ANNEXTURES
Annex: 1

Three Joint Communiqués between the United States and the Peoples Republic of China
Joint Communiqué of the United States of America and the People's Republic of China

February 28, 1972

1. President Richard Nixon of the United States of America visited the People's Republic of China at the invitation of Premier Chou En-lai of the People's Republic of China from February 21 to February 28, 1972. Accompanying the President were Mrs. Nixon, U.S. Secretary of State William Rogers, Assistant to the President Dr. Henry Kissinger, and other American officials.

2. President Nixon met with Chairman Mao Tsetung of the Communist Party of China on February 21. The two leaders had a serious and frank exchange of views on Sino-U.S. relations and world affairs.

3. During the visit, extensive, earnest and frank discussions were held between President Nixon and Premier Chou En-lai on the normalization of relations between the United States of America and the People's Republic of China, as well as on other matters of interest to both sides. In addition, Secretary of State William Rogers and Foreign Minister Chi Peng-fei held talks in the same spirit.

4. President Nixon and his party visited Peking and viewed cultural, industrial and agricultural sites, and they also toured Hangchow and Shanghai where, continuing discussions with Chinese leaders, they viewed similar places of interest.

5. The leaders of the People's Republic of China and the United States of America found it beneficial to have this opportunity, after so many years without contact, to present candidly to one another their views on a variety of issues. They reviewed the international situation in which important changes and great upheavals are taking place and expounded their respective positions and attitudes.

6. The Chinese side stated: Wherever there is oppression, there is resistance. Countries want independence, nations want liberation and the people want revolution--this has become the irresistible trend of history. All nations, big or small, should be equal: big nations should not bully the small and strong nations should not bully the weak. China will never be a superpower and it opposes hegemony and power politics of any kind. The Chinese side stated that it firmly supports the struggles of all the oppressed people and nations for freedom and liberation and that the people of all
countries have the right to choose their social systems according to their own wishes and the right to safeguard the independence, sovereignty and territorial integrity of their own countries and oppose foreign aggression, interference, control and subversion. All foreign troops should be withdrawn to their own countries. The Chinese side expressed its firm support to the peoples of Viet Nam, Laos and Cambodia in their efforts for the attainment of their goal and its firm support to the seven-point proposal of the Provisional Revolutionary Government of the Republic of South Viet Nam and the elaboration of February this year on the two key problems in the proposal, and to the Joint Declaration of the Summit Conference of the Indochina’s Peoples. It firmly supports the eight-point program for the peaceful unification of Korea put forward by the Government of the Democratic People's Republic of Korea on April 12, 1971, and the stand for the abolition of the "U.N. Commission for the Unification and Rehabilitation of Korea". It firmly opposes the revival and outward expansion of Japanese militarism and firmly supports the Japanese people's desire to build an independent, democratic, peaceful and neutral Japan. It firmly maintains that India and Pakistan should, in accordance with the United Nations resolutions on the Indo-Pakistan question, immediately withdraw all their forces to their respective territories and to their own sides of the ceasefire line in Jammu and Kashmir and firmly supports the Pakistan Government and people in their struggle to preserve their independence and sovereignty and the people of Jammu and Kashmir in their struggle for the right of self-determination.

7. The U.S. side stated: Peace in Asia and peace in the world requires efforts both to reduce immediate tensions and to eliminate the basic causes of conflict. The United States will work for a just and secure peace: just, because it fulfills the aspirations of peoples and nations for freedom and progress; secure, because it removes the danger of foreign aggression. The United States supports individual freedom and social progress for all the peoples of the world, free of outside pressure or intervention. The United States believes that the effort to reduce tensions is served by improving communication between countries that have different ideologies so as to lessen the risks of confrontation through accident, miscalculation or misunderstanding. Countries should treat each other with mutual respect and be willing to compete peacefully, letting performance be the ultimate judge. No country should claim infallibility and each country should be prepared to re-examine its own attitudes for the common good. The United States stressed that the peoples of Indochina should be allowed to determine their destiny without outside intervention; its constant primary objective has been a negotiated solution; the eight-point proposal put
forward by the Republic of Viet Nam and the United States on January 27, 1972 represents a basis for the attainment of that objective; in the absence of a negotiated settlement the United States envisages the ultimate withdrawal of all U.S. forces from the region consistent with the aim of self-determination for each country of Indochina. The United States will maintain its close ties with and support for the Republic of Korea; the United States will support efforts of the Republic of Korea to seek a relaxation of tension and increased communication in the Korean peninsula. The United States places the highest value on its friendly relations with Japan; it will continue to develop the existing close bonds. Consistent with the United Nations Security Council Resolution of December 21, 1971, the United States favors the continuation of the ceasefire between India and Pakistan and the withdrawal of all military forces to within their own territories and to their own sides of the ceasefire line in Jammu and Kashmir; the United States supports the right of the peoples of South Asia to shape their own future in peace, free of military threat, and without having the area become the subject of great power rivalry.

8. There are essential differences between China and the United States in their social systems and foreign policies. However, the two sides agreed that countries, regardless of their social systems, should conduct their relations on the principles of respect for the sovereignty and territorial integrity of all states, non-aggression against other states, non-interference in the internal affairs of other states, equality and mutual benefit, and peaceful coexistence. International disputes should be settled on this basis, without resorting to the use or threat of force. The United States and the People's Republic of China are prepared to apply these principles to their mutual relations.

9. With these principles of international relations in mind the two sides stated that:

- Progress toward the normalization of relations between China and the United States is in the interests of all countries

- Both wish to reduce the danger of international military conflict

- Neither should seek hegemony in the Asia-Pacific region and each is opposed to efforts by any other country or group of countries to establish such hegemony
Neither is prepared to negotiate on behalf of any third party or to enter into agreements or understandings with the other directed at other states.

10. Both sides are of the view that it would be against the interests of the peoples of the world for any major country to collude with another against other countries, or for major countries to divide up the world into spheres of interest.

11. The two sides reviewed the long-standing serious disputes between China and the United States. The Chinese side reaffirmed its position: the Taiwan question is the crucial question obstructing the normalization of relations between China and the United States; the Government of the People's Republic of China is the sole legal government of China; Taiwan is a province of China which has long been returned to the motherland; the liberation of Taiwan is China's internal affair in which no other country has the right to interfere; and all U.S. forces and military installations must be withdrawn from Taiwan. The Chinese Government firmly opposes any activities, which aim at the creation of "one China, one Taiwan", "one China, two governments", "two Chinas", an "independent Taiwan" or advocate that "the status of Taiwan remains to be determined".

12. The U.S. side declared: The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States Government does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves. With this prospect in mind, it affirms the ultimate objective of the withdrawal of all U.S. forces and military installations from Taiwan. In the meantime, it will progressively reduce its forces and military installations on Taiwan as the tension in the area diminishes. The two sides agreed that it is desirable to broaden the understanding between the two peoples. To this end, they discussed specific areas in such fields as science, technology, culture, sports and journalism, in which people-to-people contacts and exchanges would be mutually beneficial. Each side undertakes to facilitate the further development of such contacts and exchanges.

13. Both sides view bilateral trade as another area from which mutual benefit can be derived, and agreed that economic relations based on equality and mutual benefit are in the interest of the peoples of the two countries. They agree to facilitate the progressive development of trade between their two countries.
14. The two sides agreed that they will stay in contact through various channels, including the sending of a senior U.S. representative to Peking from time to time for concrete consultations to further the normalization of relations between the two countries and continue to exchange views on issues of common interest.

15. The two sides expressed the hope that the gains achieved during this visit would open up new prospects for the relations between the two countries. They believe that the normalization of relations between the two countries is not only in the interest of the Chinese and American peoples but also contributes to the relaxation of tension in Asia and the world.

16. President Nixon, Mrs. Nixon and the American party expressed their appreciation for the gracious hospitality shown them by the Government and people of the People's Republic of China.

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Joint Communique of the United States of America and the People's Republic of China

January 1, 1979

(The communique was released on December 15, 1978, in Washington and Beijing.)

1. The United States of America and the People's Republic of China have agreed to recognize each other and to establish diplomatic relations as of January 1, 1979.

2. The United States of America recognizes the Government of the People's Republic of China as the sole legal Government of China. Within this context, the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan.

3. The United States of America and the People's Republic of China reaffirm the principles agreed on by the two sides in the Shanghai Communiqué and emphasize once again that:

4. Both wish to reduce the danger of international military conflict.

5. Neither should seek hegemony in the Asia-Pacific region or in any other region of the world and each is opposed to efforts by any other country or group of countries to establish such hegemony.
6. Neither is prepared to negotiate on behalf of any third party or to enter into agreements or understandings with the other directed at other states.

7. The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.

8. Both believe that normalization of Sino-American relations is not only in the interest of the Chinese and American peoples but also contributes to the cause of peace in Asia and the world.

The United States of America and the People's Republic of China will exchange Ambassadors and establish Embassies on March 1, 1979.

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Joint Communiqué of the United States of America and the People's Republic of China

August 17, 1982

1. In the Joint Communique on the Establishment of Diplomatic Relations on January 1, 1979, issued by the Government of the United States of America and the People's Republic of China, the United States of America recognized the Government of the People's Republic of China as the sole legal Government of China, and it acknowledged the Chinese position that there is but one China and Taiwan is part of China. Within that context, the two sides agreed that the people of the United States would continue to maintain cultural, commercial, and other unofficial relations with the people of Taiwan. On this basis, relations between the United States and China were normalized.

2. The question of United States arms sales to Taiwan was not settled in the course of negotiations between the two countries on establishing diplomatic relations. The two sides held differing positions, and the Chinese side stated that it would raise the issue again following normalization. Recognizing that this issue would seriously hamper the development of United States - China relations, they have held further discussions on it, during and since the meetings between President Ronald Reagan and Premier Zhao Ziyang and between Secretary of State Alexander M. Haig, Jr. and Vice Premier and Foreign Minister Huang Hua in October 1981.
3. Respect for each other's sovereignty and territorial integrity and non-interference in each other's internal affairs constitute the fundamental principles guiding United States China relations. These principles were confirmed in the Shanghai Communiqué of February 28, 1972 and reaffirmed in the Joint Communiqué on the Establishment Of Diplomatic Relations, which came into effect on January 1, 1979. Both sides emphatically state that these principles continue to govern all aspects of their relations.

4. The Chinese Government reiterates that the question of Taiwan is China's internal affair. The Message to Compatriots in Taiwan issued by China on January 1, 1979 promulgated a fundamental policy of striving for peaceful reunification of the motherland. The Nine-Point Proposal put forward by China on September 30, 1981 represented a further major effort under this fundamental policy to strive for a peaceful solution to the Taiwan question.

5. The United States Government attaches great importance to its relations with China, and reiterates that it has no intention of infringing on Chinese sovereignty and territorial integrity, or interfering in China's internal affairs, or pursuing a policy of "two Chinas" or "one China, one Taiwan." The United States Government understands and appreciates the Chinese policy of striving for a peaceful resolution of the Taiwan question as indicated in China's Message to Compatriots in Taiwan issued on January 1, 1979 and the Nine-Point Proposal put forward by China on September 30, 1981. The new situation, which has emerged with regard to the Taiwan question, also provides favorable conditions for the settlement of United States - China differences over United States arms sales to Taiwan.

Having in mind the foregoing statements of both sides, the United States Government states that it does not seek to carry out a long-term policy of arms sales to Taiwan, that its arms sales to Taiwan will not exceed, either in qualitative or in quantitative terms, the level of those supplied in recent years since the establishment of diplomatic relations between the United States and China, and that it intends gradually to reduce its sale of arms to Taiwan, leading, over a period of time, to a final resolution. In so stating, the United States acknowledges China's consistent position regarding the thorough settlement of this issue.

6. In order to bring about, over a period of time, a final settlement of the question of United States arms sales to Taiwan, which is an issue rooted
in history, the two Governments will make every effort to adopt measures and create conditions conducive to the thorough settlement of this issue.

7. The development of United States - China relations is not only in the interests of the two peoples but also conducive to peace and stability in the world. The two sides are determined, on the principle of equality and mutual benefit, to strengthen their ties in the economic, cultural, educational, scientific, technological and other fields and make strong, joint efforts for the continued development of relations between the Governments and peoples of the United States and China.

8. In order to bring about the healthy development of United States - China relations, maintain world peace and oppose aggression and expansion, the two Governments reaffirm the principles agreed on by the two sides in the Shanghai Communique and the Joint Communique on the Establishment of Diplomatic Relations. The two sides will maintain contact and hold appropriate consultations on bilateral and international issues of common interest.

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Annex 2

Annex 2.1: Summary of U.S. Foreign Trade Laws

Annex 2.2: Overview of China’s Foreign Trade and Investment Laws
Overview of United States Trade Laws

TARIFF AND CUSTOMS LAWS

Tariff System: The U.S. tariff system is the Harmonised Tariff Schedule of the United States. Officially, adopted in January 1, 1989 this system is based on the Harmonised Commodity Description and Coding System of the Customs Cooperation Council, an intergovernmental organisation based in Brussels. Known as the Harmonised System (HS), it is used by all the major trading countries.

Most U.S. tariffs are ad valorem--- the tariff is designated as a percent of the value of the imported good. U.S. ad valorem rates range from less than 1% to nearly 40%, with textiles and footwear imports most often subject to the higher duties. Most ad valorem tariffs are in the 2% to 7% range, with the average tariff being around 4%.

Some imports, generally agricultural products and other less processed goods, are subject to a “specific tariff”, which is a certain charge for a certain quantity. Some products are subject to compound tariffs, a combination of ad valorem and specific levies. Still other products, such as sugar, are subject to tariff-rate quotas—a higher tariff rate is applied to the imported good after a specified quantity of the item has entered the United States during the year at a lowering prevailing rate. A small number of mostly special cases are subject to other kinds of levies.

Most Favoured Nation Status: Nearly all U.S. trading partners have “Most Favoured Nation” (MFN) status. The goods from all MFN-designated countries are subject to the same tariffs when they enter the United States. When the United States reduces, eliminates or otherwise changes a tariff, that change is applied equally to all MFN status countries. Imports from the few countries that do not have MFN status face significantly higher tariffs.

When the United States joined GATT, it agreed to extend MFN status to all other signatories. During the Cold War period, however, the Communist countries were denied MFN.

At present, the United States extends MFN status to all members of the WTO and most other countries. Nations excluded from MFN as of May 2001, include Afghanistan, Cuba, Laos, North Korea, and Serbia/Montenegro.
**Special Unilateral Programmes:** There are several laws that extend preferential tariff treatment on some products on a unilateral, non-reciprocal basis to qualifying developing countries. These programmes include:

- **Generalised System of Preferences (HSP),** a programme that grants tariff exemptions for more than 4,450 products from around 150 developing countries and territories. The GSP law provides for annual reviews of eligible articles and shipments rise above a certain dollar level. GSP benefits may also be restricted if the country maintains barriers to U.S. exports, denies intellectual property protection, or fails to abide by internationally-recognised workers rights.
- **Caribbean Basin Initiative (CBI)**
- **Andean Trade Preference Act (ATPA)**

Countries with which United States has trade agreements that reduce tariffs and other trade barriers, such as the NAFTA and the U.S.-Israel Free Trade Agreement, are covered in another part of trade law that concerns reciprocal trading agreements.

**Special Tariff Preferences:** The United States grants an important tariff preference to goods entering the country that are made with parts fabricated in the United States. The provision of the law is HTS heading 9802 under the new Harmonised System—previously known as Section 807 under the old Tariff System of the United States. Under this agreement, the tariff is levied only on the foreign value added of the product. No duty is applied to the U.S. made parts. This arrangement, known as “production sharing”, is widely used for products ranging from motor vehicles to semiconductors to apparel sewn abroad with cloth made in the United States.

**Customs Valuation, Other Regulations:** The United States accepts the WTO Agreement on Customs Valuation as the basis for the U.S. law on customs valuation, the process for determining the value of an import in order to apply the ad valorem duty. By adhering to the agreement, the United States uses the rules under the WTO Dispute Settlement Understanding to handle the disputes. Current U.S. law establishes the “transaction value” as the main basis for determining the value of imported merchandise.

**TRADE REMEDY LAWS**

U.S. trade law contains a number of statutes that provide for specific remedies when foreign goods are being given an “unfair” advantage in the U.S. market or U.S. exports are being discriminated against in foreign markets.
Laws Aimed at Imports: The two most important statutes for protecting U.S. industries from unfairly traded imports are the countervailing duty law (CVD) and the anti-dumping law (AD). Both laws require that extra duties to be levied on imports if they are found to be unfairly traded. Both laws contain similar procedures for conducting investigations, imposing duties and then reviewing and possibly removing the duties.

Countervailing Duty Law: The CVD law provides a remedy in the form of an increased import duty to offset, or "countervail", a subsidy granted to a foreign product, the sale of which in the United States is injuring a U.S. producer of an identical or similar good. In most cases the countervailable subsidies are directly provided by the foreign government, but the law also applies to indirect subsidies that are identified by the CVD investigation.

A CVD investigation is usually initiated as a result of a petition filed by a domestic industry with the U.S. Department of Commerce and the U.S. International Trade Commission (ITC), but Commerce can initiate a case on its own.

Antidumping Law: Antidumping law is much more widely used than CVD law. Antidumping duties are imposed on imports when it is determined that the foreign goods is being "dumped"---sold, or is likely to be sold, in the United States for "less than fair value". In general, less than fair value means that the price of the import in the United States—the purchase price or the exporter's sales price—is less than the price of the good in the country of origin.

As is the case for CVD, antidumping proceedings are initiated either by a petition filed by an industry or by the Commerce Department.

Likewise, under the Uruguay Round Antidumping Agreement, the government a WTO member can file a petition with USTR requesting an antidumping investigation of a product imported into the U.S. market from a third country.

AD and CVD Investigations, Levying of Duties: AD and CVD petitions have to be filed simultaneously at the Commerce Department and the ITC. If the case is accepted, then 45 days after the filling date, or after Commerce has begun an investigation on its own initiative, the ITC must make its preliminary determination on injury or threat of injury to a U.S. industry.

If the ITC determination is negative, then the proceedings end. If the ITC issues an affirmative determination, then commerce makes it preliminary determination as
to whether there is a reasonable basis to believe that a countervailable subsidy exists or that dumping has occurred. There are certain provisions of the law for so-called “critical circumstances” that allow petitioners to seek rapid action against a flood of imports that threaten a domestic industry.

**Section 201-204, Adjusting to Imports:** Sections 201-204 of the Trade Act of 1974 authorize the President to take action when a certain product is being imported into the country in such increased quantities as to cause serious injury, or threaten serious injury, to a domestic industry. This authority can be used even if the import is not priced unfairly.

**Section 337, Protecting Intellectual Property:** Section 337 is primarily used to combat intellectual property infringement in imports. It declares as unlawful infringement of intellectual property such as a valid and enforceable U.S. patent, registered trademark, copyright or registered mask work of a semiconductor chip product. Section 337 prohibits unfair methods of competition and unfair acts in the import and sale of products in the United States, the threat or effect of which is to destroy or substantially injure a domestic industry or to restrain and monopolize trade and commerce in the United States.

**ENFORCEMENT LAWS**

**Section 301 of the Trade Act of 1974:** It is the principal U.S. law to enforce rights for U.S. firms under the existing trade agreements, to obtain increased foreign market access for U.S. goods and services, and to respond to certain foreign practices such as infringement of intellectual property rights.

The Law sets up a procedure for the Office of the U.S. Trade representative to investigate foreign practices and hold consultations with a foreign government to seek a resolution of disputes. The Congress requires that USTR conduct an annual review of overseas barriers, which is published on March 31 each year as the “National Trade Estimate Report on Foreign Trade Barriers,” also known as the NTE Report.

**Super 301:** The NTE Report is used to establish the so-called “Super 301” list of priority country practices, which is essentially a list of countries likely to be subject of 301 actions.

Created in the 1988 Omnibus Trade and Competitiveness Act, Super 301 expired in 1990, but it has been revived by successive executive orders. The executive order requires that within six months of the submission of the NTE Report, the
USTR shall identify those priority foreign country practices that, if eliminated, would likely have the most potential for increasing U.S. exports.

**Special 301:** A second expansion of Section is “Special 301”, which requires USTR to identify countries that deny adequate and effective protection for intellectual property rights (IPR), or that deny fair and equitable market access for persons who rely on IPR. Countries that have the most onerous or egregious acts, policies or practices, or whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products, and are not engaged in good faith negotiations to address these problems, must be designated as “priority foreign countries”.

**LAWS RELATING TO POLITICAL AND ECONOMIC SECURITY**

**Export Controls:** The U.S. government controls certain exports to protect “national security” and to serve other domestic and and foreign policy considerations.

**Export Administration Act of 1979 (EAA):** This law lapsed in September 1990, but the Bush and Clinton administrations have kept its control system operating under an emergency law called the International Emergency Economic Powers Act (IEEPA).

The Department of Commerce’s Bureau of Export Administration (BXA) is the primary licensing agency for dual-use exports. Some exports and reexports require the submission of a license application to BXA.

The effectiveness of many of the controls are enhanced by their being maintained as part of multilateral control arrangements. Currently, the United States is a member of the Nuclear Suppliers Group, the Australia Group, The Missile Technology Control Regime and the Wassenaar Arrangement.

**International Emergency Economic powers Act:** This was passed in 1977. It gives the president of the United States the power to freeze foreign assets in the United States, to impose trade embargoes, and to take other measures judged necessary to deal with an unusual and extraordinary threat to U.S. national security, foreign policy or economic interests.

**Trading with the Enemy Act:** It was originally passed in 1917, prohibits trade by the United States with any enemy or ally of an enemy during time of war. In 1977, the presidential authority provided in TWTEA to control economic transactions
during peacetime were transferred to the International Emergency Economic Powers Act (IEEPA).

**International Security and Development Cooperation Act of 1985:** Section 505 of this law gives the president discretionary authority to restrict or ban imports from any country that the United States has determined supports terrorism or terrorist organisations or harbours terrorists or terrorist organisations.

**Other Unilateral Economic Sanctions:** Laws that call on the president to impose unilateral economic sanctions against a certain country for non-economic reasons are frequently provisions of much larger pieces of legislation, such as the foreign aid bill.

**Disapproving Foreign Investment in Defence Related Industries:** Following the proposed purchase in 1988 of an 80 percent share of a major U.S. semiconductor manufacturer by Fujitsu Ltd. Of Japan, Congress passed an amendment to the Defence Production Act allowing the president to block foreign takeovers of firms found to be important to U.S. national security. This provision is known as Exon-Florio.

**PRESIDENT’S NEGOTIATING AUTHORITY**

The U.S. Congress has the final authority to decide whether the United States will raise or cut tariffs, erect or remove other trade barriers, or enter into bilateral or multilateral trade agreements.

Congress grants the authority to the president and the executive branch to negotiate trade agreements. Congress must then approve the legislation to implement the agreements the president has negotiated.

**Fast Track Trade Agreement Negotiating Authority:** To make trade agreement negotiation more effective, Congress has on several occasions passed legislation giving the president “fast track” authority for this process.

Under this authority, the congress agrees in advance to approve or reject the legislation that implements a trade agreement negotiated by the executive branch, without the possibility of amendment. This rule thus avoids amendments that can change the terms of the agreement, requiring that it to be renegotiated.
Foreign Trade Law of the People’s Republic of China

(Adopted at the Seventh Session of the Standing Committee of the Eighth National People’s Congress on May 12, 1994)

Chapter I Principles

Article 1 This Law is formulated with a view to developing the foreign trade, maintaining the foreign trade order and promoting a healthy development of the socialist market economy.

Article 2 Foreign trade as mentioned in this Law shall cover the import and export of goods, technologies and the international trade in services.

Article 3 The authority responsible for foreign trade and economic relations under the State Council is in charge of the administration of the foreign trade of the entire country pursuant to this Law.

Article 4 The State shall apply the foreign trade system on a uniform basis and maintain a fair and free foreign trade order in accordance with law. The State encourages the promotion of its foreign trade, exercises the initiative of localities and safeguards the autonomy of business operation of the foreign trade dealers.

Article 5 The People’s Republic of China promotes and develops trade ties with other countries and regions on the principles of equality and mutual benefit.

Article 6 The People’s Republic of China shall, under international treaties or agreements to which the People’s Republic of China is a contracting party or a participating party, grant the other contracting parties or participating parties, or on the principles of mutual advantage and reciprocity, grant the other party most-favored-nation treatment or national treatment within the field of foreign trade.

Article 7 In the event that any country or region applies discriminatory prohibition, restriction or other like measures against the People’s Republic of China in respect of trade, the People’s Republic of China may, as the case may be, take counter-measures against the country or region in question.

Chapter II Foreign Trade Dealers

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**Article 8** Foreign trade dealers as mentioned in this Law shall cover the legal entities and other organizations engaged in foreign trade dealings in compliance with the provisions of this Law.

**Article 9** A foreign trade dealer who intends to engage in the import and export of goods and technologies shall fulfill the following requirements and acquire the permit from the authority responsible for foreign trade and economic relations under the State Council:

1. having its own name and corporate structure;
2. having definite scope of business in foreign trade;
3. having place of business, financial resources and professional personnel essential to the foreign trade dealings which it intends to engage in;
4. having a required record of import and export which were effected on its behalf or having necessary sources of goods for import or export;
5. other requirements provided in relevant laws and administrative regulations.

The detailed rules for the implementation of the preceding paragraph are to be laid down by the State Council.

The enterprises with foreign investment shall be exempt from the permit requirement provided in paragraph 1 with respect to their import of non-productive articles for their own use, import of equipment's and raw materials and other articles necessary for their production as well as the export of the products they produce under the relevant provisions of laws and administrative regulations governing enterprises with foreign investment.

**Article 10** The establishment and operation of enterprises and organizations engaged in international trade in services shall be in compliance with the provisions of this Law and other relevant laws and administrative regulations.

**Article 11** Foreign trade dealers shall enjoy full autonomy in their business operation and be responsible for their own profits and losses in accordance with law.

**Article 12** In foreign trade activities foreign trade dealers should honor their contracts, ensure the quality of the commodity and perfect the after-sale services.

**Article 13** Any organization or individual without foreign trade operation permit may entrust a foreign trade dealer located in China as its agent to conduct its foreign trade business within the business scope of the latter.
The entrusted foreign trade dealer shall provide the principal with actual business information such as market situation, commodity prices and client position. The agent and the principal shall conclude and sign an agency agreement, in which the rights and obligations of both parties should be specified.

**Article 14** Foreign trade dealers are obligated to provide documents and information in relation to their foreign trade dealings to the relevant authorities pursuant to the regulations of the authority responsible of foreign trade and economic relations under the State Council. The relevant authorities shall not disclose the business proprietary information provided by the dealers.

**Chapter III Import and Export of Goods and Technologies**

**Article 15** The State allows free import and export of goods and technologies except where laws or administrative regulations provided otherwise.

**Article 16** The State may impose restrictions on the import or export of goods and technologies in any of the following circumstances:
1. where the import or export shall be restricted in order to safeguard the national security or publicinterest;
2. where the export shall be restricted on account of domestic shortage in supply or effective protection of exhaustible domestic resources;
3. where the export shall be restricted due to the limited market capacity of the importing country or region;
4. where the import shall be restricted in order to establish or accelerate the establishment of a particular domestic industry;
5. where the restriction on the import of agricultural, animal husbandry or fishery products in any form is necessary;
6. where the import shall be restricted in order to maintain the State’s international financial status and the balance of international payments;
7. where, as the international treaties or agreements to which the People’s Republic of China is a contracting party or a participating party require, the import or export shall be restricted.

**Article 17** The States prohibits the import or export of any goods or technologies in any of the following circumstances;
1. where such goods or technologies will endanger national security or public interest;
2. where the import or export of such goods or technologies must be prohibited in order to protect human life or health;
3. where such goods or technologies will disrupt the ecological environment;
4. where the import or export of such goods or technologies shall be prohibited in accordance with the provisions of international treaties or agreements to which the People's Republic of China is a contracting party or a participating party.

Article 18 The authority responsible for foreign trade and economic relations under the State Council shall, in collaboration with the relevant authorities under the State Council and in accordance with the provision of Article 16, Article 17 of this Law, formulate, adjust and publish the list of goods and technologies whose import or export are subject to restrictions or prohibitions.

Upon the approval of the State Council the authority responsible for foreign trade and economic relations under the State Council may, within the framework of Article 16 and Article 17, independently or in collaboration with the relevant authorities under the State Council determine, on a temporary basis, to impose restriction or prohibition on the import or export of particular goods or technologies not included in the list mentioned in the preceding paragraph.

Article 19 Goods whose import or export is restricted shall be subject to quota and/or licensing control; technologies whose import or export is restricted shall be subject to licensing control. Import or export of any goods and technologies subject to quota and/or licensing control will be effected only with the approval of the authority responsible for foreign trade and economic relations under the State Council or the joint approval of the preceding authorities and other authorities concerned under the State Council in compliance with the provisions of the State Council.

Article 20 Import and export quotas of goods shall be distributed on the basis of the conditions including but not limited to the actual import or export performance and capability of the applicants in foreign trade dealings and on the basis of the principles of efficiency, impartiality, transparency and fair competition by the authority responsible for foreign trade and economic relations under the State Council or the relevant authorities under the State Council within their respective responsibilities. The ways and means of the distribution of quotas are to be regulated by the State Council.

Article 21 Where the import or export of goods, articles such as cultural relics, wildlife animals, plants and the products there of are prohibited or restricted by other laws or administrative regulations, the provisions of the laws and regulations in question shall be observed.

Chapter IV International Trade in Service
Article 22 The State promotes the progressive development of the international trade in services.

Article 23 With respect to international trade in services, the People's Republic of China, pursuant to the commitments made in international treaties or agreements to which the People's Republic of China is a contracting party or participating party, grants the other contracting parties and participating parties market access and national treatment.

Article 24 The State may restrict international trade in services on the basis of any of the following considerations:
1. In order to safeguard the national security or public interest;
2. In order to protect the ecological environment;
3. In order to establish or accelerate the establishment of a particular domestic service industry;
4. In order to maintain the State's balance of international payments;
5. Other restrictions provided in relevant laws and administrative regulations.

Article 25 The State prohibits any international trade in services which:
1. may endanger national security or public interests;
2. is contrary to the international obligations undertaken by the People's Republic of China;
3. is prohibited by relevant laws and administrative regulations.

Article 26 The authority responsible for foreign trade and economic relations under the State Council and relevant authorities under the State Council are responsible for the administration of international trade in services in accordance with this Law and other relevant laws and administrative regulations.

Chapter V Foreign Trade Order

Article 27 In foreign trade activities, foreign trade dealers shall operate their business in accordance with law and abide by the principle of fair competition, and are prohibited from the following acts:
1. Forgery, distortion or trading of certificates of country of origin and import or export licenses;
2. Infringement on the intellectual property rights protected by the laws of the People's Republic of China;
3. Squeezing out competitors with undue conducts of competition;
4. Defrauding the State of refunded tax on exports;
5. Other acts contrary to the provisions of laws and administrative regulations.

Article 28 In foreign trade activities, foreign trade dealers shall settle and use foreign exchanges in accordance with relevant regulations of the State.

Article 29 Where a product is imported in such increased quantities as to cause or threaten to cause serious injury to domestic producers of like or directly competitive products, the State may take necessary safeguard measures to remove or ease such injury or threat of injury.

Article 30 Where a product is imported at less than normal value of the product and causes or threatens to cause material injury to an established domestic industry concerned, or materially retards the establishment of a particular domestic industry, the State may take necessary measures in order to remove or ease such injury or threat of injury or retardation.

Article 31 Where an imported product is subsidized in any form directly or indirectly by the country of export and causes or threatens to cause material injury to an established domestic industry concerned or materially retards the establishment of a domestic industry, the State may take necessary measures in order to remove or ease such injury or threat of injury or retardation.

Article 32 In the events referred to in Article 29, Article 30 and Article 31, the authority or agency designated by the State Council shall conduct investigations and make determinations in accordance with relevant laws and administrative regulations.

Chapter VI Promotion of Foreign Trade

Article 33 The State shall establish and improve financial institutions for foreign trade and establish funds for foreign trade development and risk as the development of foreign trade requires.

Article 34 The State may take foreign trade promotion measures such as import or export credit and export tax refund for the purpose of the development of foreign trade.

Article 35 Foreign trade dealers may establish or join Chambers of Commerce for Importers and Exporters in accordance with law.
Chambers of Commerce for Importers and Exporters shall abide by relevant laws and administrative regulations, coordinate and guide the foreign trade activities of their members under their Articles of Association, provide advisory services, report to the relevant authorities of the Government the suggestions of their members with respect to foreign trade promotion, and actively promote foreign trade.

**Article 36** The international trade promotion organization of China shall, in accordance with its Articles of Association, engage in development of foreign trade relations, sponsor exhibitions, provide information and advisory services and carry out other foreign trade primitive activities.

**Article 37** The State shall support and promote the development of foreign trade in national autonomous areas and economically under-developed areas.

**Chapter VII Legal Liabilities**

**Article 38** Anyone who smuggles goods that are subject to import or export prohibitions or restrictions, and hereby commits criminal offenses, shall be subject to criminal prosecution pursuant to the Supplementary Decision on the Punishment of Smuggling Crimes. Those offenses of smuggling which do not constitute crimes shall be subject to sanctions under the provisions of the Customs Law. In addition, the authority responsible for foreign trade and economic relations under the State Council may withdraw the foreign trade operation permit of the offender in question.

**Article 39** Anyone who commits forgery, distortion of certificates of country of origin or license for import or export shall be subject to criminal prosecution under Article 167 of the Criminal Law. Anyone who commits trading of certificates of country of origin or license for import or export or trading of forged or distorted certificates of country of origin of license for import or export shall be subject to criminal prosecution in the light of Article 167 of the Criminal Law.

Where the criminal offenses referred to in the preceding paragraph are committed by an entity, the entity in question shall be imposed fine while the persons in charge of the entity directly responsible for the offenses and other persons directly responsible for the offenses shall be subject to criminal prosecutions in accordance with or in the light of Article 167 of the Criminal Law. In addition, the authority responsible for foreign trade and economic relations under the State Council may withdraw the foreign trade operation permit of the entity in question.
Anyone who knowingly uses forged or distorted import or export license in importing or exporting goods shall be imposed sanctions in accordance with the provisions of Article 38 of this Law.

**Article 40** Anyone who imports or exports technologies that are subject to import or export prohibitions or restrictions in violation of this Law and commits criminal offenses, shall be subject to criminal prosecutions in the light of the Supplementary Decision of the Punishment of Smuggling Crime.

**Article 41** Personnel serving in the State’s foreign trade authorities who commit any neglect of duty, malpractice, irregularities or abuse of power, which constitute criminal offenses, shall be subject to criminal prosecutions pursuant to law; as to those offenses which do not constitute crimes, administrative sanctions shall apply.

Personnel serving in the State’s foreign trade authorities who extort property from others with job convenience or illegally receive others’ property and seek advantages for them in return and thus commit criminal offenses shall be subject to criminal prosecutions in accordance with the Supplementary Decision on the Punishment of Embezzlement and Bribery Crimes; where such conducts do not constitute criminal offenses, administrative sanctions shall apply.

**Chapter VIII Final Provisions**

**Article 42** The State applies flexible measures, provides favorable conditions and convenience to the trade between the towns on the frontier and those towns of neighboring countries on frontier as well as trade among border residents. Detailed rules are to be laid down by the State Council.

**Article 43** This Law shall not apply to the separate customs territories of the People’s Republic of China.

**Article 44** This Law shall enter into force as of July 1st, 1994.
FOREIGN INVESTMENT LAWS OF CHINA

LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON FOREIGN CAPITAL ENTERPRISES

(Adopted at the Fourth Session of the Sixth National People's Congress on April 12, 1986, promulgated by Order No. 39 of the President of the People's Republic of China and effective as of April 12, 1986)

Article 1 With a view to expanding economic cooperation and technical exchange with foreign countries and promoting the development of China's national economy, the People's Republic of China permits foreign enterprises, other foreign economic organizations and individuals (hereinafter collectively referred to as "foreign investors") to set up enterprises with foreign capital in China and protects the lawful rights and interests of such enterprises.

Article 2 As mentioned in this Law "enterprises with foreign capital" refers to those enterprises established in China by foreign investors, exclusively with their own capital, in accordance with relevant Chinese laws. The term does not include branches set up in China by foreign enterprises and other foreign economic organizations.

Article 3 Enterprises with foreign capital shall be established in such a manner as to help the development of China's national economy; they shall use advanced technology and equipment or market all or most of their products outside China. Provisions shall be made by the State Council regarding the lines of business which the State forbids enterprises with foreign capital to engage in or on which it places certain restrictions.

Article 4 The investments of a foreign investor in China, the profits it earns and its other lawful rights and interests are protected by Chinese law. Enterprises with foreign capital must abide by Chinese laws and regulations and must not engage in any activities detrimental to China's public interest.

Article 5 The State shall not nationalize or requisition any enterprise with foreign capital. Under special circumstances, when public interest requires, enterprises with foreign capital may be requisitioned by legal procedures and appropriate compensation shall be made.

Article 6 The application to establish an enterprise with foreign capital shall be submitted for examination and approval to the department under the State Council
which is in charge of foreign economic relations and trade, to another agency authorized by the State Council. The authorities in charge of examination and approval shall, within 90 days from the date they receive such application, decide whether or not to grant approval.

Article 7 After an application for the establishment of an enterprise with foreign capital has been approved, the foreign investor shall, within 30 days from the date of receiving a certificate of approval, apply to the industry and commerce administration authorities for registration and obtain a business licence. The date of issue of the business licence shall be the date of the establishment of the enterprise.

Article 8 An enterprise with foreign capital which meets the conditions for being considered a legal person under Chinese law shall acquire the status of a Chinese legal person, in accordance with the law.

Article 9 An enterprise with foreign capital shall make investments in China within the period approved by the authorities in charge of examination and approval. If it fails to do so, the industry and commerce administration authorities may cancel its business licence. The industry and commerce administration authorities shall inspect and supervise the investment situation of an enterprise with foreign capital.

Article 10 In the event of separation, merger or other major changes, an enterprise with foreign capital shall report to and seek approval from the authorities in charge of examination and approval, and register the change with industry and commerce administration authorities.

Article 11 The production and operating plans of enterprises with foreign capital shall be reported to the competent authorities for the record. Enterprises with foreign capital shall conduct their operations and management in accordance with the approved articles of association, and shall be free from any interference.

Article 12 When employing Chinese workers and staff, an enterprise with foreign capital shall conclude contracts with them according to law, in which matters concerning employment, dismissal, remuneration, welfare benefits, labour protection and labour insurance shall be clearly prescribed.
Article 13 Workers and staff of enterprises with foreign capital may organize trade unions in accordance with the law, in order to conduct trade union activities and protect their lawful rights and interests. The enterprises shall provide the necessary conditions for the activities of the trade unions in their respective enterprises.

Article 14 An enterprise with foreign capital must set up account books in China, conduct independent accounting, submit the fiscal reports and statements as required and accept supervision by the financial and tax authorities. If an enterprise with foreign capital refuses to maintain account books in China, the financial and tax authorities may impose a fine on it, and the industry and commerce administration authorities may order it to suspend operations or may revoke its business licence.

Article 15 Within the scope of the operations approved, enterprises with foreign capital may purchase, either in China or from the world market, raw and semi-processed materials, fuels and other materials they need. When these materials are available from both sources on similar terms, first priority should be given to purchases in China.

Article 16 Enterprises with foreign capital shall apply to insurance companies in China for such kinds of insurance coverage as are needed.

Article 17 Enterprises with foreign capital shall pay taxes in accordance with relevant state provisions for tax payment, and may enjoy preferential treatment for reduction or exemption from taxes. An enterprise that reinvests its profits in China after paying the income tax, may, in accordance with relevant state provisions, apply for refund of a part of the income tax already paid on the reinvested amount.

Article 18 Enterprises with foreign capital shall handle their foreign exchange transactions in accordance with the state provisions for foreign exchange control. Enterprises with foreign capital shall open an account with the Bank of China or with a bank designated by the state agency exercising foreign exchange control. Enterprises with foreign capital shall manage to balance their own foreign exchange receipts and payments. If, with the approval of the competent authorities, the enterprises market their products in China and consequently experience an imbalance in foreign exchange, the said authorities shall help them correct the imbalance.
Article 19 The foreign investor may remit abroad profits that are lawfully earned from an enterprise with foreign capital, as well as other lawful earnings and any funds remaining after the enterprise is liquidated. Wages, salaries and other legitimate income earned by foreign employees in an enterprise with foreign capital may be remitted abroad after the payment of individual income tax in accordance with the law.

Article 20 With respect to the period of operations of an enterprise with foreign capital, the foreign investor shall report to and secure approval from the authorities in charge of examination and approval. For an extension of the period of operations, an application shall be submitted to the said authorities 180 days before the expiration of the period. The authorities in charge of examination and approval shall, within 30 days from the date such application is received, decide whether or not to grant the extension.

Article 21 When terminating its operations, an enterprise with foreign capital shall promptly issue a public notice and proceed with liquidation in accordance with legal procedure. Pending the completion of liquidation, a foreign investor may not dispose of the assets of the enterprise except for the purpose of liquidation.

Article 22 At the termination of operations, the enterprise with foreign capital shall nullify its registration with the industry and commerce administration authorities and hand in its business licence for cancellation.

Article 23 The department under the State Council which is in charge of foreign economic relations and trade shall, in accordance with this Law, formulate rules for its implementation, which shall go into effect after being submitted to and approved by the State Council.

Article 24 This Law shall go into effect as of the date of its promulgation.

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LAW OF THE PEOPLE'S REPUBLIC OF CHINA
ON CHINESE-FOREIGN EQUITY JOINT VENTURES

(Adopted at the second session of the Fifth National People's Congress on July 1, 1979, and Amended in accordance with "The decision on Amendment to The Law of the People's Republic of China on Chinese--Foreign Equity Joint
Ventures" adopted at the Third Session of the Seventh National People's Congress on April 4, 1990)

**Article 1** With a view to expanding international economic cooperation and technological exchange, the People's Republic of China permits foreign companies, enterprises, other economic entities or individuals (hereinafter referred to as foreign parties) to incorporate themselves, within the territory of the People's Republic of China, into equity joint ventures with Chinese companies, enterprises or other economic entities (hereinafter referred to as Chinese parties) on the principle of equality and mutual benefit and subject to authorization by the Chinese Government.

**Article 2** The Chinese Government protects, by the legislation in force, the investments of foreign parties, the profits due to them and their other lawful rights and interests in equity joint ventures, pursuant to the agreements, contracts and article of association approved by the Chinese Government. All the activities of an equity joint venture shall be governed by the laws, decrees and pertinent rules and regulations of the People's Republic of China. The State will not nationalize or expropriate any equity joint venture. Under special circumstances, based on the need of the social public interests, equity joint ventures may be expropriated under legal procedures and against appropriate compensation.

**Article 3** All parties to an equity joint venture shall submit their agreements, contracts and articles of association to the State's Competent Department of Foreign Relations and Trade (simplified as the examination and approval authority hereinafter) for examination and approval. The examination and approval authority shall decide whether to approve or disapprove them within 3 months. Once approved, the equity joint venture shall register with the concerned department of the State Administration for Industry and Commerce, and start operation after receiving its business license.

**Article 4** An equity joint venture shall take the form of a limited liability company. In the registered capital of an equity joint venture, the proportion of the investment contributed by the foreign parties shall in general not be less than 25 percent. The profits, risks and losses of an equity joint venture shall be shared by the parties to the venture in proportion to their contributions to the registered capital. The transfer of one party's share in the registered capital shall be effected only with the consent of the other parties to the venture.
Article 5 Each party to an equity joint venture may contribute cash, capital goods, industrial property rights, etc. as its investment in the venture. The technology or equipment contributed by any foreign party as investment shall be truly advanced and appropriate to China’s needs. In cases of losses caused by deception through the intentional provision of outdated equipment or technology, compensation shall be paid for such losses. The investment contributed by a Chinese party may include the right to the use of a site provided for the equity joint venture during the period of its operation. In case such a contribution does not constitute a part of the investment from the Chinese party, the venture shall pay the Chinese Government a fee for its use. The various contributions referred to in the present Article shall be specified in the contracts concerning the equity joint venture or in its articles of association, and the value of each contribution (excluding that of the site) shall be ascertained by the parties to the venture through joint assessment.

Article 6 An equity joint venture shall have a board of directors with a composition stipulated in the contract and the articles of association after consultation between the parties to the venture; each director shall be appointed and replaced by his own side. The chairman and the vice-chairmen shall be chosen through consultation by the parties to the venture or elected by the board of directors. If the Chinese side or the foreign side assumes the office of the chairman, the other side shall assume the office (s) of the vice-chairman or vice-chairmen. The board of directors shall decide on important problems concerning the equity joint venture on the principle of equality and mutual benefit.

The board of directors is empowered to discuss and take action on, pursuant to the provisions of the articles of association of the equity joint venture, all fundamental issues concerning the venture, namely, expansion projects, production and business programmes, the budget, distribution of profits, plans concerning manpower and pay scales, the termination of business, the appointment or hiring of the president, the vice-president (s), the chief engineer, the treasurer and the auditors as well as their functions and powers and their remuneration, etc.

The president and vice-president (s) (or the general manager and assistant general manager (s) in a factory) shall be chosen from the various parties to the equity joint venture. Procedures concerning the employment and discharge of the workers and staff members of an equity joint venture shall be stipulated according to law in the agreement or contract concluded between the parties to the venture.
Article 7 The net profits of an equity joint venture shall be distributed among the parties to the venture in proportion to their respective shares in the registered capital after the payment of an equity joint venture income tax on its gross profit pursuant to the tax laws of the people's Republic of China and after the deductions therefrom as stipulated in the articles of association of the venture for the serve funds, the bonus and welfare funds for the workers and staff members and the expansion funds of the venture.

An equity joint venture may, in accordance with provisions of the relevant laws and administrative rules and regulations of the State on taxation, enjoy preferential treatment for reduction of, or exemption from taxes.

A foreign party who re-invests any part of his share of the net profit within Chinese territory may apply for the restitution of a part of the income taxes paid.

Article 8 An equity joint venture shall, on the strength of its business licence, open a foreign exchange account with a bank or and other financial institution which is permitted by the State agency for foreign exchange control to handle foreign exchange transactions.

An equity joint venture shall conduct its foreign exchange transactions in accordance with the Foreign Exchange Regulations of the People's Republic of China.

An equity joint venture may, in its business operations, obtain funds from foreign banks directly.

The insurances appropriate to an joint venture shall be furnished by Chinese insurance companies.

Article 9 The production and business programmes of an equity joint venture shall be filed with the authorities concerned and shall be implemented through business contracts.

In its purchase of required raw and semi-processed materials, fuels, auxiliary equipment, etc., an equity joint venture shall give first priority to Chinese sources, but may also acquire them directly from the international market with its own foreign exchange funds.

An equity joint venture is encouraged to market its products outside China. It may distribute its export products on foreign markets through direct channels or its associated agencies or China's foreign trade establishments. Its products may also be distributed on the Chinese market.

Whenever necessary, an equity joint venture may set up affiliated agencies outside China.

Article 10 The net profit which a foreign party receives as his share after performing his obligations under the pertinent laws and agreements and contracts,
the funds he receives at the time when the equity joint venture terminates or winds up its operations and his other funds may be remitted abroad in accordance with the foreign exchange regulations and in the currency (.ies) specified in the contracts concerning the ventures.

A foreign party is encouraged to deposit in the Bank of China any part of foreign exchange which he is entitled to remit abroad.

**Article 11** The wages, salaries or other legitimate income of the foreign employees of an equity joint venture, after payment of the personal income tax under the tax laws of the People's Republic of China, may be remitted abroad in accordance with the foreign exchange regulations.

**Article 12** The operation periods of equity joint ventures may be handled differently according to their particular lines of business and circumstances. Equity joint ventures engaged in a certain line of business shall specify in the contracts their operation periods, while equity joint ventures engaged in another line of business may choose whether or not to specify their operation periods. In the case of an equity joint venture with its operation period specified, if the parties to the venture agree to extend the operation period, the venture may send an application to the examining and approval authority 6 months before the expiration of the operation period. The examination and approval authority shall, within 1 month of receipt of the application, decide whether to approve or disapprove it.

**Article 13** If there occur heavy losses, the failure of a party to perform its obligations under the contract and the articles of association or force majeure, etc., the equity joint venture may terminate the contract through consultation and agreement by the parties, and subject to approval by the examination and approval authority and to registration with the State's Competent Department of Industry and Commerce Administration. In cases of losses caused by a breach of contract, the financial responsibility shall be borne by the party that has breached the contract.

**Article 14** Disputes arising between the parties to an equity joint venture which the board of directors fails to settle through consultation may be settled through conciliation or arbitration by an arbitral body of China or through arbitration by an arbitral body agreed upon by the parties.

**Article 15** The present law comes into force as of the date of its promulgation. The right to amendment is vested in the National People's Congress.
Annex 3
Sino-U.S. Bilateral Trade Agreements

Annex 3.1: 1979 Trade Agreement

Annex 3.2: 1992 MOU on Market Access

Annex 3.3: IPR Agreement

Annex 3.4: WTO Accession Agreement
AGREEMENT ON TRADE RELATIONS BETWEEN THE UNITED STATES OF AMERICA AND THE PEOPLE'S REPUBLIC OF CHINA

Then Government of the United States of America and the Government of the People's Republic of China;
Acting in the spirit of the Joint Communique on the Establishment of Diplomatic Relations between the United States of America and the People's Republic of China;
Desiring to enhance friendship between both peoples;

Wishing to develop further economic and trade relations between both countries on the basis of the principles of equality and mutual benefit as well as nondiscriminatory treatment;

Have agreed as follows:

ARTICLE I

1. The Contracting Parties undertake to adopt all appropriate measures to create the most favorable conditions for strengthening, in all aspects, economic and trade relations between the two countries so as to promote the continuous, long-term development of trade between the two countries.

2. In order to strive for a balance in their economic interest, the Contracting Parties shall make every effort to foster the mutual expansion of their reciprocal trade and to contribute, each by its own means, to attaining the harmonious development of such trade.

3. Commercial transactions will be effected on the basis of contracts between firms, companies and corporations and trading organizations of the two countries. They will be concluded on the basis of customary international trade practice and commercial considerations such as price, quality, delivery and terms of payment.

ARTICLE II

1. With a view to establishing their trade relations on a nondiscriminatory basis, the Contracting Parties shall accord each other most-favored-nation treatment with respect to products originating in or destined for the other Contracting Party, i.e.
any advantage, favor, privilege or immunity they grant to like products originating in or destined for any other country or region, in all matters regarding:

(A) Customs duties and charges of all kinds applied to the import, export, re-export or transit of products, including the rules, formalities and procedures for collection of such duties and charges;

(B) Rules formalities and procedures concerning customs clearance, transit, warehousing and transshipment of imported and exported products;

(C) Taxes and other internal charges levied directly or indirectly on imported or exported products or services;

(D) All laws, regulations and requirements affecting all aspects of internal sale purchase, transportation, distribution or use of imported products; and

(E) Administrative formalities for the issuance of import and export licenses.

2. In the event either Contracting Party applies quantitative restrictions to certain products originating in or exported to any third country or region, it shall afford to all like products originating in or exported to the other country treatment which is equitable to that afforded to such third country or region.

3. The Contracting Parties note, and shall take into consideration in the handling of their bilateral trade relations, that, at its current state of economic development, China is a developing country.

4. The principles of Paragraph 1 of this Article will be applied by the Contracting Parties in the same way as they are applied under similar circumstances under any multilateral trade agreement to which either Contracting Party is a party on the date of entry into force of this Agreement.

5. The Contracting Parties agree to reciprocate satisfactorily concessions with regard to trade and services, particularly tariff and non-tariff barriers to trade, during the term of this Agreement.

ARTICLE III

For the purpose of promoting economic and trade relations between their two countries, the Contracting Parties agree to;
A. Accord firms, companies and corporations and trading organizations of the other Party treatment no less favorable than is afforded to any third country or region;

B. Promote visits by personnel, groups and delegations from economic, trade and industrial circles; encourage commercial exchanges and contacts; and support the holding of fairs, exhibitions and technical seminars in each other's country;

C. Permit and facilitate, subject to their respective laws regulations and in accordance with physical possibilities, the stationing of representatives, or the establishment of business offices, by firms, companies and corporations, and trading organizations of the other Party in its own territory; and

D. Subject to their respective laws and regulations and physical possibilities, further support trade promotions and improve all conveniences, facilities and related services for the favorable conduct of business activities by firms, companies and corporations, and trading organizations of the two countries, including various facilities in respect of office space and residential housing, telecommunications, visa issuance, internal business travel, customs formalities for entry and re-export of personal effects, office articles and commercial samples, and observance of contracts.

ARTICLE IV

The Contracting Parties affirm that government trade offices contribute importantly to the development of their trade and economic relations. They agree to encourage and support the trade promotion activities of these offices. Each party undertakes to provide facilities as favorable as possible for the operation of these offices in accordance with their respective physical possibilities.

ARTICLE V

1. Payments for transactions between the United States of America and the People's Republic of China shall either be effected in freely convertible currencies mutually accepted by firms, companies and corporations, and trading organizations of the two countries, or made otherwise in accordance with agreements signed by and between two parties to the transaction. Neither Contracting Party may impose restrictions on such payment except in time of declared national emergency.

2. The Contracting Parties agree, in accordance with their respective laws, regulations and procedures, to facilitate the availability of official export credits on
the most favorable terms appropriate under the circumstances for transactions in support of economic and technological projects and products between firms, companies and corporations, and trading organizations of the two countries. Such credits will be the subject of separate arrangements by the concerned authorities of the two Contracting Parties.

3. Each Contracting Party shall provide on the basis of most-favored-nation treatment, and subject to its respective laws and regulations, all necessary facilities for financial, currency and banking transactions by nationals, firms, companies and corporations and trading organizations of the other Contracting Party on terms as favorable as possible. Such facilities shall include all required authorizations for international payments, remittances and transfers, and uniform application of rates of exchange.

4. Each Contracting Party will look with favor towards participation by financial institutions of the other country in appropriate aspects of banking services related to international trade and financial relations. Each Contracting Party will permit those financial institutions of the other country established in its territory to provide such services on a basis no less favorable than that accorded to financial institutions of other countries.

ARTICLE VI

1. Both Contracting Parties in their trade relations recognize the importance of effective protection of patents, trademarks and copyrights.

2. Both Contracting Parties agree that on the basis of reciprocity, legal or natural persons of either Party may apply for registration of trademarks and acquire exclusive rights thereto in the territory of the other Party in accordance with its laws and regulations.

3. Both Contracting Parties agree that each Party shall seek, under its laws and with due regard to international practice, to ensure to legal or natural persons of the other Party protection of patent and trademark equivalent to the patent and trademark protection correspondingly accorded by the other party.

4. Both Contracting Parties shall permit and facilitate enforcement of provisions concerning protection of industrial property in contracts between firms, companies and corporations, and trading organizations of their respective countries, and shall provide means, in accordance with respective laws, to restrict unfair competition involving unauthorized use of such rights.
5. Both Contracting Parties agree that each Party shall take appropriate measures, under its laws and regulations and with due regard to international practice, to ensure to legal or natural persons of the other Party protection of copyrights equivalent to the copyright protection correspondingly accorded by the other Party.

ARTICLE VII

1. The Contracting Parties shall exchange information on any problem that may arise from their bilateral trade, and shall promptly hold friendly consultations to seek mutually satisfactory solutions to such problem. No action shall be taken by either Contracting Party before such consultations are held.

2. However, if consultations do not result in a mutually satisfactory solution within a reasonable period of time, either Contracting Party may take such measures as it deems appropriate. In an exceptional case where a situation does not admit any delay, either Contracting Party may take preventive or remedial action provisionally, on the condition that consultation shall be effected immediately after taking such action.

3. When either Contracting Party takes measures under this Article, it shall ensure that the general objectives of this Agreement are not prejudiced.

ARTICLE VIII

1. The Contracting Parties encourage the prompt and equitable settlement of any dispute arising from or in relation to contracts between their respective firms, companies and corporations, and trading organizations, through friendly consultation, conciliation or other mutually acceptable means.

2. If such disputes cannot be settled promptly by any one of the above-mentioned means, the parties to dispute may have recourse to arbitration for settlement in accordance with provisions specified in their contracts or other agreements to submit to arbitration. Such arbitration may be conducted by an arbitration institution in the United States of America, the People’s Republic of China, or a third country. The arbitration rules of procedure of the relevant arbitration institution are applicable, and the arbitration institution are applicable, and the arbitration rules of the United Nations Commission on International Trade Law recommended by the United Nations or other international arbitration rules, may also be used where acceptable to the parties to the dispute and to the arbitration institution.

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3. Each Contracting Party shall seek to ensure that arbitration awards are recognized and enforced by their competent authorities where enforcement is sought, in accordance with applicable laws and regulations.

**ARTICLE IX**

The provisions of this Agreement shall not limit the right of either Contracting Party to take any action for the protection of its security interests.

**ARTICLE X**

1. This Agreement shall come into force on the date on which the Contracting Parties have exchanged notifications that each has completed the legal procedure necessary for this purpose, and shall remain in force for three years.

2. This Agreement shall be extended for successive terms of three years if neither Contracting Party notifies the other of its intent to terminate this Agreement at least thirty (30) days before the end of a term.

3. If either Contracting Party does not have domestic legal authority to carry out its obligations under this Agreement, either Contracting Party may suspend application of this Agreement, or, with the agreement of the other Contracting Party, any part of this Agreement. In that event, the Parties will seek, to the fullest extent practicable in accordance with domestic law, to minimize unfavorable effects on existing trade relations between the two countries.

4. The Contracting Parties agree to consult at the request of either Contracting Party to review the operation of this Agreement and other relevant aspects of the relations between the two Parties.

In witness whereof, the authorized representatives of the Contracting Parties have signed this Agreement.

Done at Beijing in two original copies this 7th day of July, 1979, in English and Chinese, both texts being equally authentic.

For the Government of the United States of America

For the Government of the Peoples Republic of China

Leonard Woodcock Li Qiang

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PEOPLE'S REPUBLIC OF CHINA MARKET ACCESS MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING MARKET ACCESS

In recognition and furtherance of the principles and objectives of the Bilateral Agreement on Trade Relations and consistent with the principles of the General Agreement on Tariffs and Trade (GATT) and other relevant international agreements, the Government of the United States of America (U.S. Government) and the Government of the People's Republic of China (Chinese Government) have agreed as follows:

ARTICLE I - TRANSPARENCY

1. The Chinese Government will publish a regular and prompt basis all laws, regulations, rules, decrees, administrative guidance and policies pertaining to the classification or valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or the transfer of payments therefore, or affecting the sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use of imports or exports. Such information will include the quantity or value to be imported of any product subject to quantitative restriction, the types of products intended to be imported, and other relevant commercial information, such as projects which could involve imported products. Publication of such information and measures will be in a manner which enables governments and traders to become acquainted with and apply them.

The provisions of this paragraph, however, do not require disclosure of confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private. For the purposes of this Memorandum of Understanding (MOU), confidential information that could prejudice the legitimate commercial interests of a particular enterprise means specific information concerning the importation of a product that would have a significant adverse effect on the price or quantity available of such product, but shall not include information required to be disclosed under the GATT and related agreements.
2. Such laws, regulations, rules, decrees, administrative guidance and policies referred to in paragraph 1 that are not published and made available to other governments and traders as of the date of signature of this MOU will be published and made available within twelve months thereafter. The Chinese Government will issue regulations, to go into effect within 12 months of the signing of this MOU, which will provide that only laws, regulations, rules, decrees, administrative guidance, and policies that are published and readily available to other governments and foreign traders will be enforced.

3. Publication of new laws, regulations, rules, decrees, administrative guidance and policies governing the matters set forth in paragraph 1 shall take place before these measures are effective. Any publication under paragraphs 1 or 2 shall include the effective date of these measures, the products affected by a particular measure identified by tariff line, and all authorities that must approve or be consulted before action is taken and provide a contact point within each authority from which relevant information can be obtained.

4. The Chinese Government will designate an official journal dedicated to the publication of the items referred to in this Article and all such items will be published in this journal. The Chinese Government will publish this journal on a regular basis and make copies of the issues of this journal readily available to domestic and foreign nationals.

5. The U.S. Government and the Chinese Government shall administer in a uniform, impartial and reasonable manner all their respective laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

6. The Chinese Government will maintain administrative and judicial tribunals and procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters, including customs valuation, or any other matters covered by Article II of the MOU, such as application of unauthorized controls.

These procedures shall include the opportunity for appeal, without penalty, by persons affected by the relevant decision. If the initial right of appeal is to an administrative body, there shall also be the opportunity for appeal of the decision to a judicial body. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of the right to any further appeal.

ARTICLE II - QUANTITATIVE RESTRICTIONS ON IMPORTS
1. Pursuant to the People's Republic China's policy of bringing its trade regime into line with international standards, the Chinese Government:

(i) will eliminate all import restrictions, quotas, licensing requirements, and controls for the product categories listed in the Annex to this MOU according to the schedule provided in that Annex. In the interim, any quantitative restriction on the product categories listed in the Annex will be significantly liberalized year-by-year until the year that the Chinese Government has agreed to eliminate the quantitative restriction. A joint working group will monitor the implementation of this liberalization.

(ii) will publish no later than 90 days after signature of this MOU a list of all organizations, including those organizations delegated such authority from the central government, that are responsible for authorizing or approving imports whether through grant of license or other approval. Procedures for obtaining these import licenses and approvals and the criteria for deciding whether a license will be granted will also be published.

(iii) confirms that only import bans, quotas, licensing requirements, restrictions, and controls imposed by the central government are enforceable and that unauthorized import bans, quotas, licensing requirements, restrictions, and controls will not be given effect.

(iv) will not condition issuance of import licenses upon transfer of technology or meeting requirements related to investment in China or, subject to the provisions of the Annex, whether there exist competing domestic suppliers of such products.

(v) will take appropriate steps by March 31, 1993, to ensure that procurement of digital switching systems equipment is conducted on the basis of internationally accepted procedures of open tender and bidding without discrimination as to the source of the equipment or the entity seeking to acquire the equipment.

2. The Chinese Government may apply measures to prohibit the importation of goods when such measures comply with the provisions of Articles XX or XXI of the GATT.

ARTICLE III - IMPORT SUBSTITUTION
The Chinese Government confirms that it has eliminated all import substitution regulations, guidance and policies and will not subject any products to any import substitution measures in the future.

ARTICLE IV - STANDARDS AND TESTING

All sanitary and phytosanitary standards and testing requirements must be based on sound science and must be administered in a manner that does not impede or create barriers to imported products. To this end:

1. The U.S. Government and the Chinese Government will continue scientific and technical consultations concerning scientifically unjustifiable sanitary and phytosanitary restrictions on imports of agricultural products with the aim of facilitating the expanded export of agricultural products.

2. Regarding plant products, the U.S. Government and the Chinese Government affirm that phytosanitary restrictions should be based upon sound scientific evidence. The Chinese Government, within twelve months of the signing of this MOU, will eliminate any scientifically unjustifiable phytosanitary restrictions on citrus fruits, stone fruit, apples, grapes, wheat and tobacco. As a matter of policy, the U.S. Government does not apply scientifically unjustifiable phytosanitary restrictions against imported produce, such as bonsai, citrus fruit and Chinese pears.

3. Regarding animal breeding stock, within twelve months, import of U.S. animal genetic materials, (including live animals, bovine semen and embryos), will be pursuant to a veterinary protocol reflecting modern technology, based on mutually-agreed upon principles of sound science, and which does not impede the movement of the imported product.

4. The Chinese Government confirms that policies related to conservation of domestic wood products do not apply to imported wood products.

5. Prior to implementing charges in or additions to sanitary and phytosanitary testing or certification standards or requirements, the Chinese Government will publish a notice in the journal designated in Article 1 of this MOU and provide a reasonable time for interested persons, including foreign governments and traders, to make comments on these proposed changes or additions.

6. The U.S. Government and the Chinese Government will apply the same testing and certification standards to imported and domestic non-agricultural produces
and these standards will be applied uniformly throughout their respective countries.

ARTICLE V - TARIFFS

The Chinese Government will significantly reduce tariffs that were raised since 1988 in the following sectors: Edible fruits and nuts, other edible preparations, vegetable oils, photographic or cinematographic goods, miscellaneous chemical products, articles of iron or steel, machinery and mechanical appliances, electrical machinery and parts, perfumery, cosmetic and toiletry preparations, and games. These reductions will take place no later than December 31, 1993.

These reductions are without prejudice to any tariff negotiations which may take place under the auspices of the GATT.

ARTICLE VI - EXPORT RESTRICTIONS

1. Consistent with the national security interests of the United States, the U.S. Government will continue to pursue in the Coordinating Committee for Multilateral Export Controls (COCOM) liberalized export control lists and procedures including those for China.

2. The U.S. Government, in concert with COCOM, is considering liberalized treatment of computer exports for civilian end-use, which would also apply to China. This liberalization could go into effect as early as November, 1992, but no later than July 1, 1993. The liberalization will raise the sophistication of computers that will no longer require COCOM review by more than 100 percent.

3. The U.S. Government has agreed to significantly liberalize controls on telecommunications and will apply these changes to China.

ARTICLE VII - CONDITIONS OF MARKET ACCESS

1. The Chinese Government will ensure that the conditions for market access specified in this MOU remain unimpaired directly or indirectly by any other restrictions affecting imports or exports of products from the People's Republic of China.
2. Notwithstanding the provisions of the MOU, the U.S. Government and Chinese Government reserve any rights they may have in the future under the General Agreement on Tariffs and Trade.

ARTICLE VIII - SECTION 301 INVESTIGATION AND GATT

1. Effective on the date of signature of this MOU, the U.S. Government will terminate its investigation of certain market access barriers maintained by the Government of the People’s Republic of China conducted under section 301 of the Trade Act to 1974.

2. The U.S. Government will staunchly support China’s achievement of contracting party status to the GATT and will work constructively with the Chinese Government and other GATT contracting parties to reach agreement on an acceptable "Protocol" and then China’s rapid attainment of contracting party status.

ARTICLE IX - CONSULTATIONS AND FINAL PROVISIONS

1. The U.S. Government and Chinese Government agree to consult promptly on matters affecting the operation or the implementation of this Agreement at the request of either Party. In addition, both Parties agree to consult on an annual basis at the sub-ministerial level concerning the implementation and effectiveness of this MOU.

2. The Annex to this MOU is an integral part of the MOU.

Signed in Washington, D.C., this tenth day of October one thousand nine hundred and ninety-two, in two copies in the Chinese and English languages, both texts being equally authentic.

[Signed by Michael Kantor]
For the Government of United States of America

[Signed by Wu Yi]
For the Government of The People’s Republic of China

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MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE
PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE UNITED STATES
OF AMERICA ON THE PROTECTION OF INTELLECTUAL PROPERTY

In the spirit of cooperation embodied in their bilateral Agreement on Trade Relations and consistent with the principles of the relevant international agreements, the Government of the People's Republic of China (Chinese Government) and the Government of the United States of America (U.S. Government) have reached a mutual understanding on the following provisions:

ARTICLE I

1. The Chinese Government will provide the following levels of protection under the Patent Law of the People's Republic of China:

(a) Patentable Subject Matter

Patents shall be available for all chemical inventions, including pharmaceuticals and agricultural chemicals, whether products or processes.

(b) Rights Conferred

A patent shall confer the right to prevent others not having the patent owner's consent from making, using, or selling the subject matter of the patent. In the case of a patented process, the patent shall confer the right to prevent others not having the patent owner's consent from using that process and from using, selling, or importing the product obtained directly by that process.

(c) Term of Protection

The term of protection for a patent of invention will be 20 years from the date of filing of the patent application.

(d) Compulsory Licenses

(i) Patent rights shall be enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.
(ii) Where China's law allows for use of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

(1) authorization of such use shall be considered on its individual merits;

(2) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by the government in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(3) the scope and duration of such use shall be limited to the purpose for which it was authorized;

(4) such use shall be non-exclusive;

(5) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

(6) any such use shall be authorized predominantly for the supply of China’s domestic market;

(7) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

(8) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
(9) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority;

(10) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority;

(11) the conditions set forth in sub-paragraphs (2) and (6) above are not required to be applied where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(12) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(A) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(B) the owner of the first patent shall be entitled to a cross-license on reasonable terms to use the invention claimed in the second patent; and

(C) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

2. The Chinese Government will submit a bill to provide the levels of protection specified in subparagraph 1 of this Article to its legislative body and will exert its best efforts to have enacted and to implement the amended patent law by January 1, 1993.

3. Both Governments reaffirm their commitments to each other under the Paris Convention for the Protection of Industrial Property (Stockholm 1967) and their continued commitment to observe the principle of national treatment with respect to providing patent protection for the natural and legal persons of the other Party.
4. If the U.S. Government becomes a party to an international convention that requires the United States to provide a patent term of at least 20 years from the date of filing of the patent application, the United States will amend its laws to satisfy this obligation.

ARTICLE II

Both Governments reaffirm that the principle of territoriality and independence of patents with regard to protection of patents as provided in the Paris Convention for the Protection of Industrial Property should be respected.

The Chinese Government agrees to provide administrative protection to U.S. pharmaceutical and agricultural chemical product inventions which:

(i) were not subject to protection by exclusive rights prior to the amendment of current Chinese laws;

(ii) are subject to an exclusive right to prohibit others from making, using or selling it in the United States which was granted after January 1, 1986 and before January 1, 1993;

(iii) have not been marketed in China.

The owner of the exclusive right in the United States regarding such a product invention that meets the above requirements shall provide the competent Chinese authorities with an application for administrative protection including the following documents:

(1) a copy of the certificate issued by the competent authorities of the United States granting such exclusive right;
(2) a copy of the document issued by the competent authorities of the United States for the approval for manufacturing or sale of such product; and

(3) a copy of a contract for the manufacture and/or sale entered into between the owner of the exclusive right and a Chinese legal person (including foreign capital enterprises, joint venture enterprises, or cooperative enterprises) with respect to the manufacture and/or sale of the product in China.

The competent Chinese authorities will, in accordance with published Chinese laws and regulations relating to obtaining manufacturing or marketing approval, examine such application. No special rules or additional requirements for approval
will be imposed. After examination and approval, which shall occur promptly, a certificate for administrative protection, which will provide the right to manufacture or sell the subject product, will be issued to the person seeking such protection. The competent Chinese authorities will prohibit persons who have not obtained a certificate for administrative protection from manufacturing or selling the subject product during the term of administrative protection. The term of administrative protection begins from the date on which the certificate for administrative protection of the product is obtained and remains in force for seven years and six months. The above administrative protection will become available on January 1, 1993.

ARTICLE III


2. The Chinese Government will accede to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva Convention) and submit a bill to its legislative body authorizing accession by June 30, 1992. The Chinese Government will use its best efforts to have the bill enacted by February 1, 1993. The Chinese Government will deposit its instrument of ratification and the Convention will come into effect by June 1, 1993.

3. Upon China's accession to the Berne Convention and the Geneva Convention, these Conventions will be international treaties within the meaning of Article 142 of the General Principles of the Civil Code of the People's Republic of China. In accordance with the provisions of that Article, where there is an inconsistency between the provisions of the Berne Convention and the Geneva Convention on the one hand, and Chinese domestic law and regulations on the other hand, the international Conventions will prevail subject to the provisions to which China has declared a reservation, which is permitted by those Conventions.

4. In so far as China's copyright law and its implementing regulations are inconsistent with the Berne Convention, the Geneva Convention or this
Memorandum of Understanding (MOU), the Chinese Government will issue new regulations to comply with these Conventions and the MOU by October 1, 1992. These new regulations will also clarify the existing regulations and in particular will explain that the exclusive right of distribution that applies to all works and sound recordings includes making copies available by rental and that this exclusive right survives the first sale of copies. Regulations implementing the Conventions and this MOU will prevail over regulations for domestic works where there is an inconsistency between the new regulations and existing regulations.

In addition to applying to works created by nationals of Berne Union members, these new regulations will apply to all works created in the context of a contractual relationship, joint venture, or commission from foreign capital enterprises, foreign joint venture enterprises, or cooperative enterprises in which such nationals, individually or jointly with others, are intended to be owners of copyright in the resulting works.

The Chinese Government will submit a bill to amend its copyright law to the legislative body and use its best efforts to have enacted and to implement this legislation within a reasonable period of time.

5. Both Governments will indicate the status of the Berne Convention and the Geneva Convention in their respective laws and notify judicial and administrative bodies responsible for the enforcement of the copyright law and regulations of the provisions of the Conventions within 30 days after signature of this MOU or 30 days after accession to each Convention, whichever is later.

Both Governments will publish and provide to each other copies of any guidance provided to administrative or judicial bodies regarding the administration or interpretation of any laws and regulations related to the implementation of the Conventions or this MOU no later than 30 days after such guidance is issued.

6. No later than the effective date of China's accession to the Berne Convention, the Chinese Government agrees to recognize and protect computer programs as literary works under the Berne Convention, and consistent with the protection provided under that Convention shall impose no formalities on the protection of computer programs and provide a term of 50 years.

7. After China's accession to the Berne Convention, all works originating in a member of the Berne Union that are not in the public domain in their country of origin will be protected in China.
(i) With regard to any uses of an original or a copy of a U.S. work on a commercial scale undertaken before establishment of bilateral copyright relations between China and the United States, there will be no liability.

(ii) With regard to such uses undertaken after establishment of bilateral copyright relations, the provisions of the law and regulations will fully apply. With regards to a natural or legal person who owned and used a particular copy of a work for a particular purpose prior to establishment of bilateral copyright relations between China and the United States, that person may continue to make such use of that copy of the work without liability, provided that such copy is neither reproduced nor used in any manner that unreasonably prejudices the legitimate interests of the copyright owner of that work.

8. The principles of paragraph 7 above, including the limitations on liability, shall apply to sound recordings.

9. The Chinese Government will recognize this MOU as an agreement under Article 2 of the Copyright Law of the People's Republic of China which shall provide a basis for protection of works, including computer programs, and sound recordings of U.S. nationals published outside of China until such time as China accedes to the Berne Convention and the Geneva Convention. Such protection shall become effective 60 days after signature of this MOU.

Based on the commitments set forth in this MOU, the U.S. Government will take the necessary steps to secure to Chinese nationals and their works eligibility for protection under the copyright law of the United States which shall become effective no later than 60 days after signature of this MOU.

ARTICLE IV

1. For the purpose of ensuring effective protection against unfair competition as provided for in Article 10 bis of the Paris Convention for the Protection of Industrial Property, the Chinese Government will prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the trade secret owner in a manner contrary to honest commercial practices including the acquisition, use or disclosure of trade secrets by third parties who knew, or had reasonable grounds to know, that such practices were involved in their acquisition of such information.
2. The term of protection for trade secrets shall continue so long as the conditions for protection are met.

3. The competent authorities of the Chinese Government will submit the bill necessary to provide the levels of protection specified in this Article to its legislative body by July 1, 1993 and will exert its best efforts to enact and implement this bill before January 1, 1994.

ARTICLE V

Both Governments will provide effective procedures and remedies to prevent or stop, internally and at their borders, infringement of intellectual property rights and to deter further infringement. In applying these procedures and remedies, both Government's will provide safeguards against abuse and shall avoid creating obstacles to legitimate trade.

ARTICLE VI

Both Governments agree, at the request of either Party, to consult promptly on matters relating to the protection and enforcement of intellectual property rights, in particular with respect to the obligations of this MOU. Both Governments agree that the first consultations pursuant to this MOU will include discussions on the new implementing regulations for the Berne Convention and this MOU and that these discussions will be taken into consideration in the drafting of the regulations.

ARTICLE VII

In recognition of the progress in improving the protection of intellectual property rights that the Chinese Government has made and of further progress that will result from the steps that the Chinese Government has agreed to take, and in the expectation that these commitments will be fully implemented, the U.S. Government will terminate the investigation initiated pursuant to the "special 301" provisions of U.S. trade law and China's designation as a priority foreign country will be revoked effective on the date of signature of this MOU.

Signed in Washington, D.C., this seventeenth day of January, one thousand nine hundred and ninety-two, in two copies in the Chinese and English languages, both texts being equally authentic.

For the Government of The United States of America:
[signed Carla Hills]

For the Government of The People's Republic of China:
[signed Wu Yi]
The U.S.-China Bilateral WTO Accession Agreement  
(November 15, 1999)

Summary

The November 1999 US-China bilateral accession agreement produced an extensive package of Chinese commitments covering the full range of commercial issues addressed in the World Trade Organisation. Included are tariff and nontariff commitments that will be “multilateralised” in the process of China’s accession. Concessions are ratcheted-up, so that every WTO member gets the most favorable terms any single country secured with China. The six key pieces are:

1. **Tariffs:** A complete schedule of tariff reductions covering traded goods, including industrial and agricultural products. Chinese tariffs fall on average from 24.6 percent to 9.4 percent overall, and they drop to 7.1 percent on US priority products.

2. **Non-tariff barriers (NTBs):** Extensive coverage of NTBs, for example, the phase-out of import quotas, phytosanitary standards, and licensing requirements. Most quotas are phased out by 2002, and the rest by 2005.

3. **Services:** The full schedule of service sector commitments includes import-export trading rights, distribution rights, banking, insurance, telecom, professional services (accountancy and legal), consulting, business and computer related services, motion pictures and sound recording services. China will join the WTO Basic Telecommunications and Financial Services Agreements.

4. **Investment and Intellectual Property:** China will comply with the WTO Agreements on Trade Related Intellectual Property Rights (TRIPs) and Trade Related Investment Measures (TRIMs). This means foreign exchange balancing requirements, local content requirements, and technology transfer requirements will all be eliminated. China will not condition investment approvals or import licenses on local content requirements, offsets, transfer of technology, or requirements to conduct local R&D.

5. **Safeguards:** The US Bilateral Agreement contains China-specific provisions that rely on a nonmarket methodology for safeguard and dumping cases, plus special safeguards for the US textile and clothing industries.

6. **State Firms:** Anti-competitive behavior by state-owned enterprises (SOEs) becomes an actionable offense in many cases. SOE purchases are not to be treated as government procurement, which means they are subject to normal WTO rules.

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Annex 4

Corporate Practices of U.S. Companies in China: Executive Summary
Corporate Social Responsibility in China: Practices by U.S. Companies –How U.S. Companies Contribute to the Improvement of Social, Labor, and Environmental Conditions

Executive Summary

U.S. companies with operations in China are contributing to the improvement of social, labor, and environmental conditions in China. By exporting to China not only their products and services, but also their operating standards, best business practices, values, and principles, U.S. companies serve as agents of change. When U.S. companies set up operations in China, they bring with them U.S. ethical and managerial practices. These practices shape the way they run their factories, relate to their employees, and contribute to local community activities. Through these practices, U.S. companies set a positive example of corporate citizenship and contribute to the evolution of norms within Chinese society. Indeed, many of these practices are increasingly being adopted by domestic enterprises in China.

U.S. companies with international operations often establish global business practices that are implemented in a similar and appropriate way across all the countries in which they operate. In pursuing such policies in China and elsewhere, U.S. companies advance the cause of important social, labor, environmental, and economic objectives, including improved health, safety, and environmental practices; consistent enforcement of high ethical standards; increased compensation, training, and educational opportunities for workers; accelerated market reforms; transparent government regulation; and the rule of law.

To highlight the positive impact of U.S. companies, we have compiled a sample of the best practices currently in use by U.S. companies in China. Together, these practices tell a remarkable story about the role of companies in China beyond providing goods and services. These practices span eight principal areas:

- Ethical and responsible business behavior;
- Corporate codes of conduct;
- New ideas and information technology;
- Western business practices;
- Environmental, energy efficiency, health, and safety standards;
- Compensation, benefits, and training;
- Volunteerism, charitable giving, and community activism; and
- Rule of law.
I. U.S. Companies Promote Ethical and Responsible Business Behavior within their Facilities and with Their Customers and Suppliers.

U.S. companies strive to integrate their Chinese operations seamlessly into their worldwide operations. They conduct substantial ethics training for their employees in China, as they do for their employees worldwide. This training is more than simply a set of rules to follow. The training concentrates on fundamental concepts such as integrity, mutual respect, open communication, and teamwork. And it is collaborative: company officers go on-site to Chinese locations to offer guidance on compliance, to listen to employees’ concerns, and to observe the practices in use. In addition, to facilitate candid communication, the companies also have procedures for employees to communicate with management confidentially.

II. U.S. Companies Uphold Comprehensive Corporate Codes of Business Conduct and Ethics.

These corporate codes cover an array of topics, from managing supplier relationships, to protecting the environment, abiding by antibribery laws, supporting equal employment opportunity, and offering job advancement based on merit. The codes are translated into local languages, and as with ethics training, companies back up these codes with programs to ensure compliance. For example, companies conduct ethical renewal workshops to keep concepts fresh in employees’ minds, keep employees current with revisions to the code, and underscore the importance of compliance.

III. U.S. Companies Contribute to a More Open Chinese Society Through the Introduction and Dissemination of Ideas and Information Technologies.

By giving Chinese employees and consumers access to information technology, U.S. companies are giving individual Chinese citizens the opportunity to communicate with people inside and outside China, in the United States and in the rest of the world. U.S. companies are exposing Chinese citizens to new information, ideas, values, and behavior. They do so by giving their employees in China access to the Internet, Chinese-language web pages, and worldwide e-mail, which allow them to exchange information with people around the world instantaneously. U.S. companies provide access to international business, political, and financial news. They also sponsor employee newsletters to exchange information among sites across China. In addition, U.S. companies expose Chinese government officials to new ideas, such as through informal roundtable discussions with officials in Chinese ministries to exchange ideas and experiences.
IV. U.S. Companies Accelerate Exposure to, and Adoption of, Western Best Business Practices.

U.S. companies accelerate adoption of Western business practices in two ways: by bringing Chinese professionals to the United States to see the practices in action, and by bringing the practices to China to show them in action there. Accordingly, U.S. companies support substantial foreign travel by their Chinese employees, as well as Chinese officials, to give them direct exposure to market economy forces and Western social and political structures. U.S. companies with operations in China send literally thousands of their employees, Chinese officials, and students to the United States every year. And these visitors spend a substantial stay in the United States, from several weeks to as much as six months. They come to the United States to see U.S. practices first-hand—touring factories and offices across the United States. They also visit Washington, D.C. to observe our democratic political process and meet with Members of Congress and other government officials. For many of the Chinese visitors, this trip is not only their first trip to the United States, it is also their first opportunity to travel outside China.

In addition, U.S. companies teach global workforce, management, and manufacturing principles to all of their employees in China. This training is a comprehensive, "hands-on" experience which covers principles and practices such as participative management, empowered workforce, employee teaming, total quality management, and just-in-time systems. Chinese managers also receive training in fundamental market economics, and cutting-edge management practices; some even receive Western MBAs through these programs. And to further exposure to Western business practices, U.S. companies in China organize symposia on economics, finance, management and other business topics. These symposia bring Chinese professionals in contact with Americans and other foreigners from a wide array of corporations, academia, government, and other institutions to exchange ideas and experiences.

V. U.S. Companies Provide for and Promote Higher Environmental, Energy Efficiency, Health, and Safety Standards within Their Facilities and in the Communities in Which They Operate in China.

U.S. companies apply, and achieve, higher environmental, energy efficiency, health, and safety standards than Chinese-owned factories achieve—higher even than Chinese law requires. U.S. multinational companies set worldwide operating principles for their international facilities, including China, and these principles are based on U.S. standards. By setting an example of exceeding the Chinese standards, U.S. companies put pressure on domestic Chinese enterprises to comply with these higher, international standards. And U.S.
companies not only bring higher standards, they bring the technology to meet these higher standards, by providing advanced environmental protection and energy efficiency technology and by sponsoring environmental protection symposia in China to exchange information about these standards and how to meet them. Finally, by creating jobs and raising living standards in China, U.S. companies are creating the wealth necessary to help China pay for higher environmental, worker safety, and energy efficiency standards.

VI. U.S. Companies Provide Desirable Employment Alternatives to Chinese workers, Including Enhanced Compensation, Benefits, and Training Opportunities for Advancement on the basis of Merit.

U.S. companies are raising the bar for employment opportunities. They provide enhanced compensation and benefits, sponsor on-going training opportunities and offer advancement on the basis of merit. U.S. companies pay their Chinese employees substantially higher wages than the Chinese owned firms do. In addition, U.S. companies offer forward-looking programmes, such as subsidies to encourage home ownership, and on-site day care. Companies also offer performance-linked rewards systems and incentives for good safety practices. Together, these benefits lead to low employee turnover rates.

U.S. Companies also offers comprehensive technical training. They have technical training centers located throughout China, some so comprehensive that the companies call them their corporate “university”. Many companies establish minimum training hours for each worker per year, which they often substantially exceed. In addition, companies offer scholarships to students at China’s leading universities to ensure that the next generation of Chinese workers has the technical skills necessary to succeed in a more competitive workplace.

VII. U.S. Companies Export U.S. Concepts of Volunteerism, charitable Giving, and Community Activism.

U.S. companies in China are setting an example of volunteerism and community activism. They have donated millions of dollars to support a variety of charitable causes in China including scholarships for students attend university, donations to flood victims, medical care for the children, and support for primary education in rural districts. These funds empower local communities, and individuals, to work toward improving their own circumstances. Company volunteers and a human link, through tutoring and monitoring programmes.

VIII. U.S. Companies Support Advancement of the rule of law in China and Effective Enforcement Measures.
U.S. companies have taken an active role in encouraging and developing the rule of law in China. They have been working with Chinese officials to develop new laws governing property rights, taxation, corporations and other commercial areas. Industry-by-industry, they provide expertise and set an example of how to operate successfully while respecting the rule of law.