoice, contract, packing list which indicate the truth and completeness in support of the declared value. Where customs administration deems necessary, the consignors or consignees shall provide customs administration with supplemental information reflecting the relationship between the buyer and seller, transaction activities, and other information relating to the transaction value.

Article 32 To examine the truth or accuracy of the declared value, customs administration may exercise the following authorities:

- (a) To examine and reproduce contracts, invoices, books, certificates for exchange settlement and payment, documents, business correspondences and faxes and other written or electronic information reflecting the relationship and transaction between the buyer and the seller;
- (b) to interview the consignee or consignor and other enterprises having monetary and transaction relationship with the importer or exporter to inquire into the matters concerning customs value of the imported or exported goods;

- (c) to examine the goods or sample of the goods for examination and test;
- (d) to enter into the importer's or exporter's premise and storage facilities to examine the goods and operations relating to imported or exported goods;
- (e) to inquire of the relevant financial institutions to submit information relating to collection and payment for imported or exported goods, and to inquire of national tax authorities about the internal tax consequence of the imported and exported goods thereof.

When customs administration exercises the above authorities, the importer, exporter or relevant entities are obligated to provide true information, book of account and other relevant documentation evidence in written or electronic forms. No refusal, delay or concealment is allowed.

Article 33 When doubting the truth or accuracy of the declared value, customs administration shall issue a written notice to the importer or exporter with the grounds for doubts and ask for further explanation in written form, including related documents or other evidence that could demonstrate the truth or accuracy of the declared value. If, within 15 days from the date of issuance of the notice, the importer or exporter fails to provide further explanation or the customs administration, after examining the document or evidence provided, still has reasonable doubts about the truth or accuracy of the declared value, customs administration may refuse to accept the declared value and determine the customs value in accordance with the provisions in Article 7 to Article 11 or Article 22.

Article 34 When believing with grounds that the relationship between the buyer and seller influenced the transaction value, customs administration shall issue a written notice to the importer with the grounds for belief and ask for further explanation in written form, including documents or other evidence, that could demonstrate the declared value is not influenced by the relationship between the buyer and seller. If, within 15 days from the date of issuance of the notice, the importer fails to provide further information or the customs administration still, after examining the document or evidence provided, has reasonable doubts that, the relationship between the buyer and seller did influence the transaction value, customs administration may refuse to accept the declared value and determine the customs value in accordance with the provisions in Article 7 to Article 11.

Article 35 Where customs administration refuse to accept the declared value as customs value and decide to determine the customs value under the provisions of Article 8 or Article 22 (a) and (b); customs administration may consult over price with the importer or exporter to acquire the appropriate transaction value of the identical or similar goods.

Article 36 Upon written request, the importer or exporter shall have the right to ask for an explanation in writing from the customs administration as to how the customs value of the imported or exported goods was determined.

Article 37 Where customs administration decides that the determination of customs value needs to be postponed, the importer or exporter may, after submitting a guarantee according to the relevant regulations, request the goods be released from customs custody.

Customs administration shall complete, within 90 days from the date of submitting guarantee, the verification of the goods released under a customs bond and send a notice regarding the conclusion to the importer or exporter.

Article 38 customs administration shall keep confidential of the information, which is proprietary information provided by the buyer, the seller or other parties relating to the transaction.

Article 39 The importer or exporter who dissent from the decision of the customs administration on the customs valuation may apply for appeal in accordance with the relevant provisions of the *Customs Law of the People's Republic of China* and the *Regulations on Import and Export Tariff of the People's Republic of China*.

Chapter VII Legal Responsibilities

Article 40 Any action in violation of the Rules shall be dealt with by customs administration in accordance with the *Customs Law of the People's Republic of China* and the *Implementing Regulations on Imposing Administrative Penalties under the Customs Law of the People's Republic of China*. Where the violation constitutes criminal, it shall be referred to judicial authorities and be subject to criminal penalty according to relevant laws.

Chapter VIII Supplementary Provisions

Article 41 Terms used in the Rules are defined as follows:

“Customs territory” referred to the customs territory of the People’s Republic of China.

“Price actually paid or payable” means the total payment, as a condition for the sale of the imported goods from the seller, directly or indirectly made, or to be made, by the buyer to or for the benefit of the seller to the third party.

“Buying commissions,” means any fees paid by a buyer to the buyer’s agent for the service in the purchase of the imported goods.

“Brokerage fees” means any service fee paid by the buyer to the broker on behalf of the interests of both the buyer and the seller for the service in the purchase of the imported goods.

“Royalties and license fees” means the fees paid by the buyer for the right to use copyrights, patents, trademarks, know-how and other rights relating to the imported

goods. However, in determining customs value, the fees for the right to reproduce the imported goods within the customs territory shall not be added into the price actually paid or payable.

“Identical goods” means goods produced in same country or region, which are the same in all respects, including physical characteristics, quality and reputation. However, minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical.

“Similar goods” means goods produced in same country or region which, although not alike in all respects, have like characteristic and like component materials which enable them to perform the same functions and to be commercially interchangeable.

“About the same time” means within 45 days before or after the date of entry of the imported goods being valued.

“Generally accepted accounting principles” refers to any accounting principle, norm and method generally recognized in relevant country, including accrual method, matching method, historical cost method and division of revenue expenditure and capital expenditure method which are related to the value of the goods.

Article 42 The buyer and seller shall be deemed to be related only if:

- (a) they are the members of the same family;
- (b) they are officers or directors of one another’s businesses;
- (c) one party directly or indirectly controls the other party;
- (d) both of them are directly or indirectly controlled by a third party;
- (e) together they directly or indirectly control a third party;
- (f) one party directly or indirectly owns, controls or holds 5 percent or more of the outstanding voting stock or shares of the other party;
- (g) one party is an employee, officer or director of the other party; or
- (h) the buyer and seller are legally recognized partners in business.

If the buyer and seller are associated in business with each other in that one is the sole agent, sole distributor or sole concessionaire of the other, they, if fall within the criteria of the foregoing paragraphs, shall be deemed to be related.

Article 43 The “profit and general expenses” referred to in Article 9 of the Rules is to be determined on the basis of the information supplied by the importer. If the importer’s figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being sold within the customs territory, it shall be determined on the basis of the latter.

“General expenses” include direct and indirect expenses relating to sale of the goods.

“Value-added from further processing” shall be calculated on the basis of objective and quantifiable data relating to the cost of such work, generally accepted standards, calculation methods and other practices of the industry.

Article 44 “The cost or value of materials and fabrication or other processing” referred in Article 10 of the Rules shall be determined on the basis of books regarding the production of the imported goods, which are provided by the producer out of the customs territory.

“Profits and general expenses” shall be determined on the basis of the information provided by the producer out of the customs territory. If the information provided by the producer out of the customs territory is inconsistent with those of goods of the same class or kind sold by producer to the customs territory, the profit and general expenses can be determined on the basis of other information by the customs administration. “General expenses” include direct and indirect costs for producing and selling the goods.

Article 45 The Rules are not applicable to determine the customs value of passenger effects, personal postal articles and other personal effects allowed to be imported, or the dutiable value of the imported or exported goods or articles under suspicion of smuggling. The customs value of such goods or articles shall be determined under the regulations otherwise provided by General Administration of Customs of the People’s Republic of China.

Article 46 The General Administration of Customs of the People’s Republic of China is authorized to interpret the Rules.

Article 47 The Rules shall come into force on January 1, 2002, where upon the *Rules of General Administration of Customs of the People’s Republic of China Regarding Determination on Customs Value for Imported and Exported Goods* effective on September 1, 1992 and *the Regulations of General Administration of Customs of the People’s Republic of China Regarding Determination of Customs Value for Imported and Exported goods under Inward Processing* effective on October 1, 1999 shall be invalid.

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